

LOCAL GOVERNMENT LAW

- Its Effects on the Operations of

Local Authorities.

A thesis prepared for
M.A. degree in public administration,
National Institute for Higher Education,
Dublin.

February 1988.

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CONTENTS.

	<u>Page.</u>
Abstract of contents	i
Abbreviations	iii
Preface	iv

Chapter.

1	Introduction - The Problem of Local Government Law ..	1
2	Local Government - Organisation	8
3	Local Government - Personnel	38
4	Local Government - Policy	58
5	Local Government - Finance	74
6	Local Government - Functions	103
7	England - Local Government Today	132
8	Official Proposals to Reorganise Local Government since the Foundation of the State	147
9	Conclusions	211
	Notes	222

Appendix.

A	Legislative Provisions concerning Organisation, Personnel, Finance and Functions	246
B	Diagram of Local Government Areas, 1986	277
C	List of Local Authorities and Population per Member in 1981	278
D	Functions of Central Departments, except Environment, performed by Local Authorities etc., and Statutory Basis of Contact	283
E	Statutory Duties relating to (1) County and City Managers, and (2) County Secretaries / Town Clerks	285
F	Heads of Governments and Ministers of the Department responsible for Local Government since 1919	291
	Bibliography	294

ABSTRACT OF CONTENTS.
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LOCAL GOVERNMENT LAW.

- Its effects on the Operations of
Local Authorities.

Local government law was once described as a 'tortuous labryinth of an unexplored code'. Although some examination of it has been undertaken by HA Street and Judge Keane the law still remains a maze.
Chapter.

- 1 Local government statutes are complex and in many instances date from the nineteenth century. Because of this local government has been described as having a Cinderalla framework.
- 2 In the organisation division legislation deals with areas, names, the corporate body, the council, members, meetings, committees. Provisions on these matters vary unnecessarily between the five main local areas.
- 3 Legislation on personnel is spread over numerous enactments. Even with such detailed provisions there is no certainty that the best person will be selected. However, since 1922 a local government service has developed.
- 4 The complex, piecemeal and not easily accessable legislation leaves the members relying on the managers' policy leadership.
- 5 In the area of finance failure to update the valuation law resulted in the Supreme Court decision in finding the collection of rates on agricultural land unconstitutional.

- 6 Although local authorities' functions have been classified under eight programme groups only in housing and planning has any effort been made to consolidate legislation relating to each group.
- 7 The English system, from which Irish local government originated, has been rationalised. Unlike Ireland, the courts intervene increasingly both in disputes between local authorities and between local and central government.
- 8 In Ireland since 1922 , although some changes were made - rural district councils were abolished, the Local Appointments Commission was established, the management system was introduced and some statutes were up-dated - no effort has been made to deal comprehensively with local government legislation.
- 9 To conclude, then, the need is to modernise the various laws to twentieth century needs.

ABBREVIATIONS.

Abbreviations used in

(1) Chapter 2, (diagram, page 24).

c.h.d.	county health district.
rds.	roads.
S	Section.

(2) Chapter 3.

CSC	Civil Service Commission.
DLGPH	Department of Local Government and Public Health.
LAC	Local Appointments Commission.

(3) Chapter 7.

GLC	Greater London Council.
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(4) Notes.

LG	Local Government.
col.	column.
CS	Civil Service.
DLGPH	Department of Local Government and Public Health.
IIRM	Irish Law Reports Monthly.
ILTR	Irish Law Times Reports.
IR	Irish Reports.
no.	number.
p.	page.
PSORG	Public Services Organisation Review Group.

(For titles of books, articles etc. a shortened version is used).

(5) Appendix A.d.

See page 264.

(6) Bibliography.

ch.	chapter.
no.	number.
p.	page.
vol.	volume.
ed.	edited.

PREFACE.

The law relating to local government has been described by the late Justice Gavan Duffy as a 'tortuous labyrinth of an unexplored code' (Devanney v. Dublin Board of Assistance 83 ILTR, 13). While some examination of the matter has been undertaken by the late HA Street and in more recent times by Judge Keane legislation on local government law still remains a maze.

It provides for the areas of local government; the name of areas; the corporate body and the council through which it acts; offices; members - qualifications, mode of election, election areas, functions and disqualifications after election; meetings; committees and relations with other bodies.

In the case of personnel it deals with offices - creation, amalgamation, abolition, duties etc; and officers - the recruitment and appointment procedures, conditions of service, leave, remuneration and security for different types of officers.

On the financial side statutory provisions relate to the various sources of finance including numerous enactments and court decisions on the valuation and rating system; expenditure; collection, receipt and lodgement of income; procedures for making payments; estimates of receipts and expenditures; and balancing of accounts and audit.

Different provisions are provided for the individual services, spread through a number of Acts dating from the nineteenth century. The complexity and extent of these enactments can be seen in Appendix A.

The 1971 White Paper 'Local Government Reorganisation', various policy statements, reports, and submissions have, in addition to recommending proposals on structures noted the need to up-date local

government law. Political debate, however, seems to concentrate on these former proposals rather than on the law question. This thesis is intended to show that modernising the law is necessary, and should be proceeded with forthwith, even possibly before structural changes. In fact by first up-dating the legislation, in an organised way, to twentieth century needs it might then be found, without too great an upheaval of existing structures, which ones are the most suitable. In addition by dividing the appropriate law into, for example, that relating to actual development such as the provision of infrastructure, provision and maintenance of services, assistance to private development, and control and enforcement powers, it might also be seen that certain of these functional divisions could be given to different levels of local authority.

The sources of this research were

- the legal provisions relating to the five main local government areas - the county, the county borough, the borough, the urban district and the town. These were obtained from
 - (1) works by the key commentaries on Irish local government law -
 - HA Street 'The Law Relating to Local Government',
 - Judge Keane 'The Law of Local Government in the Republic of Ireland'.
 - (2) various individual statutes,
- Dail debates,
- Cabinet Papers from 1922 to 1954, in the State Paper Office,
- a collection of Papers in the National Library, including the Papers of Joseph Brennan, Robert Briscoe, Frank Gallagher, the Irish Farmers Party, Thomas Johnson, EP Mc Carron, Kathleen Mc Kenna Napoli, DM O'Dubhghaill and James O'Meara.
- material relating to the Local Government Officers Union in the Public Record Office.

- official publications and various textbooks in the National Library and in the libraries of the National Institute of Higher Education, Trinity College, the Institute of Public Administration and Louth County Council.
- local newspapers. These mainly relate to County Louth as the local government problems in this county are similar to other areas, although it is a border and maritime County and in some instances this creates difficulties. In addition County Louth contains four of the main local government areas - a county, a borough, an urban district and a town.

Some local officials were interviewed ranging in grades from town clerk to county manager, as well as officials from the Department of the Environment, and finally, but not least, Harold O'Sullivan, former General Secretary of the Local Government and Public Service Union.

For their help in the preparation of this thesis I would like to thank the following:-

- the local officials interviewed who unfortunately must remain anonymous due to the sensitive nature of some information given.
- Mr RM Lynn, Town Clerk, Dundalk, for correspondence on legal problems in the urban area.
- Mr AP Sharkey, Town Clerk, Carlow, for advice on some local issues.
- Mr John Cullen, Mr Kevin Cullen and Mr Joseph Ryan of the Department of the Environment for their views on local government and advice on some legal problems.
- Mr Harold O'Sullivan for his views on local government law and the position held by the Union on various local issues.
- the staff of the State Paper Office for making available almost five hundred Cabinet files on the local government area.

- the staff of the Public Record Office for the records of the Local Government Officers Union.
- the staff of the National Library, including Mr Brian Mc Kenna for making available the unsorted collection of the Briscoe Papers.
- the staff of the various libraries used, especially Ms Trudy Carroll in the Institute of Public Administration.
- my brother Seamus and Navan Carpets Ltd. for the use of typing and photocopying facilities.
- all those others who dealt with my various inquiries.

Finally, I am grateful to my Supervisor, Dr Eunan O'Halpin, for his advice and assistance over the year and for reading the final draft of this thesis.

The text is typed in double spacing with quotes, over approximately three lines, indented and in single spacing. The references for these are in the notes at the end of the text. The exceptions to this rule are:-

- (1) for quotes from Acts. In these cases the relevant Act and Section are specified in the text.
- (2) for some sections treble spacing is used. These are found mainly in chapter 8 where it is more appropriate to state developments in chronological order, but within sub-headings some major events run simultaneously.

Finally, I wish to certify that this thesis represents my own work and was not done in collaboration with anyone else.

CHAPTER 1

INTRODUCTION -

THE PROBLEM OF LOCAL GOVERNMENT LAW.

The main local government divisions are the county, the county borough, the borough, the urban district and the town.

Local authorities in these five areas have been described as multi-purpose bodies. They are concerned with a broad range of interrelated functions such as housing, roads, water supply and sewerage facilities, planning, environmental protection, recreation and amenity, and miscellaneous services. In 1984 they employed 31,300 people compared with 36,600 in the civil service and 92,300 in the state sponsored bodies. ¹ Estimated revenue expenditure the same year amounted to £1,052.53 million representing an over expenditure of approximately £5.00 million. This shortfall of revenue income has continued. The sources of this income were £121.70 million from the rates, £667.53 million from State grants etc., and £258.74 million from other miscellaneous receipts. Thus income from the State amounts to nearly 63 per cent of total revenue income. ²

Obviously, therefore, local authorities are an important part of the government of the country. Yet, because of the failure to up-date local government law and reorganise it to twentieth century needs local government has been described as having a 'Cinderella' ³ framework, having 'unsatisfactory laws' ⁴, and like any other historical ruin we are prepared to see 'moulder away'. ⁵ If this position continues the local authorities will not only fail to make a full contribution

to the economic, social and cultural development of the country but will be seen as unable to do so and the appropriate powers will be given to a more forward looking body. In such event they will become nothing more than 'talking shops' or cease to exist altogether.

What then is the position with local government law?.

The present system has its origin in nineteenth century legislation. The five main classes of local authority, now in existence, are creatures of statutes passed during that century, although they can trace their ancestry back through several centuries. The counties formed from the reign of King John for judicial purposes were made administrative counties with county councils in 1898. Borough corporations established originally by royal charter were formed by the Municipal Corporations(Ireland) Act, 1840. In 1898 four of these boroughs were made administrative counties termed county boroughs, while Galway Borough was made a County Borough in 1986. Urban and rural sanitary authorities were created under the Public Health (Ireland) Act, 1878. These were the forerunners of the urban district councils and the rural district councils which were abolished in 1925 in most areas. Some town commissioners were established in 1828 or under private Acts but chiefly under the Towns Improvement (Ireland) Act, 1854.

These Acts setting up new areas also gave the local body important functions, for example, to provide a clean water supply, light streets, make bye-laws etc.. To obtain these powers certain existing local government areas had to adopt the appropriate Act or had it applied to them. Thus, for example, some boroughs became towns and urban districts. This intertwining of areas and functions is probably the chief cause of the failure to up-date and codify the law. Political

debate seems to concentrate on up-dating the structures and inability to reach agreement on the question prolongs the use of outdated and archaic legislation.

After independence 'a rigorous trimming of the system'⁶ did occur. Many of the smaller bodies were abolished, the Local Appointments Commission was set up in the hope of achieving a single service, the American innovation of a city and county management system was introduced to put local government on a more business like footing. No mention was made, however, in the Constitutions of 1922 or 1937 of the position of local authorities so that they could be assured of a permanent basis. Rather they are creatures of the law - now Acts of the Oireachtas - and have only such existence as this law confers. With the pressure of expanding health and welfare services these functions were taken from the local authorities and given to eight new Regional Health Boards. Other new expanding services such as housing and physical planning continued within the local government system. It was in this latter area that the White Paper 'Local Government Reorganisation' saw a role for local bodies. It stated:

Local authorities, ----, must now regard themselves and be regarded as development corporations for their areas, Their activities reach into very many aspects of modern life and they hold the reins in local government - economic as well as physical - in critical ways.⁷

The Local Government (Planning and Development) Act, 1963 was to provide the statutory basis for this development role. But as Dr TJ Barrington pointed out, in 1982, a 'formidable legal and institutional apparatus was erected, but has proved extraordinarily sterile'.⁸ He believed that the 'great engine found itself operating in a vast intellectual scrubland in which, in a whole generation, virtually no cultivation had taken place.'⁹

On the wider issue of relating the positive developmental works of local authorities on roads, housing and sanitary services with a coherent form of national planning for infrastructural development he noted:

---- a special priority was given to housing, and here some remarkable work was done. Other aspects of infrastructural development - such as transport, communication, industrial development, ---- were related together largely at haphazard. Policies were devised for the development of some infrastructural services but not for others; while planning - which is about the ordering and co¹⁰ordination of policies - simply did not take off.

Some development did take place such as the provision of industrial estates. By the 1980s, the ability of the local authorities to deal with the redevelopment of inner city areas began to be questioned. As the local authorities were seen as not flexible enough to deal with this issue proposals were made to establish special commissioners.

While the Local Government (Planning and Development) Act, 1963 was an important piece of legislation it as well as other enactments failed to provide for an overall planning or co ordinating function. This 1963 Act bestowed wide powers to develop areas, provide sites for industries, shops etc., factory buildings, dwellings, roads and other amenities on the local authority acting as planning authority not on the local authority itself. The planning authority is only one division of the local authority, which can, and must in certain cases, act as housing authority, road authority, sanitary authority etc.. Because of the piecemeal development of local government legislation, case law and the ultra vires doctrine, as will be seen later, the local authority must follow the particular Act intended for the proposed function. For example, if it wants to provide houses for letting it must do so as housing authority under the Housing Acts. In addition

the major infrastructural plan of the local authority is the development plan under the planning Acts. To implement this plan the local authority will have to act as planning authority, housing authority, road authority, or sanitary authority depending on the particular function to be exercised. The overall local authority policy document is the yearly Estimate of Expenses whose main purpose is really to determine the expenditure and income for the coming year.

Even the actual form of local government legislation shows not only the piecemeal development of the law but the fragmented approach used. For example, the main Act relating to functions is the Local Government (Planning and Development) Act, 1963 as amended. This is a modern up-dated and consolidated piece of legislation. Yet it is divided as follows:

Part I Preliminary and General.

- definitions.
- service of notices.
- register etc..

Part II Financial Provisions.

- contributions to training and research.
- assistance by planning authorities etc..

Part III Development Plans.

- procedure involved in preparing plan and contents of plan.

Part IV Control of Development and of Retention of Certain Structures.

- planning permissions.
- enforcement powers.

Part V Amenities.

- special amenities areas, hedges etc..
- advertisements, litter etc..

Part VI Compensation.

- due to planning decisions and enforcement powers.

Part VII Acquisition of land etc..

Part VIII Miscellaneous.

- entry on land.
- cables, wires and pipelines.
- petrol pumps on roads etc..

These functions in an average size local authority might be arranged as follows:?

The Engineering Staff..... preparation of development plan.

technical reports on planning applications.

technical advice on development proposed.

The Planning Section..... responsibility for the control of development through planning applications and enforcement powers.

The General Section..... responsibility for amenity powers.

The Principal Officer..... acquisition of land.

power to build infrastructure etc..

This arrangement could vary between local authorities. Each of these divisions are seen as separate in themselves and as they grow can lose sight of the overall planning function in the community.

Other Acts, as will be seen, are much worse in their construction. Desmond Roche described the Local Government Act, 1955 as 'little more than a rag-bag of minor improvements ----'.¹¹

Legislation is not, however, the only local government problem. Lack of finance also hampers development as shown in the estimated shortfall on revenue account that has occurred over the last few years. In addition, there is an increasing dependence on State grants.

In this thesis I propose to divide local government law into the four service areas identified by the Public Services Organisation Review Group. They are organisation; personnel; policy (rather than planning to distinguish it from the physical planning function of the local authority) and finance. These divisions have not yet been extended to any local authority. The Department of the Environment, however, is now organised along those lines. In addition chapter 6 deals with local government functions. In this way I hope to show the extent of the enactments relevant to these areas and the haphazard way they exist. Since we inherited a local government system practically similar to that in England chapter 7 deals with English local government law today. In chapter 8 I outline the attempts made, since the foundation of the State, to up-date local government legislation and structures to twentieth century needs.

CHAPTER 2

LOCAL GOVERNMENT - ORGANISATION.

The organisational aspect of local government I will divide into a number of divisions. These will include:-

- (1) The area of each local authority.
- (2) The name of the area.
- (3) The incorporation of the corporate body.
- (4) The establishment of the council.
- (5) Provision of offices.
- (6) Members.
- (7) Meetings.
- (8) Committees and relations with other bodies.

The legal elements involved in each division can be seen in Appendix A.

(1) AREA.

The statutory areas of Irish local government are a 'non sanitary area' and a 'sanitary area'.

The Non Sanitary Area.

The principal divisions are the county, the county borough, the borough, the urban district and the town. Some of these, however, include other overlapping areas.

The County. It is termed the administrative county and was established under the Local Government (Ireland) Act, 1898. It consisted of the then existing judicial county, or where it was divided into ridings the riding. The result was that Tipperary which contained two

ridings became two administrative counties.

The County Borough. After the Municipal Corporations (Ireland) Act, 1840 Dublin, Cork, Limerick and Waterford remained as boroughs. In 1854 Waterford and Galway township adopted the Towns Improvement (Ireland) Act of that year and obtained the status of towns. Then the 1898 Act established the boroughs as administrative counties termed county boroughs.

A private statute of 1937 made Galway town an urban district and a borough, and by the Local Government (Reorganisation) Act, 1985 the county borough was created.

The Borough. Clonmel, Drogheda, Kilkenny and Sligo continued as boroughs under the 1840 Act, while Wexford became a borough by petitioning under Section 14 of that Act. In 1854 all these areas, except Sligo, adopted the Towns Improvement (Ireland) Act and became town areas also.

Dun Laoghaire was made a borough under the Local Government (Dublin) Act, 1930, and also became an urban district and a town by succeeding to the powers, functions and duties of the abolished urban districts.

It is unusual that the term 'borough corporate' was not used in Section 12 of the 1840 Act instead of 'town corporate'. This would have prevented the confusing use of another title for the area of the borough.

The Urban District. It is necessary to go to the 'sanitary area' to find the urban sanitary district. Under the Local Government (Ireland) Act, 1898 all urban sanitary districts became urban districts and acquired since then other powers and duties in addition to sanitary functions. Yet the Local Government (Galway) Act, 1937 provided for the purposes of the Public Health (Ireland) Acts, as amended, that Galway

shall be an urban district and an urban sanitary district.

The Town. Towns were established by

- (a) adopting the Towns Improvement (Ireland) Act, 1854. The procedure in this Act now involves the local government electors of an area, having a population of at least 1,500, petitioning the Minister for the Environment to determine the boundaries of the town and apply the Act.
- (b) having 1854 Act applied by the Local Government (Ireland) Act, 1898, Section 41.
- (c) Private Statute, for example, Bray under the Bray Township Act, 1866.

The Sanitary Area.

Section 3 of the Public Health (Ireland) Act, 1878 divided Ireland into sanitary districts to be called

- (1) urban sanitary districts.
- (2) rural sanitary districts.

The Local Government (Ireland) Act, 1898 which established the administrative county divided it into county districts. These were either

- (1) urban sanitary districts to be known as urban districts, or,
- (2) rural sanitary districts to be known as rural districts.

Provision was, also made for the alteration of boundaries where they overlapped. Under the Local Government Act, 1925 the rural sanitary districts became the county health district of the county.

The Urban District. Towns became urban sanitary districts

- (a) under the Public Health (Ireland) Act, 1878 Section 4 by having a population exceeding 6,000 at last census.
- (b) by private statute.

Under the 1898 Act, as already stated, all urban sanitary districts became urban districts. Thus, some county boroughs, boroughs and towns became urban sanitary districts known as urban districts. The County Health District. This comprises the area in the county outside the urban districts (i.e. urban districts and boroughs). Provision exists for dividing this area into a number of county health districts. under the Local Government (Amendment) (No.2) Act, 1934. Cork County is divided into three such districts.

Therefore, it can be said, using the formal term for each area that a

- (1) county is an administrative county.
- (2) county borough is a county borough, borough, urban district and in the case of Waterford and Galway a town.
- (3) borough is a borough, urban district and a town (except Sligo).
- (4) urban district is an urban district and a town.
- (5) town is a town.

This position can be seen in the diagram in Appendix B, page 277.

These overlapping areas arose because the trend originally was to establish an area with a specific authority to administer a new service rather than giving the function to the existing council. While some reorganisation took place from 1898 to 1925 with the abolition of the grand juries and the boards of guardians, a number, as seen, still exist. The reason they remain is that the power to administer some of these necessary functions are contained in nineteenth century legislation. Alongside them is the increasing growth of other services, for example, planning, housing, and pollution control given during the twentieth century to the existing

corporate body in the area, ^{and thus} thus adding to the complexity of local government law.

The extent of legal provisions relating to these five areas can be seen in Appendix A.a1. They relate to the establishment of the area, determination of boundaries, dissolution, maps and formal title.

Not only do some areas under the various headings lack statutory authority, but provisions when specified differ greatly. In addition the confusion caused by the use of the town area in Waterford and Galway County Boroughs, boroughs and urban districts could result in complications in altering boundaries, as the procedures involved in the various statutes are different. Also, the town as the lowest status area applies to the Minister for alteration of its boundaries while the urban district applies to the county council.

The overlapping of areas means, for example, that when a borough area is dissolved it becomes an urban district. If then this urban district is dissolved the area becomes a town. The urban councillors, under the Local Government Act, 1925 Section 74(2), then become the board of town commissioners until the next election of town commissioners. This board can under sub-sections (3) and (4) of the same Section apply to the Minister for its own dissolution or, the Minister, himself, in certain instances could dissolve the board. If this was done the powers, duties, property and liabilities of such board would be transferred to the board of health of the county health district. But, difficulties of interpretation have arisen. Firstly, the commissioners in the 1854 Act were never referred to as a 'board' and secondly, the board of health was the rural sanitary authority and commissioners had no sanitary powers. So it seems ~~to me~~ that the board of commissioners

only refer to the urban councillors who take over the town area for the short period between the dissolution of the urban district and the next election of town commissioners. This board would still have the sanitary powers of the urban council. In practice, however, it was decided that any town commissioners can use the procedure under this Section for dissolution. Thus, five town commissioners were, dissolved under this provision - Rathkeale, Roscommon, Fethard, Callan and Newcastle West. Officially, however, it was taken that only the commissioners were eliminated not the town area. As a result 'the town continues to have municipal status (even though administered by the county council) and the cost of appropriate services is still levied separately as town charges on the town'.¹ The White Paper 'Local Government Reorganisation' stated:

It is certain that a greater number of towns would have favoured the dissolution of their commissioners if this would have resulted in the complete abolition of municipal status and of the extra cost involved.²

An attempt was made to get rid of the town area. In the explanatory memorandum on the Local Government Bill, 1939 it was stated:

It is not convenient for boards of health administering the affairs of town commissioners that have been dissolved ---- to treat the town area otherwise than as an ordinary part of the county health district ----.³

However, when the Bill was formulated no mention was made of this proposal and, therefore, it was not included in the Local Government Act, 1941. In practical terms, then, they pay in addition to the ordinary county charges the town charges. As a result, in the case, for example, of lighting the town is charged for their share of the cost of the county health district as well as the cost of lighting for the town. Yet they have no town commissioners to be held accountable.

This official position seems grossly unfair and possibly illegal as

- (1) Tullow adopted the 1854 Act in 1902. Its boundaries were fixed, but, it never appointed commissioners and remains dormant. No town charges are levied even though the town area should exist. The Department believes that since the 1854 Act never actually operated it is not in the same position as dissolved town commissioners.
- (2) This Section 74, as already stated, refers to a 'board of commissioners of a town' not to a 'town commissioners'.
- (3) The spirit of the 1854 Act was for towns to be formed to be locally administered by their own town commissioners. Once the commissioners cease to exist then the town area should cease also. The definition of the boundary, before ^{the} 1854 Act can be adopted, seems to be only as an aid to determine who could adopt the statute and allow the appointment of commissioners.
- (4) According to the Local Government Act, 1946 Section 26(1):

The moneys to meet the expenses of the commissioners
---- shall be supplied to the commissioners by the
council of the county in which the town is situated
on an annual estimate and demand in the prescribed form.

Nothing is specified for the expenses of the same type of town when there are no commissioners. Yet the Department of the Environment in the 'Local Authority Estimates for 1986 and Estimated Outturn for 1985' incorrectly lists these five towns under the heading 'towns with commissioners'.⁴ That is Rathbede, Roscommon, Lethard, Callan and Newcastle West. Thus it ignores the fact that the appropriate county councils are accountable for the estimates of these towns. In addition by Section 26(1) above there is no legal basis for preparing separate estimates and demands for towns without commissioners.

As regards the mapping of local areas no power exists for the preparation of such maps by local authorities. This is a function of the Ordnance Survey Office.

Although each area has a formal title, in Acts various names are used. The formal title for each area is, as appropriate,

- (1) 'County' under the Local Government (Ireland) Act, 1898.
- (2) 'County Borough' under this 1898 Act, also.

The Local Government (Reorganisation) Act, 1985 terms Dublin the 'County Borough of Dublin' and Galway the 'County Borough of Galway'.

The word 'city' seems to come from ancient usage. Even before county boroughs were established the word 'town' in the Towns Improvement (Ireland) Act, 1854 Section 1 means 'a city, town ---- containing a population of' at least 1,500 at the last census. Yet in the same Act reference was made, for example, in Section 4 'upon the application of twenty one or more householders of any city or town in Ireland ----', and Section 100 did not apply the Act to the cities of Dublin, Cork and Limerick.

Since the county boroughs were established the word 'city' has been used to refer to them. The individual management Acts for Cork, Limerick and Waterford are termed City Management Acts, but, not for Dublin and Galway. Yet, within their respective Acts the word 'City' means the 'County Borough of' Dublin, Limerick and Waterford but, in Cork it is 'the Borough' and in Galway 'the County Borough'.

- (3) 'Borough of ----' (with name inserted), under the Municipal Corporations (Ireland) Act, 1840.

However, some Acts define a borough for their own purposes.

In the Local Government (Ireland) Act, 1898 Section 109(1) the expression 'borough' means a municipal borough having a town council. Yet the 1840 Act establishing the borough never speaks of a 'town council'. This term, however, appears in the 1854 and 1878 Acts. To add to the confusion Section 2 of the Local Government Act, 1941 states that 'a borough' is an 'urban area' for purposes of the Local Government Acts 1941 to 1985.

(4) 'Urban District'.

This name, as already stated, came from the title of the sanitary area which was changed in 1898 to urban district. Again, Section 2 of the Local Government Act, 1941 states that an 'urban district' is an 'urban area' for purposes of the Local Government Acts.

(5) 'A Town' by the Towns Improvement (Ireland) Act, 1854.

Legal difficulties, as will be seen later, could arise by the incorrect use of the formal name of a corporation.

Not only do complications arise regarding the law relating to areas but problems arise regarding the most suitable divisions for local government purposes.

The counties have been criticised because their boundaries, in general, were delineated between 1210 and 1606. According to Mr. Carty of the National Library:

County boundaries were arranged (for their own military and administrative convenience) by 16th century Anglo-Irish soldiers and officials who did not, however, entirely disregard tradition. ⁵

The effect of these boundaries was noted by Myles Tierney:

County Cork is composed of 1,800,000 acres and has a population in excess of one-third of a million people. From east to west, it exceeds 100 miles and

from north to south 56 miles. Apart from the considerable topographical diversity, it contains no less than twenty baronies and three ecclesiastical dioceses.⁶

John Collins, a former Secretary of the Department of Local Government and Public Health, stated:

When to-day, if there was a clear field in which to operate, ----who would place county Carlow in the same administrative category as County Cork eight times its size.

To overcome this drawback in Cork, Myles Tierney continued:

For administrative purposes, it has been divided, by its own councillors, into a number of areas in the charge of committees of the local councillors for the areas concerned, ---- In doing this, the local councillors recognised ----, that they cannot respond to situations they do not relate to ----.⁸

At the other end of the scale the towns and some small urban districts are seen as non viable units and the general view of the Department of the Environment is that they should be abolished.

In addition, in the nineteenth century when the present local areas were formed Ireland was predominantly rural. Now, however, the country is mainly urban. This increased urbanisation has caused two major problems according to Kevin Hourihan:

Firstly, the boundaries of most of the towns with legal status have not been expanded in line with their physical growth. ---- The second problem is the growth, very rapid in some cases, of those towns which have no legal status, and consequently no municipal government for their inhabitants. Although there is a procedure for towns to obtain legal status, it has been described as 'creaking' and 'arthritic', a description which seems to be justified by its most recent application in the case of both Shannon and Greystones.⁹

He, also, noted that of 'the 188 towns with populations of 1,000 or more in 1981, only 84 had legally defined boundaries.'¹⁰ Many with no legal status were 'increasing rapidly in size and importance, more so than, the smaller urban districts and commissioners' towns'.¹¹

To further add to the complications other areas once delineated for local government purposes still exist but without any statutory basis. In 1861 Bishop Reeves stated that the 'civil distribution of Ireland in the descending scale is into Provinces, Counties, Baronies, Parishes, and Townlands ----.' ¹² On this Mr Carty noted:

This summary by Bishop Reeves (1861) is substantially correct, but it may be noted ---- as to Provinces, that the provincial divisions had become little more than traditional even before the Norman invasion. ¹³

The baronies which were suppose to correspond to the ancient divisions in Ireland - the Mor Thuath - were used with some modifications, to form the district electoral divisions. Under the Poor Relief (Ireland) Act, 1838 Section 18 poor law areas were created for the purpose of electing guardians. In 1898 these became known as 'district electoral divisions' and were so adjusted in that Act that no division crossed the boundary between the urban and rural areas. In 1919 these divisions ceased to be electoral and were replaced in urban areas by poor law electoral areas and in rural areas by 'district electoral areas'. This 1919 provision was further repealed and now the Electoral Act, 1963 applies. According to HA Street:

Although the district electoral divisions has not been a unit of representation since 1919 it remains or remained in use for various purposes eg. census ---- boundaries of constituencies ----. ¹⁴

Civil parishes, originating from the ecclesiastical division, existed for 'some purposes such as the assessment of damages for malicious injuries, the formation of petty sessions districts and the collection of county cess.' ¹⁵ These areas ~~do not now~~ correspond with the ecclesiastical divisions.

Although no longer used for local government purposes baronies

and civil parishes are still referred to on certain legal documents relating to the registration of land. According to JC Wylie:

For unregistered land, the affidavit must specify "the county and barony or the town or county of a city and parish, or the town and parish", to which it relates is situated ----. ¹⁶

Another area is the townland. John Collins stated:

The townland is an ancient division supposed to contain the area of arable land capable of being turned up in the course of a year by a six-horse plough. The townlands must have undergone some changes as there is now great disparity in their areas. ¹⁷

This area is still used for valuation purposes. In addition, the County Boroughs Electoral Areas Commission Report 1985 used both townlands and district electoral divisions to alter the boundaries of electoral areas. As the Department of Local Government noted:

In Ireland there have been various units relating to political, administrative and social affairs but the unit common to all was the townland, an area defined by tradition recorded on maps. ¹⁸

However, the census of population outlined one problem with this area:

---- in most ----urban areas without legal boundaries it is not possible to compile townland population figures as building development has completely obliterated the physical features by which townland boundaries were originally defined in Ordnance Survey Maps. ¹⁹

The rural district, an area abolished by the Local Government Act, 1925, is still used in the census.

There is obvious need, therefore, for research into the possible use of one form of division for local government and other purposes. Although a difficulty exists with the townland, as noted already, it would seem the most suitable basic unit. There is no justifiable reason for overlapping local government areas or, for the use of obsolete divisions in compiling the census of population.

(2) NAME OF AREA.

Origin.

The original name of counties seems to come from ancient usage, possibly the name of a family tribe in, or in control of the area and the English version was applied to the counties when formed from 1210 to 1606.

Towns, in the same way, obtained their names from Norse settlers and became anglicised as the county came under English rule. As the area was changed from town to urban district, borough or county borough the name was normally continued. Some towns under Article 14(1) of the Schedule to the Application of Enactment Order 1898 (now repealed by the Local Government Act, 1946) changed their names, for example, Queenstown to Cobh. In 1930 the Borough of Dun Laoghaire was so named by statute.

Change of Name.

As can be seen from Appendix A.a2 there is no provision for change of name of the county, the county borough or the borough. Procedure exists for altering the name of some other areas, on the consent of four-sevenths of the ratepayers concerned.

According to the Department of the Environment an area wishing to change its name from the English to the Irish version, or vice versa, uses the provision in the Local Government Act, 1946, as amended. This was the case when an Uaimh changed its name to 'Navan'. Yet, under Article 8 of the Constitution of Ireland 1937 the Irish language is the first official language and the English language the second. Provision, may, however, be made by law for the inclusive use of either. Presumably, then, the use of both versions would not require the statutory procedure in the 1946 Act. However, a problem

may arise because of the origin of place names, where the English version may not co-incide with the direct English translation of the Irish. In 1922 when certain counties wished to use their Gaelic names the Legal Advisor to the Provisional Government stated;

The division of Ireland into counties is wholly of English or Anglo-Norman origin. The ---- counties so imposed do not correspond with the original Irish districts bearing Irish names. This presents a difficulty in restoring the old names of Irish districts and applying them to the English-created counties. From which it will be evident that this matter ought not to be dealt with hastily or without due consideration of all the facts and claims in each case, ----

This is clearly a question for the National Government and not merely for the administrative council of a particular area----. 20

For some minor places, however, DM O'Dubhghaill recalls an amusing incident prior to 1946 in the Dublin Corporation area:

Please observe that when the Corporation raised legal (British Legal) quibbles as to changing "Talbot St." to Sraid Sean O'Treasaigh the members of one new organisation got a ladder and bodily put up "Sraid Sean O'Treasaigh" on the corners of the street. THAT WAS THE STUFF TO GIVE OUR LOCAL MUNICIPAL PEOPLE.

Then we all saw the joke of a member of an Garda standing on guard under the newly erected name. 21

From legal opinion on the titles of the Departments of State it would seem that in referring to 'corporations' it is important that the name and title are properly stated. As PP O'Donoghue, a former Legal Assistant to the Attorney General, stated when considering the position of the Irish version of Ministers and their Departments in 1938:

A Corporation must in law be described by the style or title applied by the instrument creating the same. For the purpose of being a party to legal proceedings and to the holding of property as well as its acquisition and disposal, the proper description of a Corporation is necessary ----. 22

Surely then, to avoid confusion, the formal names of areas etc. should be used in local government legislation.

(3) THE CORPORATE BODY.

A corporate body is incorporated in both the non-sanitary area and the sanitary area.

(A) The Non-Sanitary Area.

- (1) The county council was incorporated by the 1898 Act and the Order of the same year.
- (II) The county borough corporation, as it is commonly known, was not specifically incorporated when it was established in 1898. Instead in Dublin, Cork, Limerick and Waterford the corporate body was incorporated in the borough by the Municipal Corporations (Ireland) Act, 1840 and in Galway by private statute in 1937. The 1898 Act Section 21(2) states that 'the mayor, aldermen and burgesses of each county borough acting by the council' shall with exceptions have powers of county councils under the Act. In addition this Section 21 is under Part I of the 1898 Act entitled 'County Councils'. There seems no reason why the corporation was not specifically incorporated in the county borough.
- (III) The corporate body was incorporated in Clonmel, Drogheda, Kilkenny and Sligo by the 1840 Act; in Wexford by a Charter under this Act and in Dun Laoghaire by the Local Government (Dublin) Act, 1930.
- (IV) The Public Health (Ireland) Acts established the sanitary authority in the urban sanitary district and the 1898 Act changed the name to urban district council.
- (V) Commissioners were incorporated in the town under the Local Government Act, 1955 Section 65. Although the town area exists in other local areas the commissioners were never incorporated in these areas.

(B) The Sanitary Area.

The Public Health (Ireland) Acts incorporated the urban sanitary authority in the urban sanitary district, and the rural sanitary authority in the rural district, later termed the county health district. However, this did not 'alter the style or title of Corporation or Council of a borough.' ²³

As can be seen from Appendix A.a3 not only do differences exist between the composition, type of body and formal name of the corporate bodies of the five main types of areas but differences among bodies in similar areas exist. In practice, however, this does not cause problems. Yet, in the case, for example, of Dun Laoghaire the corporate body is under the Local Government (Dublin) Act, 1930 Section 3(4), 'on the appointed day the inhabitants of the borough and their successors'. It seems strange that it is the inhabitants, and not the local government electors who can vote for the council, that were incorporated. In addition the use of the words 'their successors' could involve difficulty. Is it to mean future inhabitants of the borough or the successors of the inhabitants on the appointed day?. In the case, also, of towns the Local Government Act, 1955 incorporated 'the ---- (the name of the town being inserted) town commissioners'. Yet, as already seen, the Local Government Act, 1925 Section 74 relating to 'dissolution' refers to 'boards of commissioners'.

As well as the formal title given to the corporate body various other names are used depending on the particular function to be exercised. This can be seen in the following Diagram.

TITLE	REASON / PURPOSE	COUNTY	COUNTY BOROUGH	BOROUGH	URBAN DIST.	TOWN
Urban Authority	Some Local Government Acts	--	✓ For S88 1941 Act	✓ For 1946 Act	✓ For 1946 Act	✓
Elective Body ²⁴	County Management Acts.	--	--	✓	✓	✓
Local Authority	Local Government Acts 1925-1985.	✓	✓	✓	✓	✓
Public Body	Acts relating to the audit.	✓	✓	✓	✓	✓
Sanitary Authority	Local Government (Sanitary Services) Acts 1878-1964	✓ (c.h.d.)	✓	✓	✓	--
Library Authority	Public Libraries Acts, as amended.	✓	✓	✓ If adopted	✓ If adopted	--
Road Authority	Providing and maintaining roads	✓ For (c.h.d.) & some main rls. in urbans	✓	✓	✓	--
Planning Authority	Local Government (Planning & Development) Acts 1963-1983.	✓	✓	✓	✓	--
Housing Authority	Housing Acts 1966-1985.	✓ & For towns S26-S32 S34-S36 S39-S43 of 1966 Act	✓	✓	✓	✓ Except for S26-S32 S34-S36 S39-S43 of 1966 Act
Fire Authority	Fire Services Act 1981	✓ County at large except Louth, Dublin, West-meath.	✓	✓ Dunlao-ghaire, Drogheda, only.	✓ Dundalk, Athlone only.	--
Registration Authority	Electoral Acts.	✓	✓	--	--	--
Licensing Authority	Motor taxation	✓	✓	--	--	--
Rating Authority	Making & collecting	✓	✓	✓	✓	--

Instead of the previous tradition of setting up overlapping areas most functions, as already stated, after 1925 were given to, for example, the existing county council established in the nineteenth century. In some instances, though not all, these councils administer a particular service, for example, housing or planning, as housing authority or planning authority as can be seen in the above Diagram. It seems from case law that when a function is given to a local authority acting in one capacity the same function cannot be used by it acting in another capacity.

So as particular powers and duties were given to the corporate body a new title was applied without any regard to the overall divisions of functions relating to the needs of the community or even the programme divisions set out in the estimate format. This can be seen from the following Diagram.

ESTIMATE OF EXPENSES PROGRAMMES	AUTHORITIES MAINLY CONCERNED.
Housing & Building	Housing Authority.
Road Transportation & Safety	Road Authority.
Water Supply & Sewerage	Sanitary Authority.
Development Incentives & Control	Planning Authority.
Environmental Protection	Fire Authority. Sanitary Authority.
Recreation & Amenity	Library Authority. Planning Authority. Sanitary Authority.
Agriculture, Education, Health & Welfare	none.
Miscellaneous	Registration Authority. Licensing Authority. Rating Authority.

(4) THE COUNCIL.

To carry out its functions the corporate body incorporated in

- (A) the county, the urban district and the town acts itself.
- (B) the county borough and the borough acts through a council.

The council was established in the boroughs by the Municipal Corporations (Ireland) Act, 1840, and in the county boroughs by this 1840 Act, the Local Government (Ireland) Act, 1898 and individual management Acts.

As can be seen from Appendix A.a4 differences exist between the composition and formal title of these councils in both areas. Again conflicting statements arise in some statutes. In the Municipal Corporations (Ireland) Act, 1840 Section 57 the composition of all the boroughs, then, was specified as 'the mayor, aldermen and councillors.' It did not provide for Dublin 'the Lord Mayor, aldermen and councillors' although 'Lord Mayor' was included in the composition of the corporate body in Dublin.

From Appendix A relating to areas, corporate body and council it can be seen that no clear division was made in legislation of the legal elements required to establish any workable local authority. As a result confusion has arisen as to the difference between, for example,

- (1) the establishment of the area and the incorporation of the corporate body.
- (2) the corporate body and the council through which it acts.

Under the now repealed Section 72 of the Local Government Act, 1925 (dissolving councils) difficulty arose as to whether only the members were removed or the corporate body. In fact HA Street²⁵ believed that some councils dissolved under this Section 72, and re-established in 1941 and operating today, were never properly re-incorporated. The complication existing over the town area has already been shown.

(5) OFFICES.

Although the local authority as planning authority or housing authority can provide offices, they are normally provided under the statutes where specific power was given. In the

- (1) county and county borough this is the Local Government (Ireland) Act, 1898.
- (2) borough and urban district it is the Local Authorities (Miscellaneous Provisions) Act, 1936, and
- (3) towns^{it is} the Towns Improvement (Ireland) Act, 1854.

The differences between these divisions can be seen in Appendix A.a5. The Municipal Corporations (Ireland) Act, 1840 also includes the necessary power while the 1854 Act can be used by areas where it was adopted.

Under the Local Government Act, 1941 the Minister can make Regulations regarding the 'attendance' of officers. However, the only provisions regarding the time offices should be open are mandatory and are contained in nineteenth century legislation. One relates to the county surveyors' office which must be open for his regular attendance on business. This provision is contained in the Grand Juries (Ireland) Act, 1836 as modified when the upkeep of roads was the principal function of the grand juries. The other provision is in the Towns Improvement (Ireland) Act, 1854. Where this Act is adopted the offices must be open daily except Sunday, Christmas Day, Good Friday, days appointed for general fast and thanksgiving. When determining days appointed for 'general fast and thanksgiving' one may ask according to what religion?.

(6) MEMBERS.

The extent of the legal elements leading to the election of members of the local authority can be seen in Appendix A.a6. These include the specification of the electoral area; the number of members to be elected from the area as a whole and sub-divisions of it; the type of members to be elected; the candidates eligible; the electorate and the election procedure. Again provisions differ not only between the main local government areas but within similar areas.

Besides this other difficulties arise.

- (1) In the case of election areas, other divisions once used for electing local representatives are still in existence, but without any statutory basis.
- (II) The number of members to be elected for the whole local area in Dublin County and the county boroughs is specified in statute. Before the local election on 20 June 1986 the Minister was required to fix by Order the number of members for all counties, except Dublin. In the case of the boroughs, urban districts and towns, under the Local Government Act, 1941, the number was to be fixed for the election after 1 November 1941. This Order was made on 11 July 1942 and has never been up-dated. The result is that great disparities exist between the ratio of population to each representative in these areas as can be seen in Appendix C.

The following diagram shows the population ranges per member in each of the five main local areas after the 1981 census of population. Since then, as stated, the position in the counties and the county boroughs has been up-dated.

LOCAL AREA	RANGE	
	FROM	TO
County	1,254 (Leitrim)	13,257 (Dublin)
County Borough	3,572 (Limerick)	11,686 (Dublin)
Borough	788 (Kilkenny)	3,633 (Dun Laoghaire)
Urban District	196 (Kinsale & Carrickmacross)	2,138 (Dundalk)
Town	67 (Ballybay)	888 (Shannon)

In the case, however, of altering the number of members the county, county borough and borough can apply to the Minister, while the urban district has first to apply to the county council. No provision exists for altering the number of town commissioners.

