

Note for the Minister's Information

Respective roles of Minister and local authorities/agencies/bodies and statutory preclusions on exercise of Ministerial powers

1. OPERATIONAL DECISIONS BY LOCAL AUTHORITIES OR OTHER BODIES

In a number of areas, the Minister has a role in providing the legislative and policy framework but is specifically precluded under legislation in exercising any power or control in relation to operational decisions by local authorities or other bodies under the aegis of the Department in relation to certain functions. The main areas where this arises are set out below.

2. INDEPENDENT STATUS OF LOCAL AUTHORITIES

Local authorities are entirely independent corporate entities having full responsibility under law for the performance of their functions and the discharge of their governance and other responsibilities. The Minister for Housing, Planning and Local Government has responsibility for policy, legislation, Oireachtas accountability and, at a broad level, oversight, in respect of the local government system and the Department has responsibility in relation to some but not all functions, services, etc., of local authorities.

For example, the Department of Housing, Planning and Local Government has responsibility at central government level for specific functional or service areas such as planning, housing and fire services. Responsibility at the national level in relation to the policy, funding, legislation, and general oversight and accountability in respect of a number of other functions of local authorities, however, often rests with other Government Departments. Traditionally, this has applied in aspects of functions such as agriculture, education, health and welfare. More recently, this multi-lateral reporting relationship has been extended to embrace functions such as roads and traffic (since 2002), enterprise support (since 2014), tourism, certain piers and harbours and, arising from the 2016 Departmental reconfiguration, rural affairs and environmental matters. An exception to this, however, is that the oversight role of NOAC¹, one of the statutory bodies within the aegis of this Department, applies to all local authority activities, including those within the responsibility of other Departments.

¹ National Oversight and Audit Commission

In short, local authorities now perform functions across a wide range of sectors which come within the remit of a number of different Departments and central agencies. Moreover, local authorities have broad “general competence” to take action in relation to local matters with little direct involvement of central government.

The foregoing position regarding responsibilities of Departments and other central agencies in respect of functions for which local authorities have responsibility at local level reflects Government policy of greater devolution of power to local level as decided in relation to the 2012 *Action Programme for Effective Local Government*, and is set out in the Department’s Corporate Governance Framework and in numerous provisions of the Local Government Act.

The broad oversight role that the Department fulfils in respect of Local Government policy does not include the power to instruct or direct the authorities unless that is specifically provided for in legislation; the Department and Minister work in partnership and collaboration with local authorities to deliver on Government objectives. The democratically elected Councillors are responsible for running the local authority in conjunction with the Chief Executive and his/her team. This includes direct responsibility in law for the adoption of an annual budget which is sufficient to meet the expenditure arising in the year. It is a matter for each local authority to determine its own spending priorities in the context of the annual budgetary process having regard to both needs and available resources.

The collection of commercial rates is also a function of the local authorities. The rates paid by individual businesses are determined by the valuation determined by the Independent Commissioner of Valuation and the Annual Rate on Valuation (ARV). The determination of the ARV is a function of the elected members of the local authority although legislative provision exists for the Minister to limit the level of ARV that may be applied by a local authority.

3. LOCAL GOVERNMENT AUDIT SERVICE

Section 116 of the Local Government Act 2001 provides for the Local Government Audit Service (LGAS) to carry out the independent, external audit of local government bodies. All Local Government Auditors are qualified accountants.

The director of audit, local government auditors, assistant auditors and the support staff, form an independent external audit service for local government. While local government auditors are appointed by the Minister for Housing, Planning, Community and Local Government and are employees of this Department, they are, in the performance of their professional functions, independent both of the Minister and of the audited bodies. The independence of the audit function is underpinned in primary legislation.

Following the audit each local government auditor issues an audit opinion, an audit report and a management letter to the Chief Executive of the local authority. The Local Government Act, 2001 also states that the Local Government (Value for Money) Unit forms part of the Local Government Audit Service. The Unit carries out VFM studies on local authority operations, with a view to identifying best practice and recommending ways of improving existing procedures, practices and systems and thereby promoting efficiency and cost effectiveness.

4. STATUS OF STATE AGENCIES

The State Agencies under the aegis of the Department carry out a wide range of functions mirroring the various policy areas for which the Department has responsibility. The Agencies are independent in the exercise of their statutory functions and in relation to day to day operational matters.

All agencies under the aegis of the Department are established by statute and the specific establishing legislation provides for their independence and prescribes the functions that they are established to provide. The Minister/Department have an overall corporate oversight of the agencies in accordance with the *Code of Practice for the Governance of State Bodies* and they are required to confirm annually to the Minister that they comply with the code in their governance practices and procedures.

The table below lists the State Agencies that are currently under the aegis of the Department but will be subject to change on the transfer of functions to the new Department of Rural and Community Affairs:

State Agencies under the Aegis of DHPLG
An Bord Pleanála
Eirvia/Irish Water/Gas Networks Ireland ²
Housing Agency
Housing Finance Agency
Irish Water Safety - will transfer to Dept. of Rural and Community Affairs
Local Government Management Agency
National Oversight and Audit Commission (NOAC)
Residential Tenancies Board
Pobal (not for profit private company limited by Guarantee) – will transfer to Dept. of Rural and Community Affairs

5. HOUSING

The main limitations on the Minister's power in relation to housing are in the **Housing (Miscellaneous Provisions) Act 2009**, in particular Sections 6 and 22.

