

HOUSING (MISCELLANEOUS PROVISIONS) ACT 2009

(No. 22 of 2009)

EXPLANATORY MEMORANDUM

[This Memorandum does not purport to be a legal interpretation of the Act.]

Introduction

The Housing (Miscellaneous Provisions) Act 2009 amends and extends the Housing Acts 1966 to 2004 to provide local authorities with a framework for a more strategic approach to the delivery and management of housing services. That framework provides for the adoption of housing services plans, homelessness action plans and anti-social behaviour strategies; for new, more objective methods of assessing need and allocating housing; and for a more effective management and control regime covering tenancies, rents, etc. The framework also involves a more developed legislative basis for the provision of rented social housing by means of leasing or contract arrangements with private accommodation providers, and expanded opportunities for home ownership by lower-income households through an incremental purchase scheme and a tenant purchase scheme for apartments. The Act also introduces an equity-based approach to the recovery of discounts granted by housing authorities to affordable housing purchasers. Finally, the 2009 Act makes a number of amendments to the Residential Tenancies Act 2004.

Provisions of the Act

There are 7 Parts in the 2009 Act, comprising 100 sections and 4 Schedules.

Part 1 — Preliminary and General (sections 1 to 9)

This Part contains standard legislative provisions and power for the Minister to issue policy directions and guidelines to housing authorities.

Section 1 Short title, collective citation, construction and commencement

This section provides that the Housing Acts 1966 to 2004 and the 2009 Act (with the exception of section 100 (which amends the Residential Tenancies Act 2004)) may be cited together as the Housing Acts 1966 to 2009 and shall be read together as one Act. The section also provides for the commencement of the Act (other than section 100) by order or orders made by the Minister. Subsection (3) provides that the citation “Residential Tenancies Acts 2004 and 2009” shall be construed to include section 100 of the 2009 Act, which provision (by virtue of section 16 of the Interpretation Act 2005) came into operation on the date of the passing of the 2009 Act (i.e. 15 July 2009).

Section 2 Interpretation.

This is a standard section defining important terms used throughout the Act. The section includes updated definitions of-

- “anti-social behaviour” (in conjunction with section 8 and Item 1 of Part 5 of Schedule 2 to the Act).
- “dwelling”, and
- “housing authority” (in conjunction with section 8 and Item 5 of Part 4 of Schedule 2 to the Act).

The section defines “household”, subject to sections 20 and 84, to mean a person living alone or two or more persons living together. It also defines “material improvements” to include extension, enlargement, repair or conversion of a dwelling sold under incremental purchase or under an affordable dwelling purchase arrangement but excluding decoration or any improvements carried out on the land (including the construction of a dwelling).

There are 5 further interpretation sections in the Act setting out definitions for particular Parts or Chapters of the Act.

Section 3 Regulations

This section contains a general power for the Minister to make regulations under the Act. Parts 3, 4 and 5 of the Act also contain sections relating to regulations for the purposes of those Parts, while individual sections of the Act also provide for the making of regulations governing the functions to which the sections relate, e.g. section 20(4), (6) and (7), in relation to social housing assessments.

Section 4 Ministerial directions

This section empowers the Minister to give a general policy direction to a housing authority in relation to the performance of its functions under the Housing Acts 1966 to 2009 and requires the housing authority to comply with such a direction. The Minister may revoke or amend a direction under this section. General policy directions must be made available for public inspection, including publication on the Internet.

Section 5 Guidelines

This section enables the Minister to issue guidelines to housing authorities in relation to the performance of their functions under the Housing Acts 1966 to 2009 and requires housing authorities to have regard to such guidelines in the performance of those functions. Guidelines issued under this section must be made available for public inspection, including publication on the Internet.

Section 6 Limitation on Ministerial power

This section provides that, without prejudice to the Minister's powers to fund local authority housing services under section 12, the powers under sections 4

and 5 shall not be construed as enabling him or her to exercise any function in relation to any individual case being dealt with by a housing authority.

Section 7 Repeals

This section and Schedule 1 to the Act repeal provisions in 4 Housing Acts and in the Planning and Development Act 2000. 20 sections in total are repealed.

Section 8 Consequential amendments

This section and Schedule 2 to the Act make consequential amendments to provisions in 5 Housing Acts, the Housing Finance Agency Act 1981, the Planning and Development Act 2000, the Civil Registration Act 2004 and the Social Welfare Consolidation Act 2005. Section 100 of the Act separately amends provisions in the Residential Tenancies Act 2004.

Section 9 Expenses

This section is a standard provision for defraying the expense of the Minister in administering the Act.

Part 2 — Functions of housing authorities (sections 10 to 42)

This Part of the Act is divided into 6 Chapters.

Chapter 1 Housing Services (sections 10 to 13)

This Chapter summarises the main functions of housing authorities, updates the statutory basis for providing services ancillary to housing development, provides for Ministerial funding of housing authority services and the use for housing-related purposes of monies accruing to authorities from dwelling sales and equity charge payments in respect of dwellings and sites sold by the authorities.

Section 10 Provision of housing services

This section sets the context for Part 2 by outlining many of the housing services provided by housing authorities, classified into 4 groups, as follows:

- housing supports, including social housing supports (defined in section 19), affordable housing, tenant purchase under the Housing Act 1966, loans and grants, and homeless services,
- assistance (other than the provision of accommodation or financial assistance) to households that were formerly homeless or to tenants of dwellings owned by or under the control of housing authorities, for the purpose of supporting them in continuing occupation of their accommodation,
- management, maintenance and refurbishment of dwellings owned by, or under the control of, housing authorities, and
- remedial works to dwellings provided by housing authorities.

Section 11 Provision of ancillary services

This section replaces and updates section 56(2) of the Housing Act 1966. It empowers housing authorities to provide and maintain services ancillary to

existing, proposed or future housing development, including roads, shops, community facilities, playgrounds, places of worship and sites for various facilities. This provision applies to voluntary and cooperative housing and to projects undertaken through public private partnerships on behalf of housing authorities.

Section 12 Funding for housing services

This section replaces and updates section 15 of the Housing Act 1988 and empowers the Minister, with the consent of the Minister for Finance and subject to compliance with construction standards, etc., to pay grants or subsidies to housing authorities in respect of specified housing services. The section also empowers the Minister to pay grants or subsidies to housing authorities in respect of assistance to approved housing bodies under section 6 of the Housing (Miscellaneous Provisions) Act 1992 and to make regulations in relation to the provision of such assistance.

Section 13 Housing authority resources

This section provides that any monies accruing to housing authorities from sales of dwellings or payments to clear outstanding equity charges on dwellings or sites sold by the authorities, etc., shall be placed in a separate account and may, with the Minister's approval, be used for housing-related purposes.

Chapter 2 Housing Services Plan (sections 14 to 18)

This Chapter deals with the making by local authority elected members of housing services plans and with the preparation by local authority Managers of housing action programmes to implement such plans. The housing services plan will provide a strategic focus for the planning of housing services, including delivery and ongoing management.

Section 14 Obligation to make housing services plan

This section requires the elected members of each housing authority (defined by Item 5 of Part 4 of Schedule 2 for this purpose to mean each city and county council) to adopt a housing services plan within 6 months of the making of its development plan, covering the remaining period of the development plan. A county council's plan must cover the area of any borough or town council in the county.

Section 15 Content of housing services plan

Section 15(1) sets out the matters to be taken into account in the making of a housing services plan, including the development plan(s) for the area, the need to deliver housing services in a way that promotes sustainable communities and the contents of any anti-social behaviour strategy adopted by the authority under section 35. The Minister may specify the information to be included in a plan, along the lines set out in subsection (2).

Section 16 Preparation of draft plan and making of plan

This section requires the housing authority to circulate a draft housing services plan to the Minister, specified bodies and persons, and to any other persons deemed appropriate by the housing authority, and allows 8 weeks for the making of observations on the draft plan. The Manager must, within a further 4 weeks, report on the observations and any other relevant matters to the elected members who must consider the report and adopt the plan, with or

without modification, within a further 6 weeks. The Minister may, for stated reasons, require the housing authority to amend the draft plan so that the adopted plan takes full account of the matters specified in section 15(1). The adopted plan must be made available for public inspection, including publication on the Internet.

Section 17 Variation of housing services plan

This section provides that, where there is a change in any of the matters required under section 15 (1) to be taken into account in making a plan, a housing authority may, at the Manager's instigation, vary a housing services plan. Where the Minister considers that there has been a change in circumstances that significantly affects the plan, he or she may direct a housing authority to vary the plan or part of it and the authority must comply with that direction. A housing services plan is varied by way of a similar procedure to that for making a plan.

Section 18 Housing action programme

This section requires the Manager to prepare a housing action programme to implement the housing services plan, in the form and for the period directed by the Minister. The programme must take account of the funding available for the programme period and include (except in the case of the first programme) a review of progress during the period of the previous programme. A copy of the programme must be given to the Minister and to the elected members of all local authorities in the area covered by the programme.

Chapter 3 Social Housing Support (sections 19 to 22)

This Chapter deals with certain core housing authority functions, viz. the provision of social housing support, the carrying out of social housing assessments and the allocation of dwellings.

Section 19 Provision of social housing support

This section sets out the general power for housing authorities to provide or manage the provision of social housing support, replacing and updating section 56(1) of the Housing Act 1966. The section defines “social housing support” to include a range of specified housing services, and empowers housing authorities, for the purpose of providing social housing support, to purchase, build, lease or otherwise acquire dwellings or sites and to convert buildings and refurbish dwellings. Subsection (4) requires authorities to carry out their functions in a way that counteracts undue segregation between persons of different social backgrounds and ensures the provision of an appropriate mix of dwelling types and tenure classes. The section also empowers a housing authority, with the Minister’s approval, to enter into public private partnership arrangements for carrying out its social housing support functions.

Section 20 Social housing assessment

This section replaces and updates section 9 of the Housing Act 1988. For the purposes of section 20, the definition of “household” in section 2 is extended to include 2 or more persons who, in the opinion of a housing authority, have a reasonable requirement to live together. A housing authority will, normally on foot of a household’s application, carry out a “social housing assessment” of a household’s eligibility for social housing support and the form of support appropriate for that household. The section empowers the Minister to make regulations in relation to-

- the methods for determining household eligibility for social housing support (subsection (4)),

- matters by reference to which a household's need for, and the appropriate form of, such support shall be determined (subsection (6)), and
- the carrying out of social housing assessments (subsection (7)). In this connection, section 32(5) makes provision in relation to the supply of information to a housing authority by an applicant for social housing support and for the purpose of a social housing assessment.

Section 20(5) provides that a household will be ineligible for social housing support if, as a tenant of any housing authority, the household or a household member—

- was in rent arrears for an accumulated 12-week period in the 3-year period immediately prior to the assessment, and
- the housing authority has not entered into a section 34 arrangement with the tenant for the payment of rent arrears, plus interest, if applicable.

Subsection (8) repeats and replaces the existing statutory provision in section 11(2)(b) of the Housing Act 1988, whereby a housing authority carrying out a social housing assessment may, in certain circumstances, disregard the accommodation currently occupied by a household.