(III) Although the common collective title of members is 'councillors', only in the case of four local areas is this term legally defined. Cork, Limerick and Waterford management Acts provide that 'members who are not aldermen shall be councillors'.²⁶ The Local Government (Dublin) Act, 1930 Section 44 specifies for Dun Laoghaire that 'all members shall be councillors'.

In determining, then, the councillors of a local authority regard is had to the composition of the council (see Appendix A.a4).

(IV) Most of the law relating to local, national and Presidential elections and Referenda has been up-dated and consolidated in the Electoral Act, 1963.

Even though a local election is required every five years the Minister can request Dail Eireann to postpone them for some reason. This has been done on numerous occasions since 1922. In 1923 and 1926 in Dublin and Cork, after the dissolution of the Councils in those areas, the elections were postponed while

commissioners were looking into the administration of both cities. Again in 1931 legislation provided for the postponement of local elections until July, 1935 to allow reforms of local government to take place. The main reform proposed, then, - a county management system - never actually took place.

Functions of Members.

Their functions are normally referred to as the 'reserved functions'. Yet again conflicting statements could cause difficulties.

Firstly, while some of these functions are expressly stated to be reserved in the appropriate Act, others only specify the function to be performed by resolution of the elected members. These latter in Acts after the management Acts are regarded as also reserved. This description, however, according to Judge Keane 'may not be technically correct'.²⁷ The Department of the Environment proposes to deal with this matter in the new Local Government Bill.

Secondly, in making functions reserved the Minister has not always followed the empowering words in the county management Acts.

The reserved functions in the case of counties, the County Borough of Galway, boroughs, urban districts and towns are

- (1) listed in the County Management Act, 1940, Second Schedule.
- (2) specifically specified in individual Sections in the County Management Act, 1940 and later statutes.
- (3) made by order of the Minister under the County Management Act, 1940.

In the case of the County Boroughs of Dublin, Cork, Limerick and Waterford they are

- (1) listed in the individual management Acts.
- (2) specified in individual Sections in statutes since 1940.
- (3) made by order of the Minister but, only on application of council

- of county borough concerned after resolution passed by more than
- (a) half of Council in Dublin, Limerick and Waterford, and
 - (b) two-thirds of the Council in the case of Cork.

However, the Minister has specified reserved functions in Regulations

- The Local Government (Planning and Development) Regulations 1977 Article 24 relating to the weekly planning notice.
- The Local Elections Regulations 1965 Article 81(2) deciding the time of the annual meeting not in an election year.

The Department is inclined to believe that if the enabling statute gave an unqualified power to the Minister to make Regulations regarding 'incidental matters' then this includes power to make functions reserved. But why then was mention made of ministerial orders?. The making of Regulations to create reserved functions could be used to overcome the restriction placed on ministerial orders in the city management Acts.

In all for each local government area there are about 100 to 125
28
different reserved functions. In some instances certain reserved functions have, for unknown reasons, not been made so in some county boroughs. These relate to:-

- (1) The constitution of the council, including the election of the mayor in Dublin, Cork, Limerick and Waterford.
- (2) Nomination of Presidential candidate in Dublin and Limerick.
- (3) Procedure of the council including procedure at meetings in Dublin, Cork, Limerick and Waterford.
- (4) Demanding under any enactment of whole or part of expenses from another local authority.
- (5) The making of an Order under Section 31 Of the Local Government (Sanitary Services) Act, 1948 prohibiting the erection or retention of temporary dwellings.

(7) MEETINGS.

The legal position on some meetings is not clear.

Firstly, the Towns Improvement (Ireland) Act, 1854 was adopted by the County Boroughs of Waterford (in part) and Galway and the Boroughs of Clonmel, Drogheda, Kilkenny, Wexford and Dun Laoghaire and, therefore, strictly speaking applies to them. However, these areas already had provision for meetings under the Municipal Corporations (Ireland) Act, 1840 and to apply the 1854 Act would only involve duplicate, and sometimes different, procedures for meetings.

Yet, in the urban districts and towns, who also adopted the 1854 Act, not to apply the provisions of this Act would leave them without any procedure for certain meetings.

Secondly, the Local Government (Application of Enactment) Order, 1898 Article 35(2) states that the

Council of every county at large, shall hold an annual meeting and also meetings at such other times as may be necessary for properly executing their powers and duties ----'.²⁹

Whether this included county boroughs is not clear, as in the 1898 Act (under which the above Order was made) the provisions for establishing county borough councils was under Part I of this Act entitled 'County Councils'.

According to the Department of the Environment no problem exists in practice. The main Act used by the

- (1) county is the 1898 Act and Order made thereunder.
- (2) county borough and borough is the Municipal Corporations (Ireland) Act, 1840.
- (3) urban district and town is the Towns Improvement (Ireland) Act, 1854.

Appendix A.a7 is based on the Department's view. As can be seen there

are various types of meetings. The annual, quarterly, monthly and estimates are required by statute. The ordinary or special meetings and those to decide a 'Section 4 resolution' are called by the chairman / mayor or a certain number of members.

The legislation relating to meetings date from the nineteenth century. In fact the idea of quarterly meetings comes from grand jury days. Originally grand juries met twice yearly, later, with the growth of business, this occurred four times yearly at quarterly intervals.

The main provisions relating to meetings can be found in

- The Municipal Corporations (Ireland) Act, 1840.
- The Towns Improvement (Ireland) Act, 1854 incorporating Commissioners Clauses Acts.
- The Local Government (Ireland) Act, 1898 and the 1898 Order made thereunder.
- The Local Government (Ireland) Act, 1902.
- The Local Government Act, 1941.
- The Local Government Act, 1955.
- The City and County Management Acts.
- The Electoral Act, 1963 and Regulations made, thereunder, in 1965.

The result of this piecemeal legislation is that different procedures apply to some meetings. For example, the summons to attend certain meetings must be sent out three clear days prior to the meeting while for others the time specified is two clear lawful days. In the case of the quarterly, ordinary or special meeting of the county, county borough and borough there is no requirement to state the time and place of the meeting.

Although these deficiencies can be provided for in standing orders, there is no reason why legislation in this area could not be updated to modern day needs. In 1969 Draft Regulations were prepared by the

Department of Local Government but never saw the light of day.

Again, the words and phrases used in legislation can cause problems. The general rule is that all questions can be decided or acts done at meetings by the majority of the members present who vote. For certain specific decisions, to pass a resolution, a definite number of members voting in favour is required. However, the form in which these particular statutory provisions are stated, sometimes, cause difficulty in deciding whether the number required is the proportion specified of (1) all members, or

(2) members present and voting, or

(3) members present.

For example,

(a) In the case of a decision to grant planning permission which contravenes the Development Plan the number of members voting in favour must exceed one-third of the total number of the planning authority.

(b) At a meeting to pass a resolution requesting the Minister to allow half-yearly meetings instead of quarterly meetings the resolution must be passed by 'two thirds of the members of the council duly summoned on not less than one month's notice'.²⁹

According to HA Street that is two-thirds of the members summoned.³⁰

(c) Under the Local Government (Ireland) Act, 1902 the resolution to request the Minister to alter the day and time of monthly meetings must be passed 'by two-thirds of the commissioners voting on the resolution.'

Is this to mean two-thirds of all the members or, of only those voting?. HA Street believed 'the former is the more reasonable interpretation ----.'³¹

(8) COMMITTEES ETC.

Power exists to appoint general committees for the whole or any part of the county, and special committees in the county borough and the borough. These can be for any purpose connected with the exercise or performance of any power, function or duty which would be better regulated or managed by a committee. Advisory committees can, also, be appointed in all areas. The procedure of these vary, for example, for meetings, in somewhat the same way as that for the council as a whole, because similar nineteenth century legislation is applicable. Counties, county boroughs and urban districts can also appoint joint committees for any purpose for which they are jointly interested in. Dublin City Council and Dun Laoghaire Borough Council can form a Joint Committee of Reference.

In addition the local authority has an input into other statutory committees (see Appendix A.a8) by appointing members and providing finance. It is also involved in, for example, the nomination of a presidential candidate, the election of Seanad members etc.. However, as a result of the piecemeal development of local authorities no overall view was taken of the role they should play in the community and the areas they should have control over or influence. According to PJ Meghan³² a number of Departments and Bodies, such as the Office of Public Works and sport clubs etc, have contact with local authorities. Yet, taking the Departments as an example, besides the Department of the Environment, only in certain areas is a statutory basis available for the local authority to meet with these Bodies, even though in a number of cases it performs functions or provides services for them. This can be seen in Appendix D, page 283.

Statutory provisions, also, exist for local authorities to join

recognised Associations. These are the General Council of County Councils and the Association of Municipal Authorities. However, in the case of the first the member authorities can only contribute an amount fixed by the Minister for the Environment, while the amount of contribution for the second was specified in the Local Government Act, 1941 at an annual amount of £20.00 for county boroughs, £10.00 for boroughs and urban districts and £5.00 for towns. These Associations, unlike their counterparts in England and other countries, play little part in local government. This was noted by the Working Group sponsored by Muintir na Tire:

The most dramatic indication of the relative standing of councillors in Ireland as compared with other European countries is the remarkable strength, politically, financially and administratively, of local authority associations in these countries and their pathetic weakness in this country. ³³

A plan was attempted ^{around} in 1976 to 1977 to establish the Convention of Local Authorities of Ireland. Those involved included the General Council of County Councils, the Association of Municipal Authorities and the City and County Managers Association. However, according to Desmond Roche:

The plan for the Convention was not favoured by Mr. Tully, then Minister for Local Government, especially the projected inclusion of managers. It has fallen into abeyance. ³⁴

It seems strange that a Labour Minister would not favour the establishment of some such body. ~~as~~ One of the proposals, as will be seen later, of the Labour Party ^{in the} ~~around~~ 1920s ~~to 1930~~ was the setting up of a Central Council to advise and co-ordinate local bodies. The composition, however, of this Council was not specified.

Another attempt was made in 1981 with the establishment of an Irish Branch of the Council of European Municipalities. Desmond Roche

believes 'it will ---- fill the role of local spokesman in domestic
 as well as external confrontations'.³⁵ But, as can be seen from
 Appendix C, the ratio of population per member varies greatly and
 in any such co-ordinating body due weight would have to be given to
 this fact, and to ensuring an adequate voice from sparsely populated
 rural areas which have their own local problems.

Because the organisation and functions areas of local authorities are
 intertwined I will look at the efforts made to up-date the law in
 these areas later on, in chapter 8.

Even if new structures for local government are not formed, there
 is need to rationalise and up-date the law relating to areas, for
 example, there is no longer any need for the sanitary area. In fact,
 the legislation on the whole organisation division should be
 modernised to twentieth century needs.

CHAPTER 3.

LOCAL GOVERNMENT - PERSONNEL.

So far as local government personnel is concerned the statutory provisions make a distinction between the office and the holder of the office.

THE OFFICE.

The legal provisions dealing with the office - its creation, amalgamation, division, abolition, qualifications required, disqualifications, security, duties in general and the time limit imposed for filling are contained in the Local Government Act, 1941 as amended in 1946 and 1955, and by the county and city management Acts together with a number of Regulations and Circulars made thereunder. The principal ones are the Local Government (Officers) Regulations, 1943 as amended in 1974 and 1983, and the Local Government Officers Circular, 1952.

The specific duties for certain offices, for example, manager, county secretary or town clerk, treasurer, accountant, checker, rate collector, rate inspector and rent collector are laid down in various statutes. So far as the manager and county secretary or town clerk are concerned the number is quite extensive, as can be seen in Appendix E, and relate to personnel, members, elections, finance, performance of functions and could be an obstacle to any proper division of functions among modern staff, for example, finance officer.

THE OFFICE.

In the case of the office the recruitment and appointment procedures are laid down in the

- (A) Local Authorities (Officers and Employees) Act, 1926, as amended, for senior officers, for example, manager, assistant manager, county secretary, town clerk of boroughs and urban districts whose population was more than 9,000, at last census. Since 1983 smaller urban districts can recruit their own town clerks.
- (B) Local Government Act, 1941 as amended, together with numerous Regulations and Circulars, for all other officers.

Once appointed the 'conditions of service' of officers, that is, remuneration, attendance, probation, tenure of office and termination by resignation, suspension or removal, and other gainful occupations, are laid down in the Local Government Act, 1941 as amended.

Superannuation provisions are contained in schemes made under the Local Government (Superannuation) Act, 1980.

Provisions regarding illegal practices are laid down in various Acts, some dating from the nineteenth century.

The only statutory requirements regarding training is in the Fire Services Act, 1981. This Act places a duty on the fire authority to train fire service personnel.

There is a clear need to review legislation dealing with personnel. Unlike the 'organisation area' the legal provisions for all local areas are practically similar under the various legal elements required, as can be seen in Appendix A.b. However, with the growth of functions various modern day needs of personnel have been neglected, for example, provisions for training, code of conduct,

making sure staff are aware of the statutory requirements relating to them, and the use of modern technology especially as a result of a recent Supreme Court decision in *The State (John Clarke) V. Peter Senezio*, 1986.

The statutory provisions provide the outline of the personnel function. From these a permanent officer, after serving a satisfactory probationary period, and working diligently and with integrity can expect to remain in office until he dies or resigns. Remuneration is paid for in the case of the county, county borough, borough and urban district, in part out of expenditure on the various services and the remainder from the rates, and in towns with commissioners out of the rates. Even where there is not sufficient finance to pay for remuneration there is no provision for removing an officer should he wish to remain in office. However, if for certain statutory reasons, for example, on account of alterations in conditions of service it is in the public interest that he should resign, the Minister can request an officer to resign and if he refuses the Minister can remove him from office.

Under statute the Minister for the Environment has the principal role in relation to staff. In the case of

- (1) the office - he can
 - (a) decide whether or not the office is an office, where dispute arises.
 - (b) amalgamate offices.
 - (c) declare qualifications regarding character, age, health and physical characteristics, education and training, experience, residence and sex.

- his sanction is required for

- (a) creating offices.
 - (b) abolishing offices.
 - (c) qualifications declared by the Local Appointments Commission (LAC) and local authorities in certain instances
- (2) the officer - he can
- (a) for all officers, other than senior officers under the 1926 Act, provide by Regulations the remuneration and appointment procedure, Even under the 1926 Act he can decide whether or not it applies, if dispute arises.
 - (b) decide the kind and number of staff to be employed.
 - (c) request an officer to resign for statutory reasons.
 - (d) terminate a suspension.
 - (e) inquire into the removal of an officer by the local authority or remove a person for committing a crime.

- his sanction is required for

- (a) appointing staff, other than on the recommendation of one person by the LAC.
- (b) appointing a deputy manager.
- (c) altering the level of remuneration.

Under these wide Regulations of the Minister, the manager's overall functions are

- (a) control, supervision, service, remuneration, privileges and superannuation of staff.

- (b) appointing and removal of staff (other than city managers) for the county boroughs of Dublin, Cork, Limerick and Waterford. In other words he can remove the town clerk eventhough his ^{own} title is ^{in legislation} is 'city manager and town clerk'.

Although the provisions in (b) above are not specifically mentioned for some areas, this would probably not matter in practice as they are not specified as reserved to the members and would fall to the manager to deal with anyway. The manager, therefore, decides the day-to-day issues in relation to staff, subject to the necessary Regulations etc..

The members of the local authority, too, have some important functions in relation to personnel. For example, they can

- (a) with sanction of ^{the} Minister create offices other than statutory offices.
- (b) appoint a manager where one person ^{is} recommended by Local Appointments Commission.
- (c) decide to increase or reduce the rate of remuneration of any officer before the Manager submits proposal to the Minister.
- (d) suspend and remove a manager.

However, one important function of the members, that is ^{the} 'Section 4 resolution', requiring the manager to do a particular thing, cannot apply to any matter in relation to staff.

While the sanction of the Minister is required in a number of instances, the initiative lies with the local authority and this sanction is possibly only a matter of form.

The extent of the statutory provisions in relation to personnel can be seen in Appendix A.b. This includes matters in the principal Regulations of 1943 as amended in 1974 and 1983 and the Officers

Circular, 1952. This differs greatly from the position in England. Under the English Local Government Act, 1972 Section 112 power is given to the local authority to

appoint such officers as they think necessary for the proper discharge by the authority of such of their or another authority's functions as fall to be discharged by them and the carrying out of any obligations incurred by them, in connection with an agreement made by them ----.

Legislation relating to personnel, as seen, is complicated and detailed. As a result the time of officers concerned with personnel matters relate to:-

- (1) seeing recruitment is carried out according to the legislation, for example, publication of public notices etc..
- (2) obtaining sanction when required and answering routine enquiries from the Department.
- (3) determining remuneration, tax liability and superannuation of officers.
- (4) ensuring that only authorised leave is taken.

Outside the larger authorities the personnel officer would also be concerned with other miscellaneous functions of the local authority. In most authorities such an officer would not even exist. Instead these administrative issues, as they arise, would be dealt with by a designated officer. Thus, in general, there is no staff appraisal, development or training. Although the Institute of Public Administration runs a number of courses for different grades of staff most officers undertake their own study by pursuing a Degree course and / or reading local government legislation and authoritative textbooks on this subject.

DEVELOPMENT OF A SINGLE LOCAL GOVERNMENT SERVICE.

While existing statutory provisions give the main role in relation to staff to the Minister for the Environment efforts have been made to give the Government greater control over the type of local personnel to be appointed, especially to senior grades. At present, the Government appoints the members of the LAC, and thus, has an indirect control over the type of major staff to be appointed.

In 1905 Arthur Griffith, founder and first President of Sinn Fein,¹ wanted a 'National Civil Service'. In fact one of the aims of this organisation was:

The creation of a National Civil Service embracing all the employees of the County Councils, Rural Councils, Poor Law Boards, Harbour Boards and other bodies responsible to the Irish people, by the institution of a common national qualifying examination, and a local competitive examination. ¹

Dublin Corporation from the early 1900s operated a competitive recruitment scheme by written examination for clerical posts.

The reform began immediately after independence. Attempts were made to use Selection Boards appointed by the Civil Service Commission (CSC). On 19 February 1923 this proposal was put forward by Professor Eoin Mac Neill, then Minister for Education. The Local Government Officer's Union, at its annual conference in 1925, expressed satisfaction at this policy. It desired, however, that one member of the Board be a local official.

But, as Desmond Roche pointed out 'the Commissioners were reluctant to take on both tasks.'²

The main defects found by the Department of Local Government and Public Health were outlined by it, in July 1925:

---- save in the case of appointments to County

Surveyorships where there is a statutory examination no specific power is vested in the Minister to require a selective examination or other means to secure the best type of candidate. Moreover, the present system has been found open to many and serious abuses; political and personal considerations having entered into the actions of local authorities. 3

In many instances the applicants for positions canvassed the members to secure votes. The local authority could appoint any person who possessed the minimum qualification. The matter was often decided by the number of votes a particular candidate could obtain. This became a cause of great dissatisfaction. In fact in 1924 two members of a local authority had been convicted of attempted bribery in the case of the filling of a vacancy of medical officership. Thus, for the purpose of '(i) initiating the examination system and

(ii) curtailing the power of local authorities in regard to appointments----', 4

the Local Government (Officers and Employees) Bill, 1926 was initiated. Before it was introduced into Dail Eireann the Cabinet required a number of amendments, including

- (1) the 'consent of the Minister' to be included in Section 5. This Section allowed the local authority to appoint a person to act temporarily in a vacant office to which the 1926 Act applies.
- (2) the inclusion of Section 9 which allowed the Commissioners with the concurrence of the Minister dispense with the competitive examination where the nature of the duties, the knowledge and experience necessary for the efficient performance of those duties and the qualifications prescribed, cannot be satisfactorily selected by competitive means.

On 28 July 1926 the Local Government (Officers and Employees) Act, 1926 was passed into law. As well as establishing the LAC it, also, empowered the local authorities and the Minister to suspend

any officer who was unsatisfactory or misconducted himself. The Local Government Officers Union, at its annual conference in 1926, unanimously passed a motion requesting representation on the new Commission. This, however, was never achieved. According to JJ Horgan:

In many ways this Act may be said to be the most revolutionary local government measure yet passed in the Free State. It has, of course, proved the usual uproar from the various local bodies which it deprives of patronage. 5

Many local authorities, stated Neil Collins,

---- passed resolutions calling upon the Dail to repeal the 1926 Act. Other local authorities, eg. Galway, made promotions to important positions without asking the Ministers' permission declaring themselves to be ignorant of the law. 6

In 1928, a further Bill, amending this Act was initiated by Deputy Eamon de Valera, but defeated. It proposed:

- the abolition of the LAC and the transfer of its functions to the CSC.
- the recommending by the Commission of three persons for appointment.
- the inclusion as a qualification local knowledge or experience.
- empowering local councils to promote executive officers with not less than five years service who had passed a qualifying examination of the Commissioners.

However, to ensure 'general confidence in the method of making appointments' ⁷ a motion by the Labour Deputy TJ O'Conaill to appoint a Select Committee to 'consider and report on the working of the 1926 Act' ⁸ was passed. The terms of reference of this Committee had to be curtailed by denying it power to obtain from the LAC 'papers and records'. ⁹ This was due to the confidential nature of some matters:- the type of person to act on Selection Boards and the age, health and character (by certificate of referee) of candidates, and the markings allotted.

The Committee, in its Report, made eight recommendations, the most important being:-

- (1) that the Local Appointment Commissioners be appointed under the Civil Service Regulations, Act, 1924 (i.e. Civil Service Commissioners).
- (2) if not so appointed under the 1924 Act then only civil servants should be eligible for appointment as Commissioners.
- (3) Regulations prescribing qualifications should be laid before the Oireachtas.
- (4) competitive examination by way of written tests should be used for all appointments to the public service, except where professional or technical qualifications needed.

The Local Government Officers Union expressed 'dissatisfaction with
10
the manner of procedure and Report' of the Committee. Observations on the Report were requested from a number of people on 26 March 1930. Chief among them was the CSC, the LAC and the Department of Local Government and Public Health (DLGPH). It took the DLGPH approximately a year to reply. The result was, in the case of each of the main recommendations above, as follows:

- (1) All three were against. Since the Executive Council appoints the members of the LAC, any or all of which can be Civil Service Commissioners, then this procedure 'is preferable to one which
11
would bind the Council to one course only'. In addition the DLGPH stated: *that*

~~now~~ to transfer the duties of the Local Appointments Commission to the Civil Service Commission as although there is some similarity there is far from being an identity in functions. The successful recruitment of local officers through the Local Appointments Commission rests mainly on the growth of experience in the
12
practical requirements of local authorities.

- (2) Both the CSC and LAC noted that 'since the inception of the Act

all of the persons appointed to act as Local Appointment Commissioners have been persons in the Civil Service'. ¹³

The DLGPH approved of this proposal and stated:

In making this recommendation the Committee has no doubt been impressed by the importance of ensuring against any possibility of future weakening of the personnel of the Commission by the inclusion of any who might fail to bring to their duties a full sense of personal responsibility and exact impartiality. An Executive Council not fully cognisant of how essential these qualities are in a Local Appointments Commissioner might be strongly tempted to the disastrous experiment of appointing a person or persons whose inclusion would appear to popularise the Commission. ¹⁴

- (3) In this case the CSC said it did not concern them, while the LAC did not approve mainly because it would cause unnecessary delay in filling positions. The DLGPH had no objection to the recommendation.
- (4) Again the CSC said it did not concern them. The LAC disapproved, of a central written test for all local vacancies as they occurred under each local authority, as it would be 'extremely ¹⁵ cumbersome and costly'. The DLGPH was, also, of the same opinion and did not agree that written examinations should be used. It stated:

To apply written competitive examinations to posts like county secretaryships would discourage applications from the most desirable applicants, namely, those with practical experience. ¹⁶

On 20 April 1931 the Cabinet considered the recommendations of the Select Committee and the observations made thereon. It agreed with only number (2) above, that is that only civil servants should be eligible to act as Commissioners, but legislation on this matter was not necessary.

On the change of Government in 1932 the LAC was thought to be

under threat of extinction. However, the new Minister for Local Government and Public Health, Sean T O'Kelly, only changed the Commissioners. In addition he requested them to recommend three names to the local authorities for appointment, unless an authority expressly asked for only one. This proposal was not a success. For example, Sligo Corporation, as will be seen later, refused to appoint any of the three names recommended. In July 1933 the Minister withdrew the 'Three Names' direction to the LAC.

The city management system, as will be seen in chapter 8, was introduced in Cork in 1929 and Dublin in 1930, in the hope of applying more business like methods to local affairs. Four years later proposals were made to extend the system to all counties by recruiting young men aged twenty-two to twenty-seven to serve as cadets - something on the lines of the French prefectorial system. These would later rank for permanent appointment as managers. Nothing became of this suggestion, however. According to Desmond Roche:

The only indigenous officer with affinity to the prefect was the Regional Commissioner who stood by during the Emergency of 1935 - 1945, ready to take over in the event of invasion and the disruption of normal government. 17

The city management system was extended to Limerick and Waterford and, then in 1940, to the counties.

In 1941 the Local Government Act inaugurated 'a new code of law and regulation for personnel'.¹⁸ It provided a new procedure for the creation of non-statutory offices and the appointment of persons outside the 1926 Act and other personnel matters. This type of legislation had been called for by the Executive Committee of the Irish Local Government Officers Union as far back as 1925. In addition, in 1929 Philip Monaghan, the Cork City Commissioner was reported as saying that:

He had long been convinced that until the conditions of admission to promotion within the Local Government Service were fixed by statute their Local Government Officials could not make that contribution to the development of Irish Local Government which they were entitled to expect from them. ¹⁹

Another Local Government Act was passed in 1946. According to Desmond Roche:

A different aspect of expanding ministerial authority gave rise to great controversy in Dail and Senate. This was the extension of central control to minor employments and servants of local authorities (s.42). ²⁰

This Section 42 provided that a local authority could not increase the salary of minor officials and servants without the sanction of the Minister. In its Annual Report for 1950 - 1 the Department of Local Government pointed out that

---- over a long period the law has vested in the central authority a tight control over local authorities in staff matters. The purpose of this was to ensure that staffs are properly recruited and fairly treated. Generally that position has been reached. ²¹

Section 42 was repealed by the Local Government Act, 1955 and a new provision included in the City and County Management (Amendment) Act of the same year. Section 6 of this Act went even further. It provided that before the manager submitted a proposal for sanction of the Minister, to vary the number of permanent officers or increase or reduce the rate of remuneration of any officer, he must first obtain the consent of the members. This Section is still in force. Previous to this the Union officials, in dealing with a staff problem, only had to discuss the matter with the local authority concerned and the appropriate Minister. Now, they saw themselves as having to contend also, with the County Managers Association. Thus, the President of the Irish Local Government Officers Union, C O'Nuallain stated:

The introduction of the City and County Management

(Amendment) Bill 1954, and the Industrial Relations (Amendment) Bill 1954 hastened our decision to seek the establishment of a scheme of arbitration for officers of Local Authorities. 22

However, this proposal was not favoured by the Department of Finance.

In March 1954 when the Irish Trade Union Congress suggested the setting up of negotiating machinery for local authority employees, it stated:

The Minister's view is that such machinery is inappropriate and unnecessary. Local Authorities are already subject to considerable central supervision and control, and the tendency should be to reduce rather than extend it. Moreover, the existence of another central body would complicate, still further, the exercise of the existing controls. 23

Eventually, however, a Conciliation and Arbitration Scheme was worked out in 1963.

So far as the LAC was concerned its impartiality in selecting persons, on the whole, became accepted. Criticisms were levelled against it, though, and on at least one occasion its decision was enforced by the courts. In 1933 Sligo Corporation refused to appoint the persons the LAC recommended for town clerk. The Sligo Labour Party passed a resolution stating that

---- the Appointments Commission must have allowed themselves to succumb to the machinations of unwholesome intrigue and to be influenced not by considerations of competency and merit, but rather by unworthy representations and manoeuvring in dealing with the question of Sligo town clerkship ----. 24

An inquiry into the matter was proposed. The Attorney General stated:

---- in order to be an effective instrument entitled to claim the confidence of the public, the Commission and the Selection Board should be above suspicion. It might well be that while the result of such an Enquiry is clearly to be seen, it might clear the air to hold such an Enquiry. 25

On 22 September 1933 the Cabinet decided to hold a public inquiry.

The matter eventually led to an Order of Mandamus by the Minister for Local Government and Public Health to Sligo Corporation to appoint the person recommended by the Commission.

Other local authorities, seemingly, were not so opposed to the LAC. The President of the Executive Council stated on 11 October 1933 that there was 'no evidence of any general demand on the part of the local authorities for the abolition of the Local Appointments Commission.'²⁶ When in 1964 the procedure for appointment of senior posts by the LAC was criticised by one Deputy in Dail Éireann the acting Minister for Local Government refused to investigate the matter. The Deputy claimed that people in the West of Ireland were being denied proper promotional opportunities. In reply, the acting Minister stated:

The procedures for appointments and promotions to local authority offices have operated satisfactorily for many years and I do not propose to take any action to alter them. ²⁷

On the Local Government and Public Service Union side the only proposal in relation to the LAC, that came up frequently at annual conferences, was that the candidate for interview be informed of the marks awarded and place obtained. This possibly is an indication of a lack of trust in the Commission. But, personnel who sat on Interview Boards, including Harold O'Sullivan, a former General Secretary of the Union, said ^{when} ~~to~~ ^{interviewed} me that they would not favour this suggestion. However, Harold O'Sullivan further stated that he was against the LAC system. He said:

My experience of Interview Boards is that they tend to mark subjectively and that being the case it is very hard to determine an objective scheme of marking. ²⁸

The Study Group set up by the Institute of Public Administration which produced the Report 'More Local Government - A Programme

for Development' recommended that local authorities should be given a say in the running of the selection system of the LAC through a Management Board comprising representatives of councillors, of managers, of the Department and of the staffs. It, also, suggested that a training levy be imposed on local authorities.

In December 1979 the Supreme Court declared that the Local Appointment Commissioners acted beyond their powers in granting extra credit for a knowledge of Irish to candidates being selected.

The only changes since the 1926 Act ~~was~~^{were} a minor amendment in 1940 and a further amendment in 1983 to overcome the Supreme Court decision. The 1940 Act concerned the appointment of nursing staff especially nuns by the LAC. The 1983 Act empowered the Commission to select senior staff by four means, including written examination, and to take into account training and qualifications of candidates. Section 9 of the 1926 Act which allowed the LAC dispense with competitive examination was repealed. The main change, however, was the transfer of power to urban districts, with less than 9,000 population at the last census, to appoint their own town clerks.

On the face of it, it would seem that since the Select Committee Report of 1931 the trend is towards a gradual reversal of the tight control over the recruitment of senior staff. This, however, is not the case. Since the introduction of the management system, the manager as the county or city chief executive is now appointed by the LAC. This uniform procedure provides an impartial method of recruitment of senior staff and need not have worked to the disadvantage of the local area as:

Before giving their decision on the Report submitted to them by the Boards of Selection, the Commissioners take into consideration the qualifications of those applicants (if any) named in the report who are resident in the area in which the vacancy exists and preference

is given to any local candidate who, in the opinion of the Board of Selection are fully qualified and experienced. 29

The only published Report to deal with overall staff structures of local authorities was 'Strengthening the Local Government Service', better known as the Mc Kinsey Report, which appeared in 1972. It noted, as shall be seen later, the trend towards greater centralisation. Among its recommendations was a proposal to intergrate urban and county staff and combine personnel in several pairs of small counties under a single manager. An idea in itself ^{not found} towards larger authorities. A new staff structure was suggested including the creation of functional officers and service managers, better recruitment and promotion policies and managerial training programmes. These proposals, however, were rejected by the Minister.

In September 1973 a Manpower Committee was set up, representative of various Departments and bodies concerned with local personnel, to advise on manpower needs. A sub-committee determines appropriate training programmes. The only statutory provision, as already stated, in relation to training is in the Fire Services Act, 1981 which requires the fire authority to provide efficient trained fire service personnel. In 1975 a new grading structure was introduced.

Since the inception of the State, therefore, there has developed a single local government service. This is characterised by the recruitment of senior personnel through the LAC and other officials through uniform local procedures; a standard pattern of grades, conditions of service, rates of remuneration and superannuation. However, practical problems exist.

The development of this single service has permitted a high

degree of mobility between the staffs of different local authorities. This is seen as one of the strengths of local government. It helps to introduce better administrative methods and provides officials with varied experience of dealing with local issues. In recent years, however, mobility seems to be on the decline with promotions occurring from existing staff and the increase in powers of local recruitment. This may not be a bad thing, except that it has not been accompanied by enough appropriate training courses to develop new ideas, or explain the wider role of the local authority in the community, or indeed that would allow staff to mingle with their counterparts in other local authorities. The result might be that local authorities will become too parochial in outlook.

Even though legislation on the recruitment procedure is quite detailed there is no guarantee that the best candidate will succeed. Appointments to senior positions is made on the recommendations of the LAC. Although criticisms have been levelled against it the Minister is prepared to enforce its decision even to the point of obtaining an Order of Mandamus. Since 1941 if a local authority fails to comply with a Court Order the members can be removed from office and commissioners appointed. In the case of other personnel a local board is formed to select candidates for vacancies as they arise. The composition of these boards is decided by the official in charge of the local authority. One senior member of staff told me that for minor positions, before the board reached its final decision, he would be consulted. If he said that he thought that a particular candidate, who had given satisfactory service in the past but, not among the boards draft recommendations was suitable, then, the board will recommend this person. No marks or results of the interviews would be kept for

the other candidates. Although no research has been carried out on the effectiveness and impartiality of both recruitment methods, perhaps the proposal of Eamon de Valera and the Select Committee for a central qualifying test should be pursued now. The examination could assess the candidates knowledge of legislation and ability to use it to solve local problems. Thus, it need not discourage personnel with long experience. In fact they would be in a better position than other candidates as they are continually applying local government law to solve cases. The tests could apply to staff and other candidates to grade iv, grade v etc. levels and held possibly once yearly or less. The local board would then decide the suitability of the candidates for the particular vacancy as it arises, based on the applicants' personality, ³⁰ knowledge of, or interest in the local area and current issues affecting the authority etc.. Some form of appeal could exist to an independent board such as the IAC where a candidate with the highest marks in the written test was unsuccessful at the interview.

In recent years, especially, local officials have been criticised for their failures or bad decisions in dealing with local problems, such as in physical planning and repairing pot-holes on public roads. Lack of finance is a major problem in this area, but, it is not the sole cause. Even in the case of finance, one local authority, instead of encouraging the payment of the new local charge, sent out in the second year demands for two years payment to everyone, even to those who had paid in the first year. For some reason the officials saw little reason in crossing off the arrears for those small number of people who had paid and, thus, totally disregarded the image they would ^{of} portray to paying consumers. This is only a minor example, but, it is the kind of laxity that is creeping into local authorities.

A former President of the Irish Local Government Officers Union, Patrick Barry, outlined, in 1960, at the annual conference of the Union the role of local officials thus:

As professional administrators we must of course be thoroughly in control of the details of operation, of modes of procedure, of the source and limits of authority. We must too know national aims at their broadest and let patriotism inspire routine.

We must also know local needs, local aims, local attitudes, local problems. All policy comes to earth in a locality. ³¹

A large part of the time of the local officer is spent understanding the law and ensuring that it is followed to the letter. This is partly due to the cryptic and detailed construction of legislation, much of which is outdated anyway to modern day needs. Judge Keane, however, believes the problem lies with lack of qualified personnel. He stated in the Introduction to his book on local government law:

I have been continually impressed, both in practice and in the preparation of this book, by the vast range of legislative weapons available to Irish local authorities.

---- The inadequacies of our system of local government reflect far more a failing in personnel than in machinery.

---- it remains the fact that local authorities suffer constantly from a lack of sufficiently qualified officers ³² in peculiarly sensitive areas, eg, planning in rural areas.

Dr TJ Barrington, on the public service as a whole, stated in 1974 that 'on the personnel front, one finds very considerable, if not waning, natural human resources coupled with a lack of explicit personnel policies.' ³³ The adequate training of local staff, at all levels, but especially, those in direct contact with the public should be undertaken. It should not only include instruction in communications skills but in the wider role of the local authority in the community and the country.

Patrick Barry further stated that what this country demands of local staff is that 'we share its aims with a deep and sane enthusiasm'. ³⁴ Today, this has been lost sight of.

CHAPTER 4.

LOCAL GOVERNMENT - POLICY.

Since there is no policy division in local authorities I will deal with this area by looking at the sources of policy.

SOURCES.

The sources can be divided into:-

(1) The Oireachtas through legislation.

Acts of the Oireachtas vary between Public Acts which can be permissive, obligatory or adoptive, and private Acts.

(2) The Departments through Regulations, Orders, Directives and Circulars. While the principal Department is the Department of the Environment, some local services are under various other Departments, for example,

Agriculture - miscellaneous agricultural matters.

Education - miscellaneous education matters,

Health - Health Boards and Local Health Committees.

Welfare - miscellaneous welfare services, for example, the cheap fuel scheme.

Justice - courthouses.

Defence - civil defence.

Various local government Acts confer on the appropriate Minister power to make Regulations, Orders and Directives. In addition, to clarify further Regulations, Circulars are issued. As the Report of the Public Services Organisation Review Group stated:

While they are free to perform some of their legally

authorised functions as they think fit, many functions may be performed only with the sanction, approval or concurrence of the appropriate Minister. This sanction may sometimes be given generally and in other instances it may be given for a particular exercise of a power. The appropriate Minister also has extensive powers to give directions binding on local authorities. ¹

With the extension of powers and duties in new or expanding areas detailed provisions, especially for the safeguarding and exercise of ministerial powers, add to the complications of local government law. One effect of this was outlined by Maurice Danagher:

A survey of our modern Local Government Acts and statutory provisions creates, in spite of a recent trend towards decontrol in the domain of practice, the impression that local officials in discharging their duties must pay more careful attention to ministerial or departmental views and requirements than to the views of the body that employs and pays them. ²

(3) The Local Authority itself.

Under statute power is given to the local authority to decide policy

(A) generally, through - promoting legislation in the county

boroughs, boroughs, urban districts
and towns.

- opposing legislation in all areas.

- the Estimate of Expenses in all areas.

- bye-laws in counties, county boroughs
and boroughs.

- seeking additional powers in areas where
1854 Act adopted.

(B) specifically, for certain functions. Under the Estimate of

Expenses programme divisions these include:-

I Housing and Building.....Assessment of housing needs.

Building programme.

II Road Transportation and
Safety.....none.

III Water Supply and
Sewerage.....Assessment of Needs.

IV Development Incentives
and Control.....Survey of Need.

Development plan of the planning
authority. This is required to
state the development proposals
of the planning authority, but,
actually sets out the development
proposals of the local authority.
It includes objectives for
housing, roads, water and
sewerage supply, amenities etc..

V Environmental Protection. Emergency operational plan of
the fire authority.

VI Recreation and Amenity...none.

VII Agriculture, Education,
Health and Welfare.....none, other than schemes for

scholarships and cheap fuel
schemes stating the eligibility
requirements and aid available.

VIII Miscellaneous.....Some powers to make bye-laws for
miscellaneous matters, for example,
nuisances.

Taking each of these sources in turn a number of difficulties arise.

(1) Legislation.

There is no list of the statutes in force, specifically relating to local government to be found publically, or, available in the local authorities. To list the principal enactments in force, is a relatively simple exercise, but, to find all of them, some with only a few Sections still in force, or, nineteenth century legislation is another matter. Further difficulty arises if one wants to find the statutes, though not local government Acts which have provisions relating to local authorities, for example, the Health Act, 1970. It provides for membership on Health Boards and Local Health Committees of local authority members, and contributions from the rates.

The main public sources of local government enactments available are:-

(A) The volumes of statutes

In the 'Index to the Statutes in Force from 1922 to 1977', page 520 under

- (i) 'Local Authority' is listed a number of statutes relating to local government, but not all local government Acts since 1922, for example, the Local Government (Roads and Motorways) Act, 1974 is not cited.

A further subdivision is made into sixteen sub-headings.

- (ii) 'Housing' is listed housing legislation since 1922.
- (iii) 'Dublin City' etc. is found the individual city

management Acts relating to the City.

To find the legislation relating to the main services one first has to look under:-

- (1) 'Local Authority' - sub-heading 6 for 'Public Works' which is further divided into 10 areas, as follows,
 - (a) roads.
 - (b) aerodromes.
 - (c) bridges, viaducts, tunnels, and other works.
 - (d) ferry.
 - (e) drainage, water supply, wash-houses.
 - (f) pounds.
 - (g) unemployment relief works.
 - (h) flooding, landslide, subsistence etc.
 - (i) derelict sites.
 - (j) dangerous places.
- (ii) 'Local Authority' sub-heading 7 for 'Sanitary Services'.
- (iii) 'Local Authority' sub-heading 12 for 'Civic Affairs', for example, concert halls.
- (iv) 'Local Authority' sub-heading 13 for 'Planning and Development'.
- (v) 'Housing' for housing legislation.
- (vi) 'Library' for library legislation.

This division of functions does not correspond with any other classification of functions in the local authority, for example, in the Estimate of Expenses format, or, even the division of local government Acts (see next page).

or, (B) Recognised authoritative textbooks.

- (1) 'The Law Relating to Local Government in Ireland' and

other works by STB Vanston. These, however, only deal with law to 1919 and the main volume of local government legislation in force was passed since then.

(ii) 'The Law Relating to Local Government' by HA Street.

It consolidates local government enactments in force to 31 December 1953. However, it does not include Acts on particular services such as housing, libraries etc..

(iii) 'The Law of Local Government in the Republic of Ireland'

by Judge Keane. It deals with legislation on local government services to 1 July 1980, but does not deal with statutes on, for example, local authority areas - towns etc., members, elections, meetings, personnel or finance other than rates and audit.

The Acts still relating to local government can be divided into groups as follows (the approximate number in each grouping is also listed):-

GROUP	APPROX NO.
(1) Local Government Acts	
(a) Pre 1922.....L.G.(Ir) Act, 1871...	1
L.G.(Ir) Acts 1898	
to 1919.....	4
(b) Post 1922.....L.G. Acts 1925 to	
1985.....	21
(2) Management Acts.....	12
(3) Sanitary Services Acts.....	9
(4) Housing Acts (and pre 1966 Acts).....	10
(5) Planning Acts.....	4
(6) Miscellaneous (including Acts with	
provisions relating to	
local government.....	215
TOTAL	276

However, even this classification is blurred as a result of conflicting statements in Sections of some Acts, for example, Section 1 of the Local Government (Reorganisation) Act, 1985 states:-

- 1(1) This Act may be cited as the Local Government (Reorganisation) Act, 1985.
- (2) The Local Government Acts, 1925 to 1983, and this Act may be cited together as the Local Government Acts, 1925 to 1985.
- (3) The Local Government (Dublin) Acts, 1930 to 1971, and Part III of this Act may be cited together as the Local Government (Dublin) Acts, 1930 to 1985.
- (4) The County Management Acts, 1940 to 1972, and section 7 of this Act may be cited together as the County Management Acts, 1940 to 1985.
- (5) Part IV of this Act and the Local Government Acts, 1925 to 1983, shall be construed together as one Act, ----.

Further difficulty arises in the reading of Acts, because of complications caused by the 'substitution' of Sections. This will be seen in chapter 5 dealing with finance. It would be just as easy, and far less confusing to repeal the Sections causing problems and introduce a whole new Section(s) in the later Act. The same, also, applies to part amendments of previous provisions.

