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LOCAL GOVERNMENT (NO. 2) ACT 2003

ARRANGEMENT OF SECTIONS

Section

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SCHEDULE

Amendments to Principal Act

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Acts Referred to

Electoral (Amendment) Act 2001	2001, No. 38
Local Government Act 2001	2001, No. 37
Local Government Acts 1925 to 2003	
Planning and Development Act 2000	2000, No. 30
Planning and Development (Amendment) Act 2002	2002, No. 32



Number 17 of 2003

LOCAL GOVERNMENT (NO. 2) ACT 2003

AN ACT TO AMEND THE LOCAL GOVERNMENT ACT 2001,
TO MAKE (CONSEQUENT ON THE PASSING OF THE
PLANNING AND DEVELOPMENT (AMENDMENT) ACT
2002) AN AMENDMENT TO SECTION 97 OF THE
PLANNING AND DEVELOPMENT ACT 2000 AND TO
PROVIDE FOR RELATED MATTERS. [2nd June, 2003]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—In this Act “Principal Act” means the Local Government Act 2001. Definition.

2.—(1) The Principal Act is amended by inserting the following after section 13: Amendment of
Principal Act —
insertion of new
section 13A.

“Application of
disqualification to
members of Dáil
Éireann and Seanad
Éireann.

13A.—(1) A person who is a member of
either House of the Oireachtas is disqualified
from being elected or co-opted to, or from
being a member of, a local authority.

(2) In respect of local elections to be held
in the year 2004 and thereafter, section 13(1)
shall be read as if the following were substi-
tuted for paragraph (e):

‘(e) is a member of Dáil Éireann or
Seanad Éireann, or’.”.

(2) This section comes into operation and applies with respect to
the local elections to be held in the year 2004 and thereafter.

3.—The Principal Act is amended by inserting the following after section 237: Amendment of
Principal Act —
insertion of new
section 237A.

“Regulations
relating to members
of Houses of
Oireachtas.

237A.—(1) In this section ‘dealing’ in
relation to a member of either House of the
Oireachtas means a dealing with such a
member in his or her capacity as such a
member.

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(2) Local authorities shall conduct their dealings with members of either House of the Oireachtas in accordance with regulations under subsection (3).

(3) The Minister shall make regulations for the purposes of subsection (2) and those regulations shall include provisions in relation to—

- (a) the supply, without charge, of notice, agenda and minutes of local authority meetings to members of either such House,
- (b) the supply by local authorities of other specified documentation or other specified information,
- (c) correspondence with such members by local authorities,
- (d) arrangements to facilitate access by such members to information, and communication generally by local authorities with such members, and
- (e) such other matters as the Minister may consider appropriate for the purposes of subsection (2).

(4) Nothing in this section derogates from—

- (a) section 4,
- (b) the functions of a local authority as specified in section 63(1)(a), or
- (c) the role of local authority members as locally elected public representatives.”.

Consequential and other amendments to Principal Act.

4.—Each section of the Principal Act mentioned in *column 1* of the *Schedule* to this Act is amended to the extent specified in *column 2* of that *Schedule* opposite such mention.

Amendment of section 97 of Planning and Development Act 2000.

5.—Section 97 of the Planning and Development Act 2000 is amended in clause (II) of subsection (12)(b)(ii) by substituting “0.1 hectares” for “0.2 hectares”.

Amendment of Local Elections Regulations 1995.

6.—The Local Elections Regulations 1995 (S.I. No. 297 of 1995) are amended—

- (a) by deleting “Fourth” in paragraph (aa) of article 51(2), (inserted by section 54(b)(ii) of the Electoral (Amendment) Act 2001),

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- (b) by deleting in article 80(1) “the candidates shall in the case of election be determined to be elected in the order in which their names are drawn,” in the definition of “determine by lot”, S.6
- (c) by deleting article 88, (substituted by section 54(k) of the Electoral (Amendment) Act 2001),
- (d) by substituting in article 124(1) “Subject to article 125, where” for “Where”,
- (e) by substituting the following article for article 125:

“Person elected for more than one local authority.

125.—(1) Where, at an election, a person is elected as a member for two or more local authorities and section 14 of the Local Government Act 2001 would be applicable to such person, then the person shall, within the period of three days after the return is made of persons elected to be members of those local authorities, by notice in writing signed by the person and delivered to the clerk or secretary of each of those local authorities, declare which one of those authorities the person chooses to represent, and if such declaration is not so delivered within the said period, the person shall, at the end of the said period, be deemed to have chosen to represent the local authority of the local electoral area in respect of which the person received the greatest number of first preference votes.

(2) In cases where the person is elected with an equal number of first preference votes in two or more local electoral areas at elections in two or more local authorities, regard shall be had to the total numbers of votes credited to the elected member at the first count in those elections at which the member had an unequal number of votes and the local authority at which the member has the highest number of votes at that count shall be deemed to have been chosen. Where the numbers of votes credited to the member were equal at all counts at the elections, the returning officer of the local authority where the member ordinarily resides or who is designated by the Minister shall determine by lot which of the local authorities the elected member shall be deemed to have chosen, that is to say by—

- (a) writing the names of the local authorities concerned on similar slips of paper,
- (b) folding those slips so as to prevent identification, and

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(c) mixing and drawing at random those slips,

and the local authority whose name is so first drawn shall be the local authority deemed to have been chosen.

(3) Where, in pursuance of this article, a person chooses, or is deemed to have chosen, to represent a particular local authority, the person shall be deemed not to have been elected for any other local authority and the consequential vacancy or vacancies in the membership of the other local authority shall be regarded as casual vacancies occurring on the day on which the newly-elected members come into office under section 17 of the Local Government Act 2001 and shall be filled accordingly.

