

GOVERNMENT OF WEST BENGAL
LAW DEPARTMENT
Legislative

West Bengal Act III of 1994

**THE DARJEELING GORKHA HILL COUNCIL
(AMENDMENT) ACT, 1994.**

[Passed by the West Bengal Legislature.]

[Assent of the Governor was first published in the *Calcutta Gazette, Extraordinary*, of the 28th February, 1994.]

[28th February, 1994.]

An Act to amend the Darjeeling Gorkha Hill Council Act, 1988.

West Ben.
Act XIII of
1988.

WHEREAS it is expedient to amend the Darjeeling Gorkha Hill Council Act, 1988, for the purposes and in the manner hereinafter appearing;

It is hereby enacted in the Forty-fifth Year of the Republic of India, by the Legislature of West Bengal, as follows:—

1. (1) This Act may be called the Darjeeling Gorkha Hill Council (Amendment) Act, 1994.

Short title
and
commenc-
ment.

(2) Clause (b) of section 11 and section 47 shall come into force at once; and the remaining provisions of this Act shall be deemed to have come into force on the 27th day of November, 1993.

2. In section 2 of the Darjeeling Gorkha Hill Council Act, 1988 (hereinafter referred to as the principal Act),—

Amendment
of section 2
of West Ben.
Act XIII of
1988.

(a) after clause (a), the following clause shall be inserted:—

‘(a1) “Council” means the Executive Council;’;

(b) after clause (b), the following clause shall be inserted:—

‘(b1) “Councillor” means a member of the General Council;’;

(c) after clause (e), the following clause shall be inserted:—

‘(e1) “Executive Councillor” means the person nominated under clause (a) or clause (b) of sub-section (1) of section 38, and includes the Chief Executive Councillor or the Vice-Chairman of the General Council;’;

(d) clause (j) shall be omitted.

*The Darjeeling Gorkha Hill Council (Amendment)
Act, 1994.*

[West Ben. Act

(Sections 3-5.)

Amendment
of section 5.

3. In section 5 of the principal Act,—

(a) in sub-section (1),—

(i) for the word “members”, the word “Councillors” shall be substituted, and

(ii) for the words “nominated by the Government”, the word “nominated.” shall be substituted;

(b) after sub-section (1), the following sub-section shall be inserted:—

“(1A) Of the nominated Councillors, eleven shall be nominated by the Government and three shall be nominated by the Chairman of the General Council.”;

(c) for sub-section (2), the following sub-section shall be substituted:—

“(2) Subject to the provisions of sub-section (1A), the Councillors to be nominated by the Government may include—

(a) all or any of the members of the Legislative Assembly of the State of West Bengal elected from the constituencies of Darjeeling, Kurseong and Kalimpong,

(b) the member elected to the House of the People from the Darjeeling Parliamentary Constituency, or

(c) all or any of the Chairmen of the Municipalities within the Hill Areas.”;

(d) for sub-section (3), the following sub-section shall be substituted:—

“(3) The Government may provide for due representation of minorities, Scheduled Castes, Scheduled Tribes and women, while nominating the remaining Councillors.”.

Amendment
of section 8.

4. In section 8 of the principal Act, for the word “member”, the word “Councillor” shall be substituted.

Amendment
of section 9.

5. In section 9 of the principal Act,—

(a) in the marginal note, for the words “members of General Council.”, the word “Councillors.” shall be substituted;

(b) in sub-section (2), for the word “member”, the word “Councillor,” shall be substituted.

*The Darjeeling Gorkha Hill Council (Amendment)
Act, 1994.*

III of 1994.]

(Sections 6-10.)

6. In section 10 of the principal Act,—

(1) in sub-section (1), for the words “members of the General Council”, the word “Councillors” shall be substituted;

(2) in sub-section (2), for the words “members of the General Council.”, the word “Councillors.” shall be substituted.

7. In section 12 of the principal Act,—

(a) in the marginal note, for the word “members.”, the word “Councillors.” shall be substituted;

(b) for the word “members”, the word “Councillors” shall be substituted.

8. In section 13 of the principal Act,—

(a) in sub-section (1), for the words “members of the General Council”, the word “Councillors” shall be substituted;

(b) in sub-section (3), for the word “members”, the word “Councillors” shall be substituted.