Subsection (9) provides that tenants who are in receipt of social housing support from the voluntary and co-operative sector before the coming into operation of section 20 are deemed to be qualified for social housing support under that section.

Subsection (10) provides that a social housing assessment is not required for the purposes of the sale of a dwelling by way of incremental purchase under Part 3 of the Act to a household transferring from another form of social housing support.

Section 21 Summary of social housing assessments

This section requires housing authorities, for a variety of specified purposes, including the preparation of a draft housing services plan under section 15, or as required by the Minister, to prepare summaries, in the prescribed form, of their social housing assessments.

Section 22 Allocation of dwellings

This section replaces and updates provisions in section 11 of the Housing Act 1988. It deals with the allocation by housing authorities, of dwellings that they own or that are under their control (including dwellings subject to rental accommodation arrangements) and of dwellings provided by approved housing bodies with Exchequer funding. Allocations are made by Manager’s order and in accordance with an “allocations scheme” made by the authority under this section. The section empowers the elected members to make and amend an allocation scheme relating to, among other things—

- the order of priority for allocating dwellings to households qualified for social housing support, as well as to social housing tenants seeking transfers, including transfers to new dwellings reserved for incremental purchase (subsection (3)),
- the reservation of a proportion of dwellings in any part or parts of its administrative area for particular classes of household and forms of tenure (subsection (5)),
- the circumstances in which the preferences of households to live in a particular area or areas may be taken into account in allocating dwellings (subsection (6)), and
- obtaining a report from a HSE doctor where a household seeks priority in dwelling allocation on exceptional medical grounds (subsection (8)).

The allocations scheme must be made available for public inspection, including publication on the Internet (subsection (14)).

Subsection (7) empowers a housing authority to disregard a household’s order of priority under its allocation scheme when rent supplement beneficiaries are transferred into rental accommodation arrangements without moving from their existing accommodation, and also when the authority is allocating dwellings to households in specified exceptional circumstances, including emergencies.

Subsection (12) requires the Manager to submit an annual report to the elected members of the housing authority on the number of allocations made under the allocation scheme in the previous year, classified into the categories of both dwellings allocated and benefiting households. A copy of the report must be made available to the Minister on request.

Section 22 also empowers the Minister to-

- regulate the matters to be included in an allocation scheme, including conditions relating to refusals by households of offers of social housing support (subsection (4)),
- direct a housing authority to amend a draft allocation scheme or a scheme that it has made (subsections (15) and (16)), and
- issue directions about the operation of an allocation scheme, but not in such a way as to direct the allocation of a dwelling to a specific household (subsection (17)).

Chapter 4 Rental Accommodation Arrangements (sections 23 to 27)

This Chapter provides a more developed statutory framework for the provision of rented social housing by way of leasing or contract arrangements with private accommodation providers, including the Rental Accommodation Scheme. Under the scheme, dwelling providers, including approved voluntary and co-operative housing bodies, make accommodation available to housing authorities for agreed periods and let dwelling units to qualified tenants nominated by authorities in accordance with their allocation schemes. The housing authority pays the full rent on behalf of the tenant and the tenant pays an income-related rent contribution to the housing authority.

Section 23 Interpretation (Chapter 4)

This section sets out important definitions for the purposes of the Chapter.

Section 24 Rental accommodation availability agreement

This section empowers a housing authority, by Manager's order, to enter into a "rental accommodation availability agreement" with a dwelling provider, which requires the provider to make the dwelling available for a specified period and to let the dwelling either: -

- to any qualified tenant to whom the housing authority allocates the property from time to time, or to the housing authority itself; or
- to the tenant named in the availability agreement.

Subsection (2) prohibits a housing authority from entering into an availability agreement where the provider is not in compliance with the prevailing minimum statutory standards for private rented houses or does not provide the relevant tax reference number or current tax clearance certificate.

Subsection (3) sets out the information to be included in the agreement.

Subsection (4) specifies the main terms and conditions applying to an agreement, including-

- payment by the housing authority of rent and any other moneys due under the agreement,
- registration by the dwelling provider of the tenancy under the Residential Tenancies Act 2004, and
- the termination of the availability agreement by either party.

The Minister is empowered to make regulations relating to agreements, along the lines set out in subsection (5). Under paragraph (e), the Minister may specify the period within which the dwelling provider, having been notified by the housing authority under section 25(6) that the tenant has failed to comply with obligations set out in section 25(5) and (6), must serve notice of tenancy termination on that tenant.

Section 25 Chapter 4 tenancy agreement

This section empowers a housing authority to allocate dwellings that are the subject of rental accommodation availability agreements to households in accordance with its allocation scheme under section 22. It applies the terms of the Residential Tenancies Act 2004 to tenancies entered into under availability agreements (subsection (3)) and it also provides for the main terms and conditions of the “Chapter 4 tenancy agreement” between the accommodation provider and the tenant (subsection (5)). These terms and conditions include tenant obligations additional to those set out in the 2004 Act, notably in relation to payment by the tenant of an income-related rent contribution to the housing authority and the termination of the tenancy agreement in specified circumstances, including non-payment of the rent contribution and anti-social behaviour. Subsection (6)(b) gives the housing authority power to notify the dwelling provider of breaches by the tenant in relation to anti-social behaviour and of behaviour constituting grounds for termination of the tenancy under subsection 5(c). Subsection (6)(c) stipulates that the dwelling provider shall act upon this notification and serve notice of termination on the tenant if he or she has not already done so.

Section 25 provides for exchange of information between a dwelling provider and the housing authority in relation to the service of a termination notice and

an application for an excluding order under the Housing (Miscellaneous Provisions) Act 1997 in respect of the dwelling on the grounds of anti-social behaviour. In this connection, section 8 and Part 5 of Schedule 2 to the Act amend the 1997 Act to apply certain anti-social behaviour provisions to dwellings the subject of a rental accommodation availability agreement.

Subsection (10) provides that a housing authority shall, in accordance with its section 31 rent scheme, determine the rent contribution payable by the tenant of a dwelling the subject of a rental accommodation arrangement. Subsection (11) provides that the housing authority may reduce the rent contribution for the initial period of a Chapter 4 tenancy, to avoid hardship where the tenant was paying substantially less for that accommodation before the rental accommodation arrangement was put in place.

Section 26 Expenses incurred by housing authority

This is a standard provision enabling the Minister to make payments from the Exchequer in respect of expenses incurred by housing authorities under Chapter 4.

Section 27 Non-application of certain provisions to disposals for purposes of this Chapter

This section disapplies the following statutory provisions from the disposal, by a local authority, of land or a dwelling under Chapter 4-

- section 211(2) of the Planning and Development Act 2000, which requires Ministerial consent to individual disposals of land (including dwellings) by local authorities where the proposed price or rent is below market value, and
- section 183 of the Local Government Act 2001, which provides for notification of, and consideration by, elected members of the proposed disposal by a local authority of land or a dwelling.

Chapter 5 Management and Control Functions (sections 28 to 35)

This Chapter deals with the responsibilities of housing authorities in relation to their housing stock, including management and maintenance, tenancy agreements, rent schemes, arrangements for paying arrears of moneys (notably rent) due to them and a requirement for councils to adopt anti-social behaviour strategies.

Section 28 Management and control functions

This section replaces parts of section 58 of the Housing Act 1966 and section 14 of the Housing (Miscellaneous Provisions) Act 2002.

Subsection (1) vests in the housing authority the management and control of dwellings, sites, etc., that it owns, and subsection (4) outlines its functions in respect of such dwellings and sites. Subsection (1)(b) vests in the housing authority the management and control of works or services provided by the authority under the Housing Acts. Subsection (2) provides that the management and control of common areas relating to dwellings provided under the Housing Acts 1966 to 2009, or under Part V of the Planning and Development Act 2000, are not required to be vested in the housing authority. Subsection (3) enables a housing authority to exercise management and control functions in respect of dwellings that it does not own but which are the subject of a contract or lease, including a rental accommodation availability agreement, between the authority and the owner, and subsection (5) outlines the authority's functions in respect of such dwellings, which are subject to the terms of the contract or lease between the authority and the owner.

Section 29 Tenancy agreements

This section and Schedule 3 to the Act deal with the written tenancy agreement applying both to a dwelling owned by a housing authority and to a dwelling not owned by an authority but which is the subject of a contract or lease, other than a rental accommodation availability agreement, between the authority and its owner. Schedule 3 sets out the terms and conditions that must be included

in such tenancy agreements, including specific provisions in relation to anti-social behaviour, and section 29(2)(b) enables a housing authority to include other necessary and appropriate terms and conditions in such agreements. Subsection (3) provides that these terms and conditions are subject to the terms of any contract or lease between the housing authority and dwelling owner. The Minister may regulate matters set out in subsection (4) in relation to tenancy agreements, including their form and the procedures for termination of the tenancy by either the housing authority or the tenant.

Section 30 Delegation of management and control functions

This section replaces sections 9(2) and (3) of the Housing (Miscellaneous Provisions) Act 1992. It enables a housing authority, by reserved function, to delegate one, some or all of its management and control functions in respect of its dwellings to a designated body, which must include representatives of the residents of the area. The section defines a “designated body”, requires specified information to be included in a delegation and outlines matters that may be dealt with in the delegation. Under subsection (3), the Minister may regulate the delegation of functions by housing authorities. Subsection (4) empowers a housing authority to withdraw a delegation of functions at its discretion.

Section 31 Rent schemes and charges

This scheme replaces sections 58(3), (3A) and (3B) of the Housing Act 1966. Subsections (1) to (3) empower a housing authority, in respect of dwellings provided under the Housing Acts 1966 to 2009, or Part V of the Planning and Development Act 2000, to charge rents or make other charges for dwellings that it owns and to charge rent contributions or make other charges for dwellings that it does not own but which are the subject of a contract or lease, including a rental accommodation availability agreement, between the authority and the owner. Subsection (4)(b) provides that, in cases where the dwelling is in a complex or estate involving a management company, a housing authority may pass on management and service charges to tenants. Under subsection (3)(b), a

housing authority may make appropriate charges in respect of works or services provided under the Housing Acts or under Part V of the 2000 Act.

Subsection (5) requires each housing authority, by reserved function, to make a “rent scheme”, setting out the manner in which it will determine rents and other charges and empowers the authority to make a new scheme, as required. Under subsection (5)(b), the Minister may require an authority to revoke its rent scheme and make a new scheme. Subsection (6) empowers the Minister to make regulations covering the matters to be included in a rent scheme, including, among other things, the manner in which the financial circumstances of households and the number of dependents shall be taken into account in determining rent, and, in cases of financial hardship, the waiving of rent and other charges in whole or in part. Subsection (8) provides that it is the responsibility of the Manager to fix and review individual rents and charges in accordance with council policy. Under subsection (9), the rent scheme must be made available for public inspection, including publication on the Internet.

