



Number 42 of 1998

WESTERN DEVELOPMENT COMMISSION ACT, 1998

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Acts Referred to

Companies Act, 1990	1990, No. 33
European Parliament Elections Act, 1997	1997, No. 2
Industrial Development Act, 1993	1993, No. 19
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WESTERN DEVELOPMENT COMMISSION ACT, 1998

AN ACT TO ESTABLISH A BODY, TO BE KNOWN AS THE WESTERN DEVELOPMENT COMMISSION, TO PROMOTE ECONOMIC AND SOCIAL DEVELOPMENT IN THE COUNTIES OF CLARE, DONEGAL, GALWAY, LEITRIM, MAYO, ROSCOMMON AND SLIGO AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH. [25th November, 1998]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART I

Preliminary and General

1.—This Act may be cited as the Western Development Commission Act, 1998. Short title.

2.—(1) In this Act, except where the context otherwise requires— Interpretation.

“the Commission” means the Western Development Commission established by *section 7*;

“establishment day” means the day appointed under *section 6* to be the establishment day for the purposes of this Act;

“functions” includes powers and duties and references to the performance of functions includes, as respects powers and duties, references to the exercise of the powers and the performance of the duties;

“the Fund” means the fund established by *section 20*;

“the Minister” means the Minister for Agriculture and Food;

“superannuation benefit” means a pension, gratuity or other allowance payable on resignation, retirement or death.

(2) A reference in this Act to a section is a reference to a section of this Act, unless it is indicated that a reference to some other enactment is intended.

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Pt.I S.2 (3) A reference in this Act to a subsection or paragraph is a reference to the subsection or paragraph of the provision in which the reference occurs, unless it is indicated that a reference to some other provision is intended.

Expenses. 3.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

Penalties. 4.—(1) A person guilty of an offence under *section 18* shall be liable on summary conviction to a fine not exceeding £1,500 or to imprisonment for a term not exceeding 12 months or both.

(2) A person guilty of an offence under *section 16* or *17* shall be liable on summary conviction to a fine not exceeding £1,500.

(3) Where an offence under this Act is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any director, manager, secretary or other officer of such body corporate or a person who was purporting to act in any such capacity, that officer or person shall be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

Proceedings. 5.—Notwithstanding *section 10(4)* of the Petty Sessions (Ireland) Act, 1851, summary proceedings for an offence under this Act may be instituted within 12 months from the date on which the offence was committed.

PART II

Western Development Commission

Establishment day. 6.—The Minister shall by order appoint a day to be the establishment day for the purposes of this Act.

Establishment of Western Development Commission. 7.—(1) There shall stand established on the day appointed under *section 6* to be the establishment day a body to be known as the Western Development Commission, to perform the functions assigned to it by this Act.

(2) The Commission shall be a body corporate with perpetual succession and a common seal and power to sue and be sued in its corporate name and, with the consent of the Minister given with the approval of the Minister for Finance, to acquire, hold and dispose of land or an interest in land, and to acquire, hold and dispose of any other property.

(3) The seal of the Commission shall be authenticated by the signature of the chairperson of the Commission, or by the signatures of both an ordinary member and a member of the staff of the Commission authorised by the Commission to act in that behalf.

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(4) Judicial notice shall be taken of the seal of the Commission and every document purporting to be an instrument made by and to be sealed with the seal of the Commission (purporting to be authenticated in accordance with this section) shall be received in evidence and be deemed to be such instrument without proof unless the contrary is shown. Pt.II S.7

8.—(1) The general functions of the Commission shall be to promote, and procure the promotion of, and assist in, foster and encourage economic and social development in the Western Region and, for those purposes, but without prejudice to the generality of the foregoing— General functions of Commission.