9. In section 14 of the principal Act, for the word “members” in the two places where it occurs, the word “Councillors” shall be substituted.

10. Section 15 of the principal Act, shall be renumbered as sub-section (1) of that section and,—

(a) in sub-section (1) as so renumbered,—

(i) the words “or nominated” shall be omitted, and

(ii) for the words “the General Council shall be deemed”, the words “the General Council shall, notwithstanding anything contained elsewhere in this Act, be deemed” shall be substituted;

(b) after sub-section (1), the following sub-section shall be inserted:—

“(2) The names of persons nominated to the General Council by the Government or the Chairman of the General Council, as the case may be, shall be published by the Government in the *Official Gazette*.”.

Amendment of section 10.

Amendment of section 12.

Amendment of section 13.

Amendment of section 14.

Amendment of section 15.

*The Darjeeling Gorkha Hill Council (Amendment)
Act, 1994.*

[West Ben. Act

(Sections 11, 12.)

Amendment
of section
16.

11. In section 16 of the principal Act,—

- in sub-section (1),—
 - for the words “elected member”, the words “elected Councillor” shall be substituted, and
 - for the words “such member”, the words “such Councillor” shall be substituted;
- after sub-section (1), the following sub-section shall be inserted:—

“(1A) If a member of Parliament or of the State Legislature is elected as a Councillor then, at the expiration of fourteen days from the date of publication in the *Official Gazette* of the declaration that he has been so elected, the seat of such Councillor in the General Council shall become vacant, and he shall be debarred from contesting any election to the General Council for a period of ten years unless he has previously resigned his seat in Parliament or the State Legislature, as the case may be.”;
- in sub-section (2),—
 - for the word “member” in the two places where it occurs, the word “Councillor” shall be substituted;
 - for the word and figures “section 21,” the words, figures and brackets “section 21 or sub-section (7) of section 34,” shall be substituted;
- in sub-section (3), for the word “member”, the word “Councillor” shall be substituted.

Amendment
of section
17.

12. In section 17 of the principal Act,—

- in the marginal note, for the word “members.”, the word “Councillors.” shall be substituted;
- in sub-section (1), for the word “members”, the word “Councillors” shall be substituted;
- for sub-section (2), the following sub-sections shall be substituted,—

“(2) An elected Councillor, other than the Chairman and Chief Executive Councillor of the General Council, shall cease to hold office if—
 - he ceases to be a Councillor, or
 - he resigns his office in writing under his hand addressed to the Chairman of the General Council, in which case the resignation shall take effect from the date of its acceptance by the General Council.

*The Darjeeling Gorkha Hill Council (Amendment)
Act, 1994.*

III of 1994.]

(Sections 13-15.)

(3) A nominated Councillor shall hold office until—
(a) he resigns his office in writing under his hand addressed to the Government, if he is nominated by the Government, or to the Chairman of the General Council, if he is nominated by him, and, in each such case, the resignation shall take effect from the date of its acceptance by the Government or the Chairman of the General Council, as the case may be, or
(b) his nomination is cancelled by the Government, if he is nominated by the Government, or by the Chairman of the General Council, if he is nominated by him, or
(c) a fresh nomination is made in his place by the Government, if he is nominated by the Government, or by the Chairman of the General Council, if he is nominated by him, or
(d) a new General Council is constituted after a General Election held under sub-section (1) of section 13.”.

13. In section 18 of the principal Act,—

(a) in the marginal note, for the word “members.”, the word “Councillors.” shall be substituted;
(b) in sub-section (1),—
(i) for the words “elected member of the General Council”, the words “elected Councillor” shall be substituted, and
(ii) in clause (b), for the words “a member of the General Council;”, the words “a Councillor;” shall be substituted;
(c) in sub-section (2), for the words “Any member of the General Council”, the words “Any Councillor” shall be substituted.

Amendment
of
section 18.

14. In section 19 of the principal Act, in the marginal note, for the word “members.”, the word “Councillors.” shall be substituted.

Amendment
of
section 19.

15. In section 21 of the principal Act,—

(a) in the marginal note, for the word “members.”, the word “Councillors.” shall be substituted;
(b) for the words “Every member”, the words “Every Councillor, other than the Chairman and Chief Executive Councillor,” shall be substituted;

Amendment
of
section 21.