(4) Where, under this article, a member chooses or is deemed to have chosen a local authority to represent and that member has been elected for more than one local electoral area for that authority, article 124 shall apply as to the area to be represented by the member.”.

Repeals.

7.—The following provisions of the Principal Act are repealed:

- (a) section 25(1)(b) and (d) and section 35,
- (b) Chapter 3 of Part 5 (sections 39 to 43),
- (c) section 217(1)(c), and
- (d) Schedule 9.

Short title, construction and collective citation.

8.—(1) This Act may be cited as the Local Government (No. 2) Act 2003.

(2) The Local Government Acts 1925 to 2003 and this Act shall be read together as one and this Act shall be included in the collective citation “Local Government Acts 1925 to 2003”.

SCHEDULE

Section 4.

Amendments to Principal Act

1	2
Provision affected	Amendment
Section 1(5)	Delete "Chapter 3 of Part 5,".
Section 2(1)	Delete the definition of "direct election".
Section 7	Substitute "and except section 161, the coming into operation of which is provided for in that section" for "and except section 161 and Chapter 3 of Part 5, the coming into operation of which is provided for in that section and Chapter, respectively".
Section 12	Substitute "sections 13 and 13A" for "section 13".
Section 16(1)	Substitute "sections 13, 13A" for "section 13".
Section 19(1)	Substitute the following for paragraph (c)— “(c) in such circumstances as are set out in articles 25, 28, 124 and 125 of the Local Elections Regulations 1995 (S.I. No. 297 of 1995),”.
Section 21(1)	Delete "and without prejudice to section 40(7)".
Section 25(1)	Insert the following after paragraph (c) — "or".
Section 31	(a) Delete subsection (10). (b) In subsection (11) delete "Chapter 2 or Chapter 3 of".
Section 36(1)	Insert the following paragraph after paragraph (c)— “(d) On the commencement of <i>section 2</i> of the <i>Local Government (No. 2) Act 2003</i> , paragraph (c) shall cease to apply and have effect.”.
Section 48	Insert the following subsection after subsection (6)— “(7) On the commencement of <i>section 2</i> of the <i>Local Government (No. 2) Act 2003</i> , subsections (4) and (5) cease to apply.”.
Section 129(4)	(a) In paragraph (a) substitute "The chairperson of a Board" for "Subject to paragraph (b), the chairperson of a Board,". (b) Delete paragraph (b).
Section 129(9)	Insert the following paragraph after paragraph (a)— “(aa) the tenure of a chairperson appointed under subsection (4);”.
Section 167	Insert the following subsection after subsection (1)— “(1A) In addition to those employees to whom this Part applies by virtue of subsection (1), sections 168, 169 and 170 also apply to every other employee of a local authority and those sections shall be read accordingly.”.
Section 243	Delete "In addition to the amendments provided for by section 42 (which relate to direct elections),”.
Schedule 10	In paragraph 4(1), delete all words after "local authority"; In paragraph 4(2), delete all words after "annual meeting"; In paragraph 4(6)(a)(i), delete "where appropriate"; In paragraph 10(2) delete "or 41(2)".



LOCAL GOVERNMENT (NO. 2) ACT 2003

EXPLANATORY MEMORANDUM

[This memorandum is not part of the Act and does not purport to be a legal interpretation.]

General

The main purpose of the Act is to end dual local authority/parliamentary membership from the next local elections in 2004 and to discontinue the arrangements which had been put in place to introduce direct elections of city and county cathaoirlioh at that time. The Local Government Act 2001 has been amended accordingly so that from the local elections in 2004 Oireachtas members will be disqualified from local authority membership; and provisions relating to the introduction of direct election of city/county cathaoirlioh have been repealed. This Act also provides for various consequential and minor amendments to the 2001 Act and certain other legislation.

Section 1 defines the “Principal Act” as the Local Government Act 2001.

Section 2 inserts a new section 13A in the Principal Act to provide that from the local elections in 2004 and thereafter, a member of Dáil Éireann or Seanad Éireann is disqualified from being elected, or co-opted, or from being a member of a local authority.

Section 3 inserts a new section 237A in the Principal Act which provides for the making of regulations by the Minister with regard to local authorities and their dealings with members of either House of the Oireachtas. The Regulations are to deal with the supply by a local authority of notice, agenda and minutes of meetings; other specified documentation; correspondence; access to information and communication generally. *Subsection (4)* provides inter alia, that the section does not derogate from the democratic representational function of local authorities or the role of councillors as locally elected public representatives.

Section 4 provides for various amendments to the Principal Act which are listed in the Schedule to this Act. These amendments are largely consequential to the substantive changes to the Principal Act affecting the dual mandate and directly elected cathaoirlioh. The amendment to section 167 is however principally to clarify that a code of conduct issued under section 169 of the Principal Act can apply to all employees.

Section 5 effects a minor amendment to section 97 of the Planning and Development Act 2000 which was omitted by the Planning and Development (Amendment) Act 2002 and which is consequential to other amendments made by the 2002 Act.

Section 6 amends article 125 of the Local Elections Regulations 1995 to provide that a person who is elected to a number of local authorities must indicate which one of those authorities s/he chooses to represent. This follows from section 14 of the Principal Act which prohibits simultaneous membership of local authorities (other than a county and town council). The other amendments to those regulations are largely consequential.

Section 7 repeals Chapter 3 of Part 5 of the Principal Act which provides for the introduction of direct election of county/city cathaoirligh from 2004 onwards. The other repeals effected by this section are consequential on the repeal of that chapter.

Section 8 is a standard provision setting out the short title and collective citation.

*An Roinn Comhshaoil agus Rialtais Áitiúil,
Meitheamh, 2003.*