

Chapter 8

The interface between subnational and national levels of government

Multilevel regulatory governance – that is to say, taking into account the rule-making and rule-enforcement activities of all the different levels of government, not just the national level – is another core element of effective regulatory management. The OECD’s 2005 Guiding Principles for Regulatory Quality and Performance “encourage Better Regulation at all levels of government, improved co-ordination, and the avoidance of overlapping responsibilities among regulatory authorities and levels of government”. It is relevant to all countries that are seeking to improve their regulatory management, whether they are federations, unitary states or somewhere in between.

In many countries local governments are entrusted with a large number of complex tasks, covering important parts of the welfare system and public services such as social services, health care and education, as well as housing, planning and building issues, and environmental protection. Licensing can be a key activity at this level. These issues have a direct impact on the welfare of businesses and citizens. Local governments within the boundaries of a state need increasing flexibility to meet economic, social and environmental goals in their particular geographical and cultural setting. At the same time, they may be taking on a growing responsibility for the implementation of EC regulations. All of this requires a pro active consideration of:

- The allocation/sharing of regulatory responsibilities at the different levels of government (which can be primary rule-making responsibilities; secondary rule-making responsibilities based on primary legislation, or the transposition of EC regulations; responsibilities for supervision/enforcement of national or subnational regulations; or responsibilities for service delivery).
- The capacities of these different levels to produce quality regulation.
- The co-ordination mechanisms between the different levels, and across the same levels.

Assessment and recommendations

A relatively simple structure and relatively restricted functions compared with many other EU countries are assets in the Better Regulation context. The structure is simple and does not need to be pruned, as in some other European countries. Responsibilities devolved to the local levels of government are relatively circumscribed, albeit not inconsequential. Local authorities in Ireland are responsible for the delivery of public services under central supervision, and they have significant responsibilities in the delivery of permits and in planning. Most of their regulatory work rests on regulations that have been defined at the centre of government.

Co-ordination with central government needs attention. The OECD peer review team found evidence that each department goes its own way in relationships with the local level. There were complaints that “central departments are not joined up” and co-ordination between the centre and the local levels does not always seem to be optimal. This raises a number of issues. For example, environmental burdens which can mainly be traced back to the EU are a major issue at this level and may not be effectively picked up. Local authorities representatives also raised the issue of unfunded mandates, and the fact that regulatory burdens on them of regulations adopted at the national or EU level are not properly discussed beforehand. The local level seems in need of more effective consultation with the centre, with special regard to financial and resource implications. The 2008 OECD report on the Irish public service underlined the need for a more co-ordinated approach at the national level to minimise regulatory burdens on local authorities.

Recommendation 8.1. Review co-ordination and consultation mechanisms between the central and local levels, with a view to reinforcing these. Consider an annual forum.

By contrast, horizontal co-ordination between local authorities appears to be stronger. The local authorities remarked that horizontal links between them were stronger. The OECD peer review team heard that a wide range of groups are active.

National policies such as the administrative burden reduction programme do not include the local level. There may, however, be interest. The local authorities said that they had “not been invited to join the AB programme”.

Recommendation 8.2. Invite local authority participation in the administrative burden reduction programme for business, perhaps as part of the strategy renewal proposed in Chapter 5.

Background

Structure, responsibilities and funding of local authorities

The Twentieth Amendment of the Constitution of Ireland (1999) provided for constitutional recognition of local government for the first time in Ireland. The basic structures, procedures, financing arrangements, etc., of local authorities are set out in the Local Government Acts. The main act is the Local Government Act 2001. Provisions regarding specific activities, e.g. water, planning, environmental activities are contained in specific acts dealing with those areas. Provisions in relation to the role for the Minister for the Environment, Heritage and Local Government are contained, as appropriate, throughout these acts.

Structure of local governments

The primary units of local government in Ireland are counties and cities; the state is divided into 34 areas – 29 county council areas and 5 city councils (Cork, Dublin, Galway, Limerick and Waterford). Each city operates as an independent and autonomous local authority and is entirely separate from its home county. Each of the 29 counties and 5 cities has its own local authority elected by the local population, and known as the county council or the city council as appropriate.