*The Darjeeling Gorkha Hill Council (Amendment)
Act, 1994.*

[West Ben. Act

(Sections 16-19.)

- (c) for the words "before taking his seat," the words "before the first meeting of the General Council or as soon as thereafter," shall be substituted;
- (d) for the word "Schedule.", the words "First Schedule." shall be substituted.

Amendment
of
section 22.

16. In section 22 of the principal Act,—

- (a) in the marginal note, for the word "members.", the word "Councillors." shall be substituted;
- (b) for the words "Every member", the words "Every Councillor" shall be substituted.

Amendment
of
section 23.

17. In sub-section (2) of section 23 of the principal Act,—

- (a) for the word "Council" in the two places where it occurs, the words "General Council" shall be substituted;
- (b) for the words "fifteen members", the words "fifteen Councillors" shall be substituted, and
- (c) for the words "members present.", the words "Councillors present." shall be substituted.

Amendment
of
section 24.

18. In section 24 of the principal Act,—

- (a) in clause (v), after the words "public health and sanitation,", the words "family welfare," shall be inserted;
- (b) for clause (viii), the following clause shall be substituted:—
"(viii) public works;";
- (c) for clause (ix), the following clause shall be substituted:—
"(ix) roads except national highways and State highways;";
- (d) in clause (xvii), after the words "higher secondary", the words "including social, adult and mass education and non-formal education" shall be inserted;
- (e) after clause (xix), the following clauses shall be inserted:—
"(xx) sports and youth services;
(xxi) such other matters as the Government may, by notification in the *Official Gazette*, place under the control and administration of the General Council.".

Amendment
of
section 26.

19. In section 26 of the principal Act, after the words "in all cases of acquisition or disposal of immovable property,", the words "the value of which exceeds rupees one crore or which is outside the hill areas," shall be inserted.

*The Darjeeling Gorkha Hill Council (Amendment)
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III of 1994.]

(Section 20.)

20. For section 34 of the principal Act, the following section shall be substituted:—

“Chief Executive
Councillor and
Vice-Chairman.

Amendment
of section
34.

34. (1) The first meeting of the General Council after each general election shall be held on the date appointed by the Government under sub-section (1) of section 17.

(2) The Government may nominate one of the elected Councillors, not being a candidate for election as Chairman of the General Council, to preside over the first meeting.

(3) The outgoing Chairman and Chief Executive Councillor shall convene the first meeting of the General Council on the appointed date by sending notice, specifying therein the date, time and place of the meeting, to the registered address of each Councillor elected to the General Council at least seventy-two hours before the time fixed for such meeting:

Provided that if the outgoing Chairman and Chief Executive Councillor fails to convene the meeting on the appointed date, the Government may authorise an officer to convene the first meeting of the General Council on a date to be specified by the Government in this behalf.

(4) The election of the Chairman of the General Council shall be conducted by the elected Councillor nominated by the Government to preside over the first meeting under sub-section (2). The elected Councillors shall, in the prescribed manner, elect from amongst themselves one Councillor to be the Chairman who shall also be the Chief Executive Councillor. The presiding Councillor shall have the right to participate in the election of the Chairman.

(5) In the case of any casual vacancy in the office of the Chairman and Chief Executive Councillor caused by death, resignation, removal or otherwise, the elected Councillors shall, in accordance with such procedure as may be prescribed, elect one of the Councillors to fill up the vacancy:

Provided that pending the election of a Chairman, the Government may appoint by name one of the Councillors to be the Chairman who shall hold office as Chairman and Chief Executive Councillor, and shall exercise all the powers and discharge all the functions of the Chairman and Chief Executive Councillor, until a Chairman, elected in accordance with the provisions of this Act and the rules made thereunder, enters upon his office.

(6) The Chief Executive Councillor may nominate one Councillor to be the Vice-Chairman.

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Act, 1994.*

[West Ben. Act

(Sections 21, 22.)

(7) The Chief Executive Councillor shall, within one month from the date of election, make and subscribe before the Governor an oath or affirmation and shall be given a certificate of receipt of oath or affirmation as so made and subscribed according to the form set out for the purpose in the Second Schedule.”.

Substitution
of new
section for
section 35.