In effect, section 6 provides that the Minister's powers to fund local authority housing services and to issue guidelines and directions cannot be used to exercise any function in relation to any individual case being dealt with by a housing authority.

Section 22 deals with the allocation of dwelling by housing authorities and by approved housing bodies with Exchequer funding. The section empowers the elected members to make and amend an allocation scheme relating to:

- the order of priority for allocating dwellings to households qualified for social housing support;
- the reservation of a proportion of dwellings in any part or parts of its administrative area for particular classes of household and forms of tenure and

² Responsibility in relation to Gas Networks Ireland relates to corporate governance; gas policy matters rest with the Minister for Communications, Climate Action and Environment

- the circumstances in which the preferences of households to live in a particular area or areas may be taken into account in allocating dwellings.

The above are **reserved functions** to be carried out by the elected members.

While section 22 also empowers the Minister to, inter alia, issue directions about the operation of an allocations scheme, **this power cannot be used in such a way as to direct the allocation of a dwelling to a specific household.**

6. PLANNING AND DEVELOPMENT

Relevant sections of the Planning and Development Act 2000 (as amended) should be noted, as follows:

- Section 28 - Under this provision, planning authorities and An Bord Pleanála are required to have regard to guidelines issued by the Minister in the performance of their functions generally under the Planning Acts.
- Section 29 - The Minister may issue a Policy Directive under this section to planning authorities and the authorities are bound to comply with it. The legislative basis for a policy directive underpins and strengthens any policy direction the Minister may wish to issue.
- **Section 30 precludes the Minister from exercising any power or control in relation to any particular case with which a planning authority or the Board is or may be involved** (except in very specific limited circumstances set out in the legislation, principally to deal with exceptional circumstances where it is considered that a development plan or development that might adversely affect a Special Area of Conservation or a Special Protection Area should, nonetheless, be given consent for 'imperative reasons of overriding public interest' (IROPI), a power which has never been used). This means, for example, that it would not be appropriate for the Minister to become involved in an individual planning application or appeal that is being considered by a planning authority or An Bord Pleanála.
- Section 31 - Where local authorities adopt policies such that they would effectively frustrate the achievement of national policy objectives or breach statutory requirements, the Oireachtas has provided the Minister with powers to direct a planning authority to amend development plans under procedures set out in this section. Section 31 is essentially a safeguarding mechanism that follows on from

statutory consultation by planning authorities with the Minister in drawing up or amending their statutory development or local area plans. Where directions have issued, they have related to a broad range of planning issues, including excessive or inappropriate land use zoning objectives and failure to take account of flood risk assessment in preparing development plans and local area plans.

Section 255 of the Planning Act allows the Minister to direct local authorities to conduct reviews of their structures, systems and procedures in relation to implementation of their statutory planning functions and to appoint a person or body to carry out the review. These powers are restricted to the review of the organisation and of the systems and procedures used by planning authorities in relation to their functions and **they do not extend to the review of individual planning applications**. Such reviews could arise from the Minister's considerations that the LA is not carrying out its functions in accordance with the Act, is not in compliance with guidelines (section 28), policy directives (s.29) or directions (s.31), or that there may be impropriety, serious diseconomies or inefficiencies in the conduct of its functions.

Following such a review, the local authority must comply with any direction from the Minister in relation to the review. The Minister has power under section 255(4) to appoint a commissioner to carry out and have full responsibility for some or any one or all planning functions carried out by the local authority. A local authority can also, by resolution, ask the Minister to appoint a commissioner.

7. FRANCHISE – THE ELECTORAL ACTS

There are no statutory preclusions on the Minister exercising any particular powers under the electoral Acts. Having said that, it should be noted that returning officers are independent in the performance of their functions under the electoral Acts. This includes the Referendum Returning Officer and the Presidential Returning Officer who is appointed by the Minister when a referendum or a presidential election falls to be held. It is the tradition to appoint the Franchise Officer in the Department to these positions and in that role the Franchise Officer performs her role as Returning Officer, independently of the Minister and the Department.

Following each census of population the Minister establishes a Constituency Commission, by order and in accordance with Part II of the Electoral Act 1997 which provides, in section 5(2) that 'A Constituency Commission and its members shall be independent in the performance of their functions under this Act.' The membership is prescribed in the Act with

the Chair being nominated by the Chief Justice. The terms of reference for the Constituency Commission are set out in the Act and the Commission reports to the Chairman of the Dáil. The Constituency Commission stands dissolved once it has presented its report.

The Minister has the power, when a Constitution Amendment Bill is initiated, to establish a Referendum Commission. This has been done for every referendum held since 1998. The Minister establishes the Referendum Commission by order in accordance with the Referendum Act 1998 which provides, in section 2(3) that 'The Commission shall be independent in the performance of its functions'. The membership is prescribed in the Act with the Chair being nominated by the Chief Justice. The functions of a Referendum Commission are set out in the Act. The Referendum Commission must report to the Minister within six months of completing its functions under the Act and stands dissolved one month after submitting its report.