- (a) to provide assistance in such form as it considers appropriate for business and social enterprises and projects, whether established or being or to be established, in the Western Region, and to foster and encourage the establishment, maintenance and expansion of such enterprises and projects,
- (b) in co-operation with the national, regional and local bodies (whether financed out of public funds or otherwise) engaged in such development or the provision of assistance for, or the fostering and encouragement of, such development (“the bodies”)—
 - (i) to make proposals for the further co-ordination of, and to foster and encourage, the activities of the bodies in the Western Region in relation to such development and to foster and encourage such co-ordination,
 - (ii) to identify business and social enterprises and projects, and infrastructural projects related to those enterprises and projects, in the Western Region that, in the opinion of the Commission formed after consultation with such of the bodies as it considers appropriate, should, in the furtherance of such development, be established or enlarged or whose establishment or employment should be accelerated and to propose the priority that, in its opinion, should be given by the Commission or such of the bodies as it considers appropriate in relation to the provision of assistance for those enterprises and projects and to make appropriate proposals to the bodies concerned and the Minister,
 - (iii) to identify the nature and extent of the assistance that should in its opinion be provided for particular such enterprises and projects and those (if any) of the bodies by which it should be provided and to determine whether the Commission should provide the assistance or participate in its provision and to make appropriate proposals to any bodies so identified and to the Minister,
 - (iv) to identify any commitments or undertakings given by the Commission or any of the bodies in relation to assistance for business or social enterprises or projects in the Western Region that, in the opinion of the Commission and the bodies, should, owing to changes in circumstances or for any other reason, be

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withdrawn or modified or the implementation of which should be postponed and to make appropriate proposals in relation thereto to those bodies and the Minister,

- (c) to implement any proposal under *paragraph (b)* falling to be implemented by the Commission and, if it considers it appropriate to do so, to endeavour to secure the implementation of any other such proposal,
- (d) to promote, foster and encourage the provision, maintenance and, if appropriate, the enlargement of, and procure the provision of assistance for, such infrastructural projects, both local and regional, as it considers necessary or expedient for the purposes of economic and social development in the Western Region,
- (e) (i) to consult with such Ministers of the Government as it considers appropriate, and

(ii) to consult with a Minister of the Government whenever so requested by him or her,

in relation to any of its functions or a matter related to any of its functions or in relation to the functions of the Minister of the Government in so far as they relate to the Western Region or the functions of the Commission,

- (f) to consult and, where appropriate, co-operate with—
 - (i) the bodies referred to in *paragraph (b)*,
 - (ii) persons carrying on or promoting business or social enterprises or projects in the Western Region,
 - (iii) organisations that are representative of such persons, and
 - (iv) trade unions and staff associations that are representative of persons employed in or in relation to business and social enterprises or projects in the Western Region,

for the purpose of encouraging and fostering the creation of conditions in the Western Region and in particular localities therein conducive to private investment in, or the lending of money for the purposes of, business and social development in the Western Region.

(2) The Commission shall not provide financial or other material aid for the infrastructural projects referred to in *paragraph (b)(ii)* or *(d)* of *subsection (1)* unless they are subsidiary and ancillary to business or social enterprises or projects.

(3) The Commission shall not, without the consent of the Minister given with the concurrence of the Minister for Finance, provide financial or other material aid to a business enterprise or project if it is not satisfied that the enterprise—

- (a) is profitable and viable or will be so within a reasonable period of time, and

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(b) is capable, or likely to become capable within a reasonable period of time, of paying dividends to the Commission on any shares held by it in the share capital of the enterprise and paying interest to the Commission on any loan made by the Commission to the enterprise and repaying any such loan to the Commission. Pt.II S.8

(4) Assistance, or a condition of the giving of assistance, by the Commission to a company shall not be such that, by reason of the assistance or condition, the company becomes a subsidiary of the Commission.

(5) Financial or other material aid provided to enterprises or projects by the Commission shall be in such form and subject to such terms and conditions as may be determined from time to time (at such times as may be specified by the Minister) by the Commission with the consent of the Minister given with the concurrence of the Minister for Finance, and the amount thereof, in the case of any particular enterprise or project, shall not exceed £250,000 without the consent in writing of the Minister.