Section 32 Information requirements

This section replaces section 61 of the Housing Act 1966. It specifies the types of information that a housing authority may require a household applying for, or in receipt of, housing support to supply for the purpose of performing its functions under the Housing Acts. Subsections (5) and (6) empower the Minister to make regulations relating to the form of an application and the supply of information to a housing authority for the purposes of-

- carrying out a social housing assessment under section 20 [Section 8 and Item 5 of Part 5 of Schedule 2 to the Act amend the Housing (Miscellaneous Provisions) Act 1997 to enable a housing authority or a specified person (including an approved body, the Health Service Executive and the Minister for Social and Family Affairs), on request, to provide information to the housing authority concerned in relation to a person seeking housing support],

- the purchase of a dwelling under Part 3 (incremental purchase), Part 4 (tenant purchase of apartments) or Part 5 (affordable purchase dwelling arrangements).

Under subsections (7), (8) and 9, it is an offence, punishable on summary conviction by a fine not exceeding €2,000, for a household member to supply false information and, where the provision of such information results in a financial loss to the authority, either in terms of incurring a higher level of expenditure in providing housing support or of lower rent receipts, the household is liable to make up that loss to the authority.

Section 33 Moneys owing to housing authority

Section 33 (1) specifies that interest is payable on overdue payments to housing authorities in respect of specified rents, loans, affordable housing clawbacks or equity charges on dwellings sold under incremental purchase (Part 3), the tenant purchase of apartments scheme (Part 4) or affordable dwelling purchase arrangements (Part 5). Subsection (2) provides that interest is payable at a rate prescribed by the Minister which shall not be greater than the interest rate applicable to a High Court civil judgement debt. Under subsection (4), a housing authority may offset any monies that it owes to a household, in respect of any local authority service, against interest due from that household.

Section 34 Arrangements with households for payment of moneys due and owing to housing authority

This section provides that a housing authority may enter into an arrangement with a household for the rescheduling of payments of accumulated arrears, including interest, of monies due to it in respect of specified rents, equity charges and loans, where the authority is satisfied that the household would otherwise suffer undue hardship. Under subsection (3), the payment of arrears is in addition to any rent, loan repayments, etc., that the household may be paying to the authority.

Section 35 Anti-social behaviour strategy

This section requires each housing authority, by reserved function, to adopt an “anti-social behaviour strategy” for the prevention and reduction of anti-social behaviour in its housing stock. Subsection (2) specifies the principal objectives of a strategy, notably the promotion of co-operation with other persons, including An Garda Síochána, to avoid duplication of effort. Subsections (3) and (5) outline the matters that may be dealt with in a strategy and the bodies that must be consulted in drawing up a strategy. Under subsection (4), a housing authority may review its strategy from time to time and is required to do so at least 6 months before the expiry of its housing services plan. Subsection (7) provides that the existence of an anti-social behaviour strategy will not confer a legal right, additional to any right that a person may have in law, to require a housing authority to act under the Housing (Miscellaneous Provisions) Act 1997 or to seek damages for failure by the authority to perform any of its functions under that Act.

Section 8 and Item 1 of Part 5 of Schedule 2 to the Act amends the definition of anti-social behaviour in the Housing (Miscellaneous Provisions) Act 1997 to include damage to or defacement of property and significant impairment of the use or enjoyment of a person’s home.

Chapter 6 Homelessness Action Plans (sections 36 to 42)

This Chapter provides a comprehensive statutory framework for the making and adoption of homelessness action plans, implementing a recommendation in The Way Home: A Strategy to Address Adult Homelessness in Ireland, published in August 2008. The Chapter provides for the preparation and making of a plan, its contents and a timeline for its adoption. It also provides for the establishment of a homelessness consultative forum or joint forum and the appointment of a management group. The Chapter empowers the Minister to give directions in relation to a range of matters relating to the plan.

Section 36 Interpretation (Chapter 6)

This is a standard section, defining important terms used in Chapter 6. The section defines “specified body” to include FÁS, the Prison and Probation Services, the local VEC and bodies prescribed for the purpose.

Section 37 Homelessness action plan

This section, in conjunction with section 8 and the revised definition of a housing authority provided for in Item 5 of Part 4 of Schedule 2 to the Act, provides for the adoption by each city and county council of a homelessness action plan, specifying the measures to be taken to address homelessness in the administrative area(s) concerned by the authority, the HSE, specified bodies, approved bodies and other bodies dealing with homelessness. Under subsection (1), the first statutory plan must be adopted within 8 months of the coming into operation of Chapter 6. Subsection (2) sets out the broad parameters in terms of the objectives which a plan should strive to meet, including the prevention and reduction of homelessness, the provision of services to address the needs of homeless households and the promotion of effective co-ordination between the various bodies working to address homelessness. Subsection (3) sets out matters to which the plan should have regard, while subsection (4) empowers the Minister to issue directions in

relation to the contents of the plan and its duration, which shall not be less than 3 years in any case.

Section 38 Homelessness consultative forum

This section provides for the establishment by a housing authority of a homelessness consultative forum with the function of providing information, views, advice or reports, as appropriate, in relation to homelessness, draft homelessness action plans and the implementation of such plans.

Subsections (3) and (4) provide for the establishment of a joint homelessness consultative forum in respect of the administrative areas of 2 or more housing authorities-

- where this is warranted by the extent or nature of homelessness in the those areas, or
- in order to ensure the most efficient use of resources, or
- where directed by the Minister.

Under subsection (5), where a joint forum is established, the housing authorities concerned must appoint one amongst them (the “responsible housing authority”) to perform their functions under the Chapter.

Subsection (8) sets out the membership of a forum, comprising representatives of-

- (a) the housing authority (or authorities in the case of a joint forum), the HSE, specified bodies, and
- (b) approved and other bodies dealing with homelessness considered appropriate by the (responsible) housing authority in accordance with Ministerial directions under section 41.

Subsection (9) provides that the number of representatives of the groups referred to at subsection (8)(b) shall not form a majority of forum membership.

Subsection (6) and (7) provide that the (responsible) housing authority shall nominate the forum chairperson from the forum’s membership, in accordance with Ministerial directions under section 41, and that the forum chairperson shall also be the chairperson of the management group.

Subsection (10) provides that a homelessness consultative forum, or a joint forum, shall regulate its own procedures and subsection (11) provides that the housing authority (or authorities in the case of a joint forum) will provide a forum with services and support in accordance with Ministerial directions under section 41.

Section 39 Management group

This section provides for the appointment by the (responsible) housing authority, in accordance with Ministerial directions under section 41, of a management group from within the forum membership and sets out details in relation to the membership and functions of a management group.

Under subsection (4), the management group will act as an executive body within the homelessness action plan structure with functions separate from those of the homelessness consultative forum and a remit to make recommendations to housing authorities, the HSE and specified bodies, as appropriate, including recommendations regarding funding for homelessness services.

Subsection (2) provides that a management group shall regulate its own procedures and subsection (3) provides that the (responsible) housing authority will provide a management group with services and support in accordance with Ministerial directions under section 41.

Section 40 Preparation of draft plan and making of plan

This section provides for drafting and adoption of homelessness action plans within specified time periods, publication and circulation of the adopted plan and procedures for undertaking a review of a plan or preparing a new plan. The section also provides a saver for certain plans adopted before the coming into operation of Chapter 6.

Subsection (1) provides that each (responsible) housing authority shall, not later than 6 weeks after the commencement of Chapter 6, send a request to the management group to arrange for the preparation of a draft homelessness action plan.

Under subsection (2), the management group must, as part of the preparation of a draft plan, consult the homelessness consultative forum or joint forum and any town council situated in the administrative area or areas to which the plan will relate. Subsection (3) provides that the management group has 10 weeks from the date of the housing authority's request to approve and submit a plan to the housing authority.

Under subsection (4), the housing authority (or each housing authority, in the case of a joint homelessness consultative forum) must adopt a plan (with or without modification) within 6 weeks of its receipt from the management group. This provision is subject to subsections (5) to (8), which apply where a housing authority seeks to modify the draft plan in certain respects or is unable to adopt a plan for whatever reason. Subsection (12) provides that, subject to subsection (8), the adoption of a homeless action plan is a reserved function of the council.

Subsection (5) provides that, where a (responsible) housing authority wishes to modify aspects of a draft plan relating to the functions of the HSE or a specified body, it must seek the approval of the management group. Subsection (6) provides that the group must consult the homelessness consultative forum, or joint forum about the proposed modification(s) and, within 3 weeks of the referral, accept or reject them and notify the (responsible) housing authority its decision and the reasons therefor.

Subsection (7) provides that the housing authority or authorities must adopt the homelessness action plan within six weeks of the receipt of the notification under subsection (6). If the management group accepted the proposed modification, the authority must adopt the plan with that modification. If the management group rejected the proposed modification, the authority must adopt the plan without that modification.

Subsection (8) is a failsafe mechanism to ensure that a homelessness action plan is adopted within the 8-month timeframe set out in section 37(1) in cases where the elected members of the housing authority fail, for whatever reason, to adopt a plan. In such circumstances, the Manager must, by order, adopt the plan.

Subsection (9) deals with the publication and circulation of the adopted plan. Subsections (10) and (11) provides for the review and amendment of an existing plan or the preparation of a new plan, at the instigation of the (responsible) housing authority. A plan review or preparation of a new plan must begin at least 8 months before the expiration of a current plan. There is discretion, however, to review and amend or prepare and adopt a plan at any stage.

Subsection (13) provides that a plan adopted by a housing authority before Chapter 6 comes into operation that meets certain conditions is deemed to be adopted by the authority for the purposes of Chapter 6. The conditions are that the existing plan-

- specifies the measures to be undertaken to achieve the objectives of a homelessness action plan specified in section 37(2); and
- does not expire before the end of one year after the date of coming into operation of Chapter 6.

Section 41 Ministerial directions

This section empowers the Minister to give directions to a (responsible) housing authority in relation to a range of specified matters in Chapter 6, including the number, and terms and conditions of appointment, of members of a forum and a management group. Subsection (2) provides that a (responsible) housing authority must comply with any Ministerial direction given under the section.

Section 42 Power of Minister to prescribe body as specified body

This section empowers the Minister to prescribe a body as a specified body for the purpose of Chapter 6. The term “specified body” is defined in section 36 and provides for the prescription of specified bodies.

Part 3 — Incremental purchase arrangements (sections 43 to 49)

This Part provides for an incremental purchase scheme designed to promote home ownership for existing social housing tenants (including those in rental accommodation arrangements and in voluntary and cooperative housing) and households qualified for social housing support, whose incomes are too low to qualify for affordable housing but who could, over time and with appropriate supports, become the outright owners of houses newly-built by housing authorities or approved housing bodies. The scheme involves transferring full title to the new house to the household, on payment to the housing authority or body concerned of a proportion of the purchase price. The housing authority or body places an equity charge on the property in its favour for the discounted portion of the purchase price, declining over time until the charge is eliminated. The housing authority, or approved body, may suspend the incremental release of the charge for any year where a purchaser breaches the terms and conditions of the charging order, in which case the purchaser will, on the expiration of the charged period, be liable to make a payment to the housing authority or approved body to clear the outstanding equity charge on the dwelling.