While the number of Acts, with Sections specifically relating to local government is at least 276, about ninety per cent of local government legislation can be found in 60 to 70 statutes.

(2) Regulations etc..

Since Regulations, Orders etc. depend for authority on legislation the same difficulties can be found in this area.

(3) Local Authority Policy.

- (a) Promoting or opposing legislation.

Only county boroughs, boroughs, urban districts and towns can promote legislation. This is a long procedure involving a resolution to promote particular legislation being passed by the members, confirmed by the Minister and approved by the electors of the area. It is an important, though costly, power. Limerick City Council attempted to use this power to extend city management to its functional area, but the Executive Council agreed to promote the necessary Bill as a Government measure. The Local Government (Galway) Act, 1937 is a private Statute. It re-established the Borough of Galway.

All areas have the power to oppose Bills before the Oireachtas. The procedure is similar to promoting legislation.

(b) Bye-laws.

Only counties, county boroughs and boroughs can make bye-laws for 'good rule and government', but the maximum penalty that can be imposed for breach of a bye-law is small. In addition such laws usually relate to minor matters.

The extent of intervention of the courts in this policy making area can be seen in the case Listowel Urban District Council V. Mc Donagh, 1968. ³ The Council made a bye-law under Section 31(1) of the Local Government (Sanitary Services) Act, 1948 prohibiting the erection of temporary dwellings on certain streets as being prejudicial to public health. The defendant who was prosecuted and fined in the District Court appealed to the Circuit Court on the grounds that the bye-law was unreasonable and not arrived at bona fide. The Judge stated a case for the opinion of the Supreme Court on

whether it may 'inquire into what transpired at the meeting of the Listowel U.D.C. ----the views expressed by U.D.C. members concerning the order and whether the opinion was arrived at bona fide ----.' ⁴ In its decision the Supreme Court held 'that the Circuit Court in deciding the appeal was entitled to enquire into whether or not the opinion of the U.D.C. was arrived at bona fide.' ⁵

Yet, in the case Minister for Industry and Commerce ⁶ V. Hales, 1967, where central government was involved, a different view was held as Ronald Stout pointed out:

In determining the intent of a statute related to the question of whether a rule is ultra vires, the function of the Court is to make its determination based on construction of the wording of the Act. The Court should not be influenced by argument or evidence submitted as to the 'parliamentary history' of the Act, and thus debates in parliament, reports of commissions or other contemporaneous circumstances should not be taken into account - a view of judicial methods of intent, which contrasts with that of American Courts. ⁷

(c) Estimate of Expenses.

Policy for all areas, for the year only, is found in the Estimate of Expenses. The main purpose of the estimates is to decide the amount required to be raised in rates.

(d) Specific services.

Even though the local authority is divided into various authorities, for example, housing, road etc., there is no provision for policy for the sanitary authority or the road authority. If the classification is made using the estimate programmes groups there is no provision for policy for:-

- Road Transportation and Safety.
- Environmental Protection.

- Recreation and Amenity.
- Agriculture, Education, Health and Welfare.

Instead the Development Plan of the planning authority sets out not only the proposals of that authority but, in fact, those of the local authority in all areas, except towns, in housing, water supply and sewerage facilities, road provision and traffic control, planning and development regulation, recreation and amenity facilities etc.. In the case of towns the county council is the planning authority and as such sets out in its Development Plan the planning objectives for the town.

In practice, however, in the case of roads and sanitary services, even though no specific statutory requirements are laid down for the road authority or the sanitary authority each prepares its own detailed plans for a number of years ahead.

DETERMINING POLICY.

All of the statutory powers of the local authority in deciding policy (except the survey and assessment of needs which strictly speaking are only an aid to policy) are reserved to the members. Opinions differ, however, as to the use made by the elected members of their powers in deciding overall policy. Neil Collins implies that they pay little attention to these matters.

Institutionally, facilities do not exist for a general review of the managers' policy leadership. Council meetings though on a monthly cycle, do not primarily focus on policy, as opposed to its application in particular cases ----.

Members wish to be seen advancing local grievances. When public policy is discussed, it often concerns national issues. On such occasions party members line up in support of their Leinster House colleagues. ⁸

The managers' ability 'to formulate and conduct policy relies upon an unquestioned acceptance of his leadership by his council.' ⁹ To maintain this position he 'ensures that council members are seen to wield the power most relevant to their electoral survival - the ability to placate and impress an intensely individualistic and parochial electorate.' ¹⁰

But, Councillor Myles Tierney on the council - manager position stated:

The elected members can always challenge the manager at law but it is asking a lot of unpaid politicians to run the risks involved. It is easier to accept that the system favours the non-elected employees against his elected masters. ¹¹

However, the council itself, according to Neil Blaney T.D., *Chairman of the Local Government* ¹²

---- properly used is the public forum in which the major policies affecting local government in the country can be discussed and thrashed out. On this basis your electors will trust you, your corporate standing in the public will be enhanced and the general image of local government will be improved. ¹² ¹²

One Deputy Manager stated to me that councillors in urban areas are better able to influence policy proposals of the manager than county councillors. In the town the councillors know the area fairly well and act as a body for the whole urban area. In the case of county councillors only one or two come from the same part of the county. What would interest them for their particular area would be opposed by the remaining councillors who individually would see more pressing needs in their particular locality. Thus in rural areas the proposals of the manager are more acceptable and more likely to get passed unopposed than in the urban areas. However, a town clerk told me that urban councillors were really only concerned with their own particular part of the town. He also noted that at estimates time most of the debate was spent on the minor matters.

It is said that the City and County Management (Amendment) Act, 1955, 'marks a turning point in the development of the management system. Subsequently, the debate on the relative powers of managers and councillors abated - the Act codified the relationship ----'.¹³

A Deputy Manager stated to me that when he asked councillors who had experience of the former committee system if they would wish to see it returned the majority told him 'no way'. Another official noted that some councillors were not aware of their powers under the 1955 Act and seldom used them. This was disputed, however, by an official in a larger authority. The majority of the personnel asked agreed that if a member requested them to do something and they refused they would not inform the particular member that there was another procedure available to him to obtain the information required. Thus, councillors could be at a disadvantage by not knowing fully the extent of their powers and duties.

The usual power used under the 1955 Act is 'Section 4 resolution'. This gives the members power to require the manager to do certain things specified in the resolution, not relating to individual health functions, personnel matters or the performance of functions generally, that is legal and where finance is available. The extent of the use of this provision varies among local authorities. It is mainly used in planning application cases, though Judge Keane doubts the legality of its use in such cases. However, in some instances where a 'Section 4 resolution' was used to overturn the decision of the manager on a planning application the engineering personnel appealed as an aggrieved third party to an Bord Pleanála or sought the assistance of engineers in neighbouring councils. The majority of officials asked, however, stated that as manager they would discourage this type of action by

the engineering staff. Another, however, said ^{that} he would not intervene.

On the whole, the officials said that as far as they were aware councillors accepted the present relationship with the manager. But, one Deputy Manager told me, however, that this should be researched at present, as a number of developments have taken place, such as the twinning of Irish towns with their foreign counterparts, since the management system was originally introduced. He specifically mentioned the need to update the status of the chairman or mayor by giving him certain functions as is the case in some other European countries. 14

Legally, however, as already stated, the members have as a reserved function the power to adopt the various policy proposals which the manager formulates according to the detailed provisions in statutes, Regulations and Circulars. The council has the final say in amending, revoking or adopting.

On the wider issue of being informed of proposed Government policy the officials asked said that the members of the County and City Managers Association meet the Minister for the Environment four or five times a year to discuss problems. The majority of them thought they should be better informed of intended proposals so that difficulties in particular areas, for example, border counties, could be dealt with before legislation was implemented. Normally the local authority only know of proposed provisions when the particular Bill is sent to them. The matter is regarded as settled then, although they can go to the Department or a public representative in the Dail or Seanad and seek particular amendments.

In exercising its powers a local authority must have specific statutory authority otherwise it is acting ultra vires. As John Garvin, a former Secretary of the Department of Local Government,

pointed out they are 'creatures of the law and have only such existence, powers and functions as the law confers'.¹⁵ Acting ultra vires could result in a High Court declaration or injunction or a charge or surcharge by the auditor. Failure to further comply could lead to the removal of the members from office by the Minister.

Like England this doctrine may be invoked to

control the methods by which decisions are reached if exercised in bad faith, for improper purposes, where a legally relevant consideration has been ignored, where a legally irrelevant consideration has been taken into account, or where the decision is so unreasonable that no reasonable authority could act in such a manner.¹⁶

Recently, however, an unusual Court decision has been made in the area of negligence in the case Ward V. Mc Master and Louth County Council, 1986.¹⁷ Mc Master built a house and sold it to Ward. The latter obtained a loan from the Louth County Council and with his loan application paid a fee of ten pounds. Later, defects were found in the house and the owner sued not only the builder but the County Council for negligence. He claimed that the Council 'had had a statutory power ---- to grant the purchaser a loan, and that they failed to carry out the inspection of the house carefully, in pursuance of their statutory functions.'¹⁸ In the Court decision the Council was found, also, liable.

It was held:

---- the County Council, having acquired that loan applications, be accompanied by the payment of £10, failed to carry out a detailed inspection of the house. The purchaser gave evidence that he thought that the £10 was to cover the cost of the inspection and that he took the view that, if the house was passed by the Council, then it must be in a satisfactory condition. Though he had never told the Council of this reliance ----.¹⁹

Section 39 of the Housing Act, 1966 empowers certain housing authorities to grant loans, subject to Regulations of the Minister. These

Regulations, under Section 39(2)c, can provide for

----- the maximum amount of and the security for a loan ---- and the method of ascertaining the value of a house, in respect of which a loan ---- is sought.

No mention is made of inspecting the house for the purposes of the builder or indeed the purchaser and it is likely that if this was done they would be reaching a decision for improper purposes. Rather the reason for inspecting is to ascertain the value of the house to ensure it is sufficient security for the loan given. One would expect that this is an internal matter for the housing authority. Granted if the house is inaccurately valued the Council would be at a loss through insufficient security for the loan. Then the official responsible, if found negligent, would be liable for the loss, and could be surcharged. The fee is merely a charge to process the particular application, and at present day levels of wages ten pounds is only a small proportion of the costs involved.

This particular case, however, is now under appeal. It is doubtful if the same decision would be reached if the loan was from a bank or a building society in Ireland. In England, however, one official told me that a similar decision was reached ^{there} by the courts against a building society.

All officials asked said this ultra vires doctrine was a problem. In addition, they thought the courts in their interpretation of local government law was less inclined to favour the local authority than the other party. One stated that this was not necessarily a bad thing as the private person was taking on an organisation with its own legal and technical expertise. However, he thought with the new office of Ombudsman and other means of appeal available this position of the

courts should have changed. Another placed part^{of} the blame on the Council's law agent, who only briefed them on a case half an hour before entering the court.

They, also, agreed that people are more inclined now than previously to assert their rights. If they can be obtained through some technicality, for example, some inaccurate wording on a form, they will use these means.

To conclude then, all enactments relating to the local government area are difficult to find. In addition, the classification of legislation in the 'Index to Statutes in Force from 1922 to 1977', the Estimate of Expenses and local government Acts is different. Even the construction of some Acts is ^{made} unnecessarily complex by the use of substituted or part amended Sections in later Acts, rather than citing in full the new provision. In the case of court decisions, on the whole, it could be said that the courts are more inclined to favour the party against the local authority. Difficulty also exists here for the local officer in keeping abreast with relevant court decisions. Major judgements which will require legislative changes are, however, notified to the local authorities by the Department of the Environment. In deciding policy, then, it is not surprising that the members, although having the final say in certain instances, rely on the managers' leadership.

Whatever the policies of local authorities they are curbed by the amount of finance available. In obtaining finance, as will be seen in the next chapter, as well as the problem of finding suitable sources other obstacles exist.

CHAPTER 5.

LOCAL GOVERNMENT - FINANCE.

The law relating to local government finance cannot be found in one Act or any group of Local Government Finance Acts. Instead numerous powers are in the various statutes giving power to provide particular services etc.. Since 1946, however, this position has changed somewhat with the giving of general powers in some financial matters.

From statutory provisions this area can be divided into

- (1) income and receipting of income received.
- (2) expenditure and making of payments.
- (3) annual budget, that is, Estimate of Expenses.
- (4) end of year balancing of accounts, that is, Abstract of Accounts.
- (5) audit.

Taking each of these areas in turn, it can be seen that a number of statutory provisions remain on the statute books which should be repealed or consolidated.

(1) INCOME AND RECEIPTING OF INCOME.

Income of a local authority derives from

(A) Borrowing.

The general power and procedure to borrow can be found in the Local Government (No.2) Act, 1960.

Prior to 1960 various express powers to borrow were laid down in the individual statutes providing for certain services etc.. Whether that 'express power' can be made 'generally' as in 1960

in the above Act or needs to be specific for each service is not clear. HA Street stated in 1953 that 'It has been submitted that a Corporation may borrow only under express power'.¹

(B) State Grants.

These grants can be divided into

- (a) subsidies or contributions to loan charges.
- (b) specific grants for particular services.
- (c) grant-in-lieu of rates on land (to be adjusted when income from Farm Tax is received).
- (d) rate support grant and bounty -in - lieu of rates.

The last one is not really a grant at all but rather recouping the local authority for loss of income due to statutory allowances to ratepayers (that is to reduce the amount the ratepayers contribute to services provided) and a payment in lieu of rates on Government property.

In the case of subsidies and specific grants no general power exists, in local government legislation, for the Minister to give grants. Only some Acts empower the Minister, alone, or with the consent of the Minister for Finance, to give assistance through subsidies, grants etc. These Acts include

- Vocational Education Act, 1930 Section 51(6).
- Housing (Miscellaneous Provisions) Act, 1979, Section 10.
- Fire Services Act, 1981 Section 32.

Section 32 of the Fire Services Act, 1981 states:

The Minister, with the concurrence of the Minister for Finance, may pay annual or other contributions to fire authorities towards the expenditure incurred by them in the provision of a fire service.

As a result of a Court decision it is thought that this 'may'

means 'must' as the Minister for Local Government and Public Health stated in Dail Eireann over a similar type of provision in another Act:

---- the courts have held that the word "may" used in another section with a similar context is not permissive but mandatory. The Supreme Court held that in a case arising under the Military Pensions Act, 1934. 2

Most other grants depend on allocations from the Public Capital Programme.

The rate support grant is provided for in the Local Government (Financial Provisions) Act, 1978 Section 9 as extended in 1983.

(c) Miscellaneous Receipts.

By the Local Government (Miscellaneous Provisions) Act, 1983 a general power (now as a reserved function) was given to local authorities to charge~~x~~ any amount they decided for services provided, even where former Acts specified the amount or no charge applicable.

Prior to 1983 individual statutes included specific provisions to charge for services - some specifying minimum and maximum amounts. These provisions remain unrepealed. It would have been much simpler if the appropriate Sections had been repealed. This might have avoided the complications which, as will be shown later, resulted in the case *Athlone U.D.C. V. Oliver Gavin*, 1985. 3

(D) Rates.

Under the Local Government Act, 1946 the various rates in the county were consolidated into the county rate and in the county boroughs, boroughs and urban districts into the municipal rate. Rates in the towns with commissioners were abolished and the amounts required are now sought from the appropriate county councils

on an annual estimate and demand basis.

Prior to 1946 each individual statute giving power to provide a particular service gave express power to raise a rate for that specific purpose. The Local Government Act, 1946 changed this 'express power' by providing instead that deficiencies in the county or municipal fund be raised by a rate over the appropriate area. HA Street doubted the legality of this general provision in 1946: 'Any power to tax must be express and on principle the same rule should apply to imposition of a rate'.⁴ These 'express powers' given prior to 1946 have not been repealed.

In addition legislation on rating is found in numerous statutes, for example,

- Valuation Acts since 1852 deal with assessing valuations of property for rating.
- The Local Government (Collection of Rates) Acts 1924 to 1926⁵ provided better provisions for collecting rates.
- The Local Government (Rates on Agricultural Land) Acts provided various forms of relief on agricultural land through the Agricultural Grant.
- The Local Government (Reduction of Valuation) Act, 1966 provided for some relief of rates through reducing certain valuations.
- The Local Government (Remission of Rates) Acts 1940 to 1952 provided for remission of rates on houses improved or erected.
- The Local Government (Rates) Acts 1970 to 1973 dealt with payment of rates by instalments and the rates waiver scheme.
- some general Local Government Acts have provisions on collection and striking of rates.
- The City and County Management Acts have Sections on estimates meetings.
- The Housing Act, 1966 has provisions providing for restrictions on the increase of the valuation where State grant paid.
- Acts concerning certain industries, for example, the Industrial Development Act, 1972 have provisions regarding remission of rates on certain industries.

Numerous court decisions have, also, extended or amended the law in this area.

(E) Farm Tax.

The statutory basis for this tax is the Farm Tax Act, 1985 which sets out the means of assessing 'taxable farm', liability and recovery of the tax.

The procedure for determining each taxable farm follows much the same lines as the system of rateable valuation, except that appeal lies to the Farm Tax Tribunal. The actual rate, however, is fixed for the local authority. The amount for the first year is set at ten pounds by the 1985 Act and for subsequent years it is determined by the Minister who must have regard to agricultural incomes.

In his Budget statement of 31 March 1987 the Minister for the Environment announced that this tax would cease from the end of 1987.

(2) EXPENDITURE.

The power to spend money depends on the authority given by statute to provide services etc..

(3) and (4) ESTIMATE OF EXPENSES and ABSTRACT OF ACCOUNTS.

The Fund into which income is paid and out of which expenditure is made is known in the Local Government Act, 1946 as the County Fund in the county area and the Municipal Fund in the county borough, borough and urban district. No provision is made for a Town Fund in the case of town commissioners although it is referred to in the Municipal Corporation (Ireland) Act, 1840 for former boroughs that are now towns.

In recent years a new format of

- (a) Estimate of Expenses has been provided for all areas, dividing the

services of the local authority into eight programme areas.

- (b) Abstract of Accounts for all areas has also been provided for, except for towns with town commissioners.

The particular formats and provisions on accounts generally can be found in the Public Bodies Orders 1946 to 1977. The statutory power, however, to make ministerial Regulations on accounting and subsidiary matters is provided in the Local Government Act, 1955 Section 61.

(5) AUDIT.

The Acts relating to the audit of accounts are

- Local Government (Ireland) Act, 1902 Sections 19 to 22.
- Local Government Act, 1946 Sections 68 and 94 lists the following Acts as applying to the audit:-
 - (a) Local Government (Ireland) Act, 1871 Section 12 as amended by the Local Government (Ireland) Act, 1902 Section 18 and Section 19.
 - (b) Local Government (Ireland) Act, 1898 Section 63(2) except paragraph (c) repealed by the Local Government Act, 1946.
 - (c) Schedule to the Local Government (Application of Enactment) Order, 1898, Article 19(3).
 - (d) Local Government Act, 1941, Part VII.
- Local Government Act, 1955 Sections 48, 49 and 61(1).

A noteworthy trend since 1946 in local authority financial provisions, although its legality in some instances has been doubted by HA Street, has been the granting of a general power to raise a rate, borrow and charge for services. Formerly, in some cases, although authority to provide a particular service was given the service could not be undertaken if no provision was included regarding its financing. However, there is a need to, at least, consolidate the various legal provisions regarding finance in, for example, a Local Government (Finance) Act or Acts, using headings like those in Appendix A.c.

THE DEVELOPMENT OF LOCAL SOURCES OF FINANCE.

The main source of local finance over the years has been the rates. Their basis - the valuation system - derived largely from valuations made in the mid-nineteenth century. Griffith's valuation of 1852 to 1865 determined the valuation of agricultural land from the value of crops grown at the time. As the years passed these valuations became outdated and anomalies arose. To counteract their defects, however, various proposals for reductions of valuations and remission of rates were made. In addition as Neil Collins pointed out:

The attitude of all Irish administrations to local government was necessarily tempered by their attitude to agriculture - the major industry and the principal way of life. Under the free trade conventions of the 1920's, farmers sold in a very competitive export market and costs needed to be kept as low as possible. Thus, the burden of taxation and public expenditure needed to be minimised.⁶

At the end of the last century when the abolition of the grand juries ~~were~~ ^{was} proposed a special measure for landowners was embodied in the Local Government (Ireland) Act, 1898. This 'special protective financial provision for the benefit of the landlords ---- is popularly known as the "Agricultural Grant" '.⁷ The amount in the Irish Free State, in 1922, was fixed at £599,011.

The uncertain conditions of the early 1920s left the local authorities with financial problems. The outbreak of the Civil War increased these difficulties. An almost total breakdown in rates collection occurred and some councils failed to carry on their duties. This position, as will be seen later, led to a more centralised local government system. In September 1923 the Executive Council agreed to the Minister for Local Government preparing a statement showing the following:

in respect of each county, the arrears of rates, the

condition of public services, and the class of member elected to Dail Eireann at the last General Election, with a view to ascertaining what relation, if any, existed between these factors.⁸

In 1923, also, the Farmers Party Programme proposed that the cost of main roads and asylums be made a national charge. In addition they wanted the local rates relieved of the cost of drainage works. On 7 February 1924 the Irish Farmers' Union held a Conference on local government policy. It included three to five representatives of the ratepayers of each county appointed by the various County Farmers Associations. Among its proposals were that

- (1) State grants be paid for the increase in the rates due to the Troubles.
- (2) a maximum increase, determined by an expert committee, be put on rates.
- (3) the Government contribute to road expenditure and main roads be made a national charge.

The continuing rates problem led to the appointment, in March 1924, of a committee consisting of an official from the Department of Finance, Agriculture and Local Government and Public Health. The Department of Agriculture suggested that

- an immediate interdepartmental enquiry be made as to the possibilities of
- (a) changing the incidence of taxation
 - (b) revising the rating laws, which are eighty years out of date ----.

The Department of Finance, headed by the former Minister for Local Government Eamán de Blaghd, disagreed with this proposal and noted that agricultural land valuation 'has long been obsolete and is largely out of accord with modern standards of value'¹⁰ and as a result 'the farmer is proportionally more lightly rated than the occupier of town property.'¹¹

In this year, also, the Local Government (Collection of Rates) Act, 1924 was passed. It was amended again in 1926. New and better methods of collection and enforcement were provided for. The Local Government (Rates on Agricultural Land) Act, 1925 doubled the Agricultural Grant.

From 1925 a number of county councils passed resolutions that the repair and maintenance of main roads be made a national charge. Wicklow and Louth County Councils passed such resolutions on 29 January 1929 and 20 April 1929, respectively. Louth County Council also wanted the cost of mental hospitals made a national charge. These proposals of the Councils were rejected by a committee, representative of the Departments of Finance, Agriculture, Local Government and Public Health and Industry and Commerce. It believed if the Government granted such a request it would lead to greater efficiency and levelling up of the standard of service. Yet, it said that the Government

would be faced by insistent demands for additional expenditure which local authorities have hitherto resisted but which those authorities would, in the altered circumstances vigorously press; and it would be expected to maintain a high standard in road construction and repairs than hitherto prevailed. ¹²

By the end of the 1920s agricultural land in England was derated. The above Committee also noted:

The de-rating of agricultural land in Great Britain is relatively a much less costly operation than a similar measure would be in the Saorstát, partly owing to the smaller proportion of agricultural land as compared with other rateable hereditaments. ¹³

In Ireland, then, unless essential services are dispensed with 'the cost of a de-rating scheme can be provided only by additional taxation.' ¹⁴
However, around this time Sean Lemass on his protectionist policy noted:

---- that agriculture enjoys a form of protection

at the moment in the Agricultural Grant, a sum of £1,200,000 per year, contributed by the General Taxpayer, towards the relief of Rates on agricultural land.' 15

Further assistance could, he believed, be given by de-rating 'Agricultural
16
Lands and Buildings completely'

In 1929 the Minister for Finance, Eamonn de Blaghd, in his Budget statement proposed a Commission of Inquiry into Derating. By 1930 a member of the Commission indicated that the Commission was unanimous against derating but a division existed against partial de-rating. Full de-rating of agricultural land and agricultural buildings was believed to cost in the region of two million pounds. This they thought would be an excessive amount to finance. Their Report included a suggestion that the Agricultural Grant be distributed so as to favour the small farmer.

In May 1931 the Minister for Finance proposed a £750,000 addition to the Agricultural Grant in return for some form of managerial system
17

in the counties. The Labour Party proposed relief be given on a
18
graded scale. Fianna Fail wanted a grant of one million pounds.

Originally this amount was to be allocated to counties in proportion to the total assessment on such land in each county. Later they agreed with the suggestion in the De-rating Commission's Report. They proposed that rates 'be reduced by abolishing payment ---- on the first twenty
19
pounds of valuation'. The result was the Local Government (Rates on Agricultural Land) Act, 1931 which added £750,000 to the Agricultural Grant. Sean Lemass then stated Fianna Fail policy on the matter:

As Deputy de Valera has stated, this Party has committed itself to carry out a scheme of full derating by withholding and using here money that
20
is now being exported and which is our legal property.

On the farmers' side the Farmers Party in the 1920s 'generally

supported the Cosgrave government.²¹ By the end of this period the Party cease to operate. In late 1931 a new Agricultural League was formed and had among its objects the de-rating of agricultural land. The following year it became the National Farmers and Ratepayers League and later again changed its name to the National Centre Party. But, on 8 September 1933 it merged into the new political party - Fine Gael.

Farmers, according to Maurice Manning

---- continued to be represented in the individual parties with Fine Gael catering more for the bigger farmers of the east and midlands and Fianna Fail drawing heavily for its support on the smaller farmers, especially in the western areas. ²²

This division of political support may be the reason why in the years that followed the only reliefs given were the exemptions of valuations to a certain level so as to favour the small farmers.

In the meantime on the change of Government in 1932 the new Minister for Finance, Sean Mac Entee, took up immediately the valuation issue. In addition in July of that year

the land annuities were withheld and shortly afterwards the events leading to the Economic War were set in train with Britain imposing severe tariffs on Irish imports, thus severely restricting the one export market Irish products, especially agricultural products, had open to them. ²³

On 17 November 1932 the Commissioner of Valuation, JJ. Herlihy, sent a long memorandum to the Minister for Finance on the 'Revaluation of Saorstát Éireann'. In it he proposed 'a general revaluation of the Saorstát, except agricultural land.'²⁴ He also proposed a quinquennial revaluation, or alternatively comprehensive annual revisions. The reasons given were:

- (1) having 'regard to the very large increase in rental value levels since Griffith's valuation particularly since 1914, the present valuation of buildings in the Saorstát are too low ----.'²⁵

(2) agricultural land was excluded because

---- after allowing Griffiths' figures to stand for over seventy years, means selecting as a time for doing the work the very time when the difficulties of doing it were never greater and the means of doing it never less ---- to attempt it ---- would result ----, in a valuation not even as good as regards relativity of farm to farm as the present Griffith's valuation ----. 26

In addition he stated that if agricultural land was revalued the 'only inference which the agricultural community can draw is that all idea of ever de-rating agricultural land has been abandoned.' ²⁷ He then continued with the somewhat contradictory statement that no 'evidence has come before the office of general discontent among farmers.' ²⁸

In the meantime, for the year 1932 to 1933 a supplementary grant of £250,000 was added to the Agricultural Grant.

On 22 September 1933 the Cabinet authorised the 'preparation of legislation providing for a general revaluation of the Saorstát excluding agricultural land and railways.' ²⁹ It was also to provide for 'the separate valuation of sites in borough and urban areas; and for such other amendment and codification of the valuation law as might be found necessary.' ³⁰ This legislation, however, ran into problems. In 1935 the Valuation Bill item went to Cabinet meetings a number of times but was withdrawn. The same happened in early 1938 with the Valuation Bill 1938. Finally, on 30 November 1938 its introduction as a Bill was approved by the Cabinet. At the Municipal Conference a resolution was unanimously passed to oppose this enactment. In addition New Ross Urban District Council wrote to other local authorities to start a campaign against the Revaluation Bill, mainly because it did not include agricultural land. Thus, nothing became of this Bill though the issue came up on numerous occasions later.

In the same year the Economic War ended. Clan na Talmhan was

formed to promote the interests of the small farmer. One of its objects was the lowering of rates on agricultural land. By 1943 it had at most only ten seats in Dáil Éireann, and from that time on the number declined until in 1965 it ceased to exist.

In 1940 the Local Government (Remission of Rates) Act, 1940 was passed and provided for reductions in valuations of houses erected or reconstructed. Similar Acts providing for different sizes of houses were passed in 1943; 1945; 1946; 1948; 1950; 1951; and 1952.

The Irish Farmers' Federation, in July 1944, sent to the Taoiseach resolutions passed by their National Executive. These proposed that

- (1) the upkeep of roads be made a national charge.
- (2) contributions from rates to old age and blind and disability pensions should be discontinued.
- (3) agricultural land and farm buildings should be de-rated.

This letter was just acknowledged. The following year, however, Seamus Hurson, the Secretary of the Department of Local Government and Public Health, wrote to JJ Mc Elligott, the Secretary of the Department of Finance stating:

----- the time is opportune for reviving the proposals in the Valuation Bill ----- . In the Local Government Bill now before the Dail something has been done to simplify rating law but a codification of this law cannot be appropriately undertaken while the valuation law remains in the present condition. 31

This proposal was not taken up then. The Local Government Bill referred to became law in 1946. It consolidated the various rates and established the County and Municipal Funds. The Public Bodies Order of this year provided for a new format for the estimates and determining the rate in the pound; new forms for Rate Demand notes and Warrants etc.

Between 1946 and 1951 a comprehensive revision of valuation took place in Galway Borough and Buncrana Urban District. In addition Dublin

and Waterford Cities had a general revaluation under Section 65 of the Local Government (Ireland) Act, 1898 in 1916 and 1926 respectively. All these areas experienced an increase in valuations. In 1951 the total growth of the building valuations in Buncrana was fifty-eight per cent with the result that the county demand was increased. Because of this the Urban District Council refused to determine a rate sufficient to meet the demand. So the Minister made an Order removing the members from office as from 4 December 1952 and appointed a Commissioner for the discharge of their functions.³² This position did not last long. The Local Government (Temporary Reduction of Valuation) Bill, 1953 included a special provision for reduction of valuations in Buncrana for county demand purposes.

On 26 April 1952 the Assistant Secretary of the Department of Finance, OJ Redmond wrote to the Department of the Taoiseach stating:

In the Ministers view the only method by which all the anomalies in valuation could be satisfactorily adjusted would be the enactment of legislation providing for a comprehensive general revaluation but, having regard to his experience in connection with the 1938 Bill, he could not contemplate sponsoring such a measure in present circumstances. ³³

However, by 3 November 1953 the Department of Finance stated that 'now is a favourable time for taking up again the question of proceeding with the enactment of legislation on the lines of the Valuation Bill, 1938.'³⁴ It further stated:

---- Deputies seemed to favour the provision of some relief from the additional rate and other burdens that follow from revision of valuations on extensions or improvement, carried out to business or residential premises. ³⁵

The Local Government (Temporary Reduction of Valuation) Bill, 1953 only dealt with minor matters of relief arising from revision of valuations, in addition to the special provision for Buncrana.

By 1954 the possibility of setting up a Commission to enquire into the effects of the rating system were mooted.

The reasons why a revaluation never took place were outlined by CC Mc Elligott, a former Commissioner of Valuation, in 1955, as

- (1) Fear of increase in licence duties.
- (2) Fear of increase in income tax.
- (3) Fear of increase in expenses of a joint contributory area based on a proportion of aggregate valuations.
- (4) Fear of increase in the individuals' rates being made easier by a lower rate in the £ following the revaluation
- (5) Fear of increase in rates on buildings following a revaluation which does not apply to land. ³⁶

In addition, although Section 34 of the Valuation (Ireland) Act, 1852, as amended, empowered a county council to apply for a revaluation of the county area or any borough or urban district therein 'this section has always been considered by the Valuation Office to be inoperative as no provision has been made for the cost of making the revaluation or for a basis of valuing the land.' ³⁷

When Fianna Fail returned to Government again in 1957 revaluation which had long been their aim was not likely to be resumed. The new Minister for Finance Dr Jim Ryan in 1959 told the new Commissioner of Valuation that 'he did not want to hear another word about revaluation! ³⁸ Maybe this was because he had been Minister for Agriculture, in the Fianna Fail Governments up to 1947, and nothing had been done about the de-rating of agricultural land.

In 1960 a new and more flexible procedure was provided in the Local Government (No.2) Act, 1960 for borrowing by local authorities. In October 1965, an Inter Departmental Committee Report entitled 'Valuation for Rating Purposes' was published. It concluded that the position in regard to rateable valuations was unsatisfactory and inequitable. It recommended a general revaluation excluding land outside

the major urban areas. There was no likelihood of this occurring then as earlier that year, in answer to a question on rating in Dail Éireann, the Minister for Local Government stated that 'it should be some considerable time before any changes could be brought into operation. No immediate change is contemplated.' ³⁹

During the latter half of the 1960s and the early years of the 1970s there was, especially in the urban areas, a growing resentment at the level of increases in rates. Indeed, in some local authorities the ratepayers protested to such a degree that Councillors refused to adopt the recommended rate, which resulted in their being suspended and replaced by "Commissioners", appointed by the Minister for Local Government. ⁴⁰

The Government then responded 'by setting out their views on the reform of the structure and finances of local government.' ⁴¹

A White Paper on 'Local Finance and Taxation' was published in 1972. It recommended that local authorities should be able to levy local taxes and charge for services. The reorganisation of accounting systems was also proposed. It believed the best form of local tax was the rate and what was needed was 'reform of the system so as to eliminate its undoubted defects.' ⁴² For this purpose it proposed:-

- (1) the valuation office be transferred to the Minister for Local Government.
- (2) the valuation system be reformed. It decided against a general revaluation as it would take eight years to complete. However, it stated:

The Government have directed the Minister for Local Government, in consultation with the Commissioner of Valuation to prepare a series of legislative and other measures for a practical reform of the valuation system, with provision for bringing valuations ultimately to current values. ⁴³

It also noted that the 'rating of land has been the subject of controversy for many years.' ⁴⁴ and that the Committee on the Review of State

Expenditure in relation to agriculture recommended that rates should be replaced by a flat land tax. According to the Local Government and Public Services Union:

----- the White Paper on Local Finance and Taxation did little to allay public resentment at the level of local rates, probably because it did not contain any immediate prospect of rates relief. 45

On 30 March 1973 the Coalition Government announced 'their decision to transfer from local to central taxation over a period, the cost of health services and local authority housing provided for letting.' 46
 Fianna Fail then proposed the abolition of the domestic rate. As the Local Government and Public Service Union pointed out, 'public attention was directed to this question almost to the exclusion of any further debate on re-organisation.' 47

On 28 July 1975 the Public Bodies (Amendment) Order 1975 prescribed a revised format - based on eight programme groups - for the preparation of the annual estimate of local authorities. In June 1977 the Public Bodies (Amendment) Order prescribed a new form of Abstract of Accounts. A Working Party was also set up to examine the audit and general financial procedures of local authorities.

The following year the Local Government (Miscellaneous Provisions) Act, 1978 was passed. It provided for the remission of the total rates on domestic dwellings and part remissions on certain other buildings, for example, secondary schools, community halls and farm buildings etc.. The loss in income to the rating authorities as a result was to be recouped by the Department of the Environment. However, to keep down the amount of recoupment one official told me that the valuing of new property was slowed down so that local authorities, in effect, were at the loss of increased income from this source.

On 25 March 1982 the Minister for the Environment Ray Burke issued a Circular to local authorities stating that he intended introducing legislation to provide for charging for services. The necessary measure, however, was passed during the Coalition Government as the Local Government (Financial Provisions) Act, 1983. The power to charge for services was initially made an executive function of the manager. A number of members protested at this and finally it was made a reserved function by ministerial order. This Act, also, provided that the Department of the Environment could pay a sum not exceeding the loss involved. Thus the Department now only pay a percentage increase on the previous years recoupment. According to the local authorities this was less than the full loss due to the de-rating of domestic property. The Chairman of Louth County Council was reported as saying that from 1979 to 1985 'there had been a continual contraction, in real terms, of the amount of the monies paid by the central exchequer in lieu of domestic rates, since their abolition in 1977.' ⁴⁸ As will be seen later, from experience in England the full loss sustained may be recoupable by resort to the courts.

The provisions for charging for services in the 1983 Act soon ran into legal difficulties. In the case *Athlone Urban District Council V. Oliver Gavin* ⁴⁹ the county manager on 1 September 1983 made an order providing:

that a charge of £60 be levied and collected from every domestic dwelling in the area for water, sewerage and refuse collection services in respect of 1983. The sum was claimed pursuant to the provisions of s.65A of the Public Health (Ireland) Act, 1878, as inserted by s.7 of the Local Government (Sanitary Services) Act, 1962 and as amended by the Local Government (Financial Provisions) (No.2) Act, 1983. ⁵⁰

On 2 September 1983 the demand for payment was issued for a charge of £60 - £40 for water and £20 for sewerage and refuse. O. Gavin refused

to pay, so the Council issued a Civil process. The Supreme Court held that the power to charge for water is now contained in Section 65A of the 1878 Act as substituted by Section 8 of this 1983 Act. While the power to charge in Section 2(1) of the 1983 Act only applies to cases where the local authority had power to provide a service but had no power to charge for it. In these instances they can now look for payment under Section 2(1). Section 2(3) allows a local authority, where amount of charge specified in previous Act to exceed that amount. Therefore it was held:

The order of the county manager could not be interpreted as fixing three separate charges as to £40 for water, £10 for sewerage and £10 for refuse collection. It was not possible to go behind the order which fixed a charge of £60 or to supply any want of deficiency in it by evidence given in the Circuit Court of the process of discussion or agreement between officers of the authority which led to the making of the order, and as a consequence the order of the county manager was invalid by reason of its failure to provide a separate charge for each of the three services concerned. 51

Yet in the case Listowel Urban District Council V. Mc Donagh, 1968, as already seen, the Court could take into account what transpired at the council meetings.

Charging for services is now a reserved function. So the form of resolution of the members would presumably be the legal basis for each amount decided. The manager's order, however, has still to be made to authorise the collection of this sum.

A further difficulty arose in the case Thomas Lowe and John Ashley V. Corporation of Dublin. In this case the demand was for a small water charge. It specified that the amount was payable in one instalment. The Supreme Court on 17 December 1986 held this to be unlawful. The appropriate Section of the 1983 Act specified:

A charge under this section for water supplied otherwise

than by measure shall be payable in advance by equal half-yearly instalments on the 1st day of April and the 1st day of October or by such other instalments as the sanitary authority to whom the charge is payable shall determine, and, in default of being paid within two months after becoming payable, shall be recoverable as a simple contract debt in any court of competent jurisdiction.

It would appear then that 'such other instalments' means more than two or two instalments payable at different times than those stated.

However, this whole Section 8 of the 1983 Act which caused problems in both cases above is badly constructed. It starts:

8. - Section 65A of the Public Health (Ireland) Act, 1878, inserted by section 7 of the Local Government (Sanitary Services) Act, 1962, is hereby amended by -

(a) the substitution of the following subsections for subsection (1):

"(1) A sanitary authority may make charges for water supplied, whether within or outside their functional area, by them.

(1A) Notwithstanding any provision in any enactment which was in force on the commencement of the Local Government (Financial Provisions) (No.2) Act, 1983, whereby there is specified - ----.

Presumably, then, this substituted Section is read as part of the 1878 Act as passed in 1878. So in any Section it should not refer to some Act passed years later. Surely it would have been more appropriate and less complicated to amend Section 65A by a new Section and repeal Section 7 of the 1962 Act. The decision in the last case caused surprise as the issue in dispute was whether the manager could back date the charge to, for example, the beginning of the year in which it was made. This question was decided in favour of the local authority but the judge in making his final decision found the above inaccuracy in the manager's order and thus decided it was illegal.

The urgency of financing local government found new impetus in

the early 1980s when the Supreme Court in 1984 found that 'S11 of the Local Government Act 1946, was invalid to the extent that it authorised the collection of County Rate on land independently of buildings.'⁵²

The reason given was because 'the valuation system constituted an unjust attack on the property rights of persons, such as the plaintiffs who found themselves with poor land paying more than their neighbours with better land ----.'⁵³ It was held during the case that:

The valuation used is many years out of date, has never been revised, is inconsistent even within the same county, has failed to reflect fundamental changes in agricultural methods and soil evaluation and for all of these reasons lacks fairness and uniformity.⁵⁴

In the opinion of the Court it was also held that:

---- the use of the 1852 valuations was continued as a basis for agricultural rates, long after the lack of uniformity, inconsistencies and anomalies had been established and long after methods of agricultural production had drastically changed.
---- When this injustice had become obvious the State had a duty to take action ---- This it failed to do.⁵⁵

It was reported that one Judge referred to the rate as a 'Country Rate'⁵⁶ which was incorrect. Under the Local Government Act 1946 the rate raised by the county council is known as a 'County Rate'. A Country Rate would, one would expect, require to be consistent over the whole country while the County Rate would only require this consistency within the county Health District. However, in the case it was proven there were anomalies in valuations within counties.

The local authorities disagreed that action was not taken. They believed that the existing system allowed a farmer to appeal if he thought that he was too highly rated. In addition, the Agricultural Grant allowed up to fifty pounds valuation free of rates while a rates waiver scheme existed for those in poor financial circumstances, or,

finding difficulty in paying. By this time, however, it was expected that Dail Eireann would soon de-rate agricultural land anyway.

The decision in the above case now places an uncertainty on rating business premises etc.. When domestic property was de-rated the loss is paid by central Government through taxation. These business people pay not only a share of this tax but also continue to pay rates and charges for services. They would appear to be contributing more than their fair share to the local area. In addition, the basis of their valuations derives from the Valuation (Ireland) Act, 1852 as amended. It also acts as a disincentive to modernising premises. Once alterations are made the valuations are revised.

To overcome the loss of rates from agricultural land a new Farm Tax was introduced by the Coalition Government, in the Farm Tax Bill, 1985. However, on the change of Government Fianna Fail in their 1987 Budget statement announced the abolition of this tax from the end of 1987.

It has been said that:

Powers and functions, generally, have expanded.
What local authorities lack is the necessary
financial muscle with which to exercise them. 57

Yet, differences arise among councillors on this issue, possibly influenced by political differences. For example, in 1982 at the estimates meeting of Louth County Council a Fine Gael Councillor was reported as saying that:

in the last few years the central government had
almost completely taken over council operations.
---- Council could only operate to the extent that
they got allocations from the central authority. 58

On the other hand a Fianna Fail Councillor was stated as replying:

no power was taken from Councils. In the last five
years, councils had got more money from central funds

from both Governments - that they would have got if local authorities had to find the money themselves. 59

Surprisingly, opinions differ among officials as to the reasons for the present financial problems. The causes have been stated as

- lack of sources of suitable finance and the state of the 'public purse' in general.
- politics at national election time in order to gain votes.
- legislative problems.

Dr. TJ Barrington stated that:

The financial troubles in local government had arisen from the failure by the central government to provide local authorities with the framework in which it could effectively operate. For example, the government had failed to reform the valuation system of buildings or land until both systems had collapsed. 60

Except for the loss of health services it may be said that local authority powers and functions have expanded under the programme group headings. For example, there has been an increase in housing development, planning development through the provision of industrial estates, recreational facilities etc.. However, even if sources of finance were available a number of financial constraints are placed on local authorities because of statutory provisions and Department of Environment controls.

(1) Borrowing.

All borrowing requires the sanction of the Minister with the result that details of proposals for any work to be financed from loans, is submitted to the Department for examination by the technical experts of the Department. This causes delays in commencing schemes. Councillor Myles Tierney referred to it as 'a means of obstruction'. 61

(2) Grants.