(6) The Commission shall have all such powers as are necessary or expedient for the purposes of its functions (including the power to charge fees).

(7) In this section—

“assistance”, in relation to an enterprise or project, includes investment in it by the purchase of shares in its share capital, the provision of loans or other financial aid to it, the provision of advisory or consultancy services to it, the provision of training for persons employed or proposed to be employed in or in relation to the enterprise or project and any other support (within the meaning of the Industrial Development Act, 1993) for it and includes participation by the Commission jointly with another or other persons in the enterprise or project but does not include grants of money to it;

“the Western Region” means the region consisting of the counties of Clare, Donegal, Galway, Leitrim, Mayo, Roscommon and Sligo.

9.—(1) The Commission shall consist of the following members, that is to say, a chairperson and such number of ordinary members not exceeding 11 as the Minister may determine.

Membership of Commission and terms of office of members.

(2) The chairperson and the ordinary members of the Commission shall be appointed by the Minister with the consent of the Minister for Finance.

(3) The chairperson of the Commission shall hold office for a period of 3 years from the date of his or her appointment.

(4) An ordinary member of the Commission shall hold office for a period of 3 years from the date of his or her appointment.

(5) A member of the Commission whose term of office expires by the effluxion of time shall be eligible for reappointment to the Commission.

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Conditions of office
of members of
Commission.

10.—(1) The Minister may at any time remove from office a member of the Commission.

(2) A member of the Commission may resign from office by notice in writing given to the Minister and the resignation shall take effect on the date on which the Minister receives the notice.

(3) A member of the Commission shall cease to be qualified for office and shall cease to hold office if he or she is adjudicated bankrupt, or makes a composition or arrangement with creditors, or is convicted of any indictable offence in relation to a company, or is convicted of an offence involving fraud or dishonesty, whether in connection with a company or not, or is the subject of an order under section 160 of the Companies Act, 1990.

(4) A member of the Commission shall, subject to the provisions of this Act, hold office upon such terms and conditions (including terms and conditions relating to remuneration and allowances) as may be determined by the Minister, with the consent of the Minister for Finance.

Casual vacancies
among members of
Commission.

11.—(1) If a member of the Commission dies, resigns, ceases to be qualified for office and ceases to hold office or is removed from office, the Minister may appoint a person to be a member of the Commission to fill the casual vacancy so occasioned.

(2) A person appointed to be a member of the Commission pursuant to this section shall hold office for that period of the term of office of the member who occasioned the casual vacancy concerned that remains unexpired at the date of his or her appointment and shall be eligible for reappointment as a member of the Commission on the expiry of the said period.

Remuneration of
members of
Commission.

12.—The chairperson and each ordinary member of the Commission shall be paid by the Commission such remuneration (if any) and such allowances for expenses as the Minister, with the approval of the Minister for Finance, may determine.

Meetings and
procedure.

13.—(1) The Commission shall hold such and so many meetings as may be necessary for the due fulfilment of its functions.

(2) At a meeting of the Commission—

(a) the chairperson of the Commission shall, if present, be the chairperson of the meeting, or

(b) if and so long as the chairperson of the Commission is not present or if that office is vacant, the members of the Commission who are present shall choose one of their number to be chairperson of the meeting.

(3) Every question at a meeting shall be determined by a majority of the votes of the members of the Commission present and voting on the question and, in the case of an equal division of votes, the chairperson of the meeting shall have a second or casting vote.

(4) The Commission may act notwithstanding one or more vacancies among its members.

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(5) Subject to the provisions of this Act, the Commission shall regulate its procedure by rules or otherwise. Pt.II S.13

(6) The quorum for a meeting of the Commission shall unless the Minister otherwise directs be 5.