Purchasers will take full responsibility for the property from the day of purchase. If the incremental purchaser wishes to resell the dwelling during the charge period, the housing authority or body concerned has first option on buying it at the proportion of its market value equivalent to the prevailing share of the equity that is not charged. Resale of an incremental purchase house in the market is subject to the consent of the housing authority or body concerned, and, in order to clear the outstanding charge on the equity, the incremental purchaser must, on resale, pay to the authority or body that proportion of the dwelling's current market value equivalent to the prevailing charged share. Part 3 provides the framework for the incremental purchase arrangements, allowing some of the terms to be dealt with in regulations.

Section 43 Interpretation (Part 3)

Section 43(1) is a standard provision defining important terms used in Part 3. The subsection defines “eligible household” to mean-

- a household deemed qualified for social housing support under section 20, that has been allocated a dwelling in accordance with section 22 and has not lived in that allocated dwelling for longer than 5 years since the date of allocation; or
- a household already in receipt of social housing support that has requested a transfer of accommodation and, under the authority’s allocation scheme, has been allocated a dwelling reserved for purchase under Part 3. Households in this class must purchase their dwellings immediately under the scheme.

Subsection (2) provides that a housing authority shall not sell a dwelling under incremental purchase to a household which, in respect of a dwelling or site rented by any housing authority-

- was in rent arrears for an accumulated 12-week period in the 3-year period immediately prior to applying for incremental purchase, and
- the housing authority has not entered into a section 34 arrangement with the household for the payment of rent arrears, plus interest, if applicable.

Section 44 Application of Part 3 to certain dwellings

Subsection 44(1) provides that incremental purchase applies to prescribed classes of dwellings newly built by housing authorities or by approved housing bodies and to vacant dwellings that have not been let previously under an allocation scheme. This provision is subject to subsection (2), which provides that incremental purchase does not apply to an apartment in a local authority complex designated for tenant purchase under Part 4 or to an apartment with common areas or services, which is in a premises containing 2 or more apartments.

Section 45 Sale of dwelling by incremental purchase arrangement

This section empowers a housing authority or an approved housing body to sell a dwelling under incremental purchase to an eligible household at a discount fixed by the authority or body in accordance with regulations made under section 49. The sale is effected by way of a transfer order, which includes conditions relating to occupancy of the dwelling as the normal place of residence, maintenance of the dwelling by the purchaser, a requirement of consent by the authority or body to resale, etc. Subsection (3) provides that, subject to the provisions of other legislation, the sale of a dwelling under incremental purchase will not imply any warranty as to its state of repair or condition or its fitness for human habitation.

Under subsection (4), an approved housing body may, subject to regulations and with the consent of the housing authority, reserve a number of its dwellings for sale under incremental purchase. Section 22(5) provides a similar power to housing authorities, enabling them to reserve a proportion of dwellings for sale under incremental purchase.

Subsection (5) disapplies the following statutory provisions from the sale by a housing authority of a dwelling to an eligible household under incremental purchase-

- section 211(2) of the Planning and Development Act 2000, which requires Ministerial consent to individual disposals of land (including dwellings) by local authorities where the proposed price or rent is below market value, and
- section 183 of the Local Government Act 2001, which provides for notification of, and consideration by, elected members of the proposed disposal by a local authority of land or a dwelling.

Section 46 Charging order

This section requires the housing authority or approved housing body concerned, subject to any regulations made under section 49, to place a charge on a dwelling that it has sold under incremental purchase of that proportion of the value of the dwelling equivalent to the discount granted to the purchaser off

its purchase price. Subsection (1) defines the “charged period” as the period of the charge specified in the charging order, which period is subject to prescription by the Minister under section 49. Under subsection (4), this charge is reduced in equal proportions, referred to as “incremental releases”, over the charged period, provided the purchaser complies with the terms and conditions of the transfer order. The reduction in the charge for the first 5 years of occupancy is not applied until that period has expired. Subsection (5) requires the housing authority or approved housing body, at the purchaser’s request, to give to him or her a statement of the accumulated amount of incremental releases that have been applied to the charge. Subsection (14) provides for the authority or body to discharge the charge when it expires or when it is resold, whichever occurs first. It also provides that the authority or body will meet the costs of executing and registering a deed of discharge but is not otherwise liable for expenses of the purchaser under sections 46 to 48. Subsection (12) provides that moneys due to the housing authority or approved body under section 47 or 48 may be recovered as a simple contract debt through the courts, without affecting any other powers that the authority or body may have to recover it.

Subsections (6) to (11) are technical provisions relating to the status, registration, etc., of the incremental purchase charge. Under subsection (10), a housing authority may enter into an agreement with a lending institution to the effect that the authority’s charge will have a different (i.e. lower) priority relative to the institution’s mortgage charge, than it otherwise would have. Subsection (11) provides that a housing authority or approved body may enter into a subsection (10) agreement only if this will enable a purchaser to-

- obtain a mortgage from the lending institution in order to purchase the dwelling; or
- refinance an existing advance of moneys from the lending institution; or
- obtain a further advance of money from the lending institution.

Section 47 Suspension of reduction of charged share

This section empowers a housing authority or an approved body to suspend incremental releases of the authority or body's equity charge on the dwelling where the purchaser breaches any term or condition of the transfer order. Subsection (3) provides for notifying the purchaser at the time of suspension of an incremental release. For each year that the authority suspends the incremental release of the charged share, one annual increment will be withheld from the purchaser, and, on the expiration of the charged period, the purchaser is liable to repay to the authority or body an amount equivalent to the outstanding charge on the equity on the date of expiration of the charge. Under subsection (4), any debt that becomes due to an authority or body, and which is not paid by a purchaser within 2 months of notification of the amount payable in respect of the outstanding charge, may be recovered as a simple contract debt through the courts, without affecting any other powers that the authority or body may have to recover it. Subsection (6) provides that, where the purchaser disputes the market value of the dwelling as determined by the housing authority or body for the purpose of calculating the amount payable by the purchaser on expiry of the charged period, the market value shall be determined by an independent valuer nominated by the purchaser from a panel of valuers drawn up by the housing authority, with the purchaser meeting any expenses that he or she incurs in consequence.

Section 48 Control on resale of dwelling sold under an incremental purchase arrangement

This section deals with the resale of an incremental purchase dwelling during the charged period. An incremental purchaser wishing to resell must first offer to sell the dwelling back to the housing authority or approved housing body concerned at a proportion of its market value, equivalent to the prevailing share of the dwelling that is not subject to the authority or body's charge, reduced by the value of any material improvements made by the purchaser to the dwelling. Under subsection (3), the housing authority or approved body concerned may

refuse to consent to the resale of an incremental purchase dwelling in the market for one or more of the following reasons -

- the proposed sale price is less than the market value,
- anti-social behaviour by the prospective purchaser or in the interest of good estate management,
- the sale would leave the vendor or a member of his or her household without adequate housing.

Subsections (5) and (6) provide that, where an incremental purchaser resells his or her dwelling in the market, he or she must make a payment to the authority or body calculated as the proportion of the market value of the dwelling equivalent to the prevailing charged share, reduced by the value of any material improvements made by the purchaser to the dwelling. Under subsection (7), the amount of the payment by an incremental purchaser to clear a charge under section 46 is reduced where full payment would bring the net proceeds from the sale below the amount paid by the purchaser to the authority or body at the outset.

Subsection (8) provides that, where-

- the charged period for an incremental purchase dwelling has expired and there is an outstanding charge under section 47(3) which the purchaser has not paid, and
- the purchaser wishes to resell the dwelling,

the housing authority or approved body concerned may recover the amount due as a simple contract debt through the courts, without affecting any other powers the authority or body may have to recover it. The subsection also provides that material improvements made by the incremental purchaser to the dwelling after the charged period will not be reckonable in calculating the amount that the purchaser must pay to the authority or body.

Subsection (10) provides for the repayment to housing authorities by approved housing bodies of sales receipts under the scheme (which monies are lodged to the section 13 account to be used for housing-related purposes) or, alternatively, for offsets in the funding for housing provision advanced by authorities to such bodies, which take account of the bodies' sales receipts.

Subsections (11) and (12) provide that, where the vendor disputes the market value of the dwelling as determined by the housing authority or body for the purposes of this section, the market value shall be determined by an independent valuer nominated by the vendor from a panel of valuers drawn up by the housing authority in accordance with regulations made by the Minister under section 49, with the vendor meeting any expenses that he or she incurs in consequence.

Section 49 Regulations (Part 3)

This section empowers the Minister to regulate aspects of the incremental purchase scheme, including-

- the method that the housing authority or approved body will use to determine the purchase price of the dwelling, which method may differentiate between different dwelling classes and take account of the age of the dwelling,
- the method that housing authorities or approved bodies will use to determine the proportion of the purchase price (which proportion is termed the “purchase money”) that households must pay to purchase the dwelling, taking account of their financial circumstances, and
- the minimum period of the charging order (which must be at least 20 years) or the range within which the authority must fix the minimum period of the order.

Part 4 — Tenant purchase of apartments (sections 50 to 77)

This Part provides for a purchase scheme for apartment tenants in complexes wholly owned by housing authorities. Under the scheme, housing authorities will be required to conduct a tenant plebiscite in individual apartment complexes proposed for designation for tenant purchase. The housing authority may designate the complex where the plebiscite shows that a minimum number of tenants are in favour of designation and that a minimum number of tenants are willing to serve as directors of the management company for the complex if they proceed to buy their apartments. The authority will transfer ownership of each designated complex to a new management company established for the purpose, which will immediately lease all the apartments back to the authority, while retaining ownership of the common areas and services. The authority will continue to let the apartments to tenants, who, subject to fulfilling the minimum tenancy requirement, will have the option of buying them from the authority under incremental purchase arrangements. The tenant purchase option will continue to be available in the complex provided that, within a specified period after designation, the first sale takes place with a minimum proportion of all the apartments in the complex ready to be sold at that time. Tenants will be able to purchase their apartments for a proportion of the market value, with an equity charge being placed on the property in favour of the housing authority for the portion of the equity not paid for, declining over time until the charge is eliminated. The charge share will reduce in equal annual equity releases over the charged period unless the housing authority suspends individual releases for breaches of the lease by the purchaser, in which case the purchaser must, on the expiration of the charged period, make a payment to the authority to clear the outstanding charge on the property. If the tenant purchaser wishes to re-sell the apartment during the charge period, the authority has first refusal on buying it back. If the authority declines to buy back the apartment, the tenant purchaser may, in certain circumstances, sell it on the market, in which case he or she must make a payment to the authority to clear the outstanding charge on the property. Part

4 provides the framework for the scheme, allowing some of the terms to be dealt with in regulations.

Certain provisions of Part 4 reflect provisions in the Multi-Units Development Bill sponsored by the Minister for Justice, Equality and Law Reform and published in May 2009.

Section 50 Interpretation (Part 4)

This is a standard section defining important terms used in Part 4. The section defines “apartment complex” as land on which stands a building or buildings containing at least 5 apartments (excluding any community apartment, defined in section 50 to mean an apartment authorised by the housing authority to be used for the benefit of apartment occupiers in the complex) and the common areas, structures, works and services associated with that complex.