21. For section 35 of the principal Act, the following section shall be substituted:—

“Term of office. 35. (1) The Chairman and Chief Executive Councillor—

(a) shall cease to hold office as such forthwith if he ceases to be a Councillor;

(b) may, at any time, by giving notice in writing under his hand addressed to the Chief Minister, resign his office from such date as may be specified in the notice or, if no such date is specified in the notice, from the date of its acceptance by the Chief Minister;

(c) may be removed from office by a resolution carried by a majority of the total number of elected Councillors at a special meeting of the General Council called for this purpose upon a requisition made in writing by not less than one-third of such Councillors.

(2) The Vice-Chairman shall hold office until—

(a) he ceases to be a Councillor, or

(b) he resigns his office in writing under his hand addressed to the Chairman of the General Council, in which case the resignation shall take effect from the date of its acceptance by the Chairman of the General Council, or

(c) his nomination as Vice-Chairman is cancelled by the Chairman of the General Council:

Provided that notwithstanding such cancellation of his nomination, he shall, subject to the other provisions of this Act, continue to hold office as a Councillor.”.

Amendment
of
section 36.

22. In section 36 of the principal Act,—

(a) for the words “and the Vice-Chairman”, the words “the Vice-Chairman and other Executive Councillors” shall be substituted;

(b) the following proviso shall be added at the end:—

“Provided that an Executive Councillor, not holding any charge of any matter or department of the Council, shall be entitled to the same status and privileges to which any other Executive Councillor is entitled.”.

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Act, 1994.*

III of 1994.]

(Sections 23-25.)

23. In sub-section (1) of section 37 of the principal Act, clause (a) shall be omitted.

Amendment of section 37.

24. For section 38 of the principal Act, the following section shall be substituted:—

“Executive Council. 38. (1) There shall be an Executive Council consisting of the Chief Executive Councillor, the Vice-Chairman of the General Council and fifteen other Councillors of whom—

- (a) thirteen shall be nominated by the Chief Executive Councillor from amongst the elected Councillors, and
- (b) two shall be nominated by the Government from amongst the nominated Councillors:

Provided that no nominated Councillor, who is in Government service, shall be eligible to be nominated as an Executive Councillor.

(2) The manner of transaction of business of the Council shall be such as may be determined by the Council by regulations with the approval of the Government.

(3) The Council shall be responsible to the General Council.

(4) No Executive Councillor shall hold any office of profit for so long as he holds the office of Executive Councillor, and no Executive Councillor or member of his family shall, either directly or indirectly,—

- (a) enter into any contract, or
- (b) have any dealings or transaction,

with the Council without the specific and prior approval of the Council.”.

25. For section 39 of the principal Act, the following section shall be substituted:—

“Term of office of Executive Councillor. 39. An Executive Councillor shall hold office as Executive Councillor until—

- (a) he ceases to be a Councillor, or
- (b) he resigns his office of Executive Councillor in writing under his hand addressed to the Government if he is nominated by the Government, or to the Chief Executive Councillor if he is nominated by him, and, in each such case, the resignation shall take effect from the date of its acceptance by the Government or the Chief Executive Councillor, as the case may be, or

Substitution of new section for section 39.

*The Darjeeling Gorkha Hill Council (Amendment)
Act, 1994.*

[West Ben. Act

(Sections 26-30.)

- (c) his nomination as Executive Councillor is cancelled by the Government if he is nominated by the Government, or by the Chief Executive Councillor if he is nominated by him, or
- (d) a fresh nomination is made in his place by the Government if he is nominated by the Government, or by the Chief Executive Councillor if he is nominated by him.”.

Amendment
of
section 40.

26. In sub-section (2) of section 40 of the principal Act, for the words “any other members of the Executive Council”, the words “any other Executive Councillor” shall be substituted;

Amendment
of
section 41.

27. In section 41 of the principal Act,—

- (a) in the marginal note, for the words “Executive Council.”, the word “Council.” shall be substituted.
- (b) for the words “Executive Council”, the word “Council” shall be substituted.

Amendment
of
section 42.

28. For sub-section (2) of section 42 of the principal Act, the following sub-section shall be substituted:—

“(2) The Chief Executive Councillor shall make, for the convenient transaction of business of the Council, allocation among such Executive Councillors of the said business in so far as it is not business with respect to which the Chief Executive Councillor is by or under this Act required to act in his discretion as he thinks fit.”.