14.—(1) There shall be a chief executive of the Commission (who shall be known and is referred to in this Act as “the Chief Executive”). Chief Executive.

(2) The Chief Executive shall carry on and manage, and control generally, the administration and business of the Commission and perform such other functions (if any) as may be determined by the Commission.

(3) The Chief Executive shall be appointed and may be removed from office by the Commission.

(4) The Chief Executive shall hold office upon and subject to such terms and conditions (including terms and conditions relating to remuneration and allowances) as may be determined by the Commission with the consent of the Minister given with the approval of the Minister for Finance.

15.—(1) Where a member of the Commission is—

- (a) nominated as a member of Seanad Éireann,
- (b) elected as a member of either House of the Oireachtas or to be a representative in the European Parliament, or
- (c) regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act, 1997, as having been elected to that Parliament,

Membership of either House of Oireachtas or European Parliament.

he or she shall thereupon cease to be a member of the Commission.

(2) Where a member of the staff of the Commission is—

- (a) nominated as a member of Seanad Éireann, or
- (b) elected as a member of either House of the Oireachtas or to be a representative in the European Parliament, or
- (c) regarded pursuant to the said Part XIII, as having been elected to that Parliament,

he or she shall thereupon stand seconded from employment by the Commission and shall not be paid by, or be entitled to receive from, the Commission any remuneration or allowances in respect of the period commencing on such nomination or election, or when he or she is so regarded as having been elected (as the case may be), and ending when such person ceases to be a member of either House or such Parliament.

(3) A person who is for the time being entitled under the Standing Orders of either House of the Oireachtas to sit therein or who is a representative in the European Parliament shall, while he or she is so entitled or is such a member, be disqualified for membership of the Commission or for employment in any capacity by the Commission.

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(4) A period mentioned in *subsection (2)* shall not, for the purposes of any superannuation benefit, be reckoned as service with the Commission.

Disclosure by
members of
Commission of
certain interests.

16.—(1) Where at a meeting of the Commission any of the following matters arises, namely—

(a) an arrangement to which the Commission is a party or a proposed such arrangement, or

(b) a contract or other agreement with the Commission or a proposed such contract or other agreement,

then, any member of the Commission present at the meeting who otherwise than in his or her capacity as such a member has an interest in the matter shall—

(i) at the meeting disclose to the Commission the fact of such interest and the nature thereof,

(ii) neither influence nor seek to influence a decision to be made in relation to the matter,

(iii) absent himself or herself from the meeting or that part of the meeting during which the matter is discussed,

(iv) take no part in any deliberation of the Commission relating to the matter, and

(v) not vote on a decision relating to the matter.

(2) Where an interest is disclosed pursuant to this section, the disclosure shall be recorded in the minutes of the meeting concerned and, for so long as the matter to which the disclosure relates is being dealt with by the meeting, the member by whom the disclosure is made shall not be counted in the quorum for the meeting.

(3) Where at a meeting of the Commission a question arises as to whether or not a course of conduct, if pursued by a member of the Commission, would constitute a failure by him or her to comply with the requirements of *subsection (1)*, the question may be determined by the chairperson of the meeting, whose decision shall be final, and where such a question is so determined, particulars of the determination shall be recorded in the minutes of the meeting.

(4) Where the Minister is satisfied that a member of the Commission has contravened *subsection (1)*, the Minister may, if he or she thinks fit, remove that member from office and, in case a person is removed from office pursuant to this subsection, he or she shall thenceforth be disqualified for membership of the Commission.

(5) A person who contravenes this section shall be guilty of an offence.

Disclosure by
members of staff of
certain interests.

17.—(1) Where a member of the staff of the Commission has an interest, otherwise than in his or her capacity as such a member, in any contract, agreement or arrangement, or proposed contract, agreement or arrangement, to which the Commission is a party, that person shall—

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- (a) disclose to the Commission his or her interest and the nature thereof, Pt.II S.17
- (b) take no part in the negotiation of the contract, agreement or arrangement or in any deliberation by the Commission or members of the staff of the Commission in relation thereto, and
- (c) neither influence nor seek to influence a decision to be made in the matter nor make any recommendation in relation to the contract, agreement or arrangement.