Section 51 Consideration of designation of apartment complex

This section sets out the first necessary step in the process for introducing tenant purchase into an apartment complex. The housing authority may propose to designate a complex for tenant purchase where certain conditions specified in subsection (2) in relation to the complex are satisfied. These conditions include whether-

- the sale of apartments is consistent with good estate management;
- the complex is suitable for designation, having regard to, among other things, its design and annual management and maintenance costs;
- the complex is structurally sound, and
- good and marketable title can be transferred to a management company.

Subsection (2)(f) provides that a complex may not be designated if it contains apartments of a class excluded from sale by regulations made under section 77.

Section 52 Preparation of draft proposal to designate apartment complex

This section provides that, where a housing authority proposes to designate an apartment complex for tenant purchase, a draft designation proposal must be prepared. Subsection (1) sets out the type of information that must be included in the proposal in order to facilitate consultation with tenants. Subsection (2) details the arrangements for publishing the draft proposal and circulating it to tenants. Subsection (3) deals with the manner in which the consultation with tenants will be conducted.

Section 53 Proposal to designate apartment complex

This section provides for the adoption, by the elected council, of a draft proposal to designate an apartment complex, following its submission to the council, with or without modification, by the Manager.

Under subsection (1), where the conditions specified in section 51(2) continue to be met and following consideration of the views of tenants, the Manager may submit the draft proposal to designate the complex for tenant purchase to the council of the housing authority for adoption. This draft proposal may include modifications from the draft proposal originally prepared under section 52.

Subsection (2) provides that, where the manger decides not to proceed with the proposal to designate the complex, he or she must notify the tenants of the complex and the elected members of that decision and the reasons therefore.

Subsection (3) provides that the council may adopt, with or without modification, the draft proposal submitted by the Manager. Subsection (4) provides that the adoption of a section 53 proposal is a reserved function.

Section 54 Tenant plebiscite

This section provides for the conduct of a tenant plebiscite where the housing authority has adopted a “section 53 proposal” to designate an apartment complex for tenant purchase. Under subsection (1), the purpose of the plebiscite is to ascertain the level of tenant support for designation of the complex and the willingness of tenants, if they purchase their apartments, to serve as directors of the management company. Subsections (2) to (4) deal with

entitlement to vote at the plebiscite. One vote may be cast by the tenant of each apartment in the complex. The housing authority may not vote at the plebiscite and no vote may be cast in respect of community apartments or apartments in the complex sold under section 90 of the Housing Act 1996. A single vote only may be counted in respect of an apartment with 2 or more tenants, provided a majority of the tenants indicate their concurrence by signing the vote. Subsection (5) provides that the housing authority shall send the ballot papers and supporting material to tenants within 2 months of adoption of the draft proposal to designate the complex. Subsection (6) provides for the Minister to prescribe in regulations the detailed arrangements for conducting the plebiscite.

Section 55 Designation of apartment complex

This section provides that a housing authority may designate an apartment complex in accordance with a section 53 proposal where the conditions set out in section 51(2) continue to be met and the plebiscite reveals a level of support for designation and management company board participation that equals or exceeds thresholds specified in the section.

Subsection (2)(a) provides that, in order for tenant purchase designation to proceed, 65% of more of the tenants eligible to vote (as distinct from tenants who actually vote) at the plebiscite must vote in favour of the introduction of tenant purchase in the complex based on the section 53 proposal. In addition, the Table to subsection (2) specifies, for apartment complexes of different sizes, classified by the number of local authority tenanted apartments in them, the minimum number of tenants who must indicate at the plebiscite that, if they purchase their apartments, they are willing to serve as directors of the management company for the complex. The minimum number of tenants ranges from the greater of 3 or 60% of tenants in complexes of up to 9 tenanted apartments, to a minimum of 10 tenants in complexes of 60 tenanted apartments or more.

Subsection (3) provides that the designation of an apartment complex for tenant purchase will lapse if no apartment is sold in the complex before the expiry of the initial selling period.

Subsection (4) provides that the designation of an apartment complex is a reserved function of the housing authority.

Section 56 Initial selling period

This section defines the initial selling period within which the first sale of apartments in the designated complex must be completed in order for tenant purchase option to continue to be available in the complex. It also provides for the establishment of a management company by the housing authority where the sales of a specified minimum number of apartments are ready to proceed within the initial selling period and a specified minimum number of purchase applicants have indicated their willingness to serve as directors of the management company.

Under subsection (1), the housing authority must invite purchase applications from tenants within 6 months of the designation of a complex. Section 32((6) of the Act empowers the Minister to make regulations in relation to the form of an apartment purchase application and the supporting information that must accompany it.

Subsections (2) to (4) establish the concept of an “initial selling period”, defined as the period beginning on the date the housing authority, for the first time in the designated complex, makes available the necessary title documentation, etc., to a tenant purchase applicant and lasting 3 years, or 5 years where the elected members of the housing authority are satisfied that the minimum number of sales of apartments calculated in accordance with subsection (6) will proceed in the complex within the extended period.

Under subsection (5), the Manager is required to establish a management company under section 57 where he or she is satisfied that the following conditions are met-

- (a) sales of at least the minimum number of apartments, calculated in accordance with subsection (6), are ready to proceed during the initial selling period; and
- (b) at least half of the minimum number of purchase applicants involved at (a) have indicated that they are willing to serve as directors of the management company for the complex.

The Table to subsection (6) specifies the minimum number of sales that must be ready to proceed within the initial selling period for apartment complexes of different sizes. The minimum ranges from the greater of 2 or 35% of all tenanted apartments in complexes of up to 19 tenanted apartments, to the greater of 7 or 30% of tenanted apartments in complexes of 20 tenanted apartments or more.

Subsection (7) provides that, in order for an apartment sale to be deemed ready to proceed for the purposes of subsection (5) and section 64(4), the tenant must have signed the apartment assignment order, paid any deposit required and provided written notice to the housing authority of loan approval or otherwise established his or her capacity to pay for the purchase.

Section 57 Establishment and objects of management company

This section provides for the establishment under the Companies Acts, the naming, form and objects of the management company to which the housing authority will transfer the ownership of the designated apartment complex under section 59. Subsection (3) requires the words “owners’ management company” must be included in the company name. Subsection (5) specifies the principal objects of the management company to be to take ownership of the designated complex, lease to the housing authority the apartments in the complex (other than apartments purchased under section 90 of the Housing Act 1966) and manage, control and maintain the common areas, etc., in the complex. Under subsection (7), the company’s articles of association must provide for the annual levying and collection of the apartment complex service charge and the sinking fund contribution.

Section 58 Annual meetings and reports of management company

This section sets out requirements for the management company of a designated apartment complex in respect of an annual report and an annual meeting of members to consider the report.

Section 59 Transfer of ownership of designated apartment complex to management company

This section provides for the first of the 3 significant transfers of ownership that arises in an apartment complex designated for tenant purchase, viz. the transfer by the housing authority of ownership of the complex to the management company. The transfer is effected for nominal consideration by an “apartment complex transfer order” made by the authority in the prescribed format, the terms and conditions of which are set out subsection (2), including provision for the Minister to prescribe other terms and conditions. Subsection (3) provides that the transfer of ownership implies no warranty, express or implied, on the part of the authority as to the condition of the complex.

Section 60 Lease of apartment to housing authority

This section provides for the second of the 3 significant transfers of ownership that arises in an apartment complex designated for tenant purchase, viz. the leasing by the management company of the apartments in the complex to the housing authority. Subsection (1) provides that, where the title to the complex transferred to the management company under section 59 is a leasehold interest, the management company shall sub-lease, rather than lease, the apartments in the complex back to the housing authority. The leasing of each apartment is effected for nominal consideration by an “apartment transfer order” made by the management company in the prescribed format, the terms and conditions of which are set out in subsection (2), including provision for the Minister to prescribe other terms and conditions. Apartment transfer orders will be made for community apartments but, under subsection (4), not for apartments sold by the housing authority to tenants under section 90 of the Housing Act 1966.

Section 61 Consequences of designation lapsing under section 55

This section provides for the steps to be taken if the designation of the apartment complex for tenant purchase lapses under section 55 because no tenant purchased an apartment in the complex before the expiry of the initial

selling period. The management company will, in fulfilment of the condition of the apartment complex transfer order set out in section 59(2)(d), terminate the apartment leases granted to the housing authority under section 60, transfer ownership of the complex back to the housing authority and arrange for the winding up of the company. The housing authority will then resume its management functions under the Housing Acts in relation to the complex.

Section 62 Costs incurred by management company

This section provides that, in the event of the designation of the complex for tenant purchase lapsing under section 55, the housing authority will reimburse a management company its reasonable and vouched expenses in relation to-

- the transfer to the company of ownership of the designated apartment complex,
- leasing the apartments in the complex to the housing authority, and
- reversing the changes of ownership that were effected within the apartment complex to facilitate the sale of apartments to tenants.

Section 63 Management, control and maintenance of designated apartment complex

This section sets out the general obligation on the management company in a designated apartment complex to manage and maintain the common areas, structures, works and services in the complex effectively and to comply with the various obligations imposed on it under this legislation and the apartment complex transfer order.

Subsection (1) provides that, following the transfer of ownership from the housing authority to the management company, the housing authority shall continue to manage and maintain a designated apartment complex until the first sale of apartments in the complex is completed.

During the period between the transfer of ownership of the overall complex and the first sale of apartments, subsection (2) requires the management company to pass to the housing authority any receipts from apartment purchasers under section 90 of the Housing Act 1966 in respect of service charges, etc.

Subsection (3) provides that the management company will assume day-to-day responsibilities in respect of the complex on the date of the first sale of apartments in the complex. There is a general obligation on the management company to manage and maintain the common areas, structures, works and services in the designated complex in order to ensure that the complex functions effectively.

Section 64 Sale by housing authority of apartments to tenants

This section provides for the third of the 3 significant transfers of ownership that arises in an apartment complex designated for tenant purchase, viz. the sale by the housing authority of an apartment to its tenant, at a discount fixed by the authority in accordance with regulations made under section 77. The transfer is effected by an “apartment assignment order” made by the housing authority in the prescribed format, the terms and conditions of which are set out subsection (5), including provision for the Minister to prescribe other terms and conditions. The main conditions are that-

- the purchaser, or a member of his or her household, must occupy the apartment as his or her normal place of residence during the charged period, except where the housing authority agrees otherwise, and
- the apartment must not, during the charged period, be sold, assigned, let mortgaged, charged, etc., otherwise than by devise or operation of law, without the housing authority’s prior consent.

Subsection (8) provides that the sale of an apartment to its tenant implies no warranty, express or implied, on the part of the housing authority as to the state of repair or condition of the apartment or of its fitness for human habitation.

Subsection (3) sets out the circumstances in which the housing authority manager shall not proceed with the first sale of apartments in the designated complex, viz.