Amendment
of
section 43.

29. In section 43 of the principal Act, for the words “Executive Council” in the two places where they occur, the word “Council” shall be substituted.

Amendment
of
section 44.

30. In section 44 of the principal Act,—

- (a) for the words “Executive Council”, the word “Council” shall be substituted, and
- (b) for the words “five members.”, the words “nine Councillors.” shall be substituted.

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III of 1994.]

(Sections 31-34.)

31. In section 45 of the principal Act,—

- (a) in sub-section (1), for the words “Executive Council” in the two places where they occur, the word “Council” shall be substituted;
- (b) in sub-section (2), for the words “Executive Council”, the word “Council” shall be substituted.

Amendment of section 45.

32. In section 46 of the principal Act,—

- (a) for the words “or the Executive Council,”, the words “or the Council,” shall be substituted;
- (b) in the proviso,—
 - (i) for the words “Chairman of the Executive Council”, the words “Chief Executive Councillor” shall be substituted and
 - (ii) for the words “Executive Council,”, the word “Council,” shall be substituted.

Amendment of section 46.

33. For section 47 of the principal Act, the following section shall be substituted:—

“Committees. 47. The Chief Executive Councillor may, from time to time, appoint such committees constituting of members from amongst the Councillors as may be required for the efficient discharge of the functions of the General Council.”

Substitution of new section for section 47.

34. In section 48 of the principal Act,—

- (a) for the marginal note, the following marginal note shall be substituted:—

“Principal Secretary to Council.”;
- (b) for sub-section (1), the following sub-section shall be substituted:—

“(1) There shall be a Principal Secretary to the Council (hereinafter referred to as the Principal Secretary) appointed by the Government in consultation with the Chief Executive Councillor.”;
- (c) for sub-section (2), the following sub-section shall be substituted:—

“(2) The Principal Secretary shall be paid out of the Council Fund such salaries and allowances as may, from time to time, be fixed by the Government.”;

Amendment of section 48.

*The Darjeeling Gorkha Hill Council (Amendment)
Act, 1994.*

[West Ben. Act

(Sections 35, 36.)

(d) in sub-section (3),—

(i) for the words “Chief Executive Officer”, the words “Principal Secretary” shall be substituted, and

(ii) for the words “Executive Council” in the two places where they occur, the word “Council” shall be substituted;

(e) for sub-section (4), the following sub-section shall be substituted:—

“(4) (a) The Principal Secretary shall act under the direction of the Chief Executive Councillor.

(b) The Principal Secretary shall be responsible for the maintenance of the records of the Council.”;

(f) in sub-section (5),—

(i) for the word “members”, the word “Councillors” shall be substituted,

(ii) for the words “Chief Executive Officer” in the two places where they occur, the words “Principal Secretary” shall be substituted,

(iii) for the word, figure and brackets “sub-section (2)”, the word, figure and brackets “sub-section (1)” shall be substituted, and

(iv) for the proviso, the following proviso shall be substituted:—

“Provided that the Government may, at any time, withdraw the Principal Secretary appointed under sub-section (1).”.

Substitution
of new
section for
section 49.

35. For section 49 of the principal Act, the following section shall be substituted:—

“Appointment of Secretary. 49. The Government may place at the disposal of the Council the services of such officers of the Government for appointment as Secretary to the Council as the Government may think fit.”.

Amendment
of section
50.

36. In section 50 of the principal Act, for the words “General Council”, the word “Council” shall be substituted.

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III of 1994.]

(Sections 37-39.)

37. Section 51 of the principal Act shall be renumbered as sub-section (1) of that section and—

Amendment
of section
51

(a) in sub-section (1) as so renumbered,—

(i) for the words “General Council may”, the words “Council may” shall be substituted,

(ii) in the first proviso, for the words “General Council”, the word “Council” shall be substituted,

(iii) for the second proviso, the following proviso shall be substituted:—

“Provided further that where any disciplinary or other action is required to be taken against any such employee, the Council shall have the power to initiate such disciplinary or other action against such employee whereupon the Council shall report the same forthwith to the Government for such further action as the Government may think fit.”;

(b) after sub-section (1), the following sub-section shall be inserted:—

“(2) Notwithstanding anything contained in sub-section (1), the Council may, without the approval of the Government, make appointment of persons to such categories of sanctioned posts as are equivalent to Group ‘C’ and Group ‘D’ posts under the Government after making regulations relating to the conditions of service of such persons with the approval of the Government.”.