In some cases one hundred per cent grants are payable, for example,

for the provision and maintenance of national primary and secondary roads, while a hundred per cent subsidy is paid towards loan charges for houses provided for letting. The result is that every project for grant must be submitted to the Department of the Environment for approval.

To compensate local authorities for the loss in income due to the de-rating of domestic property etc. the State agreed to pay in 1978 a Grant-in-lieu of rates to the rating authorities equal to the loss. This, as seen, was amended in 1983 to a Grant not exceeding the loss due to de-rating.

(3) Rates.

Central control over rates is exercised by:

(A) Limiting amount

The actual rate raised can be limited by

(a) Minister

Under the Local Government (Miscellaneous Provisions) Act, 1978 the Minister can limit

- (i) all or any of the amounts estimated as necessary in the Estimate of Expenses.
- (ii) any rate or aggregate of the rates for the several purposes

The effect of this can be seen from the following statement by the Louth County Manager in 1982:

The limitation imposed by the Department of the Environment directives have caused severe difficulties in preparing the Estimates. Certain desirable works, which in normal circumstances would have been included, have had to be excluded or reduced by a substantial degree.⁶²

Since the liability was no longer spread over the community in general, to whom the local representatives are

answerable to at election time, the limit was, possibly, imposed to protect not only the section of the public who pay rates but the State for payment of the domestic portion. Indirectly, however, the State can impose a further limitation on the level of rates payable through the Commissioner of Valuation who assesses the valuation of property in the various rating authority areas.

(b) statute.

Some individual Acts specify maximum or minimum amounts to be contributed from rates for a particular purpose, for example, the decoration of the borough.

(B) Requiring increase in rate.

Where the rate is not sufficient, in the opinion of the Minister, he can require the local authority to adopt a new rate or a supplementary rate. If the local authority refuse, he can remove them from office. When this provision was being debated in Dail Éireann the Irish Independent noted:

Formerly the notion was that the Minister stood between the councils and the ratepayers to prevent extravagance. Henceforth the order of things will be that if the councils attempt to stand between the ratepayers and the Minister to prevent extravagance they will be abolished. In plain language the power of the purse is to be taken from the local elected representatives and handed over to the Minister. 63

(C) Remove council for failure to adopt estimates.

Where the local authority refuse to adopt the estimates and strike a rate the Minister can, after an inquiry, remove them from office.

(4) Farm Tax.

The amount is specified by the Minister who, under statute, is required to follow a set formula in calculating it. This tax, as

already stated, is to cease at the end of 1987.

(5) Local charges.

This is the only real area at present where the local authority has discretion. However, it must be remembered that as charges for services provided they must be 'reasonable' in amount, otherwise they could be struck down by the courts, especially if they are regarded as a rate or solely as a means of raising finance.

In addition various Ministers for the Environment differ on the extent of local responsibility they allow in raising charges.

The Dundalk Democrat on 26 March 1983 reported that a former Minister for the Environment stated that the 'Government's view was that if councils raised money locally, they should have discretion how it is spent.'⁶⁴ Yet, one official told me that another former Minister Liam Kavanagh issued a Circular to all local authorities requiring them to keep charges low.

One problem that may arise in this area is the extent of care the courts will apply to services which are paid for by the consumer. The case *Ward V. Mc Master and Louth County Council* relating to the ten pounds loan application fee has already been cited. As a result of the decision in this case one wonders what the likely liability would result by, for example, the planning authority charging a fee to process a planning application. If the application is granted and the final structure, built in accordance with the planning decision, is found defective will the applicant be able to sue the planning authority for negligence in granting the planning permission?[?] Another case in this area, ⁶⁵*Weir V. Corporation of Dun Laoghaire*, 1983 will be seen later. In addition, debate may surround the extent of negligence likely

to be found. Will it vary according to the amount paid towards
 ← the cost of the service by the consumer in the same way as goods
 bought below cost and later found defective?.

Legislative problems, therefore, in a number of ways, can affect the financial state of local authorities.

Firstly, uncertainty exists in using nineteenth century statutes, especially as a result of the Court decision in finding assessing rates on agricultural land unconstitutional. This is now the case for other rated property.

Secondly, court decisions can result in unfairness among ratepayers etc..

When land valuation was found unconstitutional anyone who had not paid their rates on that date no longer could be required to pay them. On the other hand people who had paid promptly for the year cannot be refunded. The same position resulted from the Court decision on water charges. Possibly a further court case to decide this issue is the normal practice but this costs money as well as uncertainty as to the result and should not be necessary. Decisions like the above are bound to entice consumers to delay making such payments. They could possibly be avoided by the court specifying:-

- (1) the date the particular court order applies, such as the date of the decision, and
- (2) that the appropriate portion of the yearly sum demanded is payable up to that time, but any sum already paid for the following period is refundable.

Bearing in mind that these decisions relate to a form of tax surely it is as much a duty on the court to ensure fairness among those ultimately affected as it is on the local authority?.

Thirdly, the fact that taxing powers like the above are struck down by

the courts on technicalities leaves the ordinary members of the public confused as to their rights and duties. By such decisions people who are not familiar with the law would think the local authorities had no right, even in the future, to impose such a tax. This is not a reflection on the court, but, rather on the particular legislation. If it was constructed in clear and concise form this type of issue would not arise.

Fourthly, lack of provisions as to costs and fines imposed when a case is brought to court causes loss of finance to the local authority. For example, when the local authority prosecute, say under the Casual Trading Act, and win, the authority normally has to pay its own costs. In addition the fine, if any, imposed is paid to the Department of Justice. The same applies to other Acts. One official said to me that this causes them to only institute proceedings in cases they are sure of winning, otherwise they would have to pay the other person's costs.

The problem of finance has been the main area of debate on local government since 1922. Policies to deal with this issue have led, as will be seen, to more central control, including empowering the Minister for the Environment to dissolve local authorities in certain cases and appoint commissioners, a power which has been used frequently because of financial matters. To provide for more business like methods the city and county management system was introduced.

Besides the uncertain conditions created after independence and the Civil War the main financial issue over the years was the rates and valuation system. To ease the incidence of rates forms of reliefs were proposed such as reductions in valuations or rates waiver schemes. Too much attention and for too long seems to have been applied to the

Valuation Bill, 1938. This did not even include provisions for revaluing agricultural land due to the Report of the Commissioner of Valuation. The main actors in this area - the rating authorities - to whom actual payment of rates were paid, and where discontent among ratepayers was most likely to be heard, were not consulted before the Report was made. The reason for this may be that county councils were believed to have power to revalue but never used it. But, as seen, doubt existed as to the sufficiency of this power.

In more recent years, with the finding of agricultural land valuations unconstitutional, the debate has concentrated on finding a means of funding local authorities. Numerous reports and proposals have been put forward but no political decision has yet been made. When the local charges were introduced in 1983, they too ran into difficulties in collecting, partly due to the complicated construction of the 1983 Act. These legislative problems, as seen, can in a number of ways affect the financial state of local authorities.

On the other hand, as will be seen in chapter 7, a trend in England in recent years has been to take central Government to court over promises made, for example, of financial aid at General Election time etc.. However, in Ireland this course is unlikely as no one 'would risk the Departments opprobrium.'⁶⁶

CHAPTER 6.

LOCAL GOVERNMENT - FUNCTIONS.

The functions of local authorities have traditionally been classified as housing, sanitary services, planning and miscellaneous functions. In addition, the average size local authority was organised, and indeed in general still is, along those lines. Each division is under a senior officer, for example, the housing officer in charge of the housing section. In the larger authorities sub-divisions of these sections might be quite big, such as the rent department or the housing maintenance department of Dublin Corporation. The library service and the motor taxation office, however, are usually seen as separate divisions in themselves. In fact, this last function is really a central government responsibility carried out on an agency basis by the local authority.

This position arose from the gradual way the local government system evolved, as the 'Local Government Reorganisation' White Paper pointed out:

---- only historical circumstances or tradition can sometimes be relied on to justify the assignment of a function to a local rather than a central authority. If it were now possible to consider, in vacuo, the functions which might appropriately be assigned to local authorities, a very different set of functions might emerge. 1

However, the above classification of functions means that some new developing functions are seen as ancillary to the principal ones above, for example, amenity development and preservation as part of the planning section, or, recreation as part of the housing or planning section. Yet the importance of the involvement of local authorities

in these areas was recognised in 1971 in the White Paper:

Local authorities can play a vital role in achieving a number of the social objectives set out in the Third Programme, for instance, fostering cultural and artistic values, preserving and developing the national heritage improving the environment, promoting community development and the better use of leisure. ²

Attempts have been made since 1977 to reorganise the functions of the local authority into eight programmes for the purposes of the Estimate of Expenses. This development, however, has not been extended to consolidating local government legislation under the same broad headings. The result is that a number of individual functions (each with its own separate legislation) appears under programmes V to VIII, as can be seen in Appendix A.d.

While the extent of legal provisions in some areas can, also, be seen in this Appendix, it does not fully show the complexity of local government law.

Firstly, the principal statute for each function is listed but it must be remembered that these enactments have in most instances been extended on numerous occasions.

Secondly, even in cases where powers or duties seem similar in the Appendix, for example, power to provide or manage facilities, the actual legal provisions differ from a specific to a vague power for practically every function. For example,

- (a) in the case of powers to provide facilities the Local Government (Planning and Development) Act, 1963 Section 77(2) states that the planning authority may provide 'factory buildings, office premises, shop premises, dwellings, amusement parks ----,' while in the Litter Act, 1982 the power is so vague that it is difficult to know if actual facilities can be provided such as

disposal sites. Section 2(1) states that it is the duty of the local authority to 'take measures for the prevention of the creation, and for the prevention and overcoming of the harmful effects of litter in its area and for the disposal of litter ----.'

- (b) in the case of the power to manage facilities the Local Government (Planning and Development) Act, 1963 Section 77(2) states that a planning authority may 'manage any such site, building, premises, dwelling ----' etc. provided under Section 77(1) of this Act.

The Towns Improvement (Ireland) Act, 1854 Section 55, incorporating the Towns Improvement Clauses Act, 1847 Section 135 dealing with recreation grounds, only states that the town commissioners may 'level, drain, plant or otherwise layout and improve.'

Thirdly, the ancillary functions of the housing authority (programme I) and the planning authority functions (programme IV) are so wide that a number of the facilities under other programme headings could be provided by these authorities. However, as HA Street stated:

---- the County Council acting in one capacity is not identifiable with the same Council acting in another capacity and therefore to the words "powers and duties" must be added "as such local authority". 3

Although, in certain instances, as will be seen later in programme II (Road Transportation and Safety) a local authority acting as a planning authority can make the local authority acting as a road authority liable, if damages occur as a result of its decisions.

Fourthly, powers in local Acts or charters are not included.

Finally, Appendix A.d does not show similar or almost similar functions performed by other bodies.

Also, while legislation is important it must be remembered that each functional area has its own peculiar problems.

PROGRAMME I - HOUSING AND BUILDING.

Up to 1966 housing legislation consisted of a code for urban dwellers - the Housing of the Working Classes Acts, and a code for rural workers - the Labourers Acts. In addition aid given to private dwellings, for example, loans, was under the Small Dwellings Acquisition Acts and a number of Housing Acts. As EP Mc Carron, a former Secretary of the Department of Local Government and Public Health stated on 20 October 1931:

Housing legislation in pre-war times developed as indeed its title indicates to deal almost solely with the needs of the working classes whereas Christian obligations and the common weal point to the claim for due attention to the housing of those with scant or uncertain earnings. 4

He believed that:

----- we in the Free State have now come to a stage when public expenditure on housing must be devoted mainly to the housing of the lowest-paid workers, and to the direct eradication of worn-out insanitary or over-crowded habitations where the living of a normal Christian family life is imperilled. 5

In 1931 the Housing (Miscellaneous Provisions) Bill became law. It included provisions for dealing with 'unhealthy areas' as opposed to 6 'slum areas' which would be too costly. Five years later the Labourers Act, 1936 provided for the sale of labourers' cottages to qualified occupiers. The other main enactments after 1922 related to State financial aid, such as grants, for private housing in order to increase the housing stock. As Desmond Roche pointed 'housing performances and shortcomings have been a constant issue in local and even national politics.' 7

All this legislation was consolidated and updated in the Housing Act, 1966, since amended in 1969; 1970; 1979; and 1985. This Act repealed forty-eight Acts and amended numerous others. It gives the local authority acting as housing authority a wide range of powers in the

provision of houses and ancillary services in connection with them.

By Section 56(2) these include:

roads, shops, playgrounds, places of recreation, parks, allotments, open spaces, sites and places of worship, factories, schools, offices and other buildings or land and such other works or services as will serve a beneficial purpose to tenants of dwellings or tenants and others.

However, as can be seen in Appendix A.d the Housing Act, 1966 gives power to acquire land compulsorily, but this authority can only be exercised by a housing authority for its own needs. This was decided in *Moran v. Corporation of Dublin*.⁸ On this case Judge Keane noted that:

Kenny J., held in the High Court that the Corporation had made the Order, in part at least, with a view to meeting the housing needs of another housing authority i.e. Dublin County Council, and that this was not within their powers under the Act. He accordingly quashed the Order and the decision was unanimously upheld by the Supreme Court.⁹

This decision could be an obstacle to agency arrangements, especially for a county council wishing to acquire land for ~~a~~^{the} town commissioners.

The main curb on local development in this area is available land and finance. The Dundalk Democrat, on 5 June 1982, outlined the position with the Louth County Council thus:

----- the County Council land bank was running low to a "mere 80 acres" and they are finding difficulty in raising a loan to finance further acquisition ----- their proposal to raise a loan of £250,000 for forward land acquisition from the Local Loans Fund has not been approved by the Department. An application was also made to the Bank of Ireland ----- but the Bank were unable to facilitate a loan of this amount at present.¹⁰

A further difficulty is added by the extent of control exercised by central government as the Housing Officer, Louth County Council, pointed out at a Council meeting in 1985 'the Council had to cost everything in a house down to the flooring boards.'¹¹

PROGRAMME II - ROAD TRANSPORTATION AND SAFETY.

The existing powers relating to roads have developed from grand jury days. Since then the principal legal provisions can be found in

- (a) the Local Government (Ireland) Act, 1898 (materials and machinery).
- (b) the Local Government Act, 1925 (road authorities and maintenance).
- (c) the Local Government Act, 1946 (bridges between counties etc.).
- (d) the Local Government Act, 1953 (declaring a road a public road).
- (e) the Local Government Act, 1955 (temporary closing of roads).
- (f) the Road Traffic Act, 1961 as amended (traffic regulation).
- (g) the Local Government (Roads and Motorways) Act, 1974 (motorways, maintenance etc..)

As to the meaning of "maintenance" HA Street stated that questions 'have arisen whether the duty extends to keeping roads in a condition better than that on the date of their construction ----.' ¹² He believed that maintenance 'includes "improvement" and the general rule is that the road authority must maintain a road in condition adequate to meet ordinary, though increased traffic.' ¹³ Formerly, and at the present time when damage to anyone occurs the road authority is only liable for 'misfeasance' and not 'non feasance'. This rule, however, is now under threat of extinction as a result of a High Court judgement in the case Sheehan V. Cork Corporation, 1986. This decision is under appeal to the Supreme Court to be heard in November, 1987. The unevenness of the surfaces of some footpaths are a cause for concern, especially in areas with old streets. Compensation claims for injury from falls in such places are on the increase. One official said to me that the courts require the level of streets to be like 'billiard boards'.

From case law it has been decided, according to Judge Keane, that

While a local authority are entitled to abate a nuisance caused by a third party, they are not liable if they fail to level off a drop in the highway created by an adjoining owner in making an approach to his land, or caused by his digging a trench for a sewer nor are they liable for their failure to top branches overlapping the highway. ¹⁴

Yet they are liable if they licence another to do the work and injury is caused as a result. As Judge Keane stated:

---- in *Rossiter V. Carlow County Council*, (unreported; judgement delivered 1965) Lavery J, sitting as a High Court judge on Circuit, found the local authority liable for the negligence of members of the defence forces who had made an excavation in the roadway under licence from the authority. ¹⁵

Thus, even if it is the local authority acting as planning authority that grants the licence the local authority as road authority can be made liable if damage results. This was decided in *Weir V. Corporation of Dun Laoghaire*, 1983. ¹⁶ In this case the plaintiff successfully claimed compensation for the injury sustained from a fall due to a '2" difference in road levels along a line where a new lay-by for buses was being constructed, for which no warning of the difference in levels was given'. ¹⁷ In the planning permission for a proposed shopping centre the planning authority imposed a condition that a lay-by be constructed. The Court held that since 'the work was done with their knowledge, they had a responsibility to look to the safety of those using the roadway who might be endangered if the work being done caused ¹⁸ a risk of injury'. The dissenting Judge in the case stated:

so to extend the liability of a road authority to include responsibility for the acts of a contractor engaged by a developer in doing work for which the latter had obtained planning permission, and equating this liability with that of the authority for acts of a contractor engaged by them, ¹⁹ is in my view warranted neither by principle nor authority.

This decision could cause complications in ^{for example,} say counties where main roads in the urban areas are in the charge of the county council. The urban district council or corporation as the planning authority could

grant the licence above. Difficulty could then arise, if damage occurred, in deciding whether the planning authority or the road authority was liable.

The law relating to public roads is not very clear. For example, a number of Acts give a different definition to a road. At present, seemingly, the meaning of a particular one depends on the Act under which it was provided or how it became a public road. There is the need, at least to consolidate the law in this area in a Roads Act and provide a proper definition to existing roads. In addition, a survey of all roads (including old ones never legally abandoned) showing length and width should be undertaken, and mapped.

Tight Departmental control exists in this area due to the hundred per cent grant for some roads. In addition, lack of finance causes long delays in properly maintaining them. Liam Fitzgerald T.D. noted in Dail Éireann:

It was interesting to note a recent statistic which revealed that it is normal practice for roads in urban and rural areas to be resurfaced every nine years, I understand now that resurfacing is likely to take place as infrequently as every 27 years. 20

However, in some minor matters, where finance should not be a major problem the local authority is hampered by lack of power. For example, no power, seemingly exists to provide ramps. When one councillor at the Dundalk Urban District Council meeting, proposed their provision the County Manager is reported as replying that:

we don't have the legal authority to provide ramps on public roads, Every local authority must have statutory authority for every act they do, and this applies in this case unless it be introduced in the new Road Traffic Bill. 21

Yet the Local Government (Roads and Motorways) Act, 1974 Section 3(1) gave a general power to a road authority to

---- do all things necessary or incidental to the construction, maintenance or improvement of public roads or for any purpose incidental thereto, including the provision of any amenity or structure for the safety or convenience of road users.

So it would seem that even this general power is not sufficient for the provision of all structures etc. for the safety of road users. According to the Dundalk Urban District Council, however, ramps are regarded as 'obstructions' on a public road. This seems unfair because they would only be an obstruction for one type of road user - the motorists. Their provision would be for the safety of pedestrians. Since the definition of a public road usually includes footpaths, could it be similarly said that poles etc, although not across the full width of the footpaths, are obstructions ?.

PROGRAMME III - WATER SUPPLY AND SEWERAGE.

The law relating to this area derives from the public health powers of the local authority found in the Public Health (Ireland) Act, 1878 as amended in 1879; 1890; 1896; 1907; 1948; 1962; and 1964. This Act established the sanitary authorities in the sanitary districts. The Water Supplies Act, 1942 deals with obtaining a source for the supply of water. An explanatory memorandum in 1945 on an Act consolidating part of the health provisions of the 1878 Act as amended noted:

The Act of 1878 is ---- still the basis of our sanitary laws although it has been extended and modified from time to time. The extensions and modifications have been made either by

- (a) later Public Health Acts, or
- (b) separate enactments, or
- (c) separate provisions scattered piecemeal through Acts which are not primarily part of the Sanitary law, 22

Although health provisions have been removed from local authorities, this is still the present position of the sanitary code. In addition, the local authority acting as housing authority or planning authority

can provide watermains and sewers for the purposes of those Acts.

As Michael Flannery pointed out:

The procedure to be followed ---- is quite complex and there must be strict compliance with it, in the case of failure to reach agreement in the acquiring of land, the Sanitary Authority can exercise compulsory powers of acquiring, but this could result in considerable delay. ²³

This complexity is further increased as a result of a decision of the High Court in relation to the Dundalk Water Augmentation Scheme. Then the Court allowed an appeal by the farmers affected by the scheme to the Circuit Court which was outside the statutory five week period specified in the Schedule to the Water Supplies Act, 1942. The Dundalk Democrat reported that the Court stated:

---- the Petition had been presented properly to the Circuit Court, within the prescribed time and in accordance with the rules laid down for the issuing, storing and filing of Circuit Court Documents. ²⁴

Therefore, irrespective of what is cited in local government legislation the Department of Justice Acts and Rules made thereunder can affect the position. Yet if the Legislature intended this state of affairs could it not have said so in the particular local government enactment?. This was done in various Sections of the Local Government (Planning and Development) Act, 1963 relating to compensation. For example, Section 55 provides that a claim for compensation be made within

- (a) six months after the notification of the decision by the planning authority or Board or the Minister as the case may be, or
- (b) such longer period as the Circuit Court may allow if it appears to the Court that there are reasonable grounds for requiring a longer period and that it would be just and reasonable to extend the period.

The delay experienced in obtaining a suitable supply can be seen in the case of the Dundalk Water Augmentation Scheme. In this town, where water rationing has occurred on several occasions, a suitable

supply could only be found in Lough Muchno in the neighbouring County of Monaghan. To add further difficulty the supply from this source would have to be taken through South Armagh in Northern Ireland. Originally delays were experienced in the Urban Council in reaching agreement on the use of this source. Monaghan County Council, then, wanted the ^{Lake} Lough partly for their own needs and as amenity area. They objected to the amount of water Dundalk intended abstracting and disagreement between the two counties ensued. The Minister for the Environment, in reply to representatives from both counties, in Dail Eireann stated:

I say to the Deputies who represent the area, that it makes the work of the Department and of the Minister far more effective and efficient if local representatives in adjoining counties can agree on a common approach to a problem that affects directly all of them. ²⁵

The extent of this delay was traced in the local newspaper:

The history of Dundalk's proposal to take water from Muchno shows vividly the delays which have beset the project since the Urban Council's decision, as far back as March 1975 to seek sanction for a proposal based on direct gravitational supply by pipelines from Lough Muchno.

The project took a tortuous course, since that decision until in Sept. 1982 a Departmental Enquiry was held in Carrickmacross into the Urban Council's application for a Provisional Order ---- a year later, in Sept. 1983 the Minister issued the Provisional Water Order. ²⁶

Further delays were then experienced when 'a petition was entered in the Circuit Court' ²⁷ by landowners affected who made 'a further appeal to the High Court'. ²⁸ After getting the go ahead from the High Court another obstacle arose in 1987 when the European Commission brought a case to the European Court of Justice over the type of pipe to be used. In mid 1987 work was allowed, finally, to commence.

The consolidation and updating of legislation in this area is needed to meet the pressing needs of areas while bearing in mind the rights of landowners etc. affected.

PROGRAMME IV - DEVELOPMENT INCENTIVES AND CONTROL.

This is the area of the local authority acting as planning authority,

In 1929 a private Bill, 'The Town Planning and Rural Amenities Bill 1929', was introduced in the Seanad by Senator Thomas Johnson. It provided for a civic survey and adoption of planning schemes by local authorities, including town commissioners. On 11 March 1930 the Cabinet agreed that

the Minister for Local Government and Public Health, on the occasion of the fifth stage in the Senate of Senators' Johnston's Town Planning and Rural Amenities Bill, 1929, should announce that it was his intention to introduce a measure dealing with the subject of Town Planning. ²⁹

The new Bill, the Local Government (Planning Schemes) Bill, 1930 provided for adoption of planning schemes by local authorities, except town commissioners. With further changes in the title of the Bill and a change of Government the measure became law in 1934 as the Town and Regional Planning Act. Other amending Acts were passed. These provided a framework to control development. Certain 'fundamental defects', ³⁰ however, were found. For example, there was no obligation on the local authority to adopt certain provisions or prepare a planning scheme, or on developers to obtain planning permission for proposed development.

In 1963 the legislation in this area was consolidated and updated in the Local Government (Planning and Development) Act, 1963 as amended in 1976 and 1982.

Under this Act the manager, as an executive function, has the power to grant or refuse planning permission. In recent years, however, some councils have sought the use of Section 4 of the City and County Management (Amendment) Act, 1955 directing the manager to grant or refuse permission as the council wish. The legality of this method is uncertain. In 1982 Judge Keane stated:

If it is competent for the elected members ---- to pass a valid S.4 resolution, then it is they and not the manager who are deciding to grant or refuse the application. It would follow that they are no longer requiring the manager to perform a particular act within the meaning of S.4; rather, they are themselves performing the act, the performance of which is entrusted to the manager, and the manager alone, by the legislature. 31

As a result he said:

On my view, the relationship between S.4 of the 1955 Act and S.26 of the Act of 1963 as amended by the 1976 Act is obscure and unsatisfactory; and it is to be hoped that it will be clarified at the earliest possible opportunity. 32

Should the members direct the manager in this way it would still be possible for the officials to appeal, as an aggrieved third party, to an Bord Pleanála within the specified time limit. This action could, however, strain relations between council and staff.

The 1963 Act also gives wide ranging powers to the planning authorities, that is, county councils, county borough corporations, borough corporations and urban district councils, to develop their areas. Section 77(2) empowers them to provide

- (a) sites for the establishment or relocation of industries, businesses (including hotels, motels, and guesthouses), dwellings, offices, shops, schools, churches ----.
- (b) factory buildings, office premises, shop premises, dwellings, amusement parks ----.
- (c) any services which they consider ancillary to anything which is referred to in paragraphs (a) and (b) ----.

and Section 77(3) gives power, 'in connection with any of their functions under this Act, make and carry out arrangements with any person or body for the development or management of land.' This Act was to make local authorities development corporations for their areas. But the failure to provide an adequate and up-to-date compulsory purchase order procedure caused problems. In 1965 the Minister for Local Government, Neil Blaney, stated that the 'main aims of the new

planning machinery include the modernisation of cities and towns to meet modern urban needs, the encouragement of balanced economic growth in all areas and the preservation of and improvement of amenities.³³ The Secretary of his Department, GA Meagher, also stated that it 'is now generally recognised that local government is an indispensable instrument in securing economic growth.'³⁴ In 1971, the White Paper on Local Government Reorganisation noted:

Local authorities, ----, must now regard themselves as development corporations for their areas.----

In the future, local authorities will need to be even more active in using their powers to assist and encourage suitable enterprises in their areas,³⁵ in maintaining liaison with industrialists ----.

Judge Keane also pointed out, on Section 77(3) of the 1963 Act:

Clearly, there are many circumstances in which developments can be jointly carried out to the public benefit by a planning authority and a private developer. The combination of the authority's powers of compulsory purchase and planning control with the developers' financial resources and expertise can stimulate the development of a particular area which would otherwise remain in a decayed condition or be developed in a piecemeal fashion by individual entrepreneurs.³⁶

Since 1965 development has taken place, but mainly in the provision of industrial estates and the establishment of Development Teams to act as a link between the needs of industry and the local authority. In recent years, however, the role of these Development Teams has been reduced. This was pointed out at a meeting of Monaghan County Council in 1985. The Dundalk Democrat reported:

The manager said the County Development Teams have been taking a lesser role in industry than heretofore. As a result of the Government's White Paper on industry the IDA has been given authority to take charge of small industries.³⁷

In addition, the information office on small industries was to be transferred from Monaghan and 'this information had always been available at the local Development Team office.'³⁸

One reason for the slow pace of development, which Judge Keane seemingly ignores, is the out-of-date compulsory purchase order procedure. This was outlined by Michael Keating T.D., in 1982:

Local authorities, for example, cannot develop their, areas of responsibility because of the antiquated compulsory purchase order procedures ----. There is no responsible acceptable excuse for discussion and negotiation over a small piece of land which a local authority want to acquire over a period of 25 years which is presently going on ----. 39

The need for updating the compulsory purchase procedure was emphasised by one Deputy Manager interviewed. He stated that problems existed in this area with the extent of proof required by the courts. He related a case where the junior official who sealed the letters for posting was required to prove that the particular form she enclosed in the registered envelope was in fact the appropriate form that should have been issued.

For some unknown reason the Local Government (Planning and Development) Act, 1963 as amended never included compulsory powers to acquire land, even though this power was contained in Acts for other services, as can be seen in Appendix A.d. This issue arose in the case *Movie News Limited V. Galway County Council*.⁴⁰ The Council contended that since the planning authority were given wide powers to develop land in the 1963 Act this created an implied power of compulsory acquisition. Judge Kenny, in the High Court stated that

I do not think that it is permissible that a power of compulsory acquisition has been created because a power to develop has been conferred on a local authority. Powers of compulsory acquisition must be created by reasonably clear language and are not to be inferred or implied. 41

It was also held that acquisition powers conferred by other Acts on the local authority, for example, the Local Government (Ireland) Act, 1898 Section 10 as extended by the Local Government (no.2) Act, 1960

Section 11 were sufficiently wide to enable the local authority to acquire land compulsorily. But, since this Section was not stated in the Compulsory Purchase Order it could not be relied on to justify the acquisition. On appeal to the Supreme Court the Council tried to rely on Section 10 of the 1898 Act as amended above. The Supreme Court refused this argument as it was not made in the High Court, and agreed with the decision of that Court. Judge Henchy stated that 'we find it unnecessary to decide whether a Compulsory Purchase Order should recite each and every provision under which it is made'.⁴²

Instead of alleviating the legal and financial problems in this area the Urban Development Areas Bill, 1982 proposed to renew and develop inner city and urban areas by the establishment of urban development commissioners. The Minister for State in the Department of the Environment in 1982 stated that it 'might be said that the powers being given to urban development commissioners are not very different to those available to the local authorities ----'.⁴³ But he goes on to state that the commissioners

will be able to operate in a more flexible manner than could a local authority and to form appropriate joint arrangements with both public and private bodies. They will, I hope, be able to attract new housing, services and industry to their areas, as well as carrying out development directly themselves ----.⁴⁴

This contradicts the view of the Department expressed in the White Paper 'Local Government Reorganisation'. It stated:

The ultra vires rule is one of the main limitations on the powers of local authorities. It has been criticised on the grounds that it makes for inflexible local government, prevents local authorities from acting as development corporations and is unsuited to present conditions. Such criticism is, however, too extreme, Local authorities ---- have been invested with wide and flexible powers to engage in economic activity and to further the development of their areas.⁴⁵

Senior officials asked about this particular issue were unaware of the Bill. They could not see the commissioners idea being accepted by the local authority. In addition, the planning authority would have to be involved. All said that, if the local authority was given the finance it could develop these areas. Harold O'Sullivan stated, to me, that it is a clear example of a similar Act introduced in England a few years earlier being applied to Ireland, without any regard to the particular needs of this country. The officials asked believed that the designation of an area, as in need of renewal, by the local authority could arise in future legislation. In such places tax incentives, grants etc. for development might be given. A recent scheme, introduced in late 1987, for some major towns is along those lines. This will give the appropriate local authorities an opportunity to renew inner urban areas.

PROGRAMME IV - ENVIRONMENTAL PROTECTION.

This is a modern day need and no attempt has been made to provide overall legislation for this area or to group appropriate functions under this heading under, for example, an environmental authority.

At present the programme group is further subdivided into

- 5.1 Waste Disposal.
- 5.2 Burial Grounds.
- 5.3 Dangerous Structures and Places.
- 5.4 Fire Service.
- 5.5 Pollution Control

Waste disposal and burial ground powers, like water and sewerage supply, date from the Public Health Act, 1878 and are functions of the local authority as sanitary authority. Dangerous places and structures are, also, dealt with by the sanitary authority under the Local Government

(Sanitary Services) Act, 1964. After the collapse of buildings in Dublin City in the early 1960s this Act was passed to deal with similar situations. Legislation relating to dangerous occurrences such as flooding, landslide etc. is not mentioned in this group. The county council, county borough corporation, borough corporation and urban district council have powers in this area under the Local Authorities (Works) Act, 1949. This Act had its origin in legal opinions questioning the powers of road authorities to carry out works for the protection of roads from flooding.

In the case of dangerous structures problems arise when they are in a row of non-detached buildings. Under Section 1 of the 1964 Act a dangerous structure is defined as

- (a) any building, wall or other structure of any kind, or
- (b) any part of, or anything attached to, a building, wall or other structure of any kind, that, in the opinion of the sanitary authority ---- is or is likely to be dangerous to any person or property.

In the State (Mc Guinness) V. Maguire, 1967⁴⁶ the Dublin Corporation as sanitary authority required Ms Mc Guinness to

- (1) take down the dangerous structures and
- (2) provide lateral support to adjoining non-detached premises.

She contended that the second requirement was ultra vires the Act.

Judge O'Dalaigh in the Supreme Court held:

---- that although requiring provision of temporary shoring of a building during demolition might be within the power granted by statute, once the buildings are demolished, they cease to be dangerous structures, and nothing can be required to prevent the structures from being dangerous, since they have ceased to exist. 47

As regards the provisions of the 1964 Act Judge O'Dalaigh continued:

---- (they) are drawn in narrow terms ----. Where as a result of the demolition of a dangerous structure, the sanitary's power is to act against the owner of such

adjoining building; it is he, and only he, who can be required to carry out such works as will ---- prevent the building from continuing to be a dangerous structure. 48

The fire service legislation has recently been consolidated and updated in the Fire Services Act, 1981, as a result of the 1975 report on the fire service and the Stardust Tragedy in Dublin. The Stardust Tribunal recommended a modern fire service code implemented by an effective fire safety organisation. Like other areas, such as health functions where failure existed to develop them under local bodies, the Tribunal urged the centralisation of the service under an Inspectorate of Fire Services reporting to the Minister.

The sub-programme - Pollution Control - contains a number of functions dealing with:

(1) Litter.

Powers in this area have been modernised and extended in the Litter Act, 1982. This area need not entail major expenditure but rather public co-operation. In introducing the Litter Bill, 1981 in Dail Eireann the Minister for State in the Department of the Environment stated that in 'the end ---- the problem will only be solved when public attitudes change.'⁴⁹ This need for co-operation was noted at a Louth County Council meeting when the County Secretary revealed that 'they had the dumping investigated by the Gardai, and they were bringing a prosecution to Court, but a witness withdrew at the last minute and they could not go any further.'⁵⁰

(2) Derelict Sites.

The legislation in this area is the Derelict Sites Act, 1961.

(3) Atmospheric Pollution.

The only statutory provisions in this area is the Local Government

(Sanitary Services) Act, 1962, Section 10 requires the Minister for the Environment to make Regulations.

(4) Water Pollution.

The recent Act in this area is the Local Authorities (Water Pollution) Act, 1977.

PROGRAMME VI - RECREATION AND AMENITY.

No attempt has been made to establish a recreation and / or amenity authority. Instead this programme is divided into a number of sub-programmes each under its own specific legislation. These are

6.1 Swimming Pools.

6.2 Libraries.

6.3 Parks, Open spaces, Recreation centres etc..

6.4 Other Recreation and Amenity.

The law relating to swimming pools is mainly found in the Local Government (Sanitary Services) Act, 1948, for the sanitary authority.

The Libraries Acts 1855 to 1920 deal with libraries and can be adopted by local authorities. However, no power to ~~compulsorily~~ ^{compulsorily} acquire land was included in the 1855 Act.

The law relating to parks, open spaces etc. is mainly found in the Local Government (Planning and Development) Act, 1963, for the local authority acting as planning authority. The local authority, itself, also has powers in this area under nineteenth century legislation.

The role of local government in recreation and amenity was recognised in the White Paper 'Local Government Reorganisation' which stated:

Local authorities will therefore be encouraged to promote cultural activities; to establish (or help to establish) local museums and art galleries to help in the conservation of national monuments and particularly in the provision of

access and parking facilities; to promote sporting and recreational facilities; particularly for the young; to encourage and assist in the development of community centres and youth clubs. 51

However, the updating and consolidation of suitable legal provisions in this area has not been made. Only in one small part of this broad programme group has any attempt been made in modernising the law and that is in the Arts Act, 1973. This statute allows local councils the reserved function of assisting the Arts Council, or any person, with money or in kind or by the provision of services or facilities.

Desmond Roche stated that:

---- the capability is spread very wide and covers painting, sculpture, architecture, music, drama, literature, design in industry, the cinema and the fine arts and applied arts generally. 52

But, all activities capable of being developed locally have not been included in this Act. Dr TJ Barrington noted that:

---- in relation to the development of the artistic, linguistic, and heritage responsibilities of government, nearly all the action in this country - little as it is! - lies elsewhere. 53

In the case of 'travel' Neil Collins cited a case which caused difficulties because the particular power was not exercised under the appropriate Act. The case arose in Waterford over the purchase of land for an airport. The City Manager did not obtain the approval of the Minister as he bought the land under the Local Government (Planning and Development) Act, 1963 for industrial purposes and consent was not required. The Auditor, however, disallowed the expenditure because he believed the appropriate Act was the Air Navigation and Transport Act, 1936 and purchase of land under this Act required Ministerial sanction. But, as Neil Collins stated 'The manager never had to pay the £552,500 but the incident illustrates the differing outlooks of auditors and managers'. 54

PROGRAMME VII - AGRICULTURE, EDUCATION, HEALTH AND WELFARE.

Although minor functions under these headings are carried out by some local authorities these areas are not local government services at all. Involvement by the local councils is mainly through the appropriate committees, that is,

Committee of Agriculture,

Vocational Education Committee,

Health Board and local health committees,

by the appointment of members and contributing finance or acting on an agency basis in the provision of some functions. None of these committees are under the county manager.

PROGRAMME VIII - MISCELLANEOUS SERVICES.

The sub-programmes in this division are

8.1 Land Acquisition and Development.

8.2 Plant and Materials.

8.3 Financial Management.

8.4 Elections.

8.5 Administration of Justice and Consumer Protection.

8.6 Property Damage.

8.7A Foreign Travel.

The main functions relate to

(1) land acquisition.

Power to acquire land by agreement or compulsorily is now given to local authorities, generally, but as already stated the legislation involved is complex. Public notices relating to this area show this complexity. For example, the form of notice for a compulsory purchase order is headed:

Form of notice of a compulsory purchase order under Section 76 of the Third Schedule to the Housing Act, 1966, as extended by Section 10 of the Local Government (No.2) Act, 1960, to be published in accordance with Article 4(a) of the Third Schedule to the Housing Act 1966. 55

The extension of an enactment in this way by an earlier Act (that is in 1960) is possibly illegal, but results from the substitution of Sections in Acts by later statutes.

Another example is the public notice for the appointment of the official arbitrator to determine compensation for land acquired for the purposes of the planning Acts. The statutes listed, as a heading, in one public notice include

The Housing Act, 1966
 Land Clauses Consolidation Act, 1845
 The Local Government (Ireland) Act, 1898
 The Local Government (No.2) Act, 1960
 The Acquisition of Land (Assessment of Compensation) Act, 1960
 as amended by the Acquisition of Land (Reference Committee) Act, 1925.
 The Property Values (Arbitration and Appeals) Act, 1960
 The Local Government (Planning and Development) Act, 1963. 56

These statutes listed are only the principal Acts and some have been amended many times.

Obviously this is an area that requires watertight legislation that protects not only the individual landowners but the community who may have to pay millions of pounds in compensation. The older and ^{more} piecemeal this legislation the less likely it will achieve these aims. In addition, because of the complexity shown in the above public notices the local administrators require the services of their law agents and possibly other highly qualified legal personnel depending on the amount of compensation payable. Also the owner of possibly only a small plot of land being compulsorily acquired will need the help of similarly qualified people.

One problem in the way of updating the compulsory purchase

procedure is dealing with the problem of compensation where a planning permission is refused, especially in the County Dublin area. One official told me that this difficulty may only be overcome by a Constitutional amendment of the Article dealing with property rights.

Part VI of the Local Government (Planning and Development) Act 1963 lists a number of conditions of a planning permission or reasons for refusal where compensation is not payable. Obviously the planning authority in making its decision will have regard to these provisions. However, a problem arises where an Bord Pleanála overturns the decision of the local authority and grants or refuses permission for reasons where compensation is payable. This is not an easy question to solve. The problem might be partly alleviated by, for example the extension of Section 57 of the 1963 Act relating to the non payment or reduction in compensation where other types of development would be permissible, such as market gardening etc., or the imposition of a development levy because of the increase in the value of the land due to the grant of planning permission. This levy could be deducted where compensation payable. The Kenny Report⁵⁷, as it is commonly known, on the price of building land proposed a number of means of dealing with this issue but nothing became of this Report. A more recent Report has also been made.⁵⁸ It proposed the granting of incentives for development in conformity with planning policies.

(2) administration of justice and consumer protection.

The main functions in this area relate to courthouses and pounds and the appropriate Minister is the Minister for Justice.

Local authority powers and duties relating to consumer protection are insignificant. This is an area one would expect could

be developed within the local government system by providing, for example, information centres. However, Desmond Roche pointed out that:

In Ireland, where the weights and measure service was (and still is) locally administered in only two areas, consumer protection is largely a state service, although local authorities have certain enforcement functions. Suggestions that the limited local authority concern should be promoted to become a leading role has not found acceptance. 59

(3) markets, fairs and abattoirs.

The main function in this sub-programme has been updated in the Casual Trading Act, 1980. Legislation relating to markets and fairs go back for centuries, as these were one of the first functions of the chartered town.

Section 5 of this 1980 Act is causing problems in some areas.

It states:

Where there is a casual trading area in the functional area of a local authority, then, ----, a local authority shall, on the application in writing therefor of a person who is the holder of a casual trading licence for the time being in force and on payment of a fee of £20, grant to the person a permit ----.

The licence is issued by the Minister for Industry, Commerce and Tourism. According to the above Section where the licence is so issued the local authority must give a permit on request irrespective of the number of places available in the casual trading area. To overcome this problem one official told me that he offers the permit to a trader for a day and time, he knows, he is trading elsewhere. This difficulty could be alleviated by empowering the local authority to decide to refuse or grant a permit. In deciding this issue it could be required to have regard to, for example,

- (a) the existing availability of the produce for sale.
- (b) whether ^{the} trader ^{is} from local area or not.

(c) the number of years ^{the} applicant was trading in ^{the} area.

Another difficulty with local government legislation that applies to all programme groups is the interpretation of the reference to 'time' in various Acts. Different periods are prescribed using such terms as 'from', 'after', 'before', 'within', 'clear days', 'not exceeding', 'less than' etc.. HA Street outlined the complications of computing time in his book 'The Law Relating To Local Government'.⁶⁰ In general, he stated:

Where in any Act of the Oireachtas a period of time is mentioned, both the first and the last days of the period are to be included, unless the contrary appears.⁶¹

Further complications arise where notices of the local authority have to be sent by post, as can be seen from the following court cases. These cases arose on the interpretation of Section 26 of the Local Government (Planning and Development) Act, 1963 as amended in 1976. This Section specifies that the decision of the planning authority on a planning application must be given 'within the period of two months beginning on the day of receipt by the planning authority of the application ----', otherwise the permission is regarded as having been given on the last day of that period.

62

In the State (Murphy) V. Dublin County Council, 1970 Mr Murphy claimed he had obtained planning permission by default as the planning refusal was not received within the statutory time limit. The county council sent the refusal by registered post on a Friday. The following Sunday was the last day of the statutory period but on the Saturday, a normal posting day, Mr Murphy's office was closed. The notice, therefore, was not delivered until the following Monday. Judge O'Keefe in the High Court held that the

time the notice was received by the applicant was not the determining factor of statutory compliance. Consequently, notice in this case had been given⁶³ ---- when it was sent by registered post ----.

