

THE ADMINISTRATIVE AND LEGAL FRAMEWORK FOR PLANNING

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**Oifig an
Rialaitheora Pleanála**
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1. Introduction

Local government is recognised in Article 28A of Bunreacht na hÉireann. Its role is to provide a forum for the democratic representation of local communities. However, local authorities do not have any inherent jurisdiction and derive all their powers from:

- (i) Acts of the Oireachtas; and
- (ii) Regulations made under these Acts by the Minister for Housing, Planning and Local Government.

As a consequence, the Minister is given a general supervisory role over local matters in local government legislation.



2. Origins and Landmarks in the Development of Local Government

Establishment of the Local Government Structure

The 1898 Local Government (Ireland) Act established a democratically elected body in each of the existing thirty-three administrative counties on the Island of Ireland. Management of the

financial and administrative business of the county was given to these councils, which consisted of a chairman and councillors. The six cities (Dublin, Waterford, Cork, Limerick, Londonderry and Belfast) had larger populations and a more extensive range of functions than the other urban authorities and were given the same powers and responsibilities as the new county councils. These thirty-nine elected bodies formed the upper tier of local government. The lower tier comprised some eighty pre-existing urban authorities, which had a limited range of functions and a localised remit (borough councils, urban district councils and town commissioners).

However, there were practical and operational difficulties with the new councils, particularly in the turbulent period surrounding Independence in 1922. These resulted in the dissolution of a number of councils for failing to discharge their functions during the 1920s. They were replaced by salaried commissioners who were full time officials with extensive administrative expertise. The business and professional community of Cork city found their experience of a commissioner so satisfactory that they proposed having a permanent official who would share power with the elected members. In 1929, the post of city manager was created by the Cork City Management Act. Between then and 1940, the management system was extended to all city and county councils.



Division of Local Powers

In the Management Acts, the powers, duties and responsibilities of local government were divided into 'reserved' and 'executive' functions. Reserved functions are exercisable only by the elected members of the local authority. Since the introduction of the management system, every local government act has specified which of the new powers being given to local authorities are reserved to the elected representatives. Any power or duty not specified as reserved must be discharged by the manager (now styled 'chief executive' since the 2014 Local Government Reform Act).

The principle underpinning the management system was that the elected members should decide on policy, political and financial matters, while the manager should be responsible for execution of settled policy and for day-to-day administration. In particular, the manager would be responsible for decisions which might be open to personal or political influence. All matters relating to staff (appointment, remuneration, work allocation, etc.) were placed exclusively within the manager's remit.

The housing function provides a clear example of the principle. Following the introduction of the management system, the elected members had the power to approve a scheme for the letting of local authority houses. Individual applications for houses were evaluated by the staff of the local authority in accordance with the priorities in the scheme the councillors had approved and the houses were then allocated by the manager on the basis of this evaluation. The division of the housing function into reserved and executive elements ensured transparency and impartiality.

Local Government in the Twenty-First Century

The 2001 Local Government Act updated and simplified the law relating to local government. It repealed legislation dating from the early nineteenth century, modernised the names of local authorities and changed the title of the city / county manager to chief executive. However, as it did not make any changes to geographic boundaries or functions, the two tier structure remained with 114 elected bodies. By the beginning of the twenty-first century, the suburbs of most of the lower tier towns had grown beyond the original administrative boundaries of the urban area and bore little relationship to the town as identified by its residents.

The 2001 Act required all city and county councils to establish Strategic Policy Committees to advise the local authority on the development of policy in respect of its functions. The members consist of councillors and representatives of the various sectors relevant to the remit of the committee in question (environment, transport, economic development and planning, etc.). All Strategic Policy Committees are chaired by an elected member of the local authority.

The 2014 Local Government Reform Act streamlined the structure of local government significantly, reducing the number of local authorities to 31. The eighty lower tier town authorities ceased to be separate units of local government and were integrated into their counties. The city and county councils were amalgamated in Limerick and Waterford, as were the administrative counties of North Tipperary and South Tipperary. Recognising that communities identify with the urban places where they live, and that these form a coherent network of service and educational centres, the 2014 Act provided a new system of municipal governance at sub-county level. Each of the counties outside the Greater Dublin Area was divided into two or more municipal districts and these were centered on a town as far as practicable.