- where the initial selling period has expired, or
- where less than a specified minimum number of sales are ready to proceed within 4 weeks of closing the first sale. Subsection (4) specifies

that the minimum number of sales (including the first one) ranges from the greater of 2 or 30% of all tenanted apartments in complexes of up to 19 tenanted apartments, to the greater of 6 or 25% of tenanted apartments in complexes of 20 tenanted apartments or more, or

- where less than half the minimum number of applicants required to be ready to proceed with sales (as determined under subsection (4)) are willing to serve as directors of the management company.

Section 64(6) provides for the payment of a deposit to the housing authority, determined in the manner prescribed by the Minister in regulations under section 77. This deposit is not refundable if the tenant withdraws from the sale within 6 months. Subsection (7) provides that, where the housing authority decides not to proceed with the sale, it shall refund the deposit (with interest) to the applicant, and recoup his or her reasonable legal expenses.

Subsection (9) specifies circumstances in which the housing authority shall not proceed with the sale of an apartment in a designated complex, including-

- where, at any time during the 3 years before applying to purchase the apartment, the tenant was in arrears of rent for an accumulated period of 12 weeks in respect of the apartment or any other dwelling let to him or her by any housing authority and the authority has not entered into a section 34 arrangement with the tenant for the payment of those arrears, plus interest, if applicable, or
- where the authority is not satisfied that enough existing and prospective apartment purchasers are willing to serve as management company directors to enable the company to operate effectively.

Section 77(b) empowers the Minister to prescribe the minimum period, which shall not be less than 1 year, for which a person must be a local authority tenant in order to be entitled to apply to purchase the apartment that he or she is renting.

Subsection (10) disapplies the following statutory provisions from the sale of an apartment in a designated complex to its tenant-

- section 211(2) of the Planning and Development Act 2000, which requires Ministerial consent to individual disposals of land (including dwellings) by

local authorities where the proposed price or rent is below market value, and

- section 183 of the Local Government Act 2001, which provides for notification of, and consideration by, elected members of the proposed disposal by a local authority of land or a dwelling.

Section 65 Management company provisions

This section provides that each apartment owner in a designated apartment complex (including purchasers of apartments under section 90 of the Housing Act 1966, and their successors in title, and the housing authority in the case of community apartments) shall be a member of the management company and shall have one vote in respect of each apartment of which he or she is the owner. Subsection (4) provides that joint apartment owners will be deemed to constitute a single member of the management company.

Subsection (5) provides that, according as the housing authority sells apartments in the complex, the authority shall reduce its representation on the board of the management company so that its proportionate representation on the company's board is the same as the proportion of all the apartments in the complex that the authority owns. Under subsection (6), when the housing authority owns 20% or less of the apartments in the complex, the authority may decline to nominate anyone to represent it on the management company board.

Section 66 Automatic transfer of membership of management company on sale of apartment

This section provides that membership of the management company associated with a particular apartment automatically transfers when ownership of the apartment changes, for whatever reason. The transfer of membership involves a transfer of all membership obligations to the new owner, notably the duty to pay service charges and any other charges. Subsection (2) requires the management company to make the necessary arrangements to give effect to the transfer of membership. Subsection (3) provides that section 66 is without

prejudice to the position of purchasers of apartments in the complex under section 90 of the Housing Act 1966 and their successors in title.

Section 67 Apartment complex service charge

This section requires the management company in a designated apartment complex to levy an itemised annual “apartment complex service charge” on apartments, other than community apartments, to cover the cost of managing and maintaining the complex.

Subsections (4) to (6) provide that the proposed apartment complex service charge must be considered at a general meeting of members and may be amended at that meeting with the approval of 60% of those present and voting at the meeting. The subsection also provides that, where at least 75 per cent of the members present and voting do not approve the proposed charge, the previous year’s charge shall remain in place until a new charge is adopted.

Subsection (7) provides that the apartment complex service charge shall be apportioned over the apartments in the complex (other than community apartments) according to floor area, determined in the manner prescribed by the Minister in regulations made under section 77. Subsection (8) provides that, where the management company receives service charges in respect of apartments sold under section 90 of the Housing Act 1966, the remaining net service charge shall, subject to the Minister’s approval, be levied on the other apartments in the complex using the same apportionment method that applies to section 90 apartment purchasers. If the Minister withholds approval to the “section 90” apportionment method on equity grounds, the net service charge shall be levied on the other apartments in the complex by the method set out in subsection (7).

Subsections (9) and (11) provide that excesses or shortfalls in the annual service charge may be carried forward to the following year and that excesses may also be applied to the cost of major works eligible for funding from the management company’s sinking fund under section 68.

Subsection (12) empowers the Minister to make regulations in respect of the classes of expenditure items that may be the subject of the apartment complex service charge.

Section 68 Sinking fund

Section 68(1) requires the management company in a designated complex to establish a sinking fund for the purpose of refurbishment, improvement or maintenance of a non-recurring nature in the complex, or related technical advice, and to levy a sinking fund contribution on apartments each year. Subsection (2) sets out a process for determining whether particular maintenance works are of a recurring nature and, thus, ineligible for support from the sinking fund.

Subsection (3) provides that the management company may not adopt a sinking fund contribution which, when apportioned over apartments (excluding community apartments) in the complex, would result in a charge on any apartment that is less than €200 or such other amount that the Minister may prescribe under subsection (6). The approval of members at a general meeting is required where the sinking fund contribution would result in an apportioned charge on any apartment that is greater than such amount.

Subsection (4) provides that the method of apportioning the sinking fund contribution over apartments will be the same as that used for apportioning the apartment complex service charge.

Subsection (5) provides that sinking fund contributions shall be kept in a separate identified account and shall only be for expenditure of the type set out in subsection (1).

Section 68(6) empowers the Minister to make regulations in respect of-

- the classes of expenditure items that may be financed from the sinking fund,
- thresholds of expenditure (either in amounts or expressed as a proportion of the sinking fund) that must be approved by members,
- the minimum annual contribution per apartment, having regard to the average level of service charges in designated apartment complexes.

Section 69 Management company annual charges

This section provides that the management company in a designated apartment complex may issue an aggregate request for payments under sections 67 and

68, collectively called “management company annual charges”. This request must outline the basis for the calculation of each charge. Subsection (3) imposes a duty on apartment owners to pay these charges in accordance with the terms of their leases and, if they do not pay, empowers the management company to re-enter and take possession of the apartment, whereupon the terms of the relevant transfer order shall end. Under subsections (4) and (5), apartment owners are liable for interest on overdue payments and the management company is required to notify the housing authority if, during the charged period, payment of these charges is overdue by more than 6 months. Subsection (6) provides that the housing authority shall not be liable for management company annual charges in respect of an apartment from the date on which the housing authority sells that apartment.

Section 70 Apartment complex support fund

This section sets out the arrangements for the establishment and operation by a housing authority of a support fund from which it will contribute to the cost of works eligible for financing from the management company’s sinking fund. Subsection (2) provides that, on the date of sale of the first apartment in the complex, the housing authority will place in the support fund a sum equivalent to a prescribed proportion of the purchase price on that date of all the apartments (including community apartments and apartments sold under section 90 of the Housing Act 1966). The proportion shall be prescribed by the Minister but shall not exceed 5% of the purchase price or such amount as the Minister may prescribe, having regard to the number and size of the apartments in the complex.

Subsection (4) provides that the authority may, on request by the management company, transfer moneys from the support fund to the management company as a contribution to the cost of refurbishment, improvement and maintenance of a non-recurring nature in the designated complex. Subsection (6) sets out the circumstances in which the housing authority may refuse to transfer moneys from the support fund to the management company, including where the proposed works are necessary due to failure on the part of the management

company to meet its obligation under section 63(3) to manage and maintain the complex effectively. Under subsection (7), the housing authority may transfer a smaller sum than the management company requests, may attach conditions to the transfer of moneys and may transfer funds in instalments. Subsections (5) and (9) provide for the release of such information, and the conduct of such inspections, surveys and tests, as the housing authority requires to decide on funding requests by the management company and to evaluate the completed works in respect of which moneys were transferred from the support fund. The housing authority will recoup the reasonable costs incurred by a management company for these purposes. Subsection (10) empowers the housing authority to demand repayments of all or some of the moneys transferred from the support fund if work is not carried out in accordance with its requirements. Subsection (11) provides for recoupment by housing authority from the apartment complex support fund of their expenses reasonably incurred under section 70.

Under subsection (3), a housing authority may manage the support funds for more than one designated complex in a single fund. Subsection (12) provides that the support fund shall comprise an investment account and a current account, with moneys being transferred to the latter account from time to time to enable the authority to make payments from the fund. Subsections (13) to (17) set out the arrangements for managing both accounts.

Section 71 Dispute between housing authority and management company arising under section 70(10)

This section provides for repayment by the management company of amounts due to the housing authority within 2 months of resolution of any dispute between the parties arising from a repayment demand by the authority under section 70(10). Subsection (2) provides that disputes about a repayment demand relating to a breach of a condition imposed by the housing authority under section 70(7) may be resolved by the management company agreeing to carry out, at its own expense, additional works that both parties agree will secure compliance with the condition concerned. Subsection (3) provides for conciliation procedures agreed between the housing authority and the

management company or, where such procedures cannot be agreed, for arbitration under the Arbitration Acts.

Section 72 Accounts of management company

This section sets out requirements applying to the keeping of the management company's accounts. Subsection (2) provides that management companies must keep proper accounts of income and expenditure, and establish and operate financial reporting systems based on standard accounting practices. The annual audited accounts must be provided to a member on request and at minimum cost. The annual audited accounts must also be submitted to the housing authority until such time as more than half of all apartments (taking community apartments into account) in the designated complex are sold.

Section 73 Property services agreement

This section provides that a specified body (viz. a housing authority, a company established by a housing authority for the purpose, or an approved housing body) may enter into a "property services agreement" with a management company in respect of a designated apartment complex. Under subsection (3), a property services agreement between a housing authority and a management company may not extend beyond 5 years after the sale of the first apartment in the designated complex. Subsection (5) provides that the costs incurred by a specified body providing services under a property services agreement shall be met by the management company in accordance with the terms of the agreement.

Subsection (4) provides for Schedule 4 to the Act, which sets out general terms that must be included in agreements under this section.

Section 74 Charging order

This section requires the housing authority, on sale of an apartment under section 64 and subject to any regulations made under section 77, to place a charge on the property of that proportion of its value equivalent to the

proportionate value of the discount granted to the purchaser off the purchase price.

Subsection (1) defines the “charged period” as the period of the charge specified in the charging order, which period is subject to prescription by the Minister under section 77. Under subsection (4), the charge is reduced in equal proportions, referred to as “incremental releases”, over the charged period, provided the purchaser complies with the terms and conditions of the apartment assignment order. The reduction in the charge for the first 5 years of occupancy is not applied until that period has expired. Subsection (5) requires the housing authority, at the purchaser’s request, to give to him or her a statement of the accumulated amount of incremental releases that have been applied to the charge. Subsection (14) provides for the housing authority, on request by the apartment purchaser, to discharge the charge when it expires or when it is resold, whichever occurs first. It also provides that the housing authority will meet the costs of executing and registering a deed of discharge but is not otherwise liable for the expenses of an apartment purchaser under sections 74 to 76.