(2) *Subsection (1)* shall not apply to contracts or proposed contracts of employment of members of the staff of the Commission with the Commission.

(3) A person who contravenes this section shall be guilty of an offence.

18.—(1) A person shall not disclose confidential information obtained by him or her while performing duties as a member or member of the staff of, or an adviser or consultant to, the Commission unless he or she is duly authorised by the Commission to do so. Prohibition of unauthorised disclosure of confidential information.

(2) A person who contravenes *subsection (1)* shall be guilty of an offence.

(3) In this section “confidential information” includes—

- (a) information that is expressed by the Commission to be confidential either as regards particular information or as regards information of a particular class or description, and
- (b) proposals of a commercial nature or tenders submitted to the Commission by contractors, consultants or any other person.

19.—(1) The Commission may establish committees to advise it in relation to the performance of any of its functions and may determine the terms of reference and regulate the procedure of any such committee. Committees of Commission.

(2) A committee established under this section may include persons who are not members of the Commission.

(3) A member of a committee established under this section may be removed from office at any time by the Commission.

(4) The Commission may at any time dissolve a committee established under this section.

(5) The Commission may appoint a person to be chairperson of a committee established under this section.

(6) There may be paid by the Commission to members of a committee established under this section such allowances for expenses incurred by them as the Commission may, with the consent of the Minister and the Minister for Finance, determine.

PART III

Provisions Relating to Finance and Staff

Western Investment Fund.

20.—(1) The Commission shall establish a fund which shall be known as the Western Investment Fund and is referred to in this Act as “the Fund”.

(2) The Fund shall be managed and controlled by the Commission and shall consist of a current account (“the current account”) and an investment account (“the investment account”).

(3) There shall be paid into the current account all moneys paid to the Commission in respect of grants to it by the Minister, and any other moneys paid to it, for use for capital purposes and there shall be paid out of the current account all moneys in respect of expenditure by the Commission in the provision of assistance under *section 8*.

(4) Moneys standing to the credit of the current account and not required to meet current liabilities shall be paid into the investment account of the Fund.

(5) Whenever the moneys in the current account of the Fund are not sufficient to meet the current liabilities of that account, there shall be paid into that account from the investment account of the Fund such moneys as are necessary to meet those liabilities.

(6) Moneys in the investment account of the Fund that are not required to meet current and prospective liabilities of that account shall be invested and the investments shall be realised or varied from time to time as occasion requires and the proceeds of any such realisation, and any dividends or other payments received in respect of moneys invested under this paragraph, shall be paid into the investment account of the Fund or invested under this paragraph.

(7) An investment under *subsection (6)* shall be in securities in which trustees are for the time being authorised by law to invest funds or in any of the stocks, funds or securities in which moneys of the Post Office Savings Bank are for the time being authorised to be invested.

Grants to Commission.

21.—The Minister may, with the consent of the Minister for Finance, advance to the Commission out of moneys provided by the Oireachtas such sums as the Minister may determine.

Accounts and audits.

22.—(1) The Commission shall keep in such form and in respect of such accounting periods as may be approved of by the Minister, with the consent of the Minister for Finance, all proper and usual accounts of moneys received or expended by it, including an income and expenditure account, a cash flow statement and a balance sheet, and in particular, shall keep in such form as aforesaid all such special accounts as the Minister may, with the consent of the Minister for Finance, or at his or her request shall, from time to time direct.