The geographic boundaries of the counties established in 1898 were not changed by the 2014 Local Government Reform Act.

The 2014 Act required each local authority to establish a Local Community Development Committee (LCDC) to develop and implement an integrated approach to local and community development, including the preparation of a Local Economic and Community Plan (LECP) to be adopted by the relevant Council. Membership of the LCDC consists of councillors, officials and representatives of public and private sector socio-economic partners. While the LCDC is serviced by staff of the local authority, the 2014 Act provided that it is to be independent in the performance of its functions.

3. Establishment of the Planning System

The 1963 Local Government (Planning and Development) Act introduced what was then called 'town and country planning', and is now frequently referred to as 'spatial planning' to distinguish it from economic planning. The planning system has three main components: (i) plan making; (ii) development control or management; and (iii) enforcement. These were

divided between the elected representatives and the manager, in accordance with the principles underpinning the Management Acts.

The development plan is the principal policy document of a local authority. It contains the objectives that will guide development during the period of the plan and has been described by the Supreme Court as ‘an environmental contract’ between the community and the planning authority (*McGarry v Sligo County Council* [1989] I.L.R.M. 768). Adopting the development plan was made a reserved function.



Decisions on planning applications are made in accordance with the policies and objectives contained in the development plan. Therefore, they fall into the category of implementation of council policy. Moreover, the decision to grant or refuse permission is potentially open to political patronage. Accordingly, deciding on individual applications was made an executive function.

Decisions on whether to take legal action against specific cases of unauthorised development are highly technical, do not involve policy formulation and, like decisions on planning applications, could be the subject of political influence. Enforcement was also made an executive function.

4. The Role of the Minister

To ensure consistency in the planning process throughout the country and to bring examples of best planning practice to the attention of all planning authorities, the Minister is empowered to issue them with guidelines concerning any of their functions.

All planning authorities and An Bord Pleanála are required to have regard to Ministerial guidelines in delivering each of the components of the planning service.

Guidelines have been issued on a wide range of planning functions, from matters that concern all areas such as *Architectural Heritage Protection* to matters of geographically-limited

applicability such as *Quarries and Ancillary Activities*. All guidelines in force at present can be downloaded from the Office of the Planning Regulator's webpage.

The Minister also has power to issue policy directives to planning authorities regarding any of their functions. They are binding on planning authorities and, where relevant, the Board. For this reason, a draft directive has to be approved by the Oireachtas before it comes into force. Only two policy directives have been issued, on Enforcement in 2013 and Urgent Social Housing Supply in 2015.



The Minister has a supervisory role with regard to development plans and is kept informed at each stage in the plan-making process. If a planning authority adopts a plan which the Minister considers fails to comply with the requirements of the planning legislation, the Minister can issue a direction in draft form to that authority, setting out the measures which must be taken by it to bring the plan into line with legislative requirements. These include Government policy and Ministerial guidelines and directives. A nine-step consultation procedure follows, giving the planning authority opportunity to explain and defend its plan. Finally, the Minister decides on one of the following options:

- (i) to issue the direction as originally drafted;
- (ii) to issue the direction in an amended form; or
- (iii) not to issue any direction.

5. The Planning System today

The 2000 Planning Act was a major piece of updating legislation that both restated existing provisions and introduced new procedures and concepts. Minister Noel Dempsey told the Oireachtas that three core principles had guided his vision of a planning system suitable to the twenty-first century. It was to have an ethos of sustainable development, be strategic in approach and deliver a high quality performance.



In order to have a strategic approach, a hierarchy of spatial plans was introduced, replacing the fragmented system whereby each of eighty-eight planning authorities made the plan they considered most suitable to their functional area, with no statutory obligation to take account of how this would link into or affect adjoining local authorities. The current hierarchy of plans is set out below.