Within most county council areas (but not all), and forming part of them, are other local authorities areas known as towns. Each of the 80 towns elects its own local authority

known as a town council or, in five cases, a borough council. The residents of the towns are represented by councillors elected both at town level and at county level (in separate elections), some of whom are members of both authorities. While town councils perform a range of functions independently, there is, in practice, substantial co-operation between them and their respective county councils.

Local elections take place every 5 years. Every resident over 18 years of age is entitled to be registered as a local authority's elector. Citizenship is not a requirement for voting at a local election. Councillors, *i.e.* the elected members, form the elected tier of a local authority. They are elected under a system of proportional representation. The elected council is the policy making forum of the local authority; the day-to-day management is carried out by the executive, *i.e.* the cadre of full-time officials led by the county or city manager. The number of councillors elected to each local authority ranges from 9 to 52.

Elected councils exercise reserved functions defined by law. They include decisions on policy and financial matters. The elected members also have an oversight role and responsibility for the general direction of the affairs of the local authority. The executive advises and assists the councillors, and discharges the day-to-day business of the local authority within the policy parameters defined by the elected council. While the division of roles between councillors and the executive is clearly defined in statute, in practice the policy and executive roles overlap.

At the regional level, there are eight regional authorities and two regional assemblies, whose members are not elected by a separate regional election but nominated by the county and city councils within their area. Regional authorities, which came into place in 1994, promote the co-ordination of public service provision. The two regional assemblies were established in 1999, mostly as an instrument for the management of EU structural funds at the time when Ireland's economic status in the European Union quickly changed. They have had limited impact on Irish governance.

Other local or regionally-based bodies operate separately from the local government system although, in some cases, having a degree of linkage with it (*e.g.* part of their membership appointed by the local authorities). Such bodies generally have specific executive or service functions within a particular sector (*e.g.* fisheries boards, health boards).

Responsibilities and powers of local authorities

The functions of local authorities in Ireland are more restricted than usually found in other European countries. They mainly provide public services under the general supervision of the Department of the Environment, Heritage and Local Government. Their annual budget is formulated under eight main programme groups (housing, road transport and safety, water supply and sewerage, local economic development, environmental protection, recreation amenities, agriculture, health and welfare), within which they exercise a limited role within these areas (see Table 8.1). Local authorities can issue by-laws to regulate some local matters (example), but their regulatory role largely focuses on the implementation of regulations that have been defined at the central level (which in many cases originate from the EU level). Their regulatory competences focus on issuing some permits (*e.g.* land use) and licences and control of nuisance and litter.

Table 8.1. Activities of local authorities in Ireland

Programme group	Summary of activities/services
Housing and building	Provision of social housing, assessment of housing needs, housing strategies, homelessness, housing loans and grants, Traveller accommodation, voluntary housing, private rented sector and housing standards
Roads and transportation	Road construction and maintenance, traffic management, public lighting, collection of motor taxes, driver licences, taxi licensing
Water and sewerage	Water supply, waste water treatment, group water schemes, public conveniences
Planning and development	Adoption of development plan, decisions on planning applications, urban or village renewal plans and works, heritage protection, industrial and tourism infrastructure and support
Environmental protection	Waste collection and disposal, waste management planning, litter prevention, the fire service, civil defence, air/water pollution controls, burial grounds, building safety
Recreation and amenity	Public libraries, parks and open spaces, swimming pools, recreation centres, the arts, culture, museums, galleries and other amenities
Agriculture, education, health and welfare	Making nominations to vocational education committees and harbour boards, processing of higher education grants, veterinary services
Miscellaneous services	Maintaining the register of electors for elections, financial management, rate collection, provision of animal pounds

Source: Department of Environment, Heritage and Local Government.

A number of services, which in other EU countries are delivered by local authorities, are in Ireland provided by local units of central government, which are much larger in scale than most Irish county or city councils. Over the past 20 years, in an effort to streamline service delivery, some strategic functions have been taken from local authorities. For example, the Environmental Protection Agency and the National Roads Authority were set up in the 1990s to bring a strategic focus and consistent national approach to major environmental functions and national road developments. Some health functions were also moved to regional health boards.