(2) Accounts kept in pursuance of this section shall be submitted not later than 3 months after the end of the accounting period to which they relate by the Commission to the Comptroller and Auditor General for audit and, immediately after the audit, a copy of the accounts, statement and balance sheet and of such other (if any)

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accounts kept pursuant to this section as the Minister, after consultation with the Minister for Finance, may direct and a copy of the Comptroller and Auditor General's report on the accounts shall be presented to the Minister who shall cause copies thereof to be laid before each House of the Oireachtas. Pt.III S.22

(3) In this section "cash flow statement" means an account showing the derivation of the income of the Commission and the purposes to which it is applied.

23.—(1) The Commission shall not later than the 31st day of March in each year prepare and submit to the Minister a report on its activities in the immediately preceding year and the Minister shall, as soon as may be, cause copies of the report to be laid before each House of the Oireachtas. Annual report and information.

(2) The Commission shall furnish the Minister with such information regarding the performance of its functions as the Minister may from time to time require.

24.—(1) The Commission may, for the purpose of providing for current expenditure, from time to time borrow money (whether on the security of the assets of the Commission or otherwise), but shall not do so without the consent of the Minister and the Minister for Finance. Power to borrow.

(2) The aggregate at any time of borrowings under *subsection (1)* shall not exceed £200,000.

25.—(1) The Commission may accept gifts of money, land or other property upon such trusts or conditions (if any) as may be specified by the donor. Gifts.

(2) The Commission shall not accept a gift if the trusts or conditions attached to it would be inconsistent with its functions.

26.—(1) The Commission shall appoint with the consent of the Minister and the Minister for Finance such and so many persons to be members of the staff of the Commission as it may from time to time determine. Staff.

(2) The terms and conditions of service of a member of the staff of the Commission shall be such as may be determined from time to time by the Commission.

(3) There shall be paid by the Commission to the members of its staff such remuneration and allowances as it, with the consent of the Minister and the Minister for Finance, from time to time determines.

27.—The Commission, in determining the remuneration or allowances for expenses to be paid to members of its staff or the other terms or conditions subject to which such members hold or are to hold their employment, shall have regard to Government or nationally agreed guidelines which are for the time being extant and to Government policy concerning remuneration and conditions of employment which is so extant and, in addition to the foregoing, the Remuneration of staff.

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Commission shall comply with any directives with regard to such remuneration, allowances, terms or conditions which the Minister may give to the Commission with the consent of the Minister for Finance.

Performance of
functions of
Commission by
members of staff.

28.—The Commission may perform any of its functions through or by any member of the staff of the Commission duly authorised in that behalf by the Commission.

Superannuation.

29.—(1) As soon as may be after its establishment, the Commission shall prepare and submit to the Minister a scheme or schemes for the granting of superannuation benefits to or in respect of such of its staff (including the Chief Executive) as the Commission shall think fit.

(2) Every such scheme shall fix the time and conditions of retirement for all persons to, or in respect of whom superannuation benefits are payable under the scheme, and different times and conditions may be fixed in respect of different classes of persons.

(3) The Commission may at any time prepare and submit to the Minister a scheme amending a scheme previously submitted and approved under this section.

(4) A scheme or amending scheme submitted to the Minister under this section shall, if approved by the Minister with the consent of the Minister for Finance, be carried out by the Commission in accordance with its terms.

(5) If any dispute arises as to the claim of any person to, or the amount of, any superannuation benefit in pursuance of a scheme under this section, such dispute shall be submitted to the Minister who shall refer it to the Minister for Finance whose decision shall be final.

(6) No superannuation benefit shall be granted by the Commission to or in respect of any of its staff (including the Chief Executive) who are members of a scheme under this section, nor shall any other arrangement be entered into for the provision of any superannuation benefit to such persons on their ceasing to hold office, other than in accordance with such scheme or schemes submitted and approved under this section.

(7) Every scheme submitted and approved under this section shall be laid before each House of the Oireachtas as soon as may be after it is approved, and if either House, within the next twenty-one days on which that House has sat after the scheme is laid before it, passes a resolution annulling the scheme, the scheme shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.