National Planning Framework 2018

Regional Spatial and Economic Strategies

City / County Development Plans

Local Area Plans

The National Planning Framework (NPF) was adopted by the Government in May 2018 following an extensive process of public consultation. Its objectives are to provide a broad national plan to secure balanced regional development and co-ordination of planning at regional and local levels. The NPF covers the period up to 2040 and replaces the National Spatial Strategy 2002-2020.

Regional planning is at a transitional stage at present. Regional Planning Guidelines were made for each of the eight regions in 2010 covering the period up to 2022. They are being replaced by a new type of regional plan, the regional spatial and economic strategy (RSES). Under the 2014 Act, the RSES is intended to provide a co-ordinating framework for both the statutory development plans and local economic and community plans adopted by the various local authorities.

The Eastern and Midland Regional Assembly adopted its strategy in June 2019, the other strategies will be adopted over the coming months. The objective of RSEs is to support the implementation of the NPF and the Government's economic policies. Strategies must be consistent with the National Planning Framework. They provide linkage between it and the city and county and local area plan levels of the planning policy hierarchy.



City and county development plans must be consistent with the NPF and the appropriate RSEs. The normally rigid, six-yearly cycle of plan making has been paused in the case of some planning authorities to ensure the NPF and the RSEs can be incorporated into the next round of development plans. The plan-making process will recommence after the relevant RSEs has been adopted. Where a review of the development plan is not due, the planning authority must ensure consistency with the higher level plans by either making a variation to the plan or bringing forward the review cycle following adoption of the relevant regional spatial and economic strategy.

Planning authorities are required to make a local area plan (LAP) for census towns with a population in excess of 5,000 and have a discretionary power to make such a plan for any area which it considers suitable. LAPs must be consistent with the relevant city or county development plan.

6. Development of Regional Level Planning

The 1991 Local Government Act empowered the Minister for the Environment to establish regional authorities, consisting of groups of city and county councils, to promote coordination of the provision of public services. Eight regional authorities were established in January 1994, covering the entire country. The members of these authorities were city and county councillors selected by the constituent local authorities. Initially the planning-related work of regional authorities was to prepare regional reports providing details of the overall development needs of the region and reviewing the constituent development plans.

The 2000 Planning Act enhanced the role of regional authorities by allocating to them the function of preparing regional planning guidelines (RPGs). The objective of RPGs was to support the implementation of the National Spatial Strategy (NSS) by providing a strategic planning framework for the development of the region covering a twelve to twenty-year horizon. These guidelines were to be consistent with the NSS.



Under the 2014 Local Government Reform Act, the regional tier of planning was further reorganised into three regional assemblies, which have responsibility for making regional spatial and economic strategies. Membership again consists of elected members from the constituent local authorities.

7. Origin and Role of the Office of the Planning Regulator

Allegations of bribery and corruption in the planning process led to the establishment of the Tribunal of Inquiry into Certain Planning Matters and Payments in 1997. The Final Report of this Tribunal was published in 2012 under the chairmanship of Judge Alan Mahon and is consequently known as the *Mahon Report*. It made a series of recommendations to reform the planning process. These included transferring the supervisory powers of the Minister with regard to plan-making to an Independent Planning Regulator, who would also be given additional powers.

The Office of the Planning Regulator (OPR) was established on 3 April 2019. Its principal function is to evaluate and assess the preparation and adoption of regional spatial and economic strategies, development plans and local area plans to ensure these comply with the various legislative requirements. If the OPR considers any such strategies or plans fail this test, it can recommend that the Minister issues a direction requiring the relevant authority to make specified changes to its spatial plan. The decision to issue a direction remains with the Minister.

The other functions of the OPR are as follows:

- (i) Providing education programmes for members and staff of planning authorities and regional assemblies
- (ii) Undertaking research into planning matters;
- (iii) Conducting reviews of the performance of their functions by planning authorities and An Bord Pleanála; and
- (iv) Examining complaints from members of the public about systemic matters in relation to a local authority's performance of its functions

8. Overview of the Planning Process

- Planning policy is made at national level by the Government, the Minister for Housing, Planning and Local Government and other Ministers.
- The planning service is delivered by the local authorities.
- The Office of the Planning Regulator has oversight of the delivery of the planning service.
- The Minister has a general supervisory jurisdiction with regard to the planning process.