In 1982, however, in *Feeney V. Bray* UDC⁶⁴ a different interpretation of the time limit was enunciated. In this case Judge O'Hanlon said that Section 7 of the 1963 Act provided four ways of serving the required notice. One method was by registered post. Therefore, if service was by this means and ~~the~~

applicant can show it did not in fact reach him within the appropriate period, the planning authority must suffer the consequences of resorting to this method of service rather than the more conclusive methods of personal service at premises where applicant resides or to which he relates.⁶⁵

To conclude then the functions of the local authority have traditionally being classified as housing, roads, sanitary services, and planning etc. under a housing authority, road authority as appropriate. This failed to take account, however, of new developing services such as environmental protection, recreation and amenity etc.. In recent years the Estimate of Expenses format has divided the powers and duties of the local authority into eight programme groups. According to Dr TJ Barrington the 'big spending occurs in the first three. The second three are small operations, and the last two are vestigal ones.'⁶⁶ However, no attempt has been made to consolidate legislation under most of these groups.

In the case of the programmes relating to 'Housing and Building' and 'Development Incentives and Control' the law has been consolidated and updated. But problems still occur with the compulsory acquisition of land procedure. For some unknown reason this important power was not included in the Local Government (Planning and Development) Act,

1963. It seems strange that the planning authority was not given the full authority necessary to implement the provisions of that Act. Instead it has to rely on statutory powers given to the local authority generally.

The legislation for the programmes dealing with roads, water supply and sewerage facilities is in need of updating in modern codes. A new and more flexible compulsory purchase procedure is required for obtaining a suitable water supply and so avoid unnecessary long delays. This in itself would reduce the final cost involved.

The programmes 'Environmental Protection' and 'Recreation and Amenity' are composed of a number of related areas, some with updated legislation. However, no attempt has been made to develop and co ordinate them under, as appropriate, an environmental authority and a recreation and / or amenity authority.

The local authorities have miscellaneous functions relating to agriculture, education, health and welfare, or have contact through committees with bodies concerned with these areas. There seems little reason today for involvement of local bodies in these areas and not in other development sectors equally important to the local community. This requires the delineation of an overall role for local government and allowing local authorities develop their functional areas according to their own needs and characteristics. For example, one town might wish to grow as an industrial base, another as a tourist resort, or another as an educational centre and so on.

The last programme group deals with miscellaneous powers and duties. Some of these functions are no longer appropriate to the local government area, such as courthouses and pounds while others could be developed under its own programme group, for example, markets, fairs, casual

trading and weights and measure.

In addition, while it is not appropriate for all local services to have identical legal provisions as they must be suitable to adapt to the needs of the various areas, yet they could be so arranged to a certain extent by granting more general powers to manage, improve, maintain etc.. Also, as seen, the construction of Acts causes difficulties in numerous ways. While the courts interpretation of legislation clarifies the position in some instances there is no certainty that the same conclusion will be found in similar cases.

This legislative problem was outlined by Dr TJ Barrington thus:

In the developmental process initiative, discretion, individual judgements are held to be crucial and essential. ---- But our local government system remains shackled with archaic legal and administrative impediments to the displaying of such qualities. Unless the central authority supports and legislates for a new initiative little or nothing can be done. ⁶⁷

Since, as already stated, the structures and functions of local authorities are entwined proposals made since 1922 to modernise these areas will be dealt with in chapter 8. First, however, I will outline the local government system in England as the present Irish organisation originated from there.

CHAPTER 7.

ENGLAND - LOCAL GOVERNMENT TODAY.

It is said that local government in Ireland has 'no historic roots in Irish national life'.¹ Instead it originated from the English system that was applied to Ireland by various British Acts of Parliament, from the early thirteenth century. This form of local administration the Irish Government took over on the establishment of the Free State. Although, as seen, it was later amended in some major ways it still relies on nineteenth century structures and legislation.

In England, however, parish councils, rural district councils and the committee system operated, up to 1972. The city management idea was never applied there. After that date a major reorganisation of the system took place.

ORGANISATION.

The Local Government Act, 1972 reorganised local areas, outside London, by dividing England into 53 counties and 369 districts. Six counties were termed metropolitan counties (mainly former county boroughs) and their districts, 36 in number, metropolitan districts. London was reorganised in 1965. Section 245 of this Act allowed a district council to petition the Queen for borough status for its area. This request required a resolution passed by a two-third majority at a special meeting. If ^{the} area became a borough the chairman could be termed a 'mayor'. Some boroughs have been created in this way.

Proposals to rationalise Irish local government areas on these lines have been made, but, so far have failed to gain political acceptance.

Functional bodies such as health and water authorities and a manpower services commission have been established. Greenwood and Stewart noted that the 'tendency of recent years has been towards functional specialization ---- appointed bodies are being substituted for elected local authorities.' ²

Unlike Ireland the 1972 Act also rationalised the law relating to the corporate body, the council, meetings, and personnel and applied somewhat similar provisions to county and district councils. As seen, Irish legislation on these areas are spread over numerous enactments, some dating from the nineteenth century. Proposals, however, to update this law on the lines of the 1972 English Act are in the pipeline, and are expected to be introduced in Dáil Éireann in early 1988.

Further changes occurred under the Local Government Act, 1985 which abolished the six metropolitan county councils and the Greater London Council from 1 April 1986. The functions of these bodies were transferred to the districts. The mode of transfer in some instances was laid down in statute, for example, joint boards for police, fire and public transport, in other cases it was left to the districts. As Steve Leach pointed out:

At one end of the scale it would be possible to retain a wide range of county wide units and to supervise their operations with joint committees. At the other it would be possible to "divide up" county functions to districts with only minimal retention of county wide units. ³

Once more local government is under review. Two inquiries have been established by the last Conservative Government. The first - the Widdicombe Committee of Inquiry - focuses upon the political dimension of local authority operations. The second - the Baker Inquiry - deals with local government finance.

PERSONNEL.

Although some statutory officers must be appointed Section 112 of the 1972 Act gave power to the local authority to 'appoint such officers as they think necessary for the proper discharge by the authority of their or another authority's function ----.' ⁴

Again in Ireland, as seen, statutory requirements relating to personnel are quite detailed and are spread over various enactments.

Since the committee system still exists in England the chief officer is not in the same position as the city manager as PW Jackson noted:

The appointment in Britain of a chief executive, with uniquely wide powers of managerial control and direction over administration has borne little resemblance to the dominant American city manager and has involved no radical disruption of the committee system nor a derogation of the chief officers' powers.' ⁵

Legally, he is responsible only to the council as a whole, while the council may see officers' reports and question officers. In practice, however, the 'chairman and ruling group do enjoy privileged access to the chief officers.' ⁶ It is 'increasingly common for chief officers to produce reports only for the eyes of the group leadership and to brief these leaders in private.' ⁷ In addition, some actually attend meetings of the ruling party leadership. Joint officer-member meetings sometimes take place where the leading elected members from the committee meet the senior officers from the Department. In recent years, also, political parties face the electorate with policy manifestos. Problems then are created when they are elected and try to implement their proposals. To overcome this difficulty chief officers are frequently consulted on the drafting of manifestos. In fact 'one chief executive had offered the services of the chief officer management team to all three parties on his council during the run-up

to the local elections.' ⁸

The involvement of these officers in the political area has until recent years been accepted. Now, however, with the increased ideological distance between the two major parties lack of trust exists in the impartiality of officers. As Haffin and Young pointed out 'the close working relationship between officers and members based upon mutual toleration, and acceptance has been eroded.' ⁹

The office of manager, on the other hand, is a statutory office whose holder is responsible for the executive functions. The other specific functions are by statute reserved to the elected members. As a result the managers avoid any involvement in the political area.

Various proposals have been put forward, in England, to deal with the problem of lack of trust in chief officers. These include a code of conduct or the introduction of a ministerial type system where the chief executive would be answerable to the chairman. The Audit Commission for Local Authorities established under the Local Government Act, 1982, outlined in its Report the desperate social and economic conditions in London. It stated that '(R)homelessness, housing conditions, crime, are worsening year by year, as the cycle of urban deprivation becomes more established.' ¹⁰ The need, it said, is for 'outstanding management of each of these problems.' ¹¹ However, it continued that this 'is not evident in many London authorities.' ¹² The Report, also, stated:

Local accountability must be made more effective, management streamlined, the stability and authority of the position of officers must be strengthened and the systems for distributing grant and controlling capital spending reformed. ---- there ---- is ---- no time to lose if effective action is to be taken to prevent the emergence in London of the urban derelection that now affects some large North American Cities. ¹³

It recommended a form of management system:

The Commission believes that the Chief Executives should have more clearly defined lines of power and responsibility and, more importantly, ----, officers should be allowed to manage without interference from members. ¹⁴

In Ireland, the same ideological difference does not exist between the Fianna Fail and Fine Gael Parties whose members dominate the local councils. The fact also that managers and other senior officials cannot become involved in party politics ensures continual loyalty to all councils. Thus as Neil Collins stated:

The divergent interests of the official and the elected member are accommodated whichever political grouping is in the majority. Parties do not organise themselves into alternative policy formulating groups. Managers eschew any interference in partisan rivalry. ¹⁵

In addition while bad management has been put forward for growing inner cities problems, in Ireland the reason given for such difficulties is that local authorities are not flexible enough to deal with these issues. ¹⁶ The management system, in general, is seen as working well. Tensions may arise, however, on certain items, for example, where a 'Section 4 resolution' is proposed, notably in planning cases. When the members used this procedure to overturn the decision of the manager and his professional staff, some engineers appealed as an aggrieved third party, to an Bord Pleanála. The majority of senior administrative staff interviewed, however, said they would discourage this type of action.

Policy.

Local authorities, in England, need as a rule specific statutory authority to act. The extent of the application of the ultra vires doctrine was outlined by Lord Watson, in *Baroness Wenlock V. River Dee Co.*

I am of opinion not only that the objects which the corporation may legitimately pursue must be ascertained from the Act itself, but that the powers which the corporation may lawfully use in furtherance of these objects must either be expressly conferred or derived by reasonable implication from its provisions. ¹⁷

Like Ireland, the ultra vires rule may be invoked to 'control the methods by which decisions are reached if exercised in bad faith, for improper purposes, where a legally irrelevant consideration has been taken into account' ¹⁸ and also 'where the decision is so unreasonable that no reasonable authority could act in such a manner.' ¹⁹

Unlike Ireland, however, a recent trend in England is the use of the courts to settle disputes not only between local authorities but between local and central authorities. For example, in December, 1981, the Secretary of State for the Environment took over the management of Norwich City Council's housing stock. This was due to the slowness in implementing the 'right to buy' provisions in the Housing Acts. The Council, then, took him to court. The Court of Appeal confirmed that he had reached his decision properly under the Act.

The financial area, especially, has been a source of contention. In March, 1984 the Labour controlled Hackney Council brought an action against the Secretary of State over the expenditure limit he fixed. They stated that it was only four-fifths of the amount the Council required. The Court of Appeal held that the Secretary of State could 'issue guidance based on principles which applied to all authorities notwithstanding that there might be individual authorities which were unable to comply.' ²⁰

In not all cases, however, do the local authorities fail. In April, 1986 Birmingham City Council won an action brought against the Secretary of State for the Environment on the grounds that he exceeded

his powers in reducing the City's block grant by forty-three million pounds. However, to legalise its decisions 'the government had already announced in anticipation that it would be introducing retrospective legislation which would affect the block grant payable'²¹ and make 'the position what the government had previously understood it to be'.²²

Therefore, in local-central court actions as BW Hogwood noted:

In most cases ---- local authorities have been unsuccessful in their attempts to use the courts to overturn central government guidance on finance or the level of central government grant awarded to them. Even when ---- Birmingham City Council was successful in 1984, the government was able to overcome the problem fairly quickly.'²³

Among local authorities one notable case was brought by the Conservative controlled Bromley Council against the Labour controlled Greater London Council (GLC) in 1981. The election manifesto which brought Labour to power on the GLC proposed to subsidise cheap fares on London Transport. When elected the GLC made the grant to enable the reduction of fares by twenty-five per cent, and levied a supplementary rate to pay for this. The boroughs, including Bromley, were responsible for collecting the rate. The Court of Appeal ruled that the supplementary rate was ultra vires. Lord Scarman said that the GLC 'had abandoned business principles'.²⁴ Lord Wilberforce said that it 'acted in breach of its fiduciary duty and failed to hold the balance between the transport users and the ratepayers as they should have done.'²⁵

BW Hogwood noted an interesting sequel to this decision:

The Conservative government subsequently removed London Transport from the GLC and established London Regional Transport, accountable directly to the Department of Transport. London Transport still required a grant to pay for its deficit and the Minister for Transport, Nicholas Ridley, attempted to levy £281 million from the GLC.

This decision was appealed to the court. The Judge ruled that it 'was

unlawful, irrational, and procedurally improper.' ²⁷ The government then, however, 'announced its intention to appeal, but in fact introduced legislation, at an accelerated pace to overturn the ruling.' ²⁸ Thus as Robin Pauley noted:

Until the last decade or so Britains local authorities have had no cause to be aware or concerned about their apparent lack of legal definition. More recently though, there has been a tendency towards litigation, partly by councils themselves but mainly by individuals and interest groups, which has tended to move the ultimate responsibility for policy out of the hands of the non-elected judiciary which is not in any way accountable to the electorate whose decisions it covers. ²⁹

In addition to the courts involvement in disputes between public authorities they also intervene in political decisions that can affect members of the public. In *R. V. Ealing L.B.C. Ex Parte Times Newspapers and Others*,³⁰ the New International Newspaper decided to change premises from off Fleet Street to Wapping to cut costs. This caused a strike. The trade union leaders called on the local authority to take action against the newspaper company as an indication of sympathy to the workers. About thirty Labour controlled local authorities in Britain banned from their libraries all copies of the newspaper and periodicals belonging to the company. The company then applied to the courts on the grounds that the local authorities, as a result of their action, failed to provide a comprehensive and efficient library service to all persons desiring to make use thereof. The Council, on the other hand, held that it was within their discretion to decide what to provide in their libraries. In addition they believed a more appropriate course to take was to appeal to the Minister.

The Court held that:

It was absurd for the councils to pretend ---- that in imposing and maintaining the ban they had been within the letter and spirit of the law. They had deliberately

flouted it when they knew that sensible and responsible officials strongly advised them that they were proceeding to act unlawfully. ---- There could hardly be a clearer manifestation of the abuse of power the remedy for which it was for the court and not the Minister to provide. ³¹

This intervention of the courts in the policy-political area began in the 1960s. Some judges, however, have noted the dangers of becoming too involved in these type of disputes. In 1982 the district auditor sought an application in the Divisional Court to declare illegal payments made to employees over the national average by the Labour Council of Camden. The amounts were paid to settle a strike during 1978 to 1979. In dismissing the application Lord Justice Ommrod stated that it 'is not for this court to pass judgement on the wisdom of the settlement'.³²

As already stated the use of the courts in Ireland to solve disputes between local authorities and between local and central governments has not been resorted to. This is due possibly to not only the cost involved in court actions but, also, the managerial system. These problems, as was seen, in the Dundalk Water Supply Augmentation Scheme, are left to the local authorities to solve, with the final say resting with the Department. HA Street pointed out, in 1954, that:

the established system operates ---- with a minimum of recourse to the courts. This ---- phenomenon may be attributed in great part to the statutory finality of ministerial decisions, coupled with the notorious expense involved in obtaining a judicial explanation particularly on a point appearing to be novel. ³³

Another reason for this lack of involvement by the courts is, as stated, the managerial system. Since the manager is responsible for all local authorities within the county and acts for them in legal proceedings it would involve him in an unusual and impossible position if two disputing councils within the county, as a reserved function, required him to institute legal proceedings.

Based on English case law decisions it is debatable whether local councils in Ireland would be successful in an action against the Department of the Environment. The lack of success of local bodies in England may be due to the fact that some of the disputes arose from the ideological differences between the main political parties. A lot would depend on the wording of the particular statute and whether central government implied it would, for example, recoup local authorities fully especially for services, or on the abolition of sources of local finance which were issues in the national election. For example, in 1978 on the derating of domestic and other property the central government agreed to recoup in full the loss involved. When, however, it found that it was unable to pay this amount in full, the Local Government (Financial Provisions) (No.2) Act, 1983 was passed. It amended the 1978 Act by providing that the Department of the Environment could pay a sum not exceeding the loss involved.

From English court decisions, though, and the fact that such derating was an issue at a national election it would appear that the Department would be liable for the full loss should a local authority venture to take the Minister to court. However, as Neil Collins found out, when the managers sought the recoupment of the shortfall in income due to the derating of domestic premises etc. in 1982, 'the managers did not anticipate taking central government to court; it is unlikely that anyone would risk the Department's opprobrium',³⁴

FINANCE.

Unlike Ireland agricultural land and seventy-five per cent of industrial property was derated in 1929. This decision of the Treasury at the time was opposed by the Ministry of Health, the Department with overall

responsibility then, for local government. The position of the Ministry was

based on the view that local government had to be sustained as a significant and valuable arm of the state. Derating would naturally undermine the fiscal independence and strength of local government. ³⁵

Loss in income was recouped by Exchequer contribution based on a five year settlement. However, when this period ended 'some local authorities found it difficult to finance the services required of them.' ³⁶

Increasing use was made of grant income until in 1963 industrial property was again fully rated. A significant proportion of income continued to be derived from central sources. The extent of state assistance was noted by David Whynes:

In 1960, direct transfers from central government contributed approximately 30 per cent of local authority receipts, by the mid-1980's, the figure had risen to over 50 per cent. ³⁷

In recent years central government's desire to control government spending has resulted in numerous policy decisions in this area. A reform of the grant system was introduced. Since 1980 local authorities that exceeded centrally set expenditure guidelines are penalised, The Department of the Environment assess 'Grant Related Expenditure ---- for each authority and if this is exceeded by more than a prescribed threshold amount then grant on the excess is progressively reduced.' ³⁸ When the local authorities tried to make up the loss of grant income from the rates the government decided to control rate levels (by 'rate capping' as it came to be known). Then the central authority revived proposals in a Green Paper entitled 'Paying for Local Government' in 1986. These were intended to 'improve the financial accountability of local authorities.' ³⁹ The Green Paper provided for

- (1) a flat rate charge on every person.
- (2) a simplified grant system. The grant would be assessed at the beginning of the year and would not alter subsequently in response to amount spent.
- (3) the determination by central government of the contribution from non-domestic ratepayers.

Thus the government will determine rates income. This control is to encourage local authorities to increase the use of charging for services. In Ireland, on the other hand, central control has not extended so far. The local authorities can still assess the rate in the pound on all rateable property, though as seen, subject to the various limits imposed by the Minister or by statute.

In 1976 the Layfield Committee noted the declining proportion of expenditure raised from charges. It 'fell from nearly 10% of rate fund expenditure in 1969-70 to 7% in 1973-4.'⁴⁰ It was also found that some major city authorities 'can gain more than a pound in extra central government grant for every extra pound raised from charges.'⁴¹

Stephen Bailey noted:

Such grant gearing arises because 'overspending' (upon which any reductions in grant are based) is defined in terms of net expenditure. This can be reduced by increasing income raised by fees and charges, so avoiding losses of grant .⁴²

FUNCTIONS.

English local government is concerned with a wider range of functions than in Ireland. Areas such as education, health and welfare and police are the responsibility of local authorities.

The problem of inner urban areas is dealt with under the Inner Urban Areas Act, 1978. Under this Act, while the Secretary of State may appoint a development corporation for the area, he may, also designate

an area in need of relief for the purposes of the Act. The result is that 'a designated district authority is given various powers to make loans' ⁴³ for the acquisition of land and the carrying out of works of local benefit. It also can declare industrial or commercial areas within the district as improvement areas. The Act gives additional powers to make loans and grants 'for various works in such improvement areas.' ⁴⁴ A recent scheme along these lines has been announced for some Irish local authorities.

The 1978 Act also provided for

the establishment of enterprise zones, where simplified planning procedures will operate and certain financial advantages, such as freedom from rates for most non-domestic hereditaments and exemptions from development land tax will be available, to encourage industry and other activity in run-down areas. ⁴⁵

However, as already seen, the Audit Commission noted a problem of bad management in dealing with Inner London areas.

To overcome the unemployment problem various policies have been proposed. The assistance given may be promotional and advisory; provision of infrastructure; financial incentives; enterprise boards or companies or support for co operatives.

A recent trend is the decentralisation of offices to provide certain services. While this involves some devolution of power, Wendy Ball noted that 'there was no fundamental evidence of the basic departmental structure of local government being changed ----.' ⁴⁶ Instead she stated:

---- decentralisation had become a new mode of service delivery. Services could be made more efficient and effective if access points were located together within the geographical area served with some means of increased client control. ⁴⁷

In Ireland the use of local offices or depots is resorted to for some services such as the fire brigade and road repairs. This is a matter

for each local authority and depends on a number of factors, for example, the local service, the area or population covered, emergency requirements etc..

The Conservative Government's policy of privatisation has been proposed for services such as refuse collection, street cleaning, cleaning of buildings, vehicle maintenance, ground maintenance and catering services. To aid the eventual implementation of this policy, Stephen Bailey noted,

Separate (current cost) accounting procedures would be introduced ----. Local authorities would have to cost present provision and compare in-house services with private sector alternatives, making the results public. The respective Secretaries of State in England, Scotland and Wales would also have powers to set financial targets for each category of work. 48

These developments are consistent with 'the Government's declared and continuing intention to promote the extension of free competition in the provision of local authority services.' 49

A similar Government policy does not exist in Ireland, although, in a number of areas the local authorities make contracts with private interests, for example, mainly housing schemes and refuse collection.

In conclusion, then, tight control over local administration exists in both England and Ireland. Similarly, in both countries some have termed the central-local relationship as a partnership while others have identified a principal-agent relation.

In England the law relating to structures, members, meetings and procedure, personnel and acquisition of land has been updated and rationalised. Similar provisions, practically, apply to all principal authorities. Irish local government, however, on the whole still relies on structures applied by the British Parliament to Ireland in the nineteenth century.

The chief executives' involvement in the political area is causing problems especially with the increasing ideological divide between the two major parties. The same division does not exist between the two major parties in Ireland. In addition, since managers and other senior officials do not become involved in party politics this ensures continual loyalty to all councils.

Again in Ireland the ultra vires rule applies and in general judicial review in both countries is somewhat similar. Unlike England, however, the use of the courts in Ireland to solve disputes between local authorities and central governments has not been resorted to. This is due possibly to not only the cost involved in court actions but also the managerial system.

English local government deals with a wider range of functions than its counterpart in Ireland. Notably education and the police are still within the local system. The powers and functions relating to the various services are laid out on much the same lines in both countries. Not only are Acts of the Oireachtas constructed along the lines of British statutes but a number of such Acts are introduced in Dail Eireann a few years after similar statutes were passed in England, without as one person said ^{when interviewed} ~~to~~ me any regard to their suitability to Irish conditions and needs.

In the next chapter it will be shown that various proposals have been made in Ireland to deal with the above deficiencies and complications in Irish local government law. Although a number of changes did occur since the establishment of the Irish Free State no overall reorganisation has taken place.

CHAPTER 8.

OFFICIAL PROPOSALS TO REORGANISE LOCAL GOVERNMENT SINCE THE FOUNDATION OF THE STATE.

In 1984 a member of Dail Éireann stated:

At times of local government elections politicians on all sides of the House have spoken lyrically for too long about the need to reform local government and made promises in that regard. Despite all that has been said, no comprehensive legislation was introduced for decades to reform the local government system. We are still relying on a system we inherited from the British. ¹

To see why this is so, after sixty-five years of independence, one must go back to shortly before the setting up of the Free State. It is necessary to look at the changes that were intended and indeed possible, and the main developments since then.

The period around independence was summed up by Sir Henry Robinson, a former Head of the Local Government Board, as a time of 'open rebellion'. ² After the general election of 1918 the newly elected Irish members refused to sit in the British Parliament. Instead the First Dail was set up on 21 January 1919 in opposition to the British administration. Shortly afterwards the Dail Ministry of Local Government was established and attempted to exercise the functions of the British Local Government Board.

The last structural changes to take place in the local government system, by this time, were made by the Local Government (Ireland) Act, 1898. It established the administrative counties. This Act, termed the

'legislative father of the Irish Free State, ' ³ had its critics, however, PL Mc Evoy noted:

That Act was formulated and passed by people who had very little, if any, knowledge of the details of local administration in Ireland ----. The inevitable result was a certain amount of overlapping, lack of cohesion, misfitting and divided authority. ⁴

In addition in the county the county council was made the rating authority. But, there were four spending bodies - the county council, the boards of guardians, the rural district councils and the asylum boards. The county council had no veto power over these last three bodies. Similarly in the urban districts there were three spending authorities but only one rating authority. As a result 'the system encouraged thoughtless extravagance.' ⁵

As well as the county, county borough, borough and urban district councils and town commissioners there existed 176 rural district councils and 131 boards of guardians. Around 1920 Arthur Griffith stated that for the whole thirty-two counties 'nine of Ireland's eleven municipal Corporations are pledged to the Republic and ninety of the 115 urban councils support the national claim.' ⁶ In fact in the local elections of that year the majority elected were in favour of independence. In an Address to the Congress of the United States it was pointed out that:

Of the City and Urban Councils	77	per cent
of the Rural District Councils	88.4	" "
of the Boards of Guardians	89.6	" "
of the County Councils	87.9	" "

were carried in favour of the Republic, give allegiance to Dail Eireann (the National Assembly) and carry out its decrees. ⁷

It further stated that:

The present British Prime Minister admitted in the House of Commons in April 1920 -
 "The elected representatives of Ireland now by

a clear, definite majority, have declared in favor of independence. " ⁸

This duplicate arrangement caused the Provisional Government to set up in June 1920, a Commission of Inquiry, under Kevin O'Higgins. It was

to report, not on general aspects of local government ---- but on the problem of survival without the sanction and countenance of the Local Government Board. Its report therefore was limited mainly to the severe economy measures necessary for the systems continued existence. A few general policy initiatives were also recommended, such as the pooling of contracts under a scheme of combined purchase, and the sale of labourers' cottages to occupants. ⁹

The unsettled conditions caused problems for both the Irish and British administration in ensuring an adequate level of auditing and accountability in local authorities. The boards of guardians had always been under tight central control. An inspector of the Local Government Board attended their meetings and was, as Sir Henry Robinson, himself a former Inspector, stated 'the eyes and ears of the Government.' ¹⁰ Around 1921 the ¹Dail Department of Local Government appointed its own inspectors and auditors to 'supervise local authorities and their officers in one, two or more counties. ' ¹¹ They were the 'mouthpiece of the Central Department in that area.' ¹² An inspector attended most of the meetings of the local authorities in his district and his advice was usually followed. Even the files on technical and professional appointments were given to him. Often the inspector interviewed the applicant. Thus the former tight control once exercised over the poor law guardians was now extended to all local authorities by the new Provisional Government. However, as ¹Seán Mac Craith, a former Inspector, stated:

There existed between the local authorities, the inspector and the Central Office in Dublin an

enthusiasm and cooperation unparalleled in local administration and which were but the overflow of the united spirit and effort of the pre-1922 period for an independent Irish Ireland. ¹³

In May 1921 the Second Dail proposed the adoption of the County Schemes by the county councils. These involved the abolition of the workhouse system and the poor law guardians which for over eighty years had been associated with complete destitution. Because 'the memory of the degrading, unnatural and often unchristian conditions attendant on the early administration of those laws remained in the minds of the people' ¹⁴ there was a 'subconscious, automatic antagonism against co-operating' ¹⁵ in the administration of this function. The abolition of the workhouse system had been suggested in 1906 and 1909 by Royal Commissions, and again, in the Democratic Programme of the First Dail. In the early 1920s the need for financial stringency decided the issue. This was outlined by Kevin O'Higgins, in Dail Eireann, in 1920. ¹⁶ Local councils were ordered by the British Government to pay out of the rates decrees for malicious damage amounting to 'about ten or twelve million pounds,' ¹⁷ otherwise grants amounting to 'one and a half million pounds' ¹⁸ would not be paid. As a result Kevin O'Higgins stated that 'we ordered the Local Authorities to function thenceforward under the auspices and supervision of the Local Government Department of Dail Eireann.' ¹⁹ To ensure payment of the decrees the 'British Local Government Board began a campaign of garnishing the funds of local authorities.' ²⁰ To prevent this some local bodies opened new secret accounts in the names of two or three trustees. To overcome the loss of one and a half million pounds Kevin O'Higgins stated:

We looked around to see whether or not there was scope for retrenchment and economy and we found a

good deal of waste and a moderate amount of corruption existing in the Local administration of the country ----. There were unions in the country where the staff outnumbered the inmates ----. 21

The County Schemes drafted by the appropriate inspector were expected to achieve the necessary economy. On them Kevin O'Higgins stated:

Certainly, any Government in normal times and without the general excuse which the financial shortage provided, would have found it very difficult to carry out these schemes ----. 22

Another economy measure was the establishment, in December 1921, of a Combined Purchasing Department in Dail Eireann 'with a view to obtaining supplies in the best and cheapest wholesale market.' 23

On 6 December 1921 the Treaty with England was signed. It was ratified by Dail Eireann on 7 January 1922. When the Dail met under Arthur Griffith on January 10 Eamon de Valera and his followers walked out. After the election the Civil War began on 22 June and lasted until 24 May 1923. Local Government financial problems increased with the outbreak of the Troubles and the almost total breakdown in rates collection and the failure of some councils to carry out their duties. In the Constitution of 1922 which had just been adopted no mention was made of the position of local authorities. In the three drafts that were considered only one dealt with local institutions. But this 'was not seriously considered by the Provisional Government or its advisors.' 24

1922 - 1932 CUMANN NA NGAEDHEAL GOVERNMENT.

Mainly due to financial constraints a number of changes occurred in these early years leading to a more centralised system and setting local government in the cities on a more business like basis. In addition, changes in living conditions led to proposals on financing housing and on town planning.

During this period, also, the Labour Party suggested its policy proposals. It intended 'to use the powers and machinery of Local Government towards attaining the objects defined in the Constitution of the Irish Labour Party and Trade Union Congress' ²⁵ that is,

To recover for the Nation complete possession of all the natural physical sources of wealth of this country. ----

To secure the democratic management and control of all industries and services by the whole body of workers, manual and mental, engaged therein in the interests of the Nation and subject to the supreme authority of the National Government. ²⁶

The Party believed that some of the proposals to achieve this policy could be implemented within the then laws and regulations governing local authorities. Others would, however, 'depend upon the amount of power in the peoples' hands to enforce their will ----.' ²⁷

The suggestions put forward were:-

- (1) joint action to establish productive undertakings and promote electricity power schemes, provision of house building material, banks, insurances etc..
- (2) encouragement of co-operative schemes.
- (3) development of natural resources.
- (4) maintenance of record of food supplies, encouragement of tillage, establishment of municipal cooked food depots, and compulsory acquisition of land if unreasonably withheld.
- (5) provision of gardens for workers.
- (6) closing of insanitary houses.
- (7) establishment of a central council to advise and co-ordinate local bodies.
- (8) discontinuance of corruption and waste.
- (9) selection of subordinate officials jointly by workmen and employing authority after passing a qualifying examination.

(10) free education at all levels.

(11) build and equipt libraries and gymnasia.

Other than the central council no mention was made of rationalising the structures or modernising the law. However, it was not until 1948 that a Labour member became Minister for Local Government. Possibly because the Labour Party saw a use for local government in attaining the objectives of the Party one of its members, Deputy William Davin, when speaking in Dáil Éireann about the action to be taken against rates defaulters stated:

----- I believe Local Government administration is the very prop upon which the administration of the national government depends, and if you let local government administration on this and any other areas collapse, then I believe we are wasting our time here in trying to carry on the national government in this country. 28

The newly recruited inspectorate staff of the Department 'enthusiastically and relentlessly pursued their aims of economy and reform.' 29 One of them, Sean Mac Craith, also noted the existence among local authorities of a 'rivalry and race for low rates.' 30 However, difficulties in collecting revenue continued to be experienced. On 28 February 1923 the Minister for Local Government outlined the financial state of the country:

In certain cases local authorities have not carried out their duties at all. In the case of County Kerry the Council has not met since June ----. The administration ---- has been carried ---- on by officials. The rate collection is practically at a standstill. 31.

To deal with the matter he proposed the appointment of commissioners to carry out the work of local authorities. He stated that this power

----- is not a power that will be lightly or readily used. It is a power which, from the use of it, the central authority or Minister responsible will naturally shrink. He is bound to incur an enormous amount of criticism. 32

But so long as the unsettled conditions remained WT Cosgrave saw the need for this form of control. He said:

---- if the circumstances do not materially change it would be in the interests of the local authorities that there would be a central and a strong authority until the local representation is of such a character that it can be depended upon to properly administer the funds raised from the rates. ³³

Thus, both 'ministers and higher civil servants were less committed to local democracy than to notions of rectitude and efficiency.' ³⁴

The legalisation of the County Schemes and the power to appoint commissioners were embodied in the Local Government (Temporary Provisions) Act, 1923. The County Schemes provided for the 'amalgamation of poor law unions in each county; the establishment of a central poor law authority to whom were transferred all the powers and duties of boards of guardians under the Poor Relief (Ireland) Acts, 1838 to 1914'. ³⁵ These Acts comprised twenty-seven in all. However, it was not until 1929 that proposals were made to consolidate them in one Act. This did not happen until the Public Assistance Act of 1939 was passed.

The County Home, the County and District Hospitals were established to replace the workhouse. During the Civil War union amalgamations continued. However, in 'other fields of local administration little advances could be made for some time.' ³⁶

In the Ministers and Secretaries Act, 1924 the importance of public hygiene was recognised with the new designation 'of the Department which from 21 April 1924, became the Department of Local Government and Public Health replacing the former title of the Ministry of Local Government----'. ³⁷

Shortly before this, in mid 1923, a recommendation was made to abolish the 161 rural district councils outside Dublin in a new Local

Government Bill. The reasons for it were

- (1) the needless expense of having an election.
- (2) that they were not required and there was 'no objection to their extinction except that proceeding from a few interested clerks.' ³⁸
- (3) that there was 'no incentive for bona fide candidates to go forward and every crank and impossibilist in the country will get a platform.' ³⁹

Again on 13 May 1924 this proposal was thought 'urgently necessary for efficiency and economy' ⁴⁰ and it was included in the Local Government Act, 1925.

It is doubtful that there was, in general 'no objection' to the extinction of the rural district councils, as

- a Conference of the Irish Farmers Union on 7 February 1924 decided '---- that the proposal to abolish district councils was a retrograde step, and anti-democratic ----.' ⁴¹

- JJ Horgan, advocate of the city management system, stated in 1928:

I do not think the abolition of the rural district councils was a wise step. It seems to me that it would have been better to retain them as advisory bodies. ⁴²

- Neil Collins noted on this provision of the 1925 Act that 'Many protests ---- were heard from urban district councils.' ⁴³ In addition he stated that the

---- Labour (Party) ---- attacked the Cosgrave governments' abolition of rural district councils in 1925 because it said this would deprive the people of democratic control of local affairs. ⁴⁴

This Local Government Act, 1925 dealt with the following:-

Part I Abolition of Rural District Councils.

Part II Public Health. This part unified the rural districts into one county health district under the board of health. It

exercised the sanitary functions of the county council. In addition in all counties except Cork and Waterford the board acted as the poor law authority. In these areas it was known as the board of health and public assistance. The board was elected from the county council but was not under its control. Provision was made for the appointment of a county medical officer of health to administer the health services throughout the county health district. In the case of sanitary administration

----- a substantial advance was ----- achieved in introducing a uniform system ----- by withdrawing the principle of local adoption from a number of useful Public Health Statutes ----- and extending their operation, generally throughout all parts of the Saorstát. 45

This part of the Act did not extend to Dublin City and County as their services, as will be seen later, were under consideration by the Greater Dublin Commission.

Part III Roads.

Part IV Superannuation etc..

Part V Miscellaneous and general matters. These related to, for example,

- committees.
- meetings.
- disqualifications of members.
- libraries.
- acquisition of land.
- delegation of powers. Under this heading the council could delegate to a manager or commissioner its functions. This, however, was never done.

- adding urban district to county health district.
- power of dissolution.

While this Act made great advances in public health reorganisation the following account of the position by the Department of Local Government and Public Health was an over-statement. According to it the 'Local Government Act 1925, made changes in the machinery and practices of local government so far reaching as in effect to establish a new system.' 46

With the concentration of detailed work in boards of health a Conference of inspectors and auditors 'advocated the transfer to County Secretaries and Town Clerks power to deal with such, but the idea did not find favour at the time with the higher executives of the Department.' 47

In the mid 1920s no major changes took place other than the legalisation of existing proposals. The Civil War following independence resulted in death and division among people who once fought together for Ireland. It left a feeling of depression around. As Sean Mac Craith stated:

With the passing years, Local Government fell into grooves and the red tape (often so necessary) crept in. The necessity and wish for revolutionary reforms was no longer felt. 48

This was, also, pointed out by JJ Horgan in 1928:

The present government has so far, in spite of some tentative and courageous experiments, made no attempt to decide or indicate what it is seeking to do in this department of national life; ---- preferring to deal with difficulties as they arise rather than to lay down a settled policy. 49

Reforms in some areas did occur. In 1926 the combined purchasing scheme was legalised in the Local Authorities (Combined Purchasing) Act, 1926, and the Local Appointments Commission was set up under the

Local Authorities (Officers and Employees) Act, 1926. When the Electricity Supply Board was set up in 1927 a number of local electricity undertakings run by some local councils transferred to the new Board. The Local Elections Act of the same year provided that the urban and county elections would be held on the same day. Provision was, also, made for the date of the annual meeting. The main change, however, was the introduction of city management in Cork and Dublin.

The power of dissolution had been used frequently in the 1920s. According to Desmond Roche '---- a total of twenty bodies were replaced by Commissioners in the first three years of the new regime.' ⁵⁰ The first to go were Kerry and Leitrim County Councils. Later Dublin City Corporation and County Council, Cork Corporation, Trim and Ennis Urban Districts were dissolved and Commissioners appointed instead. As a result a number of Acts in the 1920s dealt with the dissolution of the various local authorities and the postponement of the local elections. The Minister at the time must have been aware of opposition to postponing the elections. Col. G O'Callaghan Westroff noted at a Farmers Union meeting in 1924:

On the eve of the date on which the elections should have been held the Minister of Local Government sent down to his county a direct labour scheme binding the Council for the next three years, and proposing to pay wages which were 200 per cent, over the pre-war rates, whereas the cost of living only stood 78 per cent, over pre war rates. ⁵¹

In the case of Dublin City and County a Greater Dublin Commission of Inquiry was appointed on 4 July 1924 'to examine the several laws and the practice affecting the administration of local and public utility services, including local representation and taxation ----.' ⁵² This, according to Neil Collins

---- represented something of a success for a body

calling itself the Greater Dublin Movement which had been advocating the need for reform.----. ⁵³

Its Chairman Professor William Magennis of University College, Dublin, 'dominated his committee.---- As a result the report was largely his own work based on the submission of the Greater Dublin Movement.' ⁵⁴ The Greater Dublin Commission of Inquiry reported on 29 November 1926 and recommended:

- (1) the city management system for the whole City and County area.
- (2) the extension of the County Borough by the addition of a number of urban districts and part of the rural area.
- (3) the amalgamation of a few of the coastal urban districts.
- (4) the constitution of a 'Great Council' to administer the common functions of the new enlarged County Borough and the amalgamated urban districts.

However, to see how the management system would work it was applied first to the smaller City of Cork by the Cork City Management Act, 1929.

Cork Council had been dissolved and a commissioner appointed. A Cork Solicitor, John J Horgan, advocated a city management system. He 'founded a civic reform body called the Cork Progressive Association which helped to bring about the dissolution of Cork Corporation in 1924.' ⁵⁵ Then he 'followed up this victory with vigorous pressure for the adoption of a commission-manager plan, modelled closely on American ideas.' ⁵⁶ In January 1928 the Minister for Local Government and Public Health, General Richard Mulcahy visited Cork 'to work out a plan for the city which would compromise between commissioner rule and the return to the pre-dissolution system.' ⁵⁷ The former councillors wanted a democratic element included. Indeed in July 1928 John J Horgan noted about Dublin and Cork:

These cities have been administered by Government

Commissioners for some time. Whilst the result has proved conclusively that one or two disinterested persons can competently and quietly manage a city's affairs, it is nevertheless obvious that the complete lack of local control or advice, the resulting centripetal tendencies, and the abolition of all civic ceremony prevent this system from becoming a permanent institution in its present form, unless indeed local government as such is to cease to exist. ⁵⁸

A committee of representative citizens asked him to draft a scheme for the future government of Cork, and 'this scheme after discussion and modification was finally adopted by the government of the Irish Free State.' ⁵⁹ On the management system, he said:

Although ---- chiefly influenced by American and German experience ---- it is not a slavish copy of either ----

The Lord Mayor will be in effect the civic head and the mouthpiece of the Council and the citizens, the city manager the administrative controller of the city machinery. ⁶⁰

When it was decided to introduce this Bill in Dail Eireann the Ceann Comhairle Michael O'hAodha objected to the use of a public Bill for the interests of a particular locality. He said:

---- legislation effecting a change in the system of local government in the boroughs should not be proceeded with piecemeal, that is to say, there should not be one Bill for Cork, another say, for Waterford, still another for Limerick, and so on. Such procedure would in time to come, intensify the difficulties of codification. ⁶¹

Because of this he requested the President of the Executive Council to refuse leave to introduce the Bill. He said:

If the Bills became Acts, each Act might conceivably impose on each area systems differing somewhat from each other, and perhaps all different from the national scheme of local government. ⁶²

His suggestion, which would have helped to alleviate the complications of local government law, was listened to only for a while. In February 1927 the Secretary of the Department of Local Government and Public

Health stated that the Cork Bill was unlikely to be proceeded with as the 'Minister ---- has in mind a special Bill to alter the form of management of County Boroughs, other than the City of Dublin.' ⁶³

However, by 7 June 1928, possibly influenced by pressure from Cork City, the Department of the President told the Attorney General that the 'Executive Council have accorded Priority 1 for drafting purposes to a Bill ---- for the Management of Cork City ----.' ⁶⁴ On 22 June 1928 General Richard Mulcahy asked leave to introduce the Cork City Management Bill in Dail Eireann. This measure became law in 1929.

Besides the management system it also reduced the size of the council to twenty-one members.

In 1930 the management system was applied to Dublin in the Local Government (Dublin) Act, 1930. This Act, also reduced the number of members of the City Corporation to thirty-five. Thirty were ordinary members while five were commercial members representing commercial interests in the City. Supporting the extension of city management to Dublin and Cork the Department of Local Government and Public Health stated that:

---- there had been a growing body of opinion that public responsibilities for City government should rest on persons easily identifiable rather than collectively on a group where individual obligations became uncertain. ⁶⁵

However, during the passage of the 1930 Bill through Dail Eireann

Sean Lemass stated:

The proposal to establish a managerial system in Dublin has probably provoked more opposition than any other proposal in the Bill. Every section in the community* has expressed its objection to this proposal. ⁶⁶

The reason for this opposition was due to the experience gained from Cork. On the operation of the management system there he stated that it

---- has destroyed all public interest in the activities of the Cork Municipal Council; the operation of that system there has resulted in an average attendance of members at the meetings generally less than fifty per cent. ⁶⁷

Although the management system was requested by the people of Cork City after its implementation it soon ran into difficulties. The Cork City Management Act, 1929 Section 8 specified the reserved functions, which could be extended by order of the Minister on the application of the council by resolution. At least two-thirds of the members had to pass this resolution. This provision was possibly included to act as a safeguard so necessary powers would remain under the control of the council. Section 10 made Philip Monahan the first County Manager. Future managers were to be appointed by the council on the recommendation of the Local Appointment Commission. The Act placed a duty on the manager to give the Lord Mayor any information in his possession he requested and to advise and assist the council generally. Section 13 gave the manager the right to attend meetings of the council. However, he had to attend the estimates meeting. There he could object to any proposed amendment of the estimates of expenses where he thought it would seriously prejudice the efficient or economic performance of the duties of the Corporation. In ~~which~~ ^{this} case the proposed amendment could not be considered until after the expiration of fourteen days.

