



LG 14/2014

3 June 2014

Amendment of Section 132 (Reserved functions: duty of Chief Executive) and Section 136(1) (Furnishing of information to elected council) of the Local Government Act 2001

Dear Chief Executive

I am directed by the Minister for the Environment, Community and Local Government to refer to the commencement of section 47 of the Local Government Reform Act 2014 (the 2014 Act), which amends section 132 of the Local Government Act 2001 (the 2001 Act).

The amended section 132 of the 2001 Act covers the duties of a Chief Executive in relation to the implementation of functions reserved to elected members, by amending two existing subsections (2) and (3) and inserting five new subsections (4) to (8) inclusive. It extends the obligation on the manager to assist and advise the council to include the Municipal Districts and all Committees.

1. There was no substantive amendment of section 132(1) of the Act, other than to change the title of “manager” to “chief executive”.
2. Section 132(2) of the Act has been extended to clarify that in instances where legal advice in respect of a reserved function has been obtained, and elected members choose to seek a second legal opinion, the second legal opinion must be sought *in accordance with the terms of the resolution passed by the members*. This provision gives the elected members to opportunity to specify precisely the question to be put to legal adviser.
3. Section 132(3) of the Act has been extended to clarify that, in addition to advising and assisting the elected council, it is also the duty of the Chief Executive to advise and assist the corporate policy group, each strategic policy committee and the local community development committee. As applied in respect of the elected council under the 2001 Act, each must have regard to this advice or assistance.

This is to be read in conjunction with the requirement on the Chief Executive to provide all information that may be in his or her possession or procurement to the same entities, at the request of the

council, CPG or committee, or the chair of these. This requirement is set out in section 136(1) of the 2001 Act, as amended by section 51 of the 2014 Act.

4. Section 132(4) of the Act clarifies that that any reference in sections 132(1), 132(2) and 132(3) to the elected council of a local authority is also a reference to municipal district members when they are exercising a reserved function:-
 - section 132(1): carry into effect the lawful directions, in relation to the exercise and performance of their reserved functions, of the municipal district members;
 - section 132(2): in relation to municipal district members seeking a second legal opinion:
 - section 132(3): in relation to the advice and assistance to be given to the council and its bodies.
5. For the purposes of the elected members' superintendence and oversight, under section 132(5) of the Act, the Chief Executive, when requested by the elected members, must report on the actions already taken and planned to be taken in carrying out their directions in instances where elected members have a reserved function.
6. Section 132(6) of the Act enables elected members, in response to the Chief Executive's report, to resolve that actions already taken and planned to be taken in carrying out directions in instances where elected members have a reserved function are not sufficient, or sufficient for the efficient discharge of such function. The elected members are required to state their reason for such opinion.
7. Section 132(7) of the Act requires the Chief Executive to respond, within 14 days of the adoption of a resolution passed in accordance with section 132(6) of the Act, including identifying the changes he or she will introduce to the actions implementing the reserved function. The Chief Executive, where he or she considers it warranted, will be able to point out where the policy of the members would require amendment.
8. Section 132(8) of the Act requires the Chief Executive, when requested by the elected council, to advise on the review of any policy, or a review of the implementation of any policy, which has been approved as a reserved function. This can apply whether or not the Chief Executive has expressed an opinion on the policy under section 132(7).

Taken together section 132(5) to section 132(8) provides a mechanism for the elected members to review how the Chief Executive is

implementing the policy which the elected members have determined, and to form a view, with reasons given, where this is not considered sufficient. There is a tight timeframe for the Chief Executive to respond where this arises, with an opportunity to point out where the policy of the elected members would require review and amendment. This process enables the elected members to require a review of how their policies are being implemented, and an opportunity to provide clarity on their wishes for adjustment of this implementation, but does not require the Chief Executive to make any specific change, where it appears to the Chief Executive there are adequate reason the wishes of the elected members cannot be implemented. Should it become clear to the elected members, through this process (or otherwise) that a review of policy or a review of the implementation of a reserved function is warranted, the elected members may request the Chief Executive to advise on this review.

A copy of this circular, which is available on the SharePoint system, should be given to each elected member.

Any queries in relation to matters covered by this circular letter should be directed to Sean O'Suilleabhain (Tel. 01 888 2800 or email to sean.osuilleabhain@environ.ie). Local Government Policy Section, Custom House, Dublin 1.

Yours sincerely



Donal Enright
Principal
Local Government Policy/ Motor Tax Section
01 8883960

To Chief Executive of each County, County and City, and City

Copy for information to: ALLG