Over the last two decades, the government has engaged a series of reforms to improve the managerial capacities of local authorities administration and their capacity to deliver high quality public services. In 1996, the Department of the Environment, Heritage and Local Government initiated *Better Local Government*, a blueprint for reform of the local authorities structure. This programme was grounded in the 1994 *Strategic Management Initiative*, which set a broad agenda for change in the Irish public service and emphasised the delivery of a quality service to the public. In 2004, the Local Government Management Services Board published its first report, which detailed the performance of local authorities in the delivery of public services through a set of indicators. The reports, which have been produced on an annual basis, have increased the accountability required from local authorities. In 2000, the Planning Act and the 2001 Local Government Act made changes to local authority procedures to ensure more transparency (e.g. through submission of draft plans, requirement to have council meetings in public). More recent initiatives to enhance local democracy have focused on revising the structures for local governance. The Minister for the Environment, Heritage and Local Government launched a green paper on local government in April 2008, which outlined a number of options for governance changes in

the structure of local governments. It also stressed the need for continuous change, flexibility and imagination in service delivery, and increased sharing services between local authorities.

Funding of local governments

Irish governments have limited revenue-raising capacities and largely depend on central government for capital funding and, to a lesser degree, current funding. Subnational expenditures in Ireland grew at a very quick pace over the last decade as a result of the demands of a fast growing economy, a rising population and a large-scale infrastructure investment plan. This increase was not matched by an increase in local resources, resulting in further dependency on central government. Almost all of the capital spending is funded by state grants, covering the cost of major construction works on roads, water and sanitary service facilities, and much of the housing construction programme. Current expenditure is financed through a combination of state grants, local rates on commercial and industrial property, and through fees, charges, rents and services provided by the local authorities. Local authorities have little room for manoeuvre with respect to taxes as there are no local taxes levied on citizens in Ireland, and the revenue from local rates on commercial and industrial properties has been relatively static. There are extensive reporting relationships between central government and local authorities, on service delivery and the spending of government grants (OECD, 2008).¹

Box 8.1. Sources of local authority income

Sources of Income for Current Expenditure 2010:

- Charges for Goods and Services (30%).
- Rates (29%).
- Government Grants and Subsidies (24%).
- Local Government Fund – General Purpose Grant (17%).

Source: Department of Environment, Heritage and Local Government, www.environ.ie/en/LocalGovernment/LocalGovernmentAdministration/LocalGovernmentFinance (accessed February 17, 2010).

Efforts to promote quality regulatory management at the local level have focused on the development of consultation between central and local government, and between local authorities themselves. The Department of the Environment, Heritage and Local Government is the key interlocutor of local authorities, which interacts with them either through the Office of Local Authority Management (OLAM) or individually. OLAM is also a main channel of consultation and co-operation across local authorities, along with the regional authorities. In recent years many legislative and other changes have incorporated a requirement or advice in relation to consultation. In addition, consultation and co-operation takes place on an on-going basis between central government and subnational government on specific issues.

Co-ordination mechanisms

Co-ordination between central and local authorities

Vertical co-ordination rests on two pillars. The first is the Department of Environment, Heritage and Local Government and the second is the Office for Local Authority Management (OLAM – see Box 8.2). OLAM is a division of the Local Government Management Services Board (LGMSB). The LGMSB was established by the Department of Environment in 1996, to provide for local authorities services with respect to staff negotiations, human resources and other management services. OLAM was established in 2004, at the initiative of the County and City Managers' Association (CCMA), which is the representative body for senior managers in Irish local authorities with the support of the Department of the Environment, Heritage and Local Government.

Box 8.2. The Office for Local Authority Management (OLAM)

The key focus of the work of OLAM is to ensure that the view of the local authority system, articulated through the CCMA and its committee structure, are conveyed to relevant departments and Agencies. This is done on both a planned and responsive basis throughout the year, and combines the input of local authority practitioners with the research capacity of OLAM.