Defects in the system were soon found and the new Manager rigidly used the powers bestowed on him.

Firstly, other than the estimates meeting the manager was not required to attend meetings, or to ensure his staff, especially technical staff, attended.

Secondly, he was not obliged to give the council as a whole any information in his possession. Sean Mac Entee cited a case ⁶⁸ in Cork

where the members requested Philip Monahan to let them consult with the engineers directly on a proposal before them and he refused. Thirdly, he was not obliged to carry into effect the reserved functions and there was no power given to the members to enforce him to do what they asked.

Fourthly, he could delay the adoption of the estimates until his wishes were followed.

On the Local Government (Dublin) Bill 1929 Sean Mac Entee stated:

This Bill is the very ^{de}defecation of bureaucracy. Under it not only the manager, but the heads of the various administrative departments of the city, are going to be fringed by a divinity which forbids the lowly, ~~x~~ Corporator to have access to them.⁶⁹

However, the majority of Fianna Fail, including Eamon de Valera, were not against the management system as such but the form it was taking.

As Sean Lemass said:

We agree that the administrative and legislative functions of the Corporation should be divided and given respectively to a City Manager and the elected council, but we want to see a proper division, what is more than that, we want to see the chief-executive officer of the Corporation subordinate to the elected representatives.⁷⁰

The 1930 Act alleviated for Dublin some of the difficulties found in the Cork City Management Act. In addition, an amendment in 1941 to this latter Act placed a duty on the manager to attend the meetings of the council when requested. He also had to ensure the appropriate staff attended. However, most of the objections to the city management system voiced by Fianna Fail during the Dail debate on the Local Government (Dublin) Bill, 1929 were not finally dealt with until the mid-1850s and passed, as will be seen later, into law in the City and County Management (Amendment) Act, 1955.

The Act passed for Dublin in 1930 made the existing Town Clerk,

Gerald Sherlock, the City Manager and Town Clerk. The first three defects cited above were dealt with in this Act. In the case of number four the members could decide at the particular estimates meeting to make the amendment or adjourn the meeting for not less than fourteen days. In addition the number of members required to pass the resolution to apply to the Minister for extension of the reserved functions was reduced to half the total number of members. This Act also extended the City by taking in a number of urban districts - Rathmines, Rathgar, Pembroke and parts of the rural area. The Borough of Dun Laoghaire was established by consolidating a number of coastal urban districts. The Greater Dublin Commission of Inquiry's proposals for a Central Council was not included. The Department of Local Government and Public Health 'it is understood rejected this proposal on the grounds that there would be grave administrative difficulties in carrying out such a scheme.' ⁷¹ It also extended to Dublin City and County the Local Government Acts 1925 to 1927. This led to the abolition of the rural district councils and the formation of the Dublin Board of Assistance, the Rathdown Board of Assistance and the Balrothery Board of Assistance.

Alongside the dissolution question was the rates problem. As already seen, a Committee representative of Finance, Agriculture and Local Government and Public Health, had been appointed in March, 1924. By 1929 a Commission of Inquiry had, also, been established. Two years later, the successors of the Farmers Party the National Centre Party called for the derating of agricultural land. In May of that year Ernest Blythe, now Minister for Finance, proposed an addition of £750,000 to the Agricultural Grant. To prevent the relief being 'neutralised' he proposed to make substantial alterations in the system

of local government to avoid over-spending. These included:

The work of the boards of health will be drawn in to the county councils, the size of which will be substantially reduced. At present even when a Council has only a normal number of wind-bags, the whole time of the meeting is frequently wasted on a few unimportant items ----.

It is proposed to introduce a managership system for counties somewhat similar to that in operation in Dublin and Cork. ⁷²

Eamon de Valera wanted one million pounds relief, to be paid for out of 'land annuities going out of the country.' ⁷³

However, as Desmond Roche pointed out:

An acerbic reference to the need to curb council 'windbags' gave great offence. But the plan was still-born: the government fell a few months later. ⁷⁴

As already seen in the chapter on finance, increases in the Agricultural Grant were made to alleviate some of the anomalies of the valuation system.

In the case of the non-health services, some changes in this period did occur. In 1930 the Department of Education proposed the retention of the 'practice of administering technical education through committees' ⁷⁵ This led to the Vocational Education Act, 1930.

A private Bill - the Town Planning and Rural Amenities Bill, 1929 - was introduced in the Seanad by Thomas Johnson and later led to the State sponsored Town and Regional Planning Acts 1934 to 1939.

Some Acts were also passed in this period in the area of housing. Chief among them was the Housing (Miscellaneous Provisions) Act, 1931. It included provisions for dealing with an 'unhealthy area'.

Even the call for some form of codification of local government law was made then. Liam Raftis said in 1928:

---- it would be a great improvement if all the laws

relating to local government were codified, and that future alterations should be made only by the passing at, say, the beginning of each year of a Local Authorities Act, so that the code and the yearly alterations of it would stand in concise form as the local bodies charter. 76

He was not, however, against the use of ministerial Regulations. He stated that 'done as it is, in a reasonable way, it is much less expensive than interpretation by the Law Courts in case of doubt ----.' 77

But, among officials at a Union Conference in 1929 division existed on the issue of standardising of local government law. A representative from Cavan proposed a motion that:

---- the Government ---- should appoint a commission to inquire into the whole system of Local Government and recommend improvements particularly in regard to the co-ordination of the different services, the standardisation of all forms and documents, as far as possible; ---- the codification of the law ----. 78

This was rejected by a representative from Rathmines, who stated:

The terms co-ordination and standardisation, to his mind savoured somewhat of stagnation ----. He believed standardisation did destroy initiative and had the additional disadvantage of making officials too automatic in their official procedure ----. 79

As the matter was likely to cause a heated argument it was referred to the Central Council of the Union for consideration and ended there. Two reasons are possible for the rejection of this motion. Firstly, it is said that the Dublin area personnel like to see themselves leading in new proposals. Secondly, and more important, uncodified laws does not effect a large local body to the same extent as a small authority. In bodies such as Dublin Corporation specialisation occurs while, for example, in smaller urban districts mid to senior grades need a good working knowledge of the whole range of laws applicable to local government. No codification of the law took place, however.

In March, 1932 a new Fianna Fail Government took up office.

In this period, although local councils played a major part in achieving independence, the tight control once exercised by the British Local Government Board over the guardians was continued by the new Free State Department of Local Government and Public Health. This was due not only to the financial state of local authorities, but possibly the uncertain conditions following the Civil War and the fear of the Labour Party's intentions for local government. In fact 'the central authority ---- closely examined, supervised, questioned and controlled the decisions and work of the local authorities.' ⁸⁰ In addition, commissioners were appointed for local authorities who failed to carry out their duties.

County Schemes and the combined purchasing schemes were made permanent and embodied in legislation. The next major change was the abolition of the lower tier of local government, that is the rural district councils. Again this was seen as an economy measure. In the mid-1920s, with the feeling of depression around, the only major change was the setting up of the Local Appointments Commission. Before the end of the period the city management system was introduced, first in Cork in 1929, and then in Dublin in 1930. It soon ran into difficulties, however, in Cork which were ~~exacerbated~~ ^{underlined} by the authoritative style of the first Manager. On the other hand Gerald Sherlock, in Dublin, operated differently to his colleague and never became city manager in anything but name.' ⁸¹

Central-local relations in the period of the Cumann na nGaedhael Government were best described by John Collins, a former Secretary of the Department of Local Government, when he stated:

The older conception of the local authority as master of its own house gave way to a dual system of a central-local partnership----. The predominant partner in this new duality

was obviously the central authority insisting on the local body giving effect to the will of the Oireachtas as expressed in a multitude of statutes. 82

The developments in the poor law system, public health, housing, and technical education were imposed on local authorities 'as inescapable duties in which they had only limited discretion as to expenditure. Neglect or recalcitrance on the part of local bodies could be met and was met by the expedient of dissolution.' 83

1932 - 1948 Fianna Fail Government..

This period saw proposals for

- (1) the eventual abolition of local government which later developed into the extension of the management system.
- (2) a lower tier to local government or, at least, an input from community level which never materialised.
- (3) reform of some particular areas, that is
 - Finance - especially the valuation system.
 - consolidation and reform of rates.
 - more detailed accounting procedures.

Functions- housing legislation.

- regional planning.
- tourism functions transferred to central body.
- rationalisation of health services in county authorities and the setting up of the Department of Health.

The first concern of the new Government was in the area of housing. It is here that Fianna Fail are best noted rather than for the reform of legislation. In a radio Broadcast on 17 March 1932 Eamon de Valera said:

The slums of our cities are still a disgrace to us.
The problem of their complete elimination will be

studied at once, and I hope to be able to propose definite plans at an early date. 84

The Housing (Financial and Miscellaneous) Provisions Bill 1932, provided for increased subsidies and grants. In addition, Section 18 gave the Minister power to require the local authorities who failed to perform their housing duties to do so within a specified time. If they still failed he could invest himself with the power. Later, in 1936 the Labourers Act provided for the sale of cottages to tenants.

On 1 May 1933 the Department of Industry and Commerce issued proposals to amend tourism legislation. It noted that local authorities had powers under Section 67 of the Local Government Act, 1925 to expend a limited sum on advertising the advantages of their districts and contributing to the funds of an association. It stated that the 'Minister is satisfied that the most efficient and economical method of conducting tourism propaganda is through a central organisation.' 85 This proposal led to the repeal of Section 67 in 1931 and the establishment of a central organisation which later became Bord Fáilte.

One of the first efforts of the new Minister for Finance, Sean Mac Entee was to deal with the valuation question. When the British Land annuities were withheld the Economic War started. The issue dragged on until 1938 when finally the inadequate Valuation Bill 1938 was introduced in Dail Éireann but failed to get passed. The only changes in this period were further reliefs through the Agricultural Grant. Some amendments, as will be seen later, did occur in 1946 in rate accounting and collection.

The fall in agricultural prices during the early 1930s and the inability to sell produce caused difficulty in increasing rates as it would put an extra burden on the farmers. To reduce local expenditure the Government proposed to cut the wages of local officers. Obviously,

this was vigorously opposed by the unions. As Sean T. O'Kelly pointed out it 'was not a popular measure in the country' ⁸⁶

In 1933, the idea of extending the management system arose. Limerick Corporation unanimously decided to 'seek legislative powers to make the future administration of the City to be conducted on lines similar to the city management system now in vogue in Cork and Dublin.' ⁸⁷ Earlier in September, 1932, the Minister ordered an inquiry into the powers, duties and obligations of the Corporation and the Board of Health. The Cabinet agreed to promote the Bill which became law on 6 September 1934 as the Limerick City Management Act, 1934. This Act included provisions like those in the Local Government (Dublin) Act, 1930. It also reduced the number of councillors from forty to fifteen and abolished the eight wards and instead made the City one electoral area. A new fund and a new consolidated rate known as the Municipal Fund and the Municipal Rate were created.

On the extension of the management system to the counties 'curious developments arose'. ⁸⁸ It is not quite true to say as Desmond Roche stated that 'de Valera had, in 1931, announced his party's opposition to the idea of extending management to counties ----.' ⁸⁹ He was only opposed, as already stated, to the actual form of management introduced. That, he said in 1931, 'We are going to oppose strenuously----' ⁹⁰ The chief reason was that he objected to the reduction in the number of members. He himself stated on the debate on the Cork City (Management) Bill, 1928:

Speaking for myself ---- I may say that the general idea of separating the deliberative functions from the executive powers. appears to me to be a good one. It is an idea that I, personally, thought might be applied to a much wider sphere than merely to a sphere of city government. ⁹¹

On the question of local autonomy, he said:

---- the power of the purse ought to be definitely retained by the people's representatives.

---- I think the Department ought to interfere as little as possible with the conduct of local affairs. 92

and again, in 1931, he stated:

I think that, on general principles, it is very much better that we should devolve upon local bodies to the greatest possible extent the right to govern themselves and to take measures for their own welfare. 93

These ideas, as shall be seen later, were not always followed.

In the same year Sean T O'Kelly was aware that some officials in the Department of Local Government and Public Health wanted the abolition of local government. He said:

I think it is evident to everyone in the House that the policy of the Department has been for years, and probably will continue to be as long as the present powers remain in control, to have as great contempt as possible for local authorities and to undermine steadily, and finally abolish local authorities. 94

Because of this he was against postponing the local elections in the early 1930s. He stated:

I agree ---- that occasions might arise when local authorities might have to be severely dealt with by central authority in control of public local administration, but I doubt if any occasion has arisen and will arise that would justify the total abolition of the public authority. 95

Yet when Sean T O'Kelly was Minister for Local Government and Public Health proposals for the eventual abolition of county government were made but withdrawn by him. The events are as follows.

On 11 October 1933 the Assistant Secretary of the Department of the President, Michael Mc Dunphy, wrote to the Department of Local Government and Public Health requesting the Minister to

'submit proposals for the amendment of the Local Government Acts so as to provide for the adoption of a managerial system.' ⁹⁶ In addition he wanted the local elections further postponed to allow time for the enactment of the requisite legislation. In fact that month in the journal of the Local Government Officers Union, 'The Local Officer', it was reported that 'it is rumoured in the daily papers that the Government are contemplating the introduction of a County Managerial Scheme.' ⁹⁷

A few months later the Private Secretary to the Minister for Local Government and Public Health, Neans de Paor, issued a memorandum entitled 'County Administration' which was circulated to the Cabinet ^{the} for a meeting on 23 March 1934 but was withdrawn by the Minister. It proposed:-

- (1) that the 'functions of ---- county councils shall be wholly advisory and they shall have no administrative or executive functions' ⁹⁸
- (2) on the appointed day when the councils cease to hold office the Minister was to nominate persons to be managers. They would include eight or nine members of the Inspectorate staff of the Department.
- (3) on the same day the powers, property etc. was to be transferred to the county managers, except Vocational Education Committees, Committees of Agriculture, and Old Age Pensions Commissions.

The reasons given for this reform were

- (1) the existence of a defective local government system. It stated that
 - (a) local councils were relics of British administration.
 - (b) local bodies were too expensive.
 - (c) most services were national in their import.
 - (d) there was an increase in central government finance to local bodies.

- (2) that the conduct of administration was unsatisfactory because of
- (a) the worthless and irrelevant political discussion at meetings.
 - (b) financial maladministration.
 - (c) failure to fulfill duties.
 - (d) the opposition to the Local Appointments Commission and the Combined Purchasing Scheme.

Further county managers were to be recruited through the Local Appointments Commission as young men aged from twenty-two to twenty-seven years who would serve as cadets and later if found suitable would rank for permanent promotion to county manager. It also stated:

The Department must ---- have the power to supervise closely all details of administration and the Minister must accordingly take powers of intervention in local affairs additional to those now exercised by him. 99

This extension of the Departments' powers 'would ---- be a corollary to the frankly expressed intention of effecting further reforms at a later date with a view to acquiring control and administration of all local affairs.' 100

Why these proposals to abolish county government appeared when Sean T O'Kelly was Minister, after he making it known that he was opposed to this attitude of some Departmental officials, is not known. But, Neil Collins noted:

Despite public silence on the issue, some reform of the counties was heatedly discussed at cabinet level by Fianna Fail, with the Minister Sean T.O'Kelly and de Valera expressing divergent views ----. 101

He further stated:

A Labour TD, William Davin, claimed in February 1935 that a bill had been drafted by the previous Cumann na nGaedheal government to extend the management system to cover the whole county. In June, the president of the Irish Local Government Officers Union said the plan had only recently been shelved by Fianna Fail. 102

Nothing further was done on this area until 1939. However, by the end of 1935 six county councils, urban district councils and town commissioners were dissolved and their functions run by commissioners. Thus,

Fianna Fail ---- were no less resolute than their predecessors and continued to dissolve local authorities for failing to meet centrally determined standards of performance. 103

Other problems beset the Government during this period which may have delayed reform. It was faced with the Economic War, and the Blueshirt movement, IRA violence and anti-rates campaign. In addition the Secretary of the Department of Local Government and Public Health, EP Mc Carron was removed from office in 1936. It was stated that the Minister could no longer rely on him to implement government policy.

In one area Fianna Fail did extend local democracy. On 29 March 1935 the Local Government (Extension of Franchise) Act, 1935 was passed and repealed the occupancy of premises provision. Instead it extended the local franchise to every citizen aged twenty-one years or over whose name was on the local elections register. The use of corporate members on Dublin Corporation, which was an unpopular idea, was abolished.

In 1937 a new Constitution was adopted but no specific mention was made of the position of local authorities. Article 12, however, mentioned 'administrative counties' for the nomination of presidential candidate, while Article 22 excluded local taxation etc. raised by local authorities from the definition of a Money Bill. 104

A Tribunal, which was set up on 17 July 1935, to assess the 1930 arrangements in Dublin, reported in 1938. It recommended:

---- a single metropolitan government for Dublin City and County, including Dun Laoghaire and the urban district of Howth ----. The report does not seem to have been welcomed by the government, though it led

to certain changes - unification of Dublin City and County Manager, and in 1940, the addition of Howth to the City.

This was included in the County Management Act of 1940. 105

On 23 May 1938 the Private Secretary to the Minister for Local Government and Public Health, Brian Nolan, better known as Flann O'Brien, sent proposals to the Secretary to the Government, Maurice Moynihan, on provisions of a County Management Bill, 1939. These included:

- (1) the establishment of a Corporation in each county and the transfer to the Corporation of the powers, functions and duties of the
 - (a) county councils.
 - (b) board of health.
 - (c) mental hospital committee officers.
 - (d) public assistance authority officers.
- (2) the election of a new council in each county with numbers determined by the Minister.
- (3) the incorporation of urban districts as boroughs and provisions for mayors and urban managers.
- (4) to empower the Minister to order a county manager to act as manager for any specific urban district.
- (5) the reserved functions of councils and executive functions of managers.

On 7 October 1938 Cabinet agreement was given to prepare Heads of a Bill dealing with the subject. A Department of Local Government and Public Health memorandum dated 5 October 1939 stated:

----- apart from the greater time and attention that local administration now requires there is a consensus of opinion that the necessary expenditure upon social services has given rise to problems of management which can only be effectively handled by experienced administrators. 106

In the meantime city management, along the lines of that in Dublin City, was extended to Waterford in 1939 by the Waterford City Management Act, 1939.

The following year the County Management Act, 1940 was passed, with provisions slightly different than in the Bill. No Corporations were established in the counties and urban districts, nor were mayors or urban managers to be appointed. This Act also abolished the board of health and public assistance (in most areas) and transferred sanitary and public assistance functions to the county councils. The first county managers were recruited, mainly, from existing county secretaries. In the case of future managers the Minister was empowered to request the Local Appointments Commission to select one person (otherwise than by competitive means) under the 1926 Act. The issues that caused difficulties in the Cork city management Act were dealt with on almost similar lines as in the Local Government (Dublin) Act, 1930, except,

- (1) the estimates meeting could only be adjourned for not less than six days, where^{the} manager disagreed with^{an} amendment made by council.
- (2) a new provision was included in Section 25 which empowered the members by resolution to exceed the expenditure for any particular purpose specified in the estimates. This in a way could be used by the council to overcome the above 'power of the purse' lost to the manager.
- (3) no power was given to the council to apply to the Minister to extend the reserved functions.

This 1940 Act could be said, therefore, to have increased central control by allowing the Minister appoint the manager. On the other hand, the manager as an official of the local authority was more likely to act in the interest of the local body than a civil servant inspector. In

addition the members were given increased control over expenditure. However, they wanted more power. According to Desmond Roche:

The manager was ---- not only an officer but a statutory part of the corporation, on the same level in law as the council. This proved to be too refined a concept for most Councillors, ----. 107

The main contentious issue in Cork was dealt with by the Cork City Management (Amendment) Act, 1941, Section 12. It placed a duty on the manager to attend the meetings of the council when requested and arrange for the attendance of other officers. In the counties the councillors met the Minister to explain their objections to the management system. In Dáil Éireann, also, he came under fire from some Deputies. The Department countered this attack by issuing a number of Circulars to the local authorities requesting them to co-operate. On 19 September 1944 a motion was moved in Dáil Éireann calling for the amendment of the management Acts. John Collins summarised the Government's attitude to this motion as follows:

They regarded the management system as part of a new evolutionary process that had been taken place since 1922; it was not their view that county management must stay without any amendment but before a final view be taken on the question it must be given a fair and extensive trial. 108

Possibly the Government believed that the management system was necessary with the growth in the details of administration. But differences still existed over the extent of adequate control in the members' hands, especially over expenditure, obtaining information and making the manager carry out the wishes of the council on general policy. To encourage prospective candidates to come forward and stand for the local elections, during the Emergency, the Department of Local Government and Public Health proposed:

An appeal to men and women of high personal standing and reputation for ability and integrity to offer

themselves as candidates ---- pointing out how the managerial system will relieve them of administrative labour and drudgery ----, though it will not relieve them of their final responsibility and power to control. 109

With the introduction of county managers it was decided to reduce the number of members on the various local authorities, as already done, in the county boroughs. The proposal was to be included in a new Local Government Bill, 1939, which became law in 1941. It provided for various minor amendments to legislative provisions ranging over the whole local government area. These related to:

Part I Preliminary and General.

Part II Expenses of Certain Local Authorities. It consolidated the various rates.

Part III Officers and Employments under Local Authorities. It provided for the creation of offices and an appointment procedure for minor staff.

Part IV Construction and Reconstruction of Bridges, Viaducts and Tunnels.

Part V Miscellaneous Matters. These included, for example,

- voting at meetings.
- disqualifications of members.
- quorum.
- travelling expenses.
- traffic signs.
- maintenance of some bridges.
- band performances.
- changing name of area.
- financial matters.
- acquisition and disposal of land.
- local inquiry.

The problem of the growth of legislation was again raised. This time in the journal of the Local Government Officers Union. It stated, in 1933:

Since the establishment of Saorstát Éireann there has been a great volume of local legislation. Each year has brought its crop of Acts, and each Act its problems, which the official has to tackle in addition to the discharge of his normal duties. ¹¹⁰

The following year it called for 'an up-to-date Vanston'. ¹¹¹ It pointed out that for any administrator

the authority for any project and the procedure ordained by statute are merely the means to the end. The less time and attention he has to devote to these aspects of the matter, the more available for his special function - that of carrying the work into effect. ¹¹²

But as it is, it continued:

---- the Irish Free State official finds himself playing in turn the part of student, lawyer and administrator. Each new statute must be studied not only in itself but, also in its relation to previous legislation ----. ¹¹³

However, it noted that 'where a division of labour and specialization is possible as in the larger local authorities the problem is not so acute.' ¹¹⁴

Sean Mac Craith while noting that the grip of central control was considerably relaxed in the early 1940s also pointed out that:

---- to progress one must change, that Governments and the Ministers are too prone and ready to introduce new Local Government Acts, Orders and Regulations which make Local Services too complicated and difficult to keep peace with. ¹¹⁵

Finally, Sean Mac Entee and the Attorney General requested HA Street to compile a book on local government law. In this work, completed in December 1954, HA Street stated:

A static law of local government is neither possible nor desirable, but having evolved since 1898 by a process of addition and subtraction it should be halted for a moment and abridged. Another Pelion is arising upon Ossa as I write; it would have been

far better if necessary alterations had been incorporated with a summary of the surviving law. 116

Nothing became of this proposal. His book 'The Law Relating to Local Government' became an important source of reference on local government legislation, even to this day.

Basil Chubb noted that after independence 'the trend to grass roots authorities were reversed, a process that has continued ever since.' 117 In late 1939 attempts were made to provide for a lower tier or parish level council. However, administrative difficulties in reconciling parish areas with existing local government geographical divisions arose. On 29 September 1939 Eamon de Valera stated:

---- one of the arrangements I would like to see applied in the way of social organisation at the present time would be to organise every parish which is the natural community of our people. 118

But, according to Captain Nolan of the Ordnance Survey Office

---- the Ordnance Survey was not in a position to trace the boundaries of ecclesiastical parishes. He was aware, however, that in many cases the boundaries were not confined within the one county. 119

In addition, the Department of Local Government and Public Health memorandum entitled 'The Parish as a Local Government Unit' stated:

In considering the parish as a local government unit, the term "parish" requires elucidation. In the whole of Ireland there are 2,428 civil parishes, 1,111 ecclesiastical parishes and 3,673 District electoral divisions. These three units are thus quite different units ----.

Without definite information as to the boundaries of parishes it cannot be said whether they can be reconciled with Electoral Divisions or even townlands. Rating is on the basis of valuation, and it would be an enormous task to reconstitute District Electoral Divisions so as to make them constituent parts of parishes. It would take years to do if parishes crossed townland boundaries as the whole system depends on the townlands and the records of that area, in fact it would be preferable to adjust the boundaries of parishes. 120

Therefore no use was made of the parish as a local government unit. However, voluntary parish councils were encouraged, especially during the Emergency. In the Local Government Act, 1941 as amended in 1955 provisions were included for the county councils and county borough corporations to assist and delegate functions to approved local councils. As the Minister for Local Government and Public Health, PJ Rutledge, said in 1940:

It will be a great advantage to the statutory body to have at hand councils that can be consulted and whose local knowledge will be of advantage in dealing with local questions.¹²¹

However, a motion put forward in the Seanad the same year to establish parish councils in the rural areas on a permanent elective basis, similar to the English parish councils and with the parish meeting once a year, was rejected by the Minister. The provisions in the 1941 and 1955 Acts, though still applicable, were seldom used.

Similar problems also existed, as will be seen, in using the parish divisions as polling districts. Although problems occurred in establishing a lower tier to local government the importance of a local government system was again outlined in Dail Eireann. This time by a member of Fianna Fail, Sean Mac Entee, who, in 1942, in a proposed appeal to the public on the forthcoming local elections said:

The appeal might emphasis ---- how even more important the functions of those authorities and the responsibilities of their members will become should our neutrality be violated by the invasion of our territory. If that happened, those local authorities would be again what they were about 20 years ago, the rallying points of public opinion, buttresses of the national authority, and administrative centres of vital importance to a people striving to maintain organised government based upon national freedom.¹²²

On these local elections it was also noted:

- (1) that the 'chapel area' could not be used as a polling district as the boundaries of these 'chapel areas' are 'in some cases ancient

and not defined in terms of townlands, ' 123 but rather 'by reference to a natural feature such as a river or road, not separately identified in the Register of Electors which is prepared in alphabetical townland order.' 124

- (2) Sunday would not be suitable as a polling day. While it was thought that people in general would not object as 'regards the Christian but non-Catholic communities polling on a Sunday would be quite foreign to their concept of Sunday observance, and would be resented as such ----.' 125

With the growth of health functions it was proposed at first to delegate the functions of the Department in relation to health to a Parliamentary Secretary, later it was decided to divide the Department in two - one the Department of Local Government and another the Department of Health. Because of this central reorganisation it was decided to separate the health and welfare functions of the local authorities from the other local services. In September, 1945 a Report of a Departmental Committee on the Health Services proposed that a welfare service committee be set up in each county and county borough (with a joint committee in both Dublin and Waterford). The appropriate functions of the public assistance authorities, sanitary authorities and county councils would be transferred to them, and divided into reserved and executive. Expenses would be met from insurance monies, state grants and rates. It also recommended the establishment of three joint regional committees composed of representatives of the county and county borough councils. voluntary hospitals and other health agencies. Their aim would be to exploit every medical resource of the region. Again it was proposed to divide the functions into reserved and non-reserved. The latter was to be performed by a manager or

regional health administrator. An advisory council was also proposed to assist the Minister. These proposals, however, were never implemented.

In the same year a Public Health Bill made an attempt at consolidating health measures. The explanatory memorandum to the Bill stated:

----The consolidation into one Act of all the sanitary laws has been found impossible at present, especially having regard to the changes in the law which are required. ----

It is hoped to follow this Bill with other consolidating measures and ultimately to produce an up-to date measure including the whole code. 126

The Bill, in addition to dealing with health matters, included sanitary provisions regarding temporary dwellings, camping, water supply, drainage etc. The health matters would be dealt with by the county authorities while the other matters would remain with the sanitary authorities. A new expression the 'health authority' was included in the Bill to cover both sanitary and county authorities.

With the proposal to divide the Department in two it was decided, for legal reasons to withdraw the Public Health Bill and introduce two new Bills, one for health and another for sanitary matters. The health provisions were embodied in the Health Bill of 1947 and passed into law that year. The Irish Medical Association was opposed to this Bill because it increased the power of the manager. This was outlined by one county practitioner thus:

---- in health administration there is the local authority. The elected representatives of the people have no say whatsoever in the administration of health services. Instead, powers are vested in one man - the County Manager. Under this Bill this man will hold power in the area he controls ----.

He will have the right to decide in what hospital patients are to be treated. Any doctor working under the Bill must send his patients to that hospital, even if he knows in his heart that the patient can get better treatment in another hospital ----. 127

The Local Government (Sanitary Services) Act, 1948 embodied the sanitary provisions of the Public Health Bill proper to the Minister for Local Government. It dealt with drainage, water supplies, temporary dwellings and the use of land for camping, baths, washhouses and bathing places, the disposal of bodies of deceased persons and other miscellaneous provisions.

According to an official in the Department and from Cabinet file S13444
 Some complications occurred in dividing the legislation between

the two Bills and as a result the Health Bill mistakenly excluded certain matters, such as food and hygiene Regulations. Later when the health functions were finally taken from the local authorities these matters, proper for the new health authorities, remained with the local councils.

Central reorganisation actually resulted in three Departments. As Desmond Roche stated:

A new Department of Health took over in 1947, the supervision and direction of local and other services relating to personal health. Certain supervisory functions in connection with milk and meat were transferred to the Department of Agriculture early in 1948. And the Department of Social Welfare took over national health insurance, old age pensions appeals, widows and orphans pensions, school meals and a few other local services of a welfare nature. 128

On the one hand, in this period, attempts were made to abolish local government and make the councils advisory bodies, and on the other to establish a lower or parish tier to the system. If one takes Fianna Fail policies as those of its Leader, Eamon de Valera, he wanted representation from the parish level and more autonomy to the local area. Administrative difficulties foiled the first proposal, while on the second it could be said that the county management system introduced increased local autonomy. Although the manager was appointed by the Minister on the recommendation of the Local Appointments Commission he was an officer of the local authority and replaced the former civil

servant inspector who influenced local bodies. However, a major reduction in the number of members of the councils occurred.

County management, with the later reorganisation of health in county authorities, was opposed by the medical profession., possibly because its members saw their influence being reduced. The former boards of health, abolished in the early 1940s, were under the county medical officers of health. On county management it is difficult to understand Fianna Fail policy as the system introduced was actually a mid course between N. de Paor's first proposal of making councils only advisory bodies and the management system finally settled on in 1955 and which on the debate on the Local Government (Dublin) Bill, 1929 most Fianna Fail deputies wanted.

City management, as seen, had been requested by some local areas rather than imposed on them. One of the difficulties in Cork was dealt with in 1941, and it was ^{made} mandatory on the manager to attend meetings of the council if requested.

However, Fianna Fail are best known for their housing drive rather than legislative reform. Other than in health and sanitary matters, and in appointing minor staff, no major consolidation of statutes took place in this period. An 'up-to-date Vanston' book on local government law was begun. This, when completed, became an important source of reference and aid to local officials.

1948 - 1951 COALITION GOVERNMENT.

During this period 'the controversy over county managers came to a head'. ¹²⁹ The main idea, then, on local government put forward was a proposal to abolish the county management system in all areas, except the county boroughs and Dun Laoghaire, in the Local Government (County Administration) Bill, 1950. This Bill proposed that

- (1) county councils and urban district councils and other local bodies exercise their executive functions, except employment, tenancy and individual health functions directly through committees (that is executive bodies).
- (2) the 'scheduled functions' (that is mainly reserved functions) be performed directly by the county council or elective body.
- (3) the county manager became the county officer. (It was later proposed that the county officer be renamed the county secretary) and the county secretary the committee clerk.

It was expected that there would be wide powers of delegation of executive functions to county officers.

On 2 February 1949 the Department of Health disagreed with the proposals. It wanted local health administration separated from other local services and under the Department of Health. It was said that:

Literally, hundreds of pages of debate were entered into the record; in which all parties and most members had something to say. The very tempest which the ministerial circulars had sought to avoid raged intermittently in the National legislature. 130

The Bill lapsed, however, with the dissolution of Dáil Éireann on 7 May 1951.

1951 - 1954 FIANNA FAIL GOVERNMENT.

Three major Bills were introduced in Dáil Éireann but none became law in this period. These were

- (1) the Valuation Bill, 1953.

The revaluation issue, as seen, arose again but the only outcome was proposals for reliefs in this Bill.

- (2) the County Management (Amendment) Bill, 1953.

It provided for extending the reserved functions and thus giving the members more control but lapsed with the dissolution of the

Dail on 24 May 1954.

- (3) the Local Government Bill, 1953.

As will be seen later it contained numerous proposals relating to officers, roads, finance etc..

The Government was not long enough in office, however, to see any of these proposals through.

1954 - 1957 COALITION GOVERNMENT.

This period saw a continuation of the main proposals, with some minor amendments, of the previous Government.

After visiting each county the Minister amended slightly the County Management (Amendment) Bill, 1953 and it became law as the City and County Management (Amendment) Act, 1955. This Act increased the Councils' powers over the managers. In addition, in a number of instances, similar provisions were provided for counties and county boroughs. In particular the councils could now, according to a set procedure,

- (1) obtain information from the manager on his intended proposals.
- (2) direct him not to proceed with works.
- (3) require him to do a particular thing (that is Section 4).
- (4) adopt or amend the estimates. However, the estimates meeting or adjourned meetings must be held within twenty-one days of the first meeting.
- (5) exceed expenditure limit for any particular purpose specified in the Estimate of Expenses.
- (6) request the Local Appointments Commission to recommend a person for appointment as manager, and appoint ^{the} person recommended.

The Local Government Bill, 1953 became the Local Government Act, 1955.

It dealt with

Part I Preliminary and General.

Part II Offices and employments etc..

Part III Roads.

Part IV Provisions relating to Local Finance.

Part V Approved Local Councils in County Boroughs.

Part VI Miscellaneous matters, for example, swimming facilities,
decoration of area, museums, markets, meetings etc..

As Desmond Roche pointed out: 'the Act is little more than a rag-bag
of minor improvements ----.' 131

1957 - 1973 FIANNA FAIL GOVERNMENT.

During the first few years of the new Government no major changes took place. From the early 1960s, with Neil Blaney as Minister for Local Government and Sean Lemass as Taoiseach and the general feeling of the need for planning and growth in the country, began a period of consolidation of some areas of local government. In addition, White Papers and reports were published on specific areas of concern.

- The Local Government (No.2) Act, 1960 brought in a new and more flexible borrowing procedure.
- The Derelict Sites Act, 1961 updated the law on derelict sites.
- The Road Traffic Act, 1961 consolidated road traffic law.
- The Local Government (Sanitary Services) Act, 1962 dealt with grants to sanitary authorities, purchase of sewerage undertakings, water charges, control of atmospheric pollution etc..
- The Local Government (Planning and Development) Act, 1963 consolidated and up-dated planning law.
- The Electoral Act, 1963 up-dated and consolidated most of the law relating to elections.
- The Local Government (Sanitary Services) Act, 1964 provided new

provisions for dealing with dangerous structures and places.

In 1964, also, a new consolidated Sanitary Services Bill was 'in the pipeline' as Neil Blaney noted:

We are working on the Sanitary Services Bill, which is a pretty big measure, and we have been working on it for a number of years. We hope to be able in the not too distant future to bring it to light but I could not even at this stage hazard a guess as to how many months, it will be or whether it will be next year.¹³²

The proposed Bill was never brought to light and lapsed, according to the Department, when Desmond Roche left.

In November of that year the White Paper 'Housing Progress and Prospects' was published and dealt with proposals later embodied in the Housing Act, 1966

In 1965 the Inter Departmental Committee Report 'Valuation for Rating Purposes' was published. It was followed by another Report 'Exemptions from and Remissions of Rates'. A number of its proposals became law in the Rates Act, 1970.

In 1966 the White Paper 'The Health Services and their Further Development' was published. It led, as will be seen later, to the reorganisation of the health services in 1970.

The Minister for Finance in his Budget speech, in March 1966, proposed to set up a Group to report on the whole public service area. The Public Services Organisation Review Group was set up in September and its Report ('the Devlin Report') was published in 1969. It noted the two inherent strengths of local government as 'its aptness for popular "participation", and its power readily to penetrate the whole country'¹³³ and 'an impressive system of staff mobility'.¹³⁴ On the negative side, however, it stated:

The weaknesses are the extent of the central controls that hedge it in, and the lack of clearly defined roles and responsibilities to enable it to play a truly

developmental role in the system of Irish government and the lack also of a single central authority concerned with these problems. ¹³⁵

For the local government area, it recommended that

- (1) the Department's scope should be extended 'to enable it to take a lead role in the co ordination of all aspects of development in local areas. This co ordination should be on a regional basis.' ¹³⁶
- (2) more responsibilities be transferred to the local authorities. However, it proposed that the library service be transferred to a Department of National Culture.
- (3) 'more general powers to act in the interests of their areas subject to appropriate safeguards' ¹³⁷ should be given to local authorities.
- (4) more emphasis should be placed on 'the long-range planning of expenditure' ¹³⁸

The Addendum to the Report by TJ Barrington recommended 'an integrated administrative underpinning for all the public services provided at county and district level.' ¹³⁹

In 1969 a Survey Group was appointed by the Minister for Local Government and issued its Report entitled 'The Use of Computers in Local Government'. It led to the setting up of the Local Government Computer Services Board under the Local Government Services (Corporate Bodies) Act, 1971.

In 1970 the Health Act transferred the health functions of the county councils and county borough corporations to eight new Regional Health Boards. Neil Collins stated that the 'arguments for change revolved around the familiar 1960's "needs" for economies of scale and central co ordination and finance.' ¹⁴⁰ But, as already seen, the medical profession was not content with working within the management

system. This was also pointed out by Neil Collins:

The managers' area of discretion in relation to health had been declining for some time before the Health Act, 1970, because of the rival claims to autonomy of medical professions and the assertiveness of the Department of Health. 141

However, the idea did not find favour in other areas. One official told me that before 1970 no effort was made to develop health administration within the local government area. The health services, he said, in one particular county were actually administered by a staff officer when the appropriate official responsible should have been an assistant manager. A former General Secretary of the Local Government and Public Services Union, Harold O'Sullivan, was also against the setting up of the Health Boards. He warned the Minister for Health at the time that they would become too costly and remote. Sean Mac Craith stated that the 'remedy proposed is no real remedy as it merely proposes to have unlimited recourse to the tax pocket of the citizen having already emptied his rate pocket.' 142 But as Neil Collins pointed out:

The effect of the setting up of the health board on local government was muted by the consensus on the need for some reforms and the previously slow pace of change. 143

In December 1970 an Inter-Departmental Working Group was set up to report on air and water pollution, but its Report was not published until 1976.

As already stated the increase in rate levels led the Government to outline their views on the reform of the structures and finances of local authorities. The first White Paper 'Local Government Reorganisation' was published in February 1971. It noted that:

The real argument ---- for the ---- provision of local services by local authorities ---- is that a system of local self government, is one of the essential elements of a democracy. 144

It proposed to

- (1) maintain the county area, but abolish town commissioners and small urban district councils. Instead area committees of the county councils would be established in each electoral area consisting of county councillors of area and representatives of local development associations and others.
- (2) widen the role, progressively, of the regional groups, already established as co ordinating agencies.
- (3) establish a single local authority for Dublin City and County, including Dun Laoghaire.
- (4) provide 'for a general restatement, in broad terms, of the permissive powers of local authorities.' ¹⁴⁵ This could 'take the form of a general provision empowering local authorities to spend money on the betterment of their areas or in the interests of the inhabitants of their areas ----.' ¹⁴⁶
- (5) modernise and simplify the law relating to the constitution, membership and procedure of local authorities. Existing charters and statutory provisions relating to borough corporations were to be repealed and instead local authorities constituted and deriving all their powers and functions from the law. This, it was hoped 'will simplify and rationalise the law and eliminate obsolete and anachronistic titles and offices'. ¹⁴⁷ It also stated that many statutes dating from the nineteenth century 'are antiquated and must be completely recast.' ¹⁴⁸

The White Paper caused some public reaction. This was outlined by

Desmond Roche thus:

The proposition to effect what seemed like a wholesale liquidation of small urban councils attracted heavy fire from local councillors; while the modest proposal about regionalism, innocuous though it seemed, was

unanimously rejected by county councils. The local authority associations - county councils, General Council and Association of Municipal Authorities - were disappointingly negative. The three Dublin Councils also threw out the metropolitan plan.

---- There was much opposition also, to the idea of mixed area committees. 149

The Minister for Local Government, Bobby Molloy, with some officials visited various local authorities but came under fire on the proposals. Because of this it was decided to leave the position as it stood.

A number of interested parties did offer submissions on the White Paper in a 'debate attracting little popular interest' ¹⁵⁰ The main submission was from a Study Group set up by the Institute of Public Administration entitled 'More Local Government - a Program for Development'. It stated that the objectives of reorganisation 'should include an unambiguous statement of intent to make the term "local government" as comprehensive, as may be possible in a modern governmental context.' ¹⁵¹ It noted that services of various other Departments are organised on regions, counties, sub-county levels such as health, Electricity Supply Board, Garda Síochána etc., and they concluded that 'collectively they present a picture of great confusion.' ¹⁵² Their recommendations included

- (1) a three tier structure of decision making at region, county and sub-county level. This lower tier could possibly be centred on an urban district or town. In addition a fourth tier was proposed at community level based on the parish, half-parish, locality or neighbourhood.
- (2) the scrutiny of existing law to retain 'only what is essential regarding constitution, taxing authority and other powers. Examination should be carried out by a local government law commission.' ¹⁵³

- (3) a 'comprehensive enabling statute for local authorities generally' ¹⁵⁴ to allow them to 'undertake works and provide services for their areas, to operate as agents for state departments and state-sponsored bodies ----'. ¹⁵⁵
- (4) that local authorities should be given a say in the running of a selection system of the Local Appointments Commission.
- (5) that State grants of one hundred per cent should not affect local autonomy. They stated:

If it is true that "he who pays the piper may call the tune", it should be remembered that it is the community which pays the piper. The various parts of the public service merely carry round the pipers' cap. ¹⁵⁶

While the Study Group's proposals differed from the White Paper on the type of structures to be set up, both agreed on the need to modernise the law and provide a comprehensive enabling statute for local authorities. However, this document, as Desmond Roche pointed out 'remained an interesting idea, an ideal which would have required an inspired political reformer to bring to life and push through.' ¹⁵⁷

The second White Paper, as seen, on 'Local Finance and Taxation' was published in 1972.