38. For section 56 of the principal Act, the following section shall be substituted:—

Substitution
of new
section for
section 56.

“Inspection of
accounts etc.

56. Notwithstanding anything contained elsewhere in this Act, the Government may,—

(a) if it is of opinion that it is necessary or expedient so to do, cause an inspection to be made of the accounts of the Council from time to time and may, for the conduct of such inspection, appoint in consultation with the Council such officer or officers as the Government may think fit, and

(b) advise the Council on the accounts of the Council.”.

39. In sub-section (2) of section 57 of the principal Act, for the words “be deemed to be employed by the General Council”, the words “be deemed to be on deputation to the Council” shall be substituted.

Amendment
of section
57.

*The Darjeeling Gorkha Hill Council (Amendment)
Act, 1994.*

[West Ben. Act

(Sections 40-45.)

Amendment
of
section 58.

40. In section 58 of the principal Act, for the words “Executive Council”, the word “Council” shall be substituted.

Amendment
of
section 62.

41. In section 62 of the principal Act,—

- (a) in clause (a), for the words “members of the General Council”, the word “Councillors” shall be substituted;
- (b) in clause (b), for the words “Executive Council”, the word “Council” shall be substituted.

Amendment
of
section 65.

42. In section 65 of the principal Act,—

- (a) in the marginal note, for the word “Members,”, the words “Executive Councillors,” shall be substituted;
- (b) for the words “The Chief Executive Councillor, the Vice-Chairman and the other members of the Executive Council”, the words “The Chief Executive Councillor and the Vice-Chairman, who are the members of the Council, and the other Executive Councillors” shall be substituted.

Amendment
of
section 67.

43. In section 67 of the principal Act, for the words “or against any member or officer or employee thereof”, the words “or against any Councillor or against any officer or employee of the General Council” shall be substituted.

Amendment
of Schedule.

44. In the Schedule to the principal Act,—

- (a) in the heading, for the word “SCHEDELE”, the words “FIRST SCHEDULE” shall be substituted;
- (b) for the word “member” in the two places where it occurs, the word “Councillor” shall be substituted.

Insertion of
new
Schedule.

45. In the principal Act, after the First Schedule, the following Schedule shall be inserted:—

“SECOND SCHEDULE

[See section 34(7)]

Form of Oath or Affirmation

[Sub-section (7) of section 34 of the Darjeeling Gorkha Hill Council Act, 1988 (West Bengal Act XIII of 1988)]

I, A. B., having been elected Chief Executive Councillor of the Darjeeling Gorkha Hill

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(The Schedule.)

Council, do swear in the name of God/solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established and that I will uphold the sovereignty and integrity of India.

.....
(Signature and name of the
Chief Executive Councillor
in block letters)

.....
Sworn in the name of God/solemnly affirmed by Shri/Shrimati
..... at (place)
at (hour) on this the day
of before me.

.....
(Signature)
Governor of West Bengal.

Certificate of receipt of form of oath or affirmation

Certified that (name),
who has been elected Chief Executive Councillor of the Darjeeling
Gorkha Hill Council, has made and subscribed the oath/affirmation as
required by section 34 of the Darjeeling Gorkha Hill Council Act, 1988
(West Bengal Act XIII of 1988), before the Governor at (hour)
on the (date).

.....
(Signature)
Secretary to the Governor of
West Bengal.”.

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[West Ben. Act III of 1994.]

(Sections 46, 47.)

Repeal and
saving.

West Ben.
Ord. IV of
1993.

46. (1) The Darjeeling Gorkha Hill Council (Amendment) Ordinance, 1993, is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act as amended by the said Ordinance shall be deemed to have been validly done or taken under the principal Act as amended by this Act.

Validation.

47. Anything done or any action taken under the principal Act as amended by this Act before the publication of this Act in the *Official Gazette* shall be deemed to have been validly done or taken under the principal Act as amended by this Act as if this Act were in force when such thing was done or such action was taken.