It is done in a number of different ways:

- Through submissions and position papers.
- In direct engagement with senior public servants and Ministers.
- By identifying opportunities for wider communications.
- Through press releases on relevant issues.
- By the production and distribution of factual material on local authorities.
- Through the annual Service Indicators in Local Authorities Report.

Source: LGMSB website.

One of the key roles of the Minister for the Environment, Heritage and Local Government is to set down national policy for the local government sector, and to provide the necessary legislative and regulatory framework within which the sector operates. The relationship between the Minister and local authorities, which is also governed by legislation, ranges from a total prohibition on involvement by the minister in local authority matters (*e.g.* planning permissions), optional involvement (*e.g.* issuing directions on development plans, holding public inquiries etc), required involvement (*e.g.* determining local electoral boundaries, the ultimate decision on removing a manager from office, etc) and statutory consultation across a wide range of areas. Informal (structured and non-structured) co-operation between local authorities and government departments is a feature of the day-to-day interaction between local and central government. Local authorities now interact with wide range of government departments as departments have been reorganised and as local authorities have become involved in a wider range of activities in areas such as sports, arts and culture and community development.

The Department of the Environment, Heritage and Local Government is represented both on the High level Group on Business Regulation and on the Inter-Departmental Group, co-ordinating the 25% measurement and reduction process. Information Obligations administered by Local Authorities have been and are considered by both Groups.

Additionally, the Minister for Enterprise, Trade and Innovation has recently invited representatives of the County and City Managers' Association (CCMA) to discuss, inter alia, the issue of administrative burdens arising for business as a result of their activities. Following this meeting, the Business Regulation Unit in DETI has agreed with the Chair of the CCMA that the Local Authorities will (a) be represented on DETI's Risk-Based Enforcement Group, to discuss data sharing among inspection agencies, and (b) will identify a number of national issues (licences, permits, etc.) that may be simplified to reduce burdens on business. Thus, the interaction between the Administrative Burden Reduction Agenda and the Local Authorities is being actively considered at three or more fora.

In December 2009, the Minister for the Environment, Heritage and Local Government, announced the establishment of a Local Government Efficiency Review Group to review the cost base, expenditure of and numbers employed in local authorities.

Box 8.3. Report of the Efficiency Review Group

The Terms of Reference for the Group were:

To review the cost base, expenditure of and numbers employed in local authorities with a view to reporting on:

- specific recommendations to reduce costs;
- the effectiveness of particular programmes;
- optimal efficiency in the way programmes are delivered; and,
- any other proposals to enhance value for money in the delivery of services at local level.

The chair of the Group presented its report to the Minister on 9 July 2010. The report makes 106 recommendations and has identified efficiency and other savings of 511m for the local government sector to be pursued in the short, medium and longer terms. These savings are comprised of 346m in efficiencies and 165m in improved cost recovery and revenue raising.

The Group's recommendations cover proposals such as: joint administrative areas for some sets of counties; reductions in senior management and other staffing levels; greater efficiency in procurement; more use of shared services, such as joint inspectorates and regional design offices; better financial management including annual reporting to the *Oireachtas*; and wider use of service indicators to help improve performance.

There was a comprehensive consultation process involving the key stakeholders, including Government Departments/Agencies, local authorities, business and local authority representative groups and the general public.

The realisation of the savings and other efficiencies identified in the Report involve implementation over time. In this context, a small Local Government Efficiency Review Implementation Group with an independent chairperson to oversee implementation of relevant recommendations within the timescales identified will be established shortly.

Source: www.environ.ie/en/LocalGovernment/LocalGovernmentEfficiencyReviewGroup/PublicationsDocuments/FileDownload,23533,en.pdf.

The OECD peer review team heard some concerns that there is little central co-ordination, and that each department manages its own relationship with the local level independently, which generates issues of duplication and excessive bureaucracy. The Department of Environment itself noted that a traditional criticism was that they had in the past adopted an over strict supervisory approach. Efforts had therefore been made by the department to reduce reporting requirements, on which there had been progress, but against a growing demand from the public and *Teachta Dálas* for more information and reporting of local authority performance.