This year also a Report entitled 'Strengthening the Local Government Service' (or, the Mc Kinsey Report) was published. It noted:

----- a trend towards greater centralisation.-----
Centralisation has tended to erode the powers and responsibilities of local authorities, and the recent transfer of health services to the new health authorities has accelerated this. ¹⁵⁸

It then outlined the difficulties of small local areas thus:

In particular, boundaries between town and county hinder future development efforts; the smaller urban authorities have inadequate staff and financial resources to fulfill their responsibilities independently, and some counties appear now too small to justify the expense of separate administrations. ¹⁵⁹

On considering the Report the Minister for Local Government stated:

---- he does not accept the consultants recommendation that a population of 12,000 should be the requirement for the retention of separate urban districts. In regard to county councils, the Minister wishes to re iterate the Government's decision already announced in the White Paper to retain the county as the basic unit of local government. 160

Later in 1972, a Working Party was set up to report on the fire services. It reported in 1975. The following year, a new Government took up office.

As seen, this was the first period since independence that not only the local government area was reviewed but the public service as a whole. In addition, for a number of specific services reports or White Papers were published and the law in some important areas, for example housing and physical planning, consolidated and up-dated.

The modernisation of legislation in this period goes to show that if a Minister is willing to support the up-dating of laws then it is possible to get the necessary measure passed through the Oireachtas.

From these reviews proposals on the restructuring of local government were made by the Minister for Local Government in 1971, but came under fire from local councils. The Institute of Public Administration Study Group then made its submission. While it differed from the White Paper on the type of structures suitable for local government both agreed on the need to modernise the laws.

1973 - 1977 COALITION GOVERNMENT.

New ideas were again put forward on reorganisation and reports published on specific areas. Some legislative changes occurred, in roads, planning and water pollution, to deal with modern day requirements.

In 1973 the 'new Minister for Local Government announced that he

did not intend to proceed with the 1971 plan, and would put forward his own ideas as soon as possible.' ¹⁶¹ In December, he published his 'Discussion Document on Local Government.' The main proposals put forward were

- (1) the retention of the county as the principal local area. Unlike the White Paper, however, it also proposed to retain the urban districts and towns with commissioners and it did not agree with the idea of area committees.
- (2) greater flexibility would be provided for in regard to the transfer of functions and the making of agency arrangements between local authorities with the particular object of ensuring an effective provision of services in smaller areas. In particular it proposed to allow the transfer to county councils of functions involving major expenditures from
 - (a) urban districts in relation to
 - (i) planning and development.
 - (ii) sanitary services, that is water supply, sewerage and pollution control.
 - (iii) the construction of houses.
 - (b) town commissioners in relation to housing.
- (3) other 'practical improvements would be made in the working of the local government system' ¹⁶²

In the area of local government legislation it agreed with the White Paper and the Study Group's submission for a 'general programme of reform ---- for modernising the law relating to the constitution and procedure of local authorities.' ¹⁶³ It also proposed that provisions be made to

enable councils to incur expenditure in the reception of distinguished visitors. ---- for extending the title

of Mayor to the Chairman of urban district councils and Boards of Town Commissioners. ¹⁶⁴

It was not until early 1977 that 'authorisation was given to the drafting of legislation to effect reform of local government structures along the lines envisaged in the Discussion Document on Local Government Reorganisation published in December 1973.' ¹⁶⁵ However, 'the drafting of the proposed legislation had not been completed, at the time of the change of Government in July, 1977.' ¹⁶⁶

As already stated some legislative changes occurred during this period.

On 28 March 1973 a Local Government (Planning and Development) Bill was introduced in Dail Éireann. It provided for the setting up of an independent Planning Board and more effective enforcement powers. It did not become law until 1976.

On 30 March the Government announced 'their decision to transfer from local to central taxation, over a period, the cost of health services and local authority housing provided for letting.' ¹⁶⁷ But according to the Local Government and Public Services Union:

The Opposition of the day proposed the 'abolition' of the domestic rate, and public attention was directed to this question almost to the exclusion of any further debate on re-organisation. ¹⁶⁸

The Local Government (Roads and Motorways) Act, 1974 became operative on 1 June 1974. This Act 'was the first important revision of roads law since 1925' ¹⁶⁹ It empowered the road authorities to provide modern facilities such as motorways, flyovers etc. It also widened the powers of road authorities in maintaining public roads. However, numerous provisions relating to roads spread through various Local Government Acts remained on the statute book. But at least this Act only dealt with roads legislation.

In 1975 a Report on the fire service was published and found

---- a low level of awareness of the importance of fire prevention work and uncertainty among some local authorities as to the extent of their fire prevention responsibilities ----.

The multiplicity of statutes containing provisions directly or indirectly bearing on fire prevention and divided ministerial and enforcement responsibilities are complicating factors ----. 170

Its proposals were embodied in the Fire Services Act, 1981.

That year also, as already seen, the Minister requested the Economic and Social Research Institute to prepare a report on the rating system. In the area of financial accounting a new format, for estimates purposes, based on eight programme groups was introduced.

As already stated, in 1976, the Water Pollution Report was published. This found legislation governing the control of water pollution in eighteen Acts and functions in relation to water pollution control exercised by a number of central and local bodies. So it led, in the following year, to the Water Pollution Act, 1977. According to Judge Keane it was 'prompted in part by the requirements of Ireland's membership of the European Economic Community ----.' 171

New reorganisation proposals were put forward in this period in the 'Discussion Document'. Unlike the White Paper of the previous Government it provided for the retention of the smaller urban districts and town commissioners, and the voluntary transfer of functions to the larger authorities. Again, the modernisation of local government law was recommended. In 1977 authority was given to draft the necessary legislation but the Government changed a few months later.

In the area of legislation, other than the Water Pollution Act and the Local Government (Roads and Motorways) Act, Acts passed were really only amendments to existing statutes, but at least a separate Act was used for each subject area.

1977 - 1981 FIANNA FAIL GOVERNMENT.

The Department became the Department of the Environment on 16 August 1977, and in fact environmental matters took precedence in this period. The rates issue also arose again. In addition some changes occurred in financial accounting.

So far as reorganisation was concerned the

new Government ---- decided to undertake a re-examination of the subject which would involve a study of all earlier proposals for re organisation in the light of developments which had taken place in recent years and in the context of present day conditions. 172

No proposals, however, for change was put forward in this period.

In the area of finance a new form of Abstract of Accounts was prescribed in 1977, while in the following year domestic dwellings and other premises were derated.

In 1978 the operation of the Derelict Sites Act, 1961 was being looked into in response to a Parliamentary Question in November. A preliminary Report entitled 'Towards an Environmental Policy' was presented in April 1979 by the Environmental Council which was set up in June 1978. This Report outlines

the major pressures on the environment and their effects, indicates the issues which the Council considers should govern the approach to environment policy, and lists proposals, for further action by the Council with regard to policy. 173

Some of its proposals were embodied in the Litter Bill, 1981 which became law the following year.

The Local Government (Toll Roads) Act was passed in 1979. It empowers local authorities to enter into agreements with private interests for the construction, maintenance and management of toll roads and bridges. It was hoped that 'the private sector will respond to this opportunity to participate in the development of the country's

road system.' 174

The following year the law relating to casual trading was up-dated and modernised in the Casual Trading Act, 1980 and, to superannuation in the Local Government (Superannuation) Act, 1980.

In this period only in minor areas did up-dating of legislation occur. But, at least, each subject area, for example casual trading, toll roads and superannuation, continued to have its own Act.

1981 - 1982 COALITION GOVERNMENT.

During the time of this Coalition Government no changes occurred in the local government area.

1982 FIANNA FAIL GOVERNMENT.

The new Government introduced proposals to revitalise inner urban areas, and to charge for services provided by local authorities.

In May, 1982 the Urban Development Areas Bill was introduced in Dail Éireann. It seemed to reverse the idea of planning authorities as development corporations, although the Minister of State in the Department of the Environment denied this when introducing the Bill. The Local Government and Public Services Union stated on this Bill:

The lack of a clear Government policy regarding local government re-organisation has resulted in some ad hoc changes in the structure. ----

The duties to be performed by the new authorities could equally well be carried out under existing legislation by existing local authorities, provided they were allocated the necessary financial resources. 175

Earlier that year, in March, the Minister issued a Circular Letter to local authorities stating that he intended introducing charges for services. However, it was not until the next Government took up office that the necessary legislation was introduced. Both proposals lapsed with the dissolution of Dail Éireann on 4 November, 1982.

1982 - 1987 COALITION GOVERNMENT.

Court decisions in this period led to proposals on personnel and finance. The reorganisation issue also arose again and indeed some legislative changes in this area occurred.

As a result of a Supreme Court decision in December 1979 declaring that the Local Appointment Commissioners acted beyond their powers, in granting extra credit for a knowledge of Irish to candidates being selected, the Local Authorities (Officers and Employees) Act, 1983 was passed. It also included provisions for transferring to urban district councils with less or equal to 9,000 population the power to recruit their own town clerks. According to the Minister:

We are into an era in which we must make a reality of the proposal that small is beautiful and that a small town working with a career oriented town clerk can promote the welfare of the town in a way in which because of the limitation of the legislation we have had up to now, was not possible. 176

The urgency of financing local government found new impetus as a result of the Supreme Court decision finding the valuation of agricultural land unconstitutional. The main legislation then in this period was - the Local Government (Financial Provisions) Act, 1983 providing for charges for services.

- the Farm Tax Act, 1985 providing for a new farm tax.
- a new Valuation Bill dealing with modern industrial processes.

The Government also issued proposals for reform and Dail debates in this period on local government are dominated on all sides of the House by measures for reform, especially finance.

On 30 May 1985 the Government published its policy statement entitled 'The Reform of Local Government'. It proposed

- (1) the establishment of three electoral counties in the Dublin area. Each electoral county would be divided into two districts with district councils.

A Metropolitan Council for Dublin to act as a co ordinating body for the four local authorities was also proposed.

- (2) making Galway Borough a county borough.
- (3) like the White Paper in 1971 the retention of the county area, but unlike it, it recommended the establishment of district councils in major urban centres, and the creation of town councils in towns with 2,000 population or less.

This proposal would resemble the system established in England in 1972, except instead of parish councils town councils would be created.

- (4) the 'widening of local authority competence and discretion to act in the interests of the local community ----' ¹⁷⁷ and the 'devolution of functions and decision-making ---- from the centre to local authorities either directly or through agency arrangements.' ¹⁷⁸

This would be achieved through empowering local authorities to

- (a) help promote industrial and tourism promotion.
- (b) establish information centres.
- (c) carry out some functions exercised by Departments, for example, grants allocations, inspections functions, maintenance ^{of} small harbours and parks, and pollution control.
- (d) make increased use of committees for joint functions, co-operating with Garda Síochána and other groups.

Central control was to be relaxed in some areas, such as bye-laws, burial grounds, fairs and markets, acquisition of land and speed limits. Increase, use was to be made of block grants and the imposition of

of service charges was to be made a reserved function.

Shortly afterwards in its National Plan 'Building on Reality 1985

- 1987' the Government stated:

---- the role and influence of the elected councils should be enhanced as much as possible. Existing central controls over local councils and procedural constraints are being examined with the aim of increasing local discretion and initiative. 179

Some of the reforms proposed were embodied in the Local Government (Reorganisation) Act, 1985. It established electoral counties in the Dublin area, made Galway Borough into a County Borough, and dealt with electoral areas and other miscellaneous matters. On this Bill

John Kelly stated:

The Bill did little more than tinker around with some boundaries and with the designation of Galway City Council. It meant practically nothing to most people and was only of interest to those "in the game" the politicians.' 180

However, the Government was not long enough in office to see the 'Reform of Local Government' proposals through.

In 1985 also a Report sponsored by Muintir na Tire entitled 'Towards a New Democracy? - Implications for local government reform' was published. It recommended a structure somewhat similar to that recommended by the Institute of Public Administration Study Group. A council would be established in the region, county and at sub-county level in area equivalent to the county electoral area and centred on an urban district or town. Each area would have a recognised political leader and a chief executive. It also proposed 'advisory and other support facilities should be made available for the emergence, encouragement and development of all types of such community councils.' 181

As already stated debates on local government, in Dáil Éireann, during the mid 1980s centred on the need for reform. Different proposals

were put forward by members of the various political parties.

Liam Fitzgerald, a Fianna Fail T.D., proposed 'involving and engaging other Departments ---- we must tackle too the question of the environment and of urban problems in general.' ¹⁸² His colleague Albert Reynolds wanted 'long term financial planning ----. We must have three or five year planning.' ¹⁸³ John Boland, as Minister for the Environment stated:

I have ---- a conviction that local government has tremendous potential for improving the way we govern ourselves in the broadest sense. I am now looking forward greatly to the challenge of helping to realise that potential. ¹⁸⁴

Ray Burke replied:

We need a comprehensive plan for local government ----. We believe there should be a two tier system. ----
Local democracy can be served best through specific additional powers being devolved on local authorities in areas of housing, water, sanitary services, roads, transport, the administration of grants, and by way of involvement also in the fight against crime, lawlessness and vandalism. ---- Local authorities must have more direct access to EC funding. ¹⁸⁵

Michael O'Kennedy saw the role of local authorities as 'developmental bodies'. He stated that finance can be obtained through joint ventures with the private sector.

Many people are interested in joint ventures with the Government or, with local government, be they pension funds, investment trusts or construction companies. Our major construction companies have at least 85 per cent of their investment programmes outside of Ireland. ¹⁸⁶

He went on to state, however,

Anything I have said has to be seen in the context that the local authorities who administer these funds must be meaningful, real, democratic authorities where the democratic process is exercised effectively and is seen to be exercised ----.

I would have to say, everyone in the House would have to say, that is not the way at present.' ¹⁸⁷

As already stated implementation of the reforms proposed in 'The Reform of Local Government' statement began with the Local

Government (Reorganisation) Act, 1985 but ended with the change of Government. When the electoral counties were set up in Dublin the increased number of members were elected and, as one person stated, unable to fit in the Council Chamber. Nothing further has been done on their new role, if any. A Local Government Bill is said to be in the pipeline concerning members, meetings, personnel etc.. It was supposed to have been introduced in Dail Eireann before the end of 1987 but it is now expected in early 1988.

Local authorities are creatures of the law and thus have only such powers and duties as the law confers. Therefore to see what was done to consolidate and up-date legislation it was necessary to look at developments in local government during the periods in office of the different Governments.

In summary the main events outlined, when various political parties were in Government, are as follows;

- (1) prior to 1922. In the period before independence the Provisional Government and the local authorities worked as partners against the British administration in Ireland. Because of this, and the financial constraints existing then, it was relatively easy to get reform through and to ~~centrally~~ co-ordinate and direct the local bodies, *from the centre*.
- (2) 1922 - 1932 On the establishment of the Free State Cumann na nGaedheal formed the Government and the Civil War broke out.

From the continual financial difficulties and possibly the fear, resulting from Civil War differences, that local government could be used to

subvert the new State, central control over local authorities increased. The rural district councils and boards of guardians were abolished in most areas and authorities who failed to carry out their functions were dissolved and commissioners appointed.

Roads legislation was amended in 1925 in a general Local Government Act. The following year the combined purchasing scheme was permanently introduced and the Local Appointments Commission established.

Before the end of this period the important innovation of city management was introduced, first in Cork at the request of the citizens, and then in Dublin. This was thought necessary with the growth in administration and the need to introduce more business like methods into the affairs of local bodies.

It should also be noted that when a motion calling for the standardisation etc of local government legislation was raised at an annual conference of the Local Government Officers Union differences of opinion on the matter arose.

(3) 1932 - 1948

The new Fianna Fail Government continued to dissolve councils who failed to carry out their duties, and appoint commissioners.

At first it was curiously proposed to abolish county administration altogether and make councils advisory bodies . Managers would be appointed on

the French prefectoral style. In 1940, however, county management was introduced on the lines of the system in Dublin. City management had already been extended to Limerick in 1934 and Waterford in 1939. Some of the problems found in the operation of management in Cork City (in large part due to the rigid attitude of the first manager appointed there) were dealt with. But the system was still in a state of organic growth. Councillors were not content at the power remaining in their hands.

It was also proposed to establish a lower tier based on the parish, but administrative difficulties foiled this idea. As seen the most suitable basic unit would seem to be the townland.

In 1941 a Local Government Act was passed and contained numerous amendments to provisions in statutes covering the whole local government area. Some sanitary legislation was also up-dated in this period. The piecemeal development of local government law was causing problems for officials. HA Street was therefore requested to compile the necessary statutes in force in book form.

(4) 1948 - 1951 The Coalition Government proposed to abolish the county management system in the Local Government (County Administration) Bill, 1950 but it was not long enough in office to get the Bill passed into law.

(5) 1951 - 1954 Three major Bills were introduced by Fianna Fail

in Dail Éireann, but again the Government was not long enough in office to see any of these proposals through.

- (6) 1954 - 1957 The new Coalition Government continued, with some amendments, the proposals of the previous Government. The differences between managers and councillors were settled in the City and County Management (Amendment) Act, 1955. A further Local Government Act of that year contained, as seen a rag-bag of amendments to local government legislation.

- (7) 1957 - 1973 During this period of Fianna Fail in power not only was the local government system and various parts of it reviewed but the whole public service. This was the main time since independence that consolidation of statutes occurred. Legislation on borrowing, derelict sites and dangerous structures and places, electoral law, physical planning and housing were up-dated and modernised.

Proposals for reorganisation were made providing for the retention of the county unit but the abolition of the smaller urban districts and towns with commissioners. The modernisation of law on procedure etc. and nineteenth century legislation was also recommended. Local councils and others disliked the idea of abolishing the smaller local authorities and nothing became of the White Paper.

In 1970 the health services were taken from the local bodies and transferred to new Health Boards

set up under up-dated legislation. This resulted, not only from the need for economy, but from the pressure from the medical profession and the Department of Health, and from the slow pace of change within the local government system.

- (8) 1973 - 1977 The Coalition Government set forth its proposals on reorganisation in a Discussion Document. Authority was given in 1977 to draft the necessary legislation but the Government changed a few months later. It proposed to retain the county, the urban district and the town and to provide for the voluntary transfer of some functions from the smaller local authorities to the county councils. It also recommended the modernisation of the laws on the constitution and procedure of local authorities.

New legislation on water pollution, the establishment of an Bord Pleanála, and the provision of motorways was passed. Other legislative changes were really only amendments to the existing law but, at least, each subject area had its own statute.

- (9) 1977 - 1981 The only changes introduced by Fianna Fáil were related to casual trading, superannuation and litter but at least each subject area continued to have its own Act.

- (10) 1981 - 1982 and

- (11) 1982 both periods were too short for the passing of any legislation on local government.

- (12) 1982 -1987 The Coalition Government issued new proposals on

reorganisation in 'The Reform of Local Government'.

It proposed district and town councils, the devolution of some functions and the wider use of committees. Some of the proposals became law in the Local Government (Reorganisation) Act, 1985 but the Government then changed and nothing further was done on this issue.

Financial difficulties also dominated this period with the Supreme Court decision of levying rates on agricultural land unconstitutional.

Thus in more recent years in White Papers and reports, while differences may arise on the type of local government structures suitable, all agree on the need for reform of local government law. Yet very little has been done on this issue but, rather the debate concentrates on the structures most acceptable politically. On this latter matter, however, the Governments either have given way to pressure from interested parties or else were not long enough in office to see the necessary measure through. Thus as Ruairi Quinn, Minister of State for the Environment, stated in 1983:

---- since the foundation of the State, no government has attempted to institute major reform of the local government system in such a way as to prepare for the latter part of this century. 188

In the meantime the courts have found one area of local government legislation unconstitutional while various other parts are on shaky ground.

CHAPTER 9CONCLUSIONS.

All Irish Governments have expressed an interest in extending and improving local government. On one occasion, though, proposals were made to actually abolish county government. None, however, have taken serious steps to overhaul the whole system. Some indeed were not long enough in office to see their policies implemented and what others have written was exaggerated.

When the new State was set up it was possibly thought desirable to keep the existing services ongoing in the uncertain conditions then prevailing. The degrading workhouse system was, however, eliminated. Two other major changes took place with the abolition of the rural district councils in the Local Government Act, 1925 and the establishment of the Local Appointments Commission. It was not quite true to say that there was no objection to the extinction of rural district councils. Indeed their abolition left a void in local government in the county. The result was that the county council is usually seen as representing the area of the county outside the urban districts and the boroughs, which is incorrect. The county council was established in the administrative county. However, something had to be done about the spending powers of the rural district councils and their financial position vis-a-vis the county council. This could have been dealt with in the same way as in the urban district. It was also an overstatement to say that the 1925 Act established a new local government system.

With the growth in the details of administration, and instead of

calling together the whole council to deal with minor matters, it was decided to introduce at first city management and later county management. The new full time official, it was hoped, would be better able to keep abreast with the increase in legislation and introduce more business like methods to the administration.

The extent of complicated legislative provisions was causing problems as far back as the 1920s. But, as seen, not all officials wanted the laws rationalised. The particular official who objected to the motion raised at the annual conference of the Local Government Officers Union was, it should be noted, from the Dublin Corporation area. A large body, where specialisation occurs, is not affected to the same extent by piecemeal legislation as a small local authority. In addition, Harold O'Sullivan said to me that from his experience the Dublin Corporation disliked been made similar to the rest of the country. Also it wished to lead in new proposals as it saw itself as a developed body. However, when I asked the four senior officials interviewed their views on local government law one of them, from the two medium size local authorities, said it was a 'maze' and the other referred to it as a 'jungle'. The official from the largest body did not, on the whole, find much problem with it. The main difficulty he thought was in the lack of provisions to deal with new problems. The fourth person from the smaller local authority likewise found, in general, no problem with existing legislation. Once you know the law exists on an issue then you can look up the details in the appropriate Act, he said. I would not expect that this opinion of the last official was widespread in small local authorities. In addition, he previously worked in one of the largest local authorities in the country.

When, however, an up-to-date Vanston was called for this was done.

HA Street's book appeared in 1955. He too saw the need to pause, review and organise local government law in a more rational way. This was never done. His book 'The Law Relating to Local Government' became a tremendous help to local officials over the years to this day.

Legislation continued to be passed. Some statutes, like the Local Government Act, 1955, with numerous provisions concerning the whole local government area. Others, especially in more recent years, at least concern a specific subject area. Chief among them are the Local Government (Planning and Development) Act, 1963 and the Housing Act, 1966. But even this important 1963 Act failed to contain all the necessary provisions needed to carry out the objects of this Act. Other statutes, for example the Local Government (Water Pollution) Act, 1977, the Fire Services Act, 1981 and the Litter Act, 1982 only deal with sub-areas of the programme group 'Environmental Protection'. No effort seems to be made to at least look at the Estimate of Expenses' broad programme groups and consolidate legislation affecting them. In the various reports, submissions and a White Paper agreement exists that

- (1) the law is complicated and in need of up-dating.
- (2) more power should be given to local bodies to act in the interest of their areas.

The attitude of the Department of the Environment also is that the law is antiquated but the question of modernisation has to wait its turn until more pressing needs are dealt with. Presumably these are the problems of the time, for example financial difficulties and balancing the budgets. Yet, as already seen, if the law had been dealt with, as it should have been, some of these current needs might not be so pressing.

Legislation on the local government area concerns not only

functions but organisation, personnel, policy and finance. In other words for everything it does, including its very existence, the local authority must show statutory authority.

In the case of organisation, as seen in chapter 2, the local government system consists of five main areas - county, county borough, borough, urban district and town. Its basis is still in nineteenth century legislation. Not only that but, as JJ Horgan pointed out, it is a system that

was imposed from without by the English Government - generally for purely political reasons, and always no matter how well meaning, without real knowledge of Irish conditions. What was good enough for England was ipso facto good enough for Ireland also. ¹

One particular area of contention, in recent years, has been the question of finding the most appropriate structures for local government. While disagreement, politically, still centres on the most suitable form the majority seems to favour the county and at sub-county level the electoral area possibly centred on a town. The size of the particular towns would have to be specified. It is likely all the present boroughs and possibly the majority of urban districts and the larger towns with commissioners would be included if such a proposal was made a reality. Further research, however, would be required in each area to find the most suitable boundaries to such local divisions. While this thesis is not on the local government structures it would appear that the most suitable basic unit, whatever divisions are decided on, is the townland.

If townland groupings centering on particular towns are used the delination of boundaries should be relatively easy. It would, however, involve political changes in the areas of representation (although electoral areas are composed of townlands) and therefore it would be more suitable that the changes be prepared before a local election. With surveys etc. this would take six months to complete and cost about £50,000. (according to the author's calculations),

In addition, legislation would be necessary for the resulting adjustments required between local authorities, for example, financial changes to deal with debts and the compensation for loss of rating areas etc.. This would be fairly complex but, it is done at present whenever any boundary is increased or reduced. The position and power of the county council would have to be clarified, for example, as overall co-ordinating body. For this reason it might be a help if the legislation was organised and constructed on the lines of the headings used in Appendix A.d. Statutory changes would also have to be made, in possibly the planning Acts, to ensure that the urban area is not allowed to extend uncontrolled into the adjoining rural area, with the consequent deterioration of the town centre. Suitable financial and other incentives could be used to prevent this. Whatever is decided on it can be seen from the developments in the period 1957 to 1973 that if the Minister is willing to sponsor the necessary measure then it has a fair chance of passing into law.

It is in this area of structures that political dispute has arisen and prevented the implementation of other proposals agreed by all relating to the up-dating of the law on the councils, members, meetings, sanitary functions etc.. The reason for this is that some structures were originally set up to deal with particular powers and duties in areas co-terminous with other local government divisions, such as the sanitary authority in the sanitary district. Because of this legislation relating to some functions and structures are intertwined in the same legal codes.

For present day needs, at least, even without setting up new forms of organisations there is no reason why the town area, the urban district area and the borough area should exist within the other principal

areas. These co-terminous divisions should be eliminated and the law applied direct to the county, the county borough, the borough, the urban district and the town areas. This should not affect the status of these units but would slightly ease the complications of the legislation. There is need also to up-date and possibly apply similar provisions to all areas relating to the corporate body, the council, offices, members and meetings. Proposals in this regard are said to be in the pipeline.

The legislation relating to personnel was set out in chapter 3. It, as seen, is scattered over various Acts and requires consolidation. In the 1920s the management system was advocated by persons interested in bringing business like methods into local government. When it was extended to the counties in the 1940s disagreement arose as to who should have the final say - the members or the manager. This largely ceased with the passing of the County and City Management (Amendment) Act, 1955. To a certain extent the problem continues today by the use of Section 4 resolutions in, for example, planning decisions. It might be more appropriate in the up-dating of legislation if provisions relating to managers were included in the legislation relating to personnel, generally, rather than having specific management Acts. This would lessen the complications of the legislation and also indicate that managers are officials of the local authorities rather than on the same level in law as the members.

A special area of contention, as outlined in chapter 4, is the ultra vires doctrine. This doctrine will always arise because the local authorities are creatures of statute. However, because of the present detailed and antiquated laws that exist this rule causes special difficulty. There is need at least to obtain a list of legislation

relating to the local government area. This is obtainable from the Index to British Statutes to 1921 and the Index to Statutes in Force from 1922 to 1985. In addition, to find out the Sections of other Acts, for example the Health Act, 1970, not local government statutes as such but with provisions applicable to local government it is necessary to check through all legislation, at least since 1921. However, for the purposes of research on, for example, the history of local government or whether controls have increased or decreased it would be desirable that a list be prepared showing

- (1) all statutes ever passed with provisions relating to local government.
- (2) the date and legislation by which repeals ^{were} made.
- (3) the Acts and Sections in force.

The list could be in loose leaf form and up-dated regularly, and available to local authorities and in libraries. Similarly lists of court decisions specifically affecting the local government area should be provided. In addition, it would be desirable that legislation be written in clear and concise form with no substituted provisions. All obsolete enactments should be repealed as they raise doubts as to their legal effect. More general provisions should be provided, as far as possible, and the Acts constructed in a form more relevant to the needs of the community.

The ultra vires doctrine will still continue because of the importance of the work of local authorities. As John Garvin, a former Secretary of the Department of Local Government, pointed out:

The work of local authorities touches the lives of individuals in numerous ways ---- it is very intimate and affects the citizen in all sorts of ways from the cradle to the grave. ²

So the exercise of powers carries with it the requirement of adherence

to procedures, publication of notices, rights of appeal etc..

As seen in chapter 5 the valuation and rates issue has dominated official proposals on local government over the years. In more recent times the levying of rates on agricultural land was found unconstitutional due to the failure to update the appropriate legislation. The debate has now concentrated on finding a means of funding local authorities, and on reorganising local bodies. Numerous reports and proposals, on the finance area, have been made. The need is now, ^{for} the political will to implement them. Legislation on the existing finance area is, as already seen, in need of up-dating and codification.

The position of the actual functions was outlined in chapter 6. As seen certain ones which have been important to a new State such as housing and the clearance of unhealthy areas were dealt with in various Acts from 1921 to 1966, until finally in 1966 the legislation was consolidated. Alongside this function was the need to control development which resulted in the Town and Regional Planning Acts. However, powers were found lacking especially for the development years of the late 1950s and the 1960s. So by 1963 the Local Government (Planning and Development) Act was passed. This major Act, though, did not include all the necessary powers required to develop areas. For other functions very little has been done to codify and modernise the law, especially under the broad programme headings set out in the Estimate of Expenses.

Indeed one reason why local government law is in such a mess is that Governments, as seen, simply do not want to tackle the problem in a comprehensive manner.

Another reason may be due to the enormous amount of work involved in serious statutory reform. This was the case that prevented a general revaluation. The White Paper on 'Local Finance and Taxation' estimated

the time for this as eight years. Yet eight and more years later the valuation issue was still causing difficulties. When finally the Supreme Court made its decision in the early 1980s other means of finance had to be found anyway, indeed at a time when the national finances were in difficulties too. In addition, the comprehensive consolidation of the piecemeal legislation is a once off measure, although it would need to be continually up-dated, possibly yearly. At present officials in over a hundred different local authorities and in the Department have continually to understand and apply out-dated or cryptic legislation that is extending as the scope and complexity of local administration increases. This in itself involves an enormous amount of time. In addition the result, as seen, is unnecessary court cases such as those referred to already relating to compulsory acquisition of land and water charges.

A third problem is that Governments fear the political implications of tinkering around with existing structures and especially boundaries. This failure to agree on structures has, as already stated, been one of the main reasons why local government law relating to the corporate body, the council, meetings etc. has not been up-dated.

A fourth problem is how to deal with contentious issues that are currently causing problems. For example, at present difficulties exist over deciding the compensation appropriate where planning permission is refused or granted subject to conditions, and where land is compulsorily acquired. If these issues are not dealt with in the up-dated legislation then the Minister may fear the particular measure will come under fire from his colleagues in Dáil Éireann. Again in the 1957 to 1973 period there were possibly disputed proposals especially relating to planning and housing then also, yet the Acts were passed. In addition, if the politicians do not decide these issues the situation will reach

such a state that the courts will be asked to decide as happened already with land valuations. Then it may not be possible or politically wise to implement legislation on the matter.

When the local authority is no longer able to cope under its existing framework with expanding services the trend has been to take the function away from the local area. It is then given to a new body set up under up-to-date legislation, as in the case of health. In the early 1980s the inner urban areas development functions of the local councils were being questioned, because it is said that they were not flexible enough to deal with the problems of these areas. As Dr. TJ Barrington pointed out 'Local government is, like any other historical ruin, something that we are perhaps reluctant to see removed wholly, but which we are prepared to see moulder away.' ³

In England, on the other hand, even though we inherited their local government system and form of legislation, new structures have been established and the law up-dated in a number of areas.

As already seen the importance of local government was recognised, especially during the Emergency, although its position was never clarified in the Constitution. Its statutory position has been defined in the White Paper 'Local Government Reorganisation' thus:-

The strict legal and constitutional position in Ireland is that local authorities are bodies charged by the Oireachtas with responsibility for the performance of certain duties in particular areas. They derive their powers, functions and duties from legislation and are themselves creatures of the law with only such existence, powers and functions as the law confers. ⁴

However, the 'local authority has a wider role than that of administering a series of services. It is a political institution for local choice as well as a provider of services.' ⁵ The right to respond to local circumstances is 'legitimated by local elections.' ⁶ The importance

of this role was outlined by John Stewart:

The possibility of variation - to allocate resources in different ways (within limits), to raise different levels of resources (within limits), to organise services in different ways (within limits) - marks the significance of local authorities in the government of communities. The local authority can express or can shape the particularity of the locality ----.

A problem in Ireland, is the lack of interest, however, in local government. Dr TJ Barrington noted 'the very inadequate acceptance of the democratic value of the directly elected local representative.'⁸ Basil Chubb also stated:

Most people almost certainly approve of the idea of local democracy, though they do not feel very strongly about it and may well have only a very hazy notion of what is involved.⁹

Unlike England, there is very little public information available on local government. This is due, in part, to the legislation which cannot easily be found and, then, is so complicated and involved that it would be difficult for the general public to understand. It is hoped, therefore, that the up-dating of local government law receives the urgent attention it requires by the Minister for the Environment. As the Institute of Public Administration Study Group pointed out:-

The fact may be, cogently made, indeed, that the most vital Local Government problem is not one of structure, or staff, or even of finance (although that is crucial) but simply bringing the system from the 19th. century into the 20th. century.¹⁰

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A P P E N D I X A.

LEGISLATIVE PROVISIONS CONCERNING ORGANISATION,
PERSONNEL, FINANCE AND FUNCTIONS.

SOURCE:

Legislation found in

- (1) STB Vanston's book The Law Relating to Local Government and Public Health in Ireland, 1913.
- (2) HA Street's book The Law Relating to Local Government, 1955.
- (3) Acts of the Oireachtas passed since 1955.

and other provisions in

- (1) The Public Bodies Order 1946 as amended.
- (2) Local Government (Officers) Regulations 1943 as amended in 1974 and 1983.
- (3) Local Government Officers Circular, 1952.

ORGANISATION					
	COUNTY	COUNTY BOROUGH	BOROUGH	URBAN DIST.	TOWN
<u>AREA</u> (A) ADMINISTRATIVE					
AREA					
(1)EXISTING -Administrative					
County -County	✓				
-County Borough		✓			
Borough		✓	✓		
Urban District		✓	✓	✓	
Town		✓ 1	✓ 2	✓	✓
(2)FUTURE:- Administrative					
County -County	✓				
-County Borough					
Borough			✓		
Urban District					
Town					✓
BOUNDARIES					
(1)EXISTING:-Administrative	✓				
County -County					
-County Borough		✓			
Borough			✓		
Urban District				✓	
Town		✓	✓	✓	✓
(2)FUTURE:- Administrative					
County -County	✓				
-County Borough		✓			
Borough			✓		
Urban District				✓	
Town		✓	✓	✓	✓
DISSOLUTION					
Administrative					
County -County	✓				
-County Borough		✓			
Borough		✓	✓		
Urban District				✓	
Town					
MAPS					
FORMAL NAME	✓	✓	✓	✓	✓

1 Except Dublin, Cork and Limerick.

2 Except Sligo.

	COUNTY	COUNTY BOROUGH	BOROUGH	URBAN DIST.	TOWN
(B) SANITARY AREA					
AREA					
(1) EXISTING: -County Health District	✓				
-Urban District		✓	✓	✓	
(2) FUTURE -County Health District	✓				
-Urban District					✓
BOUNDARIES					
(1) EXISTING -County Health District	✓				
-Urban District		✓	✓	✓	
(2) Future -County Health District	✓				
-Urban District		✓	✓	✓	
DISSOLUTION					
-County Health District					
-Urban District				✓	
MAPS					
FORMAL NAME					
-County Health District	✓				
-Urban District		✓	✓	✓	
 <u>APPENDIX A.a2.</u> <u>NAME OF AREA</u>					
CHANGE OF NAME					
-WHOLE AREA				✓	✓
-PART OF AREA -Non municipal town	✓	✓			
-Townland	✓				
-Street	✓	✓	✓	✓	✓
-Locality	✓	✓	✓	✓	✓

	COUNTY	COUNTY BOROUGH	BOROUGH	URBAN DIST.	TOWN
<u>C O R P O R A T E B O D Y</u>					
INCORPORATION					
(1) Administrative Area	✓				
-County					
-County Borough					
-Borough		✓	✓		
-Urban District					
-Town					✓
(2) Sanitary Area	✓				
-County Health District					
-Urban district		✓	✓	✓	
COMPOSITION					
-Chairman & Councillors.	✓				
-Lord Mayor, Aldermen & Burgesses .		✓ 1			
-Mayor, Aldermen & Burgesses.		✓ 2	✓ 3		
-The Inhabitants & their Successors.		✓ 4	✓ 5		
-The Council .				✓	
-The Town Commissioners .					✓
TYPE OF BODY					
-Body corporate.	✓	✓	✓	✓	✓
-Body politic & corporate.		✓ 4	✓ 5		
-Power to sue & be sued in its corporate name		✓ 4			
-perpetual succession.	✓	✓	✓	✓	✓
-A common seal	✓	✓ 4	✓ 5	✓	✓
-May hold land	✓			✓	✓
-By the Council (a)capable in law		✓ 6	✓ 3		
(b)invested with rights, powers etc. of former boroughs (prior to 1840).		✓ 6	✓ 3		
-The right to assume the armorial bearings formerly borne by the town.		✓ 4			
FORMAL TITLE					
-__ County Council (insert name of county).	✓				
-The Right Honourable the Lord Mayor, Aldermen & burgesses of __ (insert name).		✓ 1			
-Mayor, Aldermen & Burgesses.			✓ 3		
-The Corporation of __ (insert name).			✓ 5		
-The Urban District Council __ (insert name).				✓	
-The __ Town Commissioners (insert name).					✓

- 1 Dublin, only.
- 2 Except Dublin & Galway.
- 3 Except Dunlaoghaire.
- 4 Galway, only.
- 5 Dunlaoghaire, only.
- 6 Except Galway.

	COUNTY	COUNTY BOROUGH	BOROUGH	URBAN DIST.	TOWN
<u>T H E C O U N C I L</u>					
CORPORATE BODY ACTS (a) itself	✓			✓	✓
(b) through a council.		✓	✓		
COUNCIL:-ESTABLISHMENT		✓	✓		
-COMPOSITION -The Mayor, Aldermen & Councillors elected & accepted office.		✓ 1	✓ 2		
-Specific number of members		✓ 3			
-The elected members.			✓ 4		
-Formal TITLE-City Council.		✓ 5			
-Council of Borough.			✓ 2		
-Borough Council.		✓ 6	✓ 4		
-District Council		✓	✓	✓	
<u>A P P E N D I X A . a 5</u>					
<u>O F F I C E S</u>					
PROVISION(Other than L.G.(P&D) ACT, 1963 and H.ACT, 1966)					
-OPTIONAL POWER	✓	✓	✓	✓	✓
-MANDATORY POWER	✓	✓	✓		
-County Surveyor's office.					
-TYPE OF PREMISES					
-Fit & convenient building		✓	✓	✓	✓
-Not licensed for intoxicating liquor unless no other suitable room available .	✓	✓	✓	✓	
MANAGEMENT					
-GENERAL POWER (No provision)					
-TIMES OFFICES OPEN					
-All		✓ 7	✓	✓	✓
-County Surveyor's	✓	✓			
-MAINTENANCE		✓	✓	✓	✓
-FURNISH	✓	✓	✓	✓	✓
-PROVISION OF STATIONERY					✓ 8

1 Except Galway.

2 Except Dunlaoghaire.

3 Galway, only.

4 Dunlaoghaire, only.

5 Except Cork.

6 Cork, only.

7 Galway & Waterford (if that part of 1854 Act adopted).

8 For meetings, only.

	COUNTY	COUNTY BOROUGH	BOROUGH	URBAN DIST.	TOWN
<u>M E M B E R S</u>					
ELECTION AREAS	✓				
ELECTORAL COUNTY	✓ 1				
ELECTORAL AREA-Existing -in Ministerial Order	✓	✓ 2			
-in Act		✓ 3	✓	✓	✓
Alteration -Ministerial Order	✓ 1	✓	✓	✓	✓
Formal Title					
-County Electoral Area	✓	✓ 4			
-Electoral Area		✓ 5			
-Borough Electoral Area		✓ 1			
-Local Electoral Area			✓	✓	✓
DISTRICT ELECTORAL DIVISIONS					
POWER -Ministerial Order	✓	✓			
WARDS POWER -Ministerial Order		✓	✓	✓	
NUMBER OF MEMBERS TO BE ELECTED FROM:-					
CORPORATE AREA AS A WHOLE					
-Existing -in Act	✓ 1	✓			
-in Ministerial Order	✓ 6		✓	✓	✓
Alteration-Ministerial Order	✓ 6				
-County Council applies to Minister	✓			✓	
-Council applies to Minister		✓	✓		
ELECTORAL COUNTIES ¹					
Existing -in Act	✓				
Alteration -Ministerial Order	✓				
ELECTORAL AREAS					
Existing -Ministerial Order	✓	✓	✓	✓	✓
Alteration -Ministerial Order	✓	✓	✓	✓	✓
DISTRICT ELECTORAL DIVISIONS (no provision)					
WARDS (No Provision)					

- 1 Dublin, only (i.e. Fingal, Belgard & DunLaoghaire / Rathdown).
- 2 Dublin & Galway.
- 3 Except Dublin & galway.
- 4 Galway, Only.
- 5 Cork, Limerick & Waterford.
- 6 Except Dublin.

	COUNTY	COUNTY BOROUGH	BOROUGH	URBAN DIST.	TOWN
TYPE OF MEMBERS TO BE ELECTED:-					
ALDERMEN	✓	✓	✓	✓	
-Ministerial Regulations					
-Ministerial Order			✓	✓	
-in Act		✓ 1			
COUNCILLORS Specifically defined as			✓ 2		
-all members					
-members who are not Aldermen		✓ 3			
(Composition of Council includes					
-Chairman & Councillors	✓			✓	
-Mayor, Aldermen & Councillors elected & accepted office		✓ 5	✓ 4		
-elected members			✓ 2		
-specific number of members		✓ 6			
-Commissioners.)					✓
CANDIDATES:-					
DISQUALIFICATIONS					
-An infant	✓	✓	✓	✓	✓
-Committed crime within 5 years & sentenced to imprisonment	✓	✓	✓	✓	✓
-Non payment of surcharge	✓	✓	✓	✓	✓
-Non payment of rates	✓	✓	✓	✓	✓
-Acting as member when disqualified	✓	✓	✓	✓	✓
QUALIFICATIONS					
-Valid nomination	✓	✓	✓	✓	✓
-Pays deposit	✓	✓	✓	✓	✓
THE ELECTORATE	✓	✓	✓	✓	✓
-On register of electors					
THE ELECTION.	✓	✓	✓	✓	✓

1 Where only one electoral area in county borough.

2 Dun Laoghaire, only.

3 Except Dublin & Galway.

4 Except Dun Laoghaire.

5 Except Galway.

6 Galway, only.

		COUNTY	COUNTY BOROUGH	BOROUGH	URBAN DIST.	TOWN
THE ELECTED						
RECORDS	-Register of members addresses	✓	✓	✓	✓	✓
	-Register of interest in land	✓	✓	✓	✓	
TERM OF OFFICE						
	-Period of 5 years.	✓	✓	✓	✓	✓
	-Resignation	✓	✓	✓	✓	✓
	-Removal (A) Individual members					
	-Committed crime etc.	✓	✓	✓	✓	✓
	-Absence from meetings					
	of- 6 months		✓	✓	✓	✓
	12 months	✓				
	-Made false claim for certain expenses.	✓	✓	✓	✓	✓
	-Non payment of rates.	✓	✓	✓	✓	✓
	-Acting when disqualified.	✓	✓	✓	✓	✓
	-Certain occupations.	✓	✓	✓	✓	✓
	-Non disclosure of certain interests.	✓	✓	✓	✓	✓
	-Non payment of surcharge.	✓	✓	✓	✓	✓
	(B) Council as a whole					
	-Duties not being performed	✓	✓	✓	✓	✓
	-Refusal to comply with Court Order etc.	✓	✓	✓	✓	✓
	-Refusal to allow books audited.	✓	✓	✓	✓	✓
	-Number less than quorum.	✓	✓	✓	✓	✓
	-Refusal to comply with express requirement	✓	✓	✓	✓	✓
	-Makes insufficient rate.	✓	✓	✓	✓	
VACANCY	-Filling	✓	✓	✓	✓	✓
REMUNERATION	-Salary		✓ ¹	✓ ¹		
	-Subsistence allowance & travelling expenses.	✓	✓	✓	✓	✓
FUNCTIONS	-Reserved.	✓	✓	✓	✓	✓

¹ Mayor, only, & Chairman in DunLaoghaire.