Subsection (12) provides that moneys due to the housing authority under section 75 or 76 may be recovered as a simple contract debt through the courts, without affecting any other powers that the authority may have to recover it.

Subsections (6) to (11) are technical provisions relating to the status, a housing authority may enter into an agreement with a lending institution to the effect that the authority’s charge will have a different (i.e. lower) priority relative to the institution’s mortgage charge, than it otherwise would have. Subsection (11) provides that a housing authority may enter into a subsection (10) agreement only if this will enable a purchaser to-

- obtain a mortgage from the lending institution in order to purchase the apartment; or
- refinance an existing advance of moneys from the lending institution; or
- obtain a further advance of money from the lending institution.

Section 75 Suspension of reduction of charged share

This section empowers a housing authority to suspend incremental releases of the authority's charge on the apartment where the purchaser breaches any term or condition of the apartment assignment order. Subsection (3) provides for notifying the purchaser at the time of suspension of an incremental release. For each year that the authority suspends the incremental release of the charged share, one annual increment will be withheld from the purchaser, and, on the expiration of the charged period, the purchaser is liable to repay to the authority an amount equivalent to the outstanding charge on the equity on the date of expiration of the charge. Under subsection (4), any debt that becomes due to a housing authority and which is not paid by a purchaser within 2 months of notification of the amount payable in respect of the outstanding charge, may be recovered as a simple contract debt through the courts, without affecting any other powers that the authority may have to recover it. Subsection (6) provides that, where the purchaser disputes the market value of the apartment as determined by the housing authority for the purpose of calculating the amount payable by the purchaser on expiry of the charged period, the market value shall be determined by an independent valuer nominated by the purchaser from a panel of valuers drawn up by the housing authority, with the purchaser meeting any expenses that he or she incurs in consequence.

Section 76 Control on resale of apartment subject to a charging order

This section requires a tenant purchaser who wishing to resell an apartment during the charged period to notify the housing authority, which may then purchase the apartment at a proportion of its current market value, equivalent to the prevailing share of the dwelling that is not subject to the authority's charge. Under subsection (4), the housing authority may refuse to consent to the resale of a tenant purchase apartment in the market for one or more of the following reasons -

- the proposed sale price is less than the market value,

- anti-social behaviour by the prospective purchaser or in the interest of good estate management,
- the sale would leave the vendor or a member of his or her household without adequate housing.

Subsection (5) provides that, where a tenant purchaser resells his or her apartment in the market, he or she must make a payment to the authority calculated as the proportion of the current market value of the apartment equivalent to the authority's prevailing charged share in the property. Under subsection (6), the amount of such a payment is reduced where necessary to avoid bringing the net proceeds of the sale below the amount paid by the purchaser to the authority at the outset. Subsection (7) provides that, where-

- the charged period for a tenant purchase apartment has expired and there is an outstanding charge under section 75(3)) which the purchaser has not paid off, and
- the purchaser wishes to resell the dwelling,

the housing authority may recover the amount due as a simple contract debt through the courts, without affecting any other powers the authority may have to recover it.

Subsection (8) provides that, where the vendor disputes the current market value of the dwelling as determined by the housing authority for the purpose of calculating the amount payable by the purchaser on resale of the apartment, the market value shall be determined by an independent valuer nominated by the vendor from a panel of valuers drawn up by the housing authority in accordance with regulations made by the Minister under section 77, with the vendor meeting any expenses that he or she incurs in consequence.

Section 77 Regulations (Part 4)

This section empowers the Minister to regulate aspects of the tenant purchase of apartments scheme, notably-

- the class or classes of apartment that are excluded from sale,

- the minimum period (which shall not be less than 1 year) for which a person must be a local authority tenant in order to be entitled to apply to purchase the apartment that he or she is renting,
- the methods that the housing authority will use to determine the purchase price of an apartment and the proportion of the purchase price (which proportion is termed the “purchase money”) that a household must pay to buy the apartment, taking account of the household’s financial circumstances, and
- the minimum period of the charging order (which must be at least 20 years) or the range within which the authority must fix the minimum period of the order.

Part 5 — Affordable dwelling purchase arrangements (sections 78 to 96)

This Part will replace the time-limited clawback currently applied under the various affordable housing schemes with an equity-based approach to recovering the discounts granted to purchasers on sale of dwellings. The new approach involves the housing authority placing a charge on the affordable dwelling equivalent to the proportionate discount granted to the purchaser off its market value. The purchaser may pay instalments off the charge during the charged period and must pay off the prevailing charge, at current market value, on resale of the property or expiration of the charged period, whichever occurs first. Part 5 impacts upon arrangements for the sale of affordable housing only - the existing schemes for the delivery of affordable housing will not change.

Part 5 also provides enabling powers for an open market component of the scheme to be introduced at a later stage to replace the shared ownership scheme, when market conditions are suitable.

Section 78 Interpretation (Part 5)

This is a standard section defining important terms used in Part 5.

Section 79 Provision of dwellings

Section 79(1) and (2) empower a housing authority to provide affordable dwellings (by acquiring, building or causing dwellings to be built, or otherwise providing or facilitating their provision) through a variety of delivery mechanisms, including through public private partnership arrangements or arrangements with an approved body, for sale to eligible persons at a discount fixed by the authority in accordance with regulations made under section 95. Subsection (3) empowers the Minister to pay grants in respect of the cost of affordable dwellings to-

- housing authorities, both for dwellings which they provide themselves and dwellings provided on their behalf by approved housing bodies or other persons,

- the Affordable Homes Partnership, and
- other statutory and prescribed bodies providing services to housing authorities for the acquisition of dwellings.

Subsection (4) provides that, in carrying out their functions under the new arrangements, housing authorities must take account of their housing services plans and aim to counteract social segregation and provide a variety of dwelling types to match varying demand.

Section 80 Direct sales agreement

This section provides that a housing authority may enter into a “direct sales agreement” with specified persons for the sale of affordable dwellings to eligible households.

Under subsection (1), a housing authority may enter into a direct sales agreement with a person or a public private partnership with whom the housing authority has contracted or arranged for the provision of dwellings under section 79, and with a person with whom a planning authority has entered into a Part V agreement for the provision of dwellings under section 94(4)(a) of the Planning and Development Act 2000.

Under subsections (2) to (4), a direct sales agreement allows a person referred to in subsection (1) to sell affordable dwellings, at stipulated prices and under agreed arrangements, direct to households deemed eligible under section 84 that are nominated by the housing authority in accordance with a scheme of priority.

In the case of a person with whom a planning authority has entered into a Part V agreement for the provision of dwellings, subsection (5) requires the housing authority to recoup to that person any shortfall between the agreed cost of providing an affordable dwelling and its selling price under a direct sales agreement.

Section 81 Open market dwelling

This section provides for the open-market component of the new equity-based approach to the purchase of affordable dwellings, which will replace the current

shared ownership scheme when market conditions permit. Under the section, a housing authority may provide financial assistance to a household eligible for affordable housing to buy an open market dwelling in the State of a class prescribed by the Minister. The financial assistance is the difference between the market value of the dwelling and the amount that the authority requires the household to pay in order to purchase the dwelling. The amount of assistance is subject to a maximum amount that the Minister may prescribe under section 95.

Section 82 Application of Part 5

This section specifies the classes of dwellings deemed to be affordable dwelling and to which the new affordable dwelling purchase arrangements will apply, namely-

- dwellings made available under section 79,
- dwellings subject to Part V agreements,
- dwellings made available under Part 2 of the Housing (Miscellaneous Provisions) Act 2002 but not sold before the date of coming into operation of the relevant provisions of this Act, and
- open market dwellings.

Section 83 Affordable dwelling purchase arrangements

This section provides for the arrangements that a housing authority may enter into for the sale of an affordable dwelling to an eligible household in accordance with a scheme of priority. The arrangements, which are common to all affordable dwellings, are specified in subsection (2) to be the terms and conditions set out in subsection (3), the terms and conditions of a charging order and such other terms and conditions as may be prescribed by the Minister. These arrangements apply-

- in the case of direct sales, on payment of the purchase price stipulated in the relevant agreement,

- in the case of affordable dwellings provided by, or to, housing authorities, on receipt by the housing authority of the purchaser's payment to buy the dwelling, and
- in the case of open market dwellings, the provision by the housing authority of financial assistance to the purchaser.

The terms and conditions specified in subsection (3) include requirements, which apply during the charged period, that-

- where a purchaser resells an affordable dwelling, he or she must repay an amount calculated under section 90 to the housing authority, and
- except with the authority's prior written consent, the dwelling must be occupied as the normal place of residence of the purchaser or a household member, and must not be let or sublet.

Under the subsection, conditions may also be specified providing for a deposit of such amount as may be prescribed and prohibiting, for the duration of the charged period, the sale, assignment, mortgaging, charging etc., of the dwelling, otherwise than by devise or operation of law, without the housing authority's prior consent.

Subsection (4) provides that the sale of an affordable dwelling does not imply any warranty on the part of the housing authority as to the state of repair or condition of the dwelling sold or its fitness for human habitation.

Subsection (5) disapplies the following statutory provisions from the sale of an affordable dwelling to an eligible household-

- section 211(2) of the Planning and Development Act 2000, which requires Ministerial consent to individual disposals of land (including dwellings) by local authorities where the proposed price or rent is below market value, and
- section 183 of the Local Government Act 2001, which provides for notification of, and consideration by, elected members of the proposed disposal by a local authority of land or a dwelling.

Subsection (6) provides that a housing authority may provide a loan to an eligible household for the purposes of this Part.

Section 84 Assessment of eligibility of household for affordable dwelling purchase arrangement

This section provides for the determination of a household's eligibility to purchase a dwelling under an affordable dwelling purchase arrangement.

Subsection (1) extends the definition of "household" in section 2 of the Act to include, for the purposes of this section, 2 or more persons who, in the opinion of a housing authority, have a reasonable requirement to live together.

Subsection (2) provides that, where a household applies to a housing authority to purchase an affordable dwelling, the housing authority must, subject to any regulations made for the purpose, assess that household's eligibility, taking account of the following:

- its accommodation needs (including current circumstances, distance from employment and whether any household members are attending local education facilities), and
- whether repayments on a mortgage not exceeding 90% of the market value of a dwelling that would meet the household's accommodation needs would exceed 35% of its net household income (under subsection (3), account must be taken of any other household assets that could be used to defray accommodation costs).

Subsection (2) also requires account to be taken of whether the household or any member has previously purchased or built a dwelling in the State, or owns or is beneficially entitled to an interest in any dwelling or land in the State or elsewhere. These latter provisions are qualified by subsections (4) and (5) in the case of separation, divorce and nullity, or where the current accommodation needs of a household that previously purchased an affordable dwelling require the household to relocate to a different dwelling or administrative area.