OLAM notes that a key concern for local authorities is the extent of the regulatory or administrative burden falling on local authorities from various sources (national government/government agencies/EU level). While there is some consultation with local authorities, particularly at a regional level, in regard to the regulatory development process, local authorities outline the need for a greater level of consultation particularly having regard to resource or financial implications, for example as regards environmental regulations.² Regulations need to give local authorities sufficient flexibility to set policies at local level and so that timeframes for transpose directives are realistic. At the same time, they highlight their own resource constraint to assess regulatory processes. OLAM reports that local authorities have been seeking to assess some of the key risks and implications of new regulations that they need to apply, including the issue of unfunded mandates.

These issues were reflected in a range of comments to the OECD peer review team from local authority representatives. These included the comment that “we should be better at doing *ex post* review (and was the RIA correct in anticipation of impacts)”; “Many burdens perceived by business and local authorities directly arise from EU directives. This is particularly difficult in the environmental area.” “Regulations are growing out of transposition of EU directives”. “It is not a question of more/less regulation, but of good regulation”.

The 2008 OECD report on the Irish public service underlines the need for a more co-ordinated approach at a national level in order to minimise the regulatory burden on local authorities.

Co-ordination between local authorities

Although no specific local written policy exists in this area and informality is the key note, since 2002, the County and City Managers Association (CCMA) has established formal committee structures to enable a co-ordinated approach to regulatory issues. Local authorities use the CCMA networking structures to collaborate, to disseminate best practice, and to streamline procedures where possible in order to minimise the regulatory burden. The Committees also work with their respective counterpart functional Divisions in the Department of the Environment, Heritage and Local Government (*e.g.* Housing and Planning). In respect of waste management, local authorities co-ordinate regulation across waste regions. Strategic or management issues of common concern are dealt with at CCMA level and OLAM provides a corporate response on behalf of the system on a range of issues. At a regional level, regional authorities enable co-ordinated responses on strategic issues with nominated “lead authorities” led by county managers. Directors of service also co-ordinate specific work programmes at this level. A number of services are delivered or managed regionally (for example, fire services). A range of co-ordination mechanisms exist either at regional or national level on other policy areas, including water services. The OECD peer review team heard confirmation that a wide range of groups are active to bring local authorities together.

Better Regulation policies deployed at local level

Reflecting the fact that they have relatively few regulatory powers, the main activity focuses on the issue of managing regulations “from above”. Local authorities themselves reported that they have become increasingly better at doing consultation (citing for example the Housing Forum which carries out extensive surveys). Individually and collectively, however, local authorities are actively trying to reduce the burden of administration where it is in their remit to do so. They are also actively seeking the reduction of administrative burdens in their dealings with government departments and state organisations.

Initiatives by local authorities to support business include:

- Each county/city council has established a Business Support Unit (or similar arrangement) to act as a point of contact for businesses to ensure co-ordinated response (*e.g.* planning, water and roads).
- The Minister for the Environment has agreed (and signalled to the *Oireachtas* Committee on Economic Regulatory Affairs) to set up a Business Users Fora to improve consultation / responsiveness by local authorities to local businesses including in respect of regulatory requirements.

The Minister for Enterprise, Trade and Innovation met with members of the County and City Managers’ Association in June 2010 to discuss, *inter alia*, AB reduction. Following this meeting, officials in DETI have discussed how priority national ABs arising from Local Authority administration may be tackled in co-operation with the HLG. Additionally, the cross-Government prioritisation of IOs includes any priority IOs that have national scope and may give rise to substantial burdens for business, including those that govern Local Authorities. Once these IOs have been measured, by mid 2011, it is envisaged that simplification workshops will then, of necessity, involve the Local Authorities directly in the search for simplification ideas.

Notes

1. OECD (2008), OECD Public Management Reviews – Ireland, Towards an Integrated Public Service, page 68.
2. The case of environmental enforcement is cited, where prescriptive standards and targets are set (for example criminal liability is an issue for local authority staff in respect of some environmental regulation but not always accompanied by dedicated resources).