			COUNTY	COUNTY BOROUGH	BOROUGH	URBAN DIST.	TOWN
LEADER	-TITLE	-Chairman	✓		✓ ¹	✓	✓
		-Lord Mayor		✓ ²			
		-Mayor		✓ ³	✓ ⁴		
	-Qualifications			✓	✓		
		-Fit person		✓	✓		
		-Councillor or Alderman	✓	✓	✓		
	-Time elected						
		-Annual meeting	✓			✓	✓
		-Quarterly meeting		✓	✓		
	-Absence	-Vice chairman Acts	✓				
		-Deputy Lord Mayor acts		✓ ⁵			
		-Person members present choose		✓ ⁶	✓	✓	✓
	-Vacancy	-Filled by members present		✓	✓	✓	✓
	-Remuneration			✓	✓		
	-Powers	-Same as chief officer so far as not altered by M.C.(I.) Act, 1840.		✓	✓		
		-Request information from manager	✓	✓	✓	✓	✓
		-Appoint deputy when unable to act		✓ ⁵			
		-Call a meeting	✓	✓	✓		
		-Casting vote	✓	✓	✓	✓	✓
		-Be consulted by manager before appointing deputy manager or in certain instances appoint deputy manager	✓	✓			
		-Must be notified by manager before he takes his leave	✓	✓			
		-Sign Rate book etc.	✓	✓	✓	✓	
DEPUTY LEADER			✓	✓ ⁵			

- 1 Dunlaoghaire, only.
- 2 Dublin & Cork (by Letters Patent of 1900), only
- 3 Except Dublin & Cork.
- 4 Except Dunlaoghaire.
- 5 Dublin, only.
- 6 Except Dublin.
- 7 Except for election of chairman.

APPENDIX A.a7.

	COUNTY	COUNTY BOROUGH	BOROUGH	URBAN DIST.	TOWN
<u>C O M M I T T E E S</u>					
<u>PRINCIPAL STATUTORY COMMITTEES:-</u>					
VOCATIONAL EDUCATION COMMITTEE	✓	✓	✓ 1	✓ 2	
SCHOOL ATTENDANCE COMMITTEE		✓ 3	✓ 4		
COMMITTEE OF AGRICULTURE	✓				
DISEASE OF ANIMALS COMMITTEE	✓				
HEALTH BOARDS	✓	✓	✓ 4		
LOCAL HEALTH COMMITTEES	✓	✓	✓ 4		
HARBOUR BOARDS	✓ 5	✓ 5	✓ 5	✓ 5	
<u>JOINT COMMITTEES:-</u>					
GENERAL JOINT COMMITTEE	✓	✓	✓	✓	
JOINT COMMITTEE OF REFERENCE		✓ 6	✓ 4		
<u>COMMITTEE OF THE LOCAL AUTHORITY:-</u>					
GENERAL	✓	✓	✓	✓	✓
SPECIAL		✓	✓		
ADVISORY	✓	✓	✓	✓	✓
<u>R E L A T I O N S W I T H O T H E R B O D I E S</u>					
MEMBERSHIP OF STATUTORY COMMITTEES (above)	✓	✓	✓	✓	
NOMINATION OF PRESIDENTIAL CANDIDATE	✓	✓			
ELECTION OF SENATE MEMBERS	✓	✓			
APPROVING LOCAL COUNCILS	✓	✓			
DELEGATION OF FUNCTIONS WITH CONSENT OF MINISTER	✓	✓ 7	✓		
PERFORMANCE OF FUNCTIONS ETC. FOR OTHER BODIES	✓	✓	✓	✓	
HAVING FUNCTIONS OF LOCAL BODIES TRANSFERRED TO THEM	✓				
<u>R E C O G N I T I O N O F L O C A L A U T H O R I T Y A S S O C I A T I O N S</u>					
GENERAL COUNCIL OF COUNTY COUNCILS	✓				
ASSOCIATION OF MUNICIPAL AUTHORITIES		✓	✓	✓	✓

- 1 Drogheda, Dunlaoghaire, Sligo & Wexford, only;
 2 Bray & Tralee, only.
 3 Dublin, Cork & Waterford, only.
 4 Dunlaoghaire, only.
 5 Coastal local authorities, only.
 6 Dublin, only.
 7 Galway, only.

PERSONNEL

PERSONNEL			COUNTY	COUNTY BOROUGH	BOROUGH	URBAN DIST.	TOWN
<u>THE OFFICE</u>							
MEANING (No Provision)							
CREATION	(1)Permanent office		✓	✓	✓	✓	✓
	(A)Statutory		✓	✓	✓	✓	✓
	(B)Other		✓	✓	✓	✓	✓
	(2)Temporary office		✓	✓	✓	✓	✓
AMALGAMATION			✓	✓	✓	✓	✓
DIVISION	(1)Major		✓	✓	✓	✓	✓
	(2)Minor		✓	✓	✓	✓	✓
ABOLITION			✓	✓	✓	✓	✓
QUALIFICATIONS DECLARED BY							
	(1)Minister		✓	✓	✓	✓	✓
	(2)Local Appointments Commission with consent of Minister		✓	✓	✓	✓	✓
	(3)Local authority		✓	✓	✓	✓	✓
DISQUALIFICATIONS			✓	✓	✓	✓	✓
SECURITY			✓	✓	✓	✓	✓
DUTIES	Type	-Provided by Statute	✓	✓	✓	✓	✓
		-Declared by Minister	✓	✓	✓	✓	✓
	Delegation		✓ 1	✓ 2	✓ 3	✓ 3	✓ 3
	Acting for another Local authority		✓	✓	✓	✓	✓
	Performance		✓	✓	✓	✓	✓
			✓	✓	✓	✓	✓
TIME FOR FILLING			✓	✓	✓	✓	✓
<u>THE OFFICER:-</u>							
APPOINTMENT	(1)Non Individual						
		-Treasurer	✓	✓	✓	✓	✓
		-Solicitor	✓	✓	✓	✓	✓
	(2)Individual						
		(A)Permanent whole- time officer					
		-Definition	✓	✓	✓	✓	✓
		-Appointed by	✓	✓	✓	✓	✓
		-Number	✓	✓	✓	✓	✓
		-Kind	✓	✓	✓	✓	✓
		-Method of recruit- ment					
		(1)under 1926 Act	✓	✓	✓	✓	✓
		(11) others	✓	✓	✓	✓	✓
		-Taking up duty	✓	✓	✓	✓	✓

PERSONNEL (continued).	COUNTY	COUNTY BOROUGH	BOROUGH	URBAN DIST.	TOWN
-Reinstatement	✓	✓	✓	✓	✓
(B)Permanent part-time officer	✓	✓	✓	✓	✓
(C)Temporary officer -Definition	✓	✓	✓	✓	✓
-Appointed by	✓	✓	✓	✓	✓
-Recruitment	✓	✓	✓	✓	✓
(D)Deputy officer	✓	✓	✓	✓	✓
(E)Substitute officer -Definition	✓	✓	✓	✓	✓
-Appointed by	✓	✓	✓	✓	✓
-Recruitment	✓	✓	✓	✓	✓
CONDITIONS OF SERVICE					
Definition (no provision)					
Appeal	✓	✓	✓	✓	✓
Remuneration-Definition	✓	✓	✓	✓	✓
-Level	✓	✓	✓	✓	✓
-Leave -sick	✓	✓	✓	✓	✓
-annual	✓	✓	✓	✓	✓
-special	✓	✓	✓	✓	✓
-How financed	✓	✓	✓	✓	
-Superannuation	✓	✓	✓	✓	✓
Attendance	✓	✓	✓	✓	✓
Probation	✓	✓	✓	✓	✓
Tenure -General tenure	✓	✓	✓	✓	✓
-Termination by					
(1)Resignation	✓	✓	✓	✓	✓
(2)Suspension	✓	✓	✓	✓	✓
(3)Removal	✓	✓	✓	✓	✓
Other gainful occupations	✓	✓	✓	✓	✓
Illegal practices	✓	✓	✓	✓	✓
Training	✓	✓	✓ 4	✓ 5	

1 By manager and rate collector.

2 By manager in Dublin and Galway, only; and rate collector.

3 By rate collector, only.

4 DunLaoghaire and Drogheda, only (fire authorities)

5 Dundalk and Athlone, only (fire authorities).

FINANCE.

	COUNTY	COUNTY BOROUGH	BOROUGH	URBAN DIST.	TOWN
<u>INCOME</u>					
PROVISIONS FOR PARTICULAR TYPES					
-Borrowing	✓	✓	✓	✓	✓
-Grants/Subsides	✓	✓	✓	✓	✓
-Rates	✓	✓	✓	✓	
-Farm tax	✓	✓	✓	✓	
-Miscellaneous eg charges.	✓	✓	✓	✓	✓
RECEIPTING					
-Persons concerned	✓	✓	✓	✓	
-Type of receipt	✓	✓	✓	✓	✓
-Record	✓	✓	✓	✓	✓
-Checking receipts	✓	✓	✓	✓	✓
-Checking arrears due	✓	✓	✓	✓	✓
LODGING					
-When	✓	✓	✓	✓	
-Type of lodgement	✓	✓	✓	✓	✓
-Record of lodgements	✓	✓	✓	✓	✓
-Checking of lodgements	✓	✓	✓	✓	✓
<u>EXPENDITURE</u>					
PROVISIONS FOR PARTICULAR TYPES					
-Loans	✓	✓	✓	✓	✓
-Grants/Contributions	✓	✓	✓	✓	
-Works/Services etc.	✓	✓	✓	✓	✓
ACCOUNTING OF EXPENDITURE	✓	✓	✓	✓	✓
LIMITING					
-Limit(revenue expenditure)	✓	✓	✓	✓	✓
-Exceeding limit	✓	✓	✓	✓	✓
MAKING PAYMENTS					
-Persons concerned	✓	✓	✓	✓	✓
-authorisation	✓	✓	✓	✓	✓
-BY whom					
-Method	✓	✓	✓	✓	✓
<u>ESTIMATE OF EXPENSES</u>					
PREPARATION					
-By whom	✓	✓	✓	✓	✓
-when	✓	✓	✓	✓	✓
-Format	✓	✓	✓	✓	✓
PUBLICATION	✓	✓	✓	✓	✓
ADOPTION	✓	✓	✓	✓	✓
AFTER ADOPTION					
-issue of demands	✓	✓	✓	✓	✓
-copy to certain persons	✓	✓	✓	✓	✓

FINANCE (continued).		County	County Borough	Borough	Urban Dist.	Town
<u>ABSTRACT OF ACCOUNTS.</u>						
	PREPARATION-By whom	✓	✓	✓	✓	✓
	-When	✓	✓	✓	✓	✓
	-Format	✓	✓	✓	✓	✓
	AFTER PREPARATION					
	-Certification	✓	✓	✓	✓	✓
	-Checking	✓	✓	✓	✓	✓
THE AUDIT						
ANNUAL	-Notice to local authority	✓	✓	✓	✓	✓
	-Publication	✓	✓	✓	✓	✓
	-Inspection	✓	✓	✓	✓	✓
	-Appeal	✓	✓	✓	✓	✓
	-Adjournment	✓	✓	✓	✓	✓
	-Close	✓	✓	✓	✓	✓
	-Report of auditor	✓	✓	✓	✓	✓
	-Cost	✓	✓	✓	✓	✓
	Extraordinary	✓	✓	✓	✓	✓

APPENDIX A.d.ABBREVIATIONS:

C.C. County Council.
 C.B. County Borough.
 B. Borough.
 U.D. Urban District.
 T.C. Town Commissioners.
 G. General power given, for example, to do all things necessary to implement main power.

M.C. (I.) 1840	Municipal Corporations (Ireland) Act, 1840.
T.I. (I.) 1854	Towns Improvement (Ireland) Act, 1854.
P.L. (I.) 1855-1920	Public Libraries (Ireland) Acts 1855 to 1920.
P. (I.) 1869	Parks (Ireland) 1869.
P.H. (I.) 1878	Public Health (Ireland) Act, 1878.
L.G. (I.) 1898	Local Government (Ireland) Act, 1898.
F. (A.L.A.) 1919	Ferries (Acquisition by Local Authorities) Act, 1919.
L.G. 1925	Local Government Act, 1925.
L.A. (A.) 1926	Local Authorities (Allotments) Act, 1926.
J. 1927	Juries Act, 1927.
V.E.C. 1930	Vocational Education Act, 1930.
A. 1931	Agricultural Act 1931.
A.N.T. 1936	Air Navigation and Transport Act, 1936.
L.G. 1946	Local Government Act, 1946.
PBO	Public Bodies Order 1946.
L.G. (S.S.) 1948	Local Government (Sanitary Services) Act, 1948.
L.A. (W.) 1949	Local Authorities (Works) Act, 1949.
G. & L. 1956	Gaming and Lotteries Act, 1956.
L.G. 1960	Local Government Act, 1960.
D.S. 1961	Derelict Sites Act, 1961.
C. 1962	Coroners Act, 1962.
L.G. (S.S.) 1962	Local Government (Sanitary Services) Act, 1962.
C.P. 1963	Coastal Protection Act, 1963.
L.G. (P. & D.) 1963	Local Government (Planning and Development) Act, 1963.
L.G. (S.S.) 1964	Local Government (Sanitary Services) Act, 1964.
H.A. 1966	Housing Act, 1966.
H.A. 1970	Health Act, 1970.
L.A. (R. & M.) 1974	Local Government (Roads and Motorways) Act, 1974.
L.A. (W.P.) 1977	Local Authorities (Water Pollution) Act 1977.
C.T. 1980	Casual Trading Act, 1980.
F.S. 1981	Fire Services Act, 1981.
M.I. 1981	Malicious Injuries Act, 1981.
S.W. 1981	Social Welfare Act, 1981.
L. 1982	Litter Act, 1982.

ENVIRONMENTAL PROTECTION										
WASTE DISPOSAL	BURIAL GROUNDS	SAFETY OF STRUCTURES	DANGEROUS PLACES	DANGEROUS OCCURRENCES	FIRE PROTECTION	EMERGENCY SERVICES	LITTER	DERELICT SITES	WATER POLLUTION	ATMOSPHERIC POLLUTION
P.H. (I) 1878	P.H. (I) 1878	L.G. (S.S.) 1964	L.G. (S.S.) 1964	A.A. (W.) 1949	F.S. 1981	F.S. 1981	L. 1982	D.S. 1961	L.G. (W.P) 1977	L.G. (S.S.) 1962
SANITARY	BURIAL BOARD	SANITARY	SANITARY	LOCAL (C.C., C.B., B., U.D.C.)	FIRE	FIRE	LOCAL (C.C., C.B., B., U.D.C.)	LOCAL (C.C., C.B., B., U.D.C.)	LOCAL (C.C., C.B.)	SANITARY
DISPOSAL SITE	BURIAL GROUND			WORKS TO AFFORD RELIEF	PREMISES ETC.		SCRAP YARD			
✓	✓	✓	✓	✓	✓		✓	✓		
✓	✓				✓					
	✓				✓					
				✓	✓					
				✓ (Fisher -1ss)	✓ (C.C.)					
				✓	✓					

AMENITY										
GENERAL POWER	PARKS, OPEN SPACES	PUBLIC RIGHT OF WAY	FLORA	Fauna	TREES	SHRUBS	HEDGES	OTHER PLANTS	VIEWS & PROSPECTS	
L.G. (P&D) 1963	P. (I) 1869	L.G. (P&D) 1963	L.G. (P&D) 1963	L.G. (P&D) 1963	L.G. (P&D) 1963	L.G. (P&D) 1963	L.G. (P&D) 1963	L.G. (P&D) 1963	L.G. (P&D) 1963	
PLANNING	B., U.D., & T.C.	PLANNING	PLANNING	PLANNING	PLANNING	PLANNING	PLANNING	PLANNING	PLANNING	
GENERAL	PARKS, OPEN SPACES	PUBLIC RIGHT OF WAY	FLORA		TREES	SHRUBS	HEDGES	OTHER PLANTS		
✓	✓	✓	✓		✓	✓	✓	✓		
✓										
✓ (c.c.)	✓									
✓		✓								

ENVIRONMENTAL PROTECTION										
WASTE DISPOSAL	BURIAL GROUND	SAFETY OF STRUCTURES	DANGEROUS PLACES	DANGEROUS OCCURRENCES	FIRE PROTECTION	EMERGENCY SERVICES	LITTER	DERELICT SITES	WATER POLLUTION	ATMOSPHERIC POLLUTION
✓ ✓	✓				✓ ✓		✓			
	✓				✓					
	✓				✓					
	✓(by Minister)				✓					

AMENITY

GENERAL POWER	PARKS, OPEN SPACES	PUBLIC RIGHT OF WAY	FLORA	FAUNA	TREES	SHRUBS	HEDGES	OTHER PLANTS	VIEWS & PROSPECTS
✓ (c.c.)		✓(c.c.)	✓ (c.c.)		✓ (c.c.)	✓(c.c.)	✓ (c.c.)	✓ (c.c.)	
✓		✓							
		✓							
		✓							
		✓ (obstruc- tion)							
		✓							

V										
ENVIRONMENTAL					PROTECTION					
WASTE DISPOSAL	BURIAL GROUND	SAFETY OF STRUCTURES	DANGEROUS PLACES	DANGEROUS OCCURRENCES	FIRE PROTECTION	EMERGENCY SERVICES	LITTER	DERELICT SITES	WATER POLLUTION	ATMOSPHERIC POLLUTION
DOMESTIC REFUSE COLLECTION	MAINTAIN GRAVE				FIRE FIGHTING SERVICE	EMERGENCY SERVICE	COLLECTION OF LITTER			
✓	✓					✓				
✓					✓		✓			
					✓		✓	G		
					✓		✓	G		
✓					✓		✓			
					✓		✓			
	✓				✓	✓				
					✓	✓				
					✓(c.c.)	✓(c.c.)				
					✓					
					✓					
✓					✓	✓				
✓(WASTE receptacle)					✓(person in control)	✓(person in control)				
					✓					

AMENITY

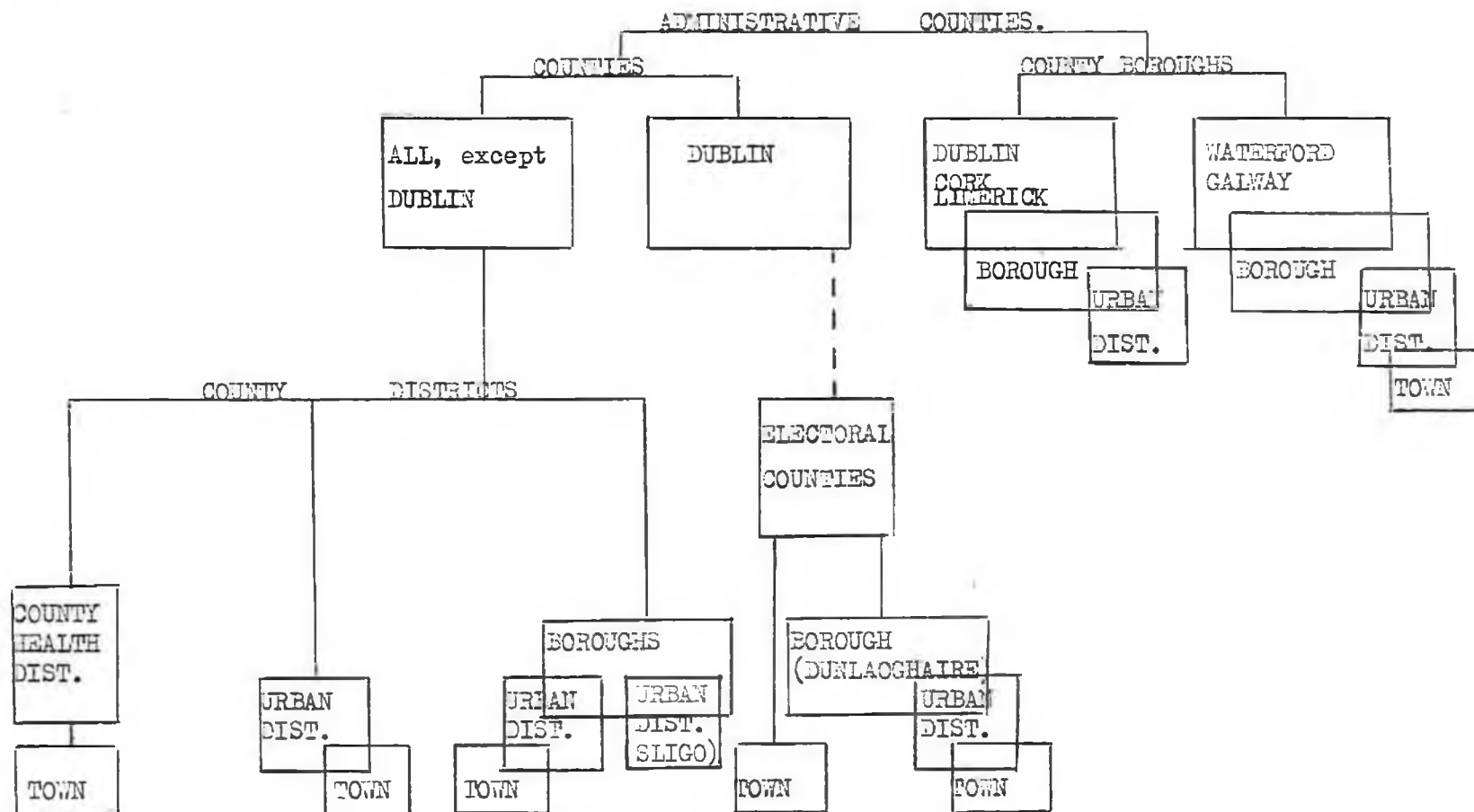
GENERAL POWER	PARKS, OPEN SPACES	PUBLIC RIGHT OF WAY	FLORA	FAUNA	TREES	SHRUBS	HEDGES	OTHER PLANTS	VIEWS & PROSPECTS
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V										
ENVIRONMENTAL					PROTECTION					
WASTE DISPOSAL	BURIAL GROUND	SAFETY OF STRUCTURES	DANGEROUS PLACES	DANGEROUS OCCURRENCES	FIRE PROTECTION	EMERGENCY SERVICES	LITTER	DERRISCT SITES	WATER POLLUTION	ATMOSPHERIC POLLUTION
	✓(to manage)				✓		✓			
		✓(to reh-use)	✓				✓		✓	
					✓	✓	✓			
✓(throwing rubbish on street)	✓(burying outside burial ground)				✓(guard against fire)		✓(occupier to keep it free of litter) ✓(litter public place)		✓(trade effluent)	
		✓	✓				✓			
		✓	✓		✓		✓	✓	✓	
		✓	✓		✓		✓	✓	✓	
		✓								
							✓	✓		
		✓	✓	✓					✓	
✓			✓				✓	✓		

AMENITY

GENERAL POWER	PARKS, OPEN SPACES	PUBLIC RIGHT OF WAY	FLORA	FAUNA	TREES	SHRUBS	HEDGES	OTHER PLANTS	VIEWS & PROSPECTS
✓			✓		✓	✓	✓	✓	
✓			✓		✓	✓	✓	✓	
✓ ✓			✓		✓	✓	✓	✓	
✓									
✓ ✓									
					✓	✓	✓		
✓		✓	✓	✓	✓	✓	✓	✓	✓
					✓		✓		

AREA: 1986 (After Local Government (Reorganisation) Act 1985).



A P P E N D I X C.LIST OF LOCAL AUTHORITIES AND POPULATIONPER MEMBER. in 1981.

LOCAL AUTHORITY	STATUS OF LOCAL AREA	POPULATION IN 1981 ¹	NUMBER OF MEMBERS ²	POPULATION PER MEMBER ³
Carlow	County	39,820	21	1,896
Carlow	Urban District	11,722	9	1,302
Muinebeag	Town	2,510	9	278
Cavan	County	53,855	25	2,154
Cavan	Urban District	3,240	9	360
Cootehill	Town	1,554	9	172
Belturbet	Town	1,138	9	126
Clare	County	87,567	32	2,736
Ennis	Urban District	6,223	9	691
Kilrush	Urban District	2,753	9	305
Shannon	Town	7,998	9	888
Cork	County	266,121	48	5,544
Cork	County Borough	136,344	31	4,398
Cobh	Urban District	6,587	9	731
Mallow	Urban District	6,572	9	730
Youghal	Urban District	5,870	9	652
Fermoy	Urban District	3,106	9	345
Midleton	Urban District	3,215	9	357
Clonakilty	Urban District	2,698	9	299
Macroon	Urban District	2,495	9	277
Skibereen	Urban District	2,130	9	236
Kinsale	Urban District	1,765	9	196

LOCAL AUTHORITY	STATUS OF LOCAL AREA	POPULATION IN 1981	NUMBER OF MEMBERS	POPULATION PER MEMBER
Passage West	Town	3,584	9	398
Bantry	Town	2,862	9	318
Bandon	Town	2,055	9	228
Donegal	County	125,112	28	4,468
Letterkenny	Urban District	6,444	9	716
Buncrana	Urban District	3,141	9	349
Bundoran	Urban District	1,610	9	178
Ballyshannon	Town	2,675	9	297
Dublin	County	477,282	36	13,257
Dublin	County Borough	525,882	45	11,686
Dunlaoghaire	Borough	54,496	15	3,633
Balbriggan	Town	5,582	9	620
Galway	County	172,018	31	5,548
Galway	Borough ⁴	37,835	12	3,152
Ballinasloe	Urban District	6,374	9	708
Tuam	Town	4,366	9	485
Loughrea	Town	3,377	9	375
Kerry	County	122,770	26	4,721
Tralee	Urban District	16,495	12	1,374
Killarney	Urban District	7,693	9	854
Listowel ²	Urban District	3,542	9	393
Kildare	County	104,122	21	4,958
Naas	Urban District	8,345	9	927
Athy	Urban District	4,920	9	546
Droichead Nua	Town	5,780	9	642

LOCAL AUTHORITY	STATUS OF LOCAL AREA	POPULATION IN 1981	NUMBER OF MEMBERS	POPULATION PER MEMBER
Kilkenny	County	70,806	26	2,723
Kilkenny	Borough	9,466	12	788
Laoighis	County	51,171	25	2,046
Portlaoighise	Town	4,049	9	449
Mountmellick	Town	2,954	9	328
Leitrim	County	27,609	22	1,254
Limerick	County	100,925	27	3,737
Limerick	County Borough	60,736	17	3,572
Longford	County	31,140	21	1,482
Longford	Urban District	3,998	9	444
Granard	Town	1,285	9	142
Louth	County	88,514	26	3,404
Drogheda	Borough	23,247	12	1,937
Dundalk	Urban District	25,663	12	2,138
Ardee	Town	3,199	9	355
Mayo	County	114,766	31	3,702
Ballina	Urban District	6,856	9	761
Castlebar	Urban District	6,409	9	712
Westport	Urban District	3,378	9	375
Meath	County	95,419	29	3,290
Navan	Urban District	4,124	9	458
Ceanannus Mor	Urban District	2,623	9	291
Trim	Urban District	2,144	9	238

LOCAL AUTHORITY	STATUS OF LOCAL AREA	POPULATION IN 1981	NUMBER OF MEMBERS	POPULATION PER MEMBER
Monaghan	County	51,192	20	2,559
Monaghan	Urban District	6,177	9	686
Castleblaney	Urban District	2,425	9	269
Clones	Urban District	2,329	9	258
Carrickmacross	Urban District	1,768	9	196
Ballybay	Town	603	9	67
Offaly	County	58,312	21	2,776
Tullamore	Urban District	7,901	9	877
Birr	Urban District	3,679	9	408
Edenderry	Town	3,452	9	383
Roscommon	County	54,543	26	2,097
Boyle	Town	1,737	9	193
Sligo	County	55,474	24	2,311
Sligo	Borough	17,232	12	1,436
Tipperary North	County ⁵	58,984	21	2,808
Thurles	Urban District	7,352	9	816
Nenagh	Urban District	5,717	9	635
Templemore	Urban District	2,425	9	269
Tipperary South	County ⁵	76,277	26	2,933
Clonmel	Borough	12,407	12	1,033
Carrick on Suir	Urban District	5,566	9	618
Tipperary	Urban District	4,984	9	553
Cashel	Urban District	2,436	9	270

LOCAL AUTHORITY	STATUS OF LOCAL AREA	POPULATION IN 1981	NUMBER OF MEMBERS	POPULATION PER MEMBER
Waterford	County	38,473	23	1,672
Waterford	County Borough	88,591	15	5,906
Dungarvan	Urban District	6,631	9	736
Tramore	Town	5,635	9	626
Lismore	Town	919	9	102
Westmeath	County	61,523	23	2,674
Athlone	Urban District	9,444	9	1,049
Mullingar	Town	7,854	9	872
Wexford	County	99,081	21	4,718
Wexford	Borough	11,417	12	951
New Ross	Urban District	5,386	9	598
Enniscorthy	Urban District	5,014	9	557
Gorey	Town	2,588	9	287
Wicklow	County	87,449	21	4,164
Bray	Urban District	22,853	12	1,904
Arklow	Urban District	8,646	9	960
Wicklow	Urban District	5,178	9	575
(Greystones	Town since 1981			

- 1 Source;- Census of population 1981. Figures for all areas for 1986 are not yet available.
- 2 Source;- Desmond Roche, Local Government in Ireland, pp.312-20. Appendix II.
- 3 Population per member figure is rounded down to the nearest whole number.
- 4 Galway Borough was made a County Borough from 1986.
- 5 Tipperary North and Tipperary South are administrative counties.

A P P E N D I X D.FUNCTIONS OF CENTRAL DEPARTMENTS, EXCEPTENVIRONMENT, PERFORMED BY LOCAL AUTHORITIES ETC.And STATUTORY BASIS OF CONTACT.

DEPARTMENT	STATUTORY CONTACT	SERVICES ETC PROVIDED BY LOCAL AUTHORITIES.
Agriculture	Committee of Agriculture	Some functions regarding slaughter houses, disease of animals, & provision of seeds
Defence	Civil Defence	Civil defence personnel
Education	Vocational Education Committees, School Attendance Committees.	Scholarships, sites for schools and services. School attendance.
Finance	Development Teams Office of Public Works	County Development officer, planning functions. Coast erosion, drainage, & National Monuments.
Fisheries & Forestry	(Regional Fisheries Board)	Preserve areas of natural beauty, trees & woodlands.
Gaeltacht	----	Gaeltacht housing, water and sewerage.
Health	Regional Health Boards. Local Health Committees.	Can provide infrastructure eg. water and sewerage.
Industry and Energy	(Industrial Development Authority)	Provides infrastructure eg. industrial serviced sites.
Justice	----	Provides courthouses, & pounds. Traffic functions, coroners.
Labour	----	Take part in schemes to alleviate unemployment, Factories Acts & Office Premises Acts functions.
Public Service	(Local Appointments Commission)	Recruitment of staff through LAC.

DEPARTMENT	STATUTORY CONTACT	SERVICES ETC. PROVIDED BY LOCAL AUTHORITIES.
Social Welfare	----	contributes to Unemployment Assistance Funds, blind welfare. Cheap Fuel Scheme.
Trade and Commerce	----	Markets and Fairs, weights and measures.
Tourism	(Bord Failte)	Develop and preserve amenities.
Transport and Communications.	Harbour Authorities	Maintain harbours, provide and maintain roads.

A P P E N D I X E.
STATUTORY DUTIES RELATING TO

- (1) COUNTY AND CITY MANAGERS. AND
(2) COUNTY SECRETARIES / TOWN CLERKS.

(1) COUNTY AND CITY MANAGERS.

The duties provided by statute relate to

- (A) Personnel
- (a) Control and supervision of staff for all areas.
 - (b) Service, remuneration, privileges and superannuation of staff for all areas except the County Boroughs of Limerick and Waterford.
 - (c) Appointing and removal of staff (other than city manager) for County Boroughs of Dublin, Cork, Limerick and Waterford.
 - (d) Appoint deputy manager in all areas.
 - (e) Delegate functions to assistant manager in counties only.
 - (f) Delegate functions to approved officer in all areas.
- (B) Members
- (a) Advisory functions in all areas.
 - (b) Furnish information on request of council or chairman / mayor, in all areas.
 - (c) Submit plans and specifications for the execution of any particular work, on request of council, in all areas.
 - (d) Attend meetings in all areas.
 - (e) In county, convene meeting for the adoption of Towns Improvement (Ireland) Act, 1854.
- (6) Elections
- (a) In county, hold first election of a new town commissioners.

- (D)Finance
- (a)Prepare Estimate of Expenses in all areas.
 - (b)Record proposal at meeting involving an illegal payment for all areas.
 - (c)Prepare financial statements
 - for all areas when requested by members (reserved function).
 - for County Boroughs of Dublin and Cork at the beginning of every month.
 - (d)Check lodgements before the seventh of every month for all areas.
 - (e)Checking of persons who receives payments,for all areas.
 - (f)Functions in relation to rates in all areas
 - i.e.-sign and seal rate collectors warrant.
 - investigate rate collectors account.
 - give opinion as to the need for valuation revisions.
 - (g)Authorisation of payments, except those ordered by a court,in all areas.

(The person who countersigns varies between areas.)

(E)Performance
of functions

- (a)Performance of executive functions in all areas.
- (b)Dealing with requisitions to do a particular thing in all areas (i.e. Section 4 resolution).
- (c)Delegation of executive functions to committee, with consent of Minister, by virtue of an enactment in force before 13 June 1940 in

counties and County Borough of Galway.

- (d) Carry into effect the reserved functions in all areas
- (e) Deal with matters incidental to exercise of executive functions, for example, making contracts, affixing seal etc., in all areas.
- (f) Acting in legal proceedings, in all areas.
- (g) Acting by signed order in all areas.

(2) COUNTY SECRETARIES OR TOWN CLERKS.

The duties provided by statute (including the Public Bodies Orders)¹ relate to

- (A) Personnel
 - (a) Where Insurance Acts apply seeing that the duties of the local authority are being performed by officers etc., in all areas.
- (B) Members
 - (a) Keeping register of members addresses, in all areas.
- (C) Meetings
 - (a) Send summons to attend, in all areas.
 - (b) Summon a new meeting where failure arose to hold annual or quarterly meetings.
 - (c) Keep minutes in towns where Towns Improvement (Ireland) Act adopted.
 - (d) Send notice to propose revoking a resolution where 1854 Act adopted.
- (D) Elections
 - (a) Returning Officer in all areas.
 - (b) Deputy Returning Officer in borough, urban district and town for county councillors in those areas.

- (E)Finance
- (a)Relating to valuations in all areas except towns,
- leave valuations lists open for inspection.
 - send them to valuation office.
 - give public notice of receipt of valuations.
 - send appeals to Commissioner of Valuation.
 - give certificate of rateable value.
- (b)Relating to rates, in all areas except towns.
- prepare rate book, enter particulars and certify rates
 - collecting books in order (see to it)
 - keep rates ledger.
 - report on state of rate collection to council.
- (c)Relating to rates in county boroughs, boroughs and urban districts - Rate Inspector unless manager with consent of Minister assigns it to some other officer.
- (d)Relating to rates in boroughs and urban districts - determine nett produce of a 1p. rate and submit it to county council.
- (e)Relating to Estimate of Expenses in all areas
- countersign.
 - transmit to Minister.
 - Send demands to bodies concerned.
- (f)Relating to expenditure
- record expenditure on each road in all areas except towns.
 - prepare annual summary of expenditure in all areas.

-estimate amount expended on main roads in
boroughs and urban districts.

(g) Issue arrears notices to debtors in all
areas.

(h) Countersigns authorisation of payments (i.e.
Treasurers Advice Note) in all areas except
county boroughs.

(i) In the case of Galway, only, once a Banking
Company appointed Treasurer the town clerk
shall exercise and perform all powers and
duties, other than the receipt and payment
of money and of keeping the accounts of same,
formerly imposed on Treasurer.

(j) Relating to Abstract of Accounts in all areas

-prepare.

-sign.

-transmit to Minister.

-prepare copies for auditor.

-publication.

-send copy audited Abstract to manager and
members.

(k) Relating to Audit of accounts in all areas.

-submit auditor's certificate of charge or
surcharge to person.

-notice of Audit (give).

-Deposit books etc. for inspection

(F) Performance

of functions

(a) Preparation of lists of ratepayers for change

of name of locality in all areas.

(b)Keep book of licences for hackney carriages
in towns where Towns Improvement(Ireland) Act
1854 adopted.

(c) Print bye-laws in county boroughs and
boroughs.

(d)Functions in relation to coroners districts in
counties.

(e)Countersign payments for public assistance
authority in all areas.

(f)Produce managers orders at meeting in Cork
County Borough, only.

1 Article 29 of the Public Bodies Order 1946 provides that the local authority may by order direct that any duty imposed by this Order on the Secretary or clerk may be performed by another specified officer.

A P P E N D I X E.
HEADS OF GOVERNMENT AND
MINISTERS OF THE DEPARTMENT RESPONSIBLE FOR
LOCAL GOVERNMENT SINCE 1919.

1919-1922 PROVISIONAL GOVERNMENT.

Head of Provisional Government. Minister for Local Government.

Eamon de Valera 1919-1922 W.T. Cosgrave.

1922-1932 CUMANN NA nGAEDHEAL GOVERNMENT.

President of Executive Council Minister for Local Government.

W.T. Cosgrave 1922-1932 Ernest Blythe 1922-1923

Seamus de Burca 1923-1924

Minister for Local Government and
Public Health.

Seamus de Burca 1924-1927

Richard Mulcahy 1927-1932

1932-1948 FIANNA FAIL GOVERNMENT.

President of Executive Council Minister for Local Government and
Public Health.

Eamon de Valera 1932-1938 S.T. O'Kelly 1932-1939

An Taoiseach

Eamon de Valera 1938-1948 P.J. Rutledge 1939-1941

Eamon de Valera 1941

Sean Mac Entee 1941-1948

1948-1951 COALITION GOVERNMENT.

An Taoiseach Minister for Local Government.

J.A. Costello 1948-1951 T.J. Murphy 1948-1949

William Norton 1949

Michael Keyes 1949-1951

1951-1954 FIANNA FAIL GOVERNMENT.An Taoiseach.Minister for Local Government.

Eamon de Valera 1951-1954

Patrick Smith 1951-1954

1954-1957 COALITION GOVERNMENT.An Taoiseach.Minister for Local Government.

J.A. Costello 1954-1957

Patrick O'Donnell 1954-1957

1957-1973 FIANNA FAIL GOVERNMENTAn Taoiseach.Minister for Local Government.

Eamon de Valera 1957-1959

Neil T. Blaney 1957-1966

Sean Lemass 1959-1966

Jack Lynch 1966-1973

Kevin Boland 1966-1970

Robert Molloy 1970-1973

1973-1977 Coalition Government.An Taoiseach.Minister for Local Government.

Liam T. Cosgrave 1973-1977

James Tully 1973-1977

1977-1981 Fianna Fáil Government.An TaoiseachMinister for the Environment.

Jack Lynch 1977-1979

Sylvester Barrett 1977-1980

C.J. Haughey 1979-1981

Raphael Burke 1980-1981

1981-1982 COALITION GOVERNMENT.An TaoiseachMinister for the Environment.

Garret Fitzgerald 1981-1982

Peter Barry 1981-1982

1982 FIANNA FAIL GOVERNMENT.An Taoiseach

CJ Haughey

1982

Minister for the Environment.

Raphael Burke

1982

1982-1987 COALITION GOVERNMENT.An Taoiseach

Garret Fitzgerald 1982-1987

Minister for the Environment.

Dick Spring

1982-1985

Liam Kavanagh

1985-1986

John Boland

1986-1987

1987- FIANNA FAIL GOVERNMENT.An Taoiseach.

CJ Haughey

1987-

Minister for the Environment.

Padraig Flynn

1987-

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(b) original material.

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S4115	S4536	S4964	S5265	S5482	S5870
S6193	S6460	S6461A	S6466	S6778A	S6778B
S9375	S10519	S10519A1	S10685A	S11150	S11953C/2
S12787	S12913	S13444B	S13444J	S13494A	S13578

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(iii) parliamentary records.

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<u>date</u>	<u>volume</u>
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9 February 1923	2
28 February 1923	
28 June 1928	24
27 February 1930	33
28 February 1930	
6 May 1931	38
7 May 1931	
27 February 1933	43
27 November 1940	81
18 June 1964	211
1 July 1964	
17 February 1965	214
27 April 1965	215
1 June 1982	335.3
2 June 1982	335.4
8 February 1983	339.10
22 May 1984	350.10
23 May 1984	350.11
9 May 1986	366.5
17 June 1986	368.1

(iv) legislation.

- (1) Statutes, Regulations, Orders and Circulars listed in HA Street, The Law Relating to Local Government, Stationery Office, Dublin. (Acts in the collective citations below, marked with an asterick (*), up to 1953 are also listed in this book).
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- (3) Parks (Ireland) Act, 1869.
- (4) "The Local Government (Sanitary Services) Acts, 1878 to 1964".
- (5) Dublin Corporation Act, 1890 (53 & 54 Vict c. ccxvi).
- *(6) "The Local Government Acts, 1925 to 1985".
- (7) Acquisition of Land (Allotments) Act, 1926 as amended.
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- (9) Juries Act, 1927 (No.23).
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- (12) Local Government (Galway) Act, 1937 (No.3 Private).
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- (26) Arts Act, 1973. (No.33).
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- (28) Local Elections (Petitions and Disqualifications) Act, 1974 (No.8).
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- (31) Casual Trading Act, 1980 (No.43).
- (32) Social Welfare (Consolidation) Act, 1981 (No.1).
- (33) Malicious Injuries Act, 1981 (No.9).
- (34) Fire Services Act, 1981 (No.30).
- (35) Litter Act, 1982 (No.11).
- (36) Local Authorities (Officers and Employees) Act, 1983 (No.1).
- *(37) Public Bodies Orders 1946 to 1977.
- (38) Local Elections Regulations, 1965 (No.128).
- (39) Local Government (Planning and Development) Regulations, 1977 to 1982.

(v) newspapers.

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<u>The Drogheda Independent</u>	13 October	1978.
<u>Dundalk Democrat</u>	14 January	1939
	2 February	1982
	3 April	1982
	5 June	1982
	12 March	1983
	26 March	1983
	19 May	1984
	30 June	1984
	29 September	1984
	23 March	1985
	6 April	1985
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(a) list of persons interviewed.

It is not possible to name the local officials interviewed because of the sensitive nature of some information given.

8	April	1987	Mr John Cullen, Principal Officer, Finance (Local), Department of the Environment.
30	April	1987	Mr Joseph Ryan, Administrative Officer, Planning Unit, Department of the Environment.
20	July	1987	Deputy County Manager.
22	July	1987	Deputy County Manager.
22 July & 3 September	1987	1987	Mr Harold O'Sullivan, Dundalk, former General Secretary of the Local Government and Public Service Union.
24	July	1987	Finance Officer.
11	August	1987	Town Clerk (Grade II).
31	August	1987	Mr Kevin Cullen, Assistant Principal Officer, Planning Unit, Department of the Environment.