Subsection (7) allows the Minister to make regulations in relation to the means of assessing household eligibility, including-

- procedures to assess household income and financial circumstances,
- determination of the price of a dwelling suitable for a household's accommodation needs,
- the availability to the household of suitable alternative accommodation; and,

- any other housing support, including affordable housing, previously provided to the household, which the housing authority may take into account in its eligibility assessment.

Section 85 Scheme of priority for affordable dwelling purchase arrangements

This section sets out the manner in which a housing authority is to put in place a scheme of priority for households eligible for affordable housing.

Subsection (1) provides that a housing authority must make a scheme of priority within one year of the coming into operation of Part 5 where the demand for affordable dwellings or, in the case of open market dwellings, the demand for financial support, exceeds supply.

Subsection (2) empowers the Minister to make regulations on matters to be dealt with in a scheme of priority, including-

- the determination of the suitability of affordable dwellings to meet identified accommodation needs and the manner in which such dwellings (and financial assistance) are provided to eligible households,
- the classification of households, and
- the order of priority for the sale of affordable dwellings or provision of financial assistance, including priority within household classes.

Subsection (3) provides for the grouping of similar households by reference to the order of priority established in accordance with regulations made under subsection (2).

Subsection (4) provides, at the housing authority's instigation, for amendment or replacement of the scheme of priority from time to time. Subsection (5) provides that the making, or amendment, of a scheme of priority is a reserved function. Subsection (6) provides that the sale of affordable dwellings and the provision of financial assistance to buy open market dwellings are executive functions. Subsection (7) provides that existing schemes of priority remain in operation until a new scheme made under this Part comes into force. Subsection (8) provides that schemes of priority must be made available for public inspection, including publication on the Internet. A housing authority

must, under subsection (9), send to the Minister a copy of its draft scheme or draft amendment of the scheme, and must comply with any direction by the Minister to amend it. Under subsection (10), a housing authority must comply with any direction by the Minister to amend a scheme in the manner that he or she may direct.

Section 86 Charging Order

This section requires the housing authority, subject to any regulations made under section 95, to place a charge on the property of that proportion of its value equivalent to the proportionate value of the discount granted to the purchaser off the market value (or, in the case of an open market dwelling, the financial assistance provided to purchase the dwelling expressed as a proportion of the dwelling's market value).

Subsection (1) requires the authority to make the order on completion of the sale of an affordable dwelling to an eligible household and defines the "charged period" as the period of the charge specified in the charging order, which period is subject to prescription by the Minister under section 95. Subsection (3) provides for the housing authority to discharge the charge on the earliest of-

- subject to section 90, the first resale of the dwelling, or
- subject to section 87, repayment of the outstanding charge on the property, or
- subject to section 89, the expiration of the charged period.

Section 87 Payments by purchaser during charged period

This section sets out arrangements for repayments by the purchaser to the housing authority during the charged period to reduce or clear the outstanding equity charge on the dwelling

Subsections (1) to (3) provide that, after 5 years ownership, a purchaser may make a payment or payments (subject to a prescribed minimum payment) to the housing authority to reduce the amount of the equity charge outstanding on the dwelling.

Subsection (4) and (5) require a housing authority, no later than 1 month after receipt of a notification from the purchaser of the amount he or she proposes to pay to the authority, to issue a statement to the purchaser -

- setting out the prevailing market value of the dwelling, (which, further to section 78(3), is calculated net of any material improvements made by the purchaser in the case of dwellings other than apartments),
- confirming that the proposed repayment equals or exceeds the minimum prescribed amount, and
- setting out the proportionate charge on the dwelling following the payment, which is calculated by reducing the existing proportionate charge by that proportion of the current market value of the dwelling represented by the amount of the proposed payment.

Subsection (6) provides that the statement issued under subsection (5) remains valid for 3 months and that any payment made after that period has expired will be treated as a new notification under subsection (4).

Subsection (7) requires the housing authority to discharge the charge where the amount paid by the purchaser is equivalent to the outstanding equity charge on the dwelling.

Subsection (8) provides that the housing authority is liable for any expenses incurred under this section, including valuation expenses other than those incurred by the purchaser under section 92.

Section 88 Registration of charging orders and agreements with financial institutions

Section 88 (1) to (4) are technical provisions relating to the status, registration, etc., of the housing authority's charge.

Under subsection (5), a housing authority may enter into an agreement with a lending institution to the effect that the authority's charge will have a different (i.e. lower) priority relative to the institution's mortgage charge, than it otherwise would have. Subsection (6) provides that a housing authority may enter into a subsection (5) agreement only if this will enable a purchaser to-

- obtain a mortgage from the lending institution in order to purchase the dwelling; or
- refinance an existing advance of moneys from the lending institution; or
- obtain a further advance of money from the lending institution.

Section 89 Repayment on expiration of charged period

Section 89(1) requires an affordable housing purchaser, within one month of the expiration of the charged period, to pay to the housing authority an amount equivalent to the outstanding proportionate charge on the dwelling on the date of expiration. Subsection (2), in conjunction with section 78(3), provides that, in the case of dwellings other than apartments, the amount payable is based on the market value, net of any material improvements made to the dwelling by the purchaser.

Subsection (3) provides that, where the purchaser fails to make the payment required under this section, the housing authority may recover the amount due as a simple contract debt through the courts, without affecting any other powers the authority may have to recover it.

Section 90 Control on resale of dwelling purchased under affordable dwelling purchase arrangement

Section 90 deals with the resale of an affordable dwelling during the charged period. Subsection (1) requires the purchaser to pay to the housing authority a percentage of the market value of the dwelling equivalent to the outstanding proportionate charge on the dwelling on the date of resale. Subsection (2), in conjunction with section 78(3), provides that, in the case of dwellings other than apartments, the amount payable is based on the market value, net of any material improvements made to the dwelling by the purchaser.

Subsection (3) provides that, where a purchaser resells an affordable dwelling the subject of a charging order which has expired and there is an outstanding charge under section 89 which the purchaser has not paid off, the housing authority may recover the amount due as a simple contract debt through the courts, without affecting any other powers the authority may have to recover it.

The subsection also provides that material improvements made by the purchaser to the dwelling after the charged period will not be reckonable in calculating the amount that the purchaser must pay to the authority.

Section 91 Recovery of amounts due to housing authority

This section provides that a housing authority may recover any moneys due under sections 89 and 90 as a simple contract debt through the courts, without affecting any other powers the authority may have to recover it.

Section 92 Valuation of dwelling for certain purposes

This section provides that the housing authority shall determine the market value of an affordable dwelling for the purposes of:

- calculating the proportionate charge to be placed on the dwelling after sale (section 86);
- calculating the outstanding proportionate charge on the dwelling following payments during the charged period (section 87);
- calculating, on expiration of the charged period, the amount of the payment required to clear the outstanding proportionate charge on the dwelling (section 89), and;
- calculating the amount of the payment required to clear the outstanding proportionate charge on the dwelling where a dwelling is resold during the charged period (section 90).

The section also provides that, where the affordable dwelling purchaser disputes the market value as determined by the housing authority, the market value shall be determined by an independent valuer nominated by the purchaser from a panel of valuers drawn up by the housing authority in accordance with regulations made by the Minister under section 95, with the affordable dwelling purchaser meeting any expenses that he or she incurs in consequence.

Section 93 Discharge of charging order

Section 93(1) provides that the housing authority shall, on request by the purchaser, discharge the charge when it expires or a charged dwelling is resold, subject to payment of the amount necessary to clear the outstanding charge on an affordable dwelling and compliance with the terms and conditions of the affordable dwelling purchase arrangement and the charging order. Subsection (2) provides that the housing authority will meet the costs of executing and registering a deed of discharge but is not otherwise liable for any expenses incurred by a purchaser under section 93.

Section 94 Affordable Dwellings Fund

This section provides for the establishment of an Affordable Dwellings Fund to finance the operation of the affordable dwelling purchase arrangements. Under subsection (2), housing authorities will pay into the fund monies received from affordable dwelling purchasers under sections 87, 89, 90 and 91, and monies received, before the coming into operation of part 5 of the Act, under clawback arrangements for:

- the shared ownership scheme,
- section 99(4) of the Planning and Development Act 2000, and
- affordable housing under the Housing (Miscellaneous Provisions) Act 2002.

Subsection (3) allows a housing authority to make payments to the Fund from monies received under Part V of the Planning and Development Act 2000. Subsection (4) empowers the Minister to make payments to the Fund from monies provided by the Oireachtas with the consent of the Minister of Finance. Subsection (5) provides that the Housing Finance Agency will manage the Fund, that Fund monies must be accounted for separately, and that the Agency may advance monies from the Fund to housing authorities for housing support purposes under this Act.

Subsection (6) provides that the Fund accounts must be in such form and prepared in such manner as the Minister determines and must-

- be prepared separately from any other accounts, and

- consist of an audited balance sheet and income and expenditure account.

Subsection (7) requires the Housing Finance Agency to provide, on request by the Minister, an estimate of Fund income and expenditure for such period as the Minister specifies. Subsection (8) provides that, where the Minister is satisfied that Fund monies exceed the Agency's borrowing costs, the surplus may be distributed by the Minister to housing authorities for housing support purposes under this Act.

Subsection (9) provides that the Fund will meet the administrative costs of the Housing Finance Agency in managing it.

Section 95 Regulations (Part 5)

This section empowers the Minister to make regulations in relation to matters arising under Part 5 of the Act. Examples of matters set out in the section are-

- (a) the type of open market dwellings in respect of which eligible households may receive financial assistance,
- (b) subject to eligibility assessment, the category of households with which affordable dwelling purchase arrangements can be made,
- (c) the minimum and maximum amount that may be charged in a charging order, subject to the maximum not exceeding 40% of the market value of the dwelling,
- (d) the maximum amount of financial assistance that may be provided under section 81 to eligible households to purchase open market dwellings; and
- (e) determination of the minimum charged period, or the range within which the minimum charged period must be set by a housing authority, subject to such minimum period not being less than 25 years from the date of sale.

Subsection (2) provides that the Minister may set a monetary amount or a percentage of the market value as the minimum instalment that a purchaser must make during the charged period under section 87 to reduce the outstanding charge on the dwelling.

Section 96 Transitional arrangements and savings provisions

Section 96(1) provides that an affordable housing application under the Housing (Miscellaneous Provisions) Act 2002, or Part V of the Planning and Development Act 2000, in respect of which the housing authority has not made a decision before the commencement of the relevant provisions of the 2009 Act, will be deemed to be an application in respect of an affordable dwelling purchase arrangement provided for in Part 5 of the Act. Subsection (2) requires the housing authority to so notify the household that has made such an application and the household must inform the housing authority within 3 months where it does not wish to proceed with its application.

Subsection (3) provides that a shared ownership application under the Housing (Miscellaneous Provisions) Act 1992, in respect of which the housing authority has not made a decision before the commencement of the relevant provisions of the Act, will be deemed to be an open market dwelling purchase application provided for in Part 5 of the Act. Subsection (4) requires the housing authority to so notify the household that has made such an application and the household must inform the housing authority within 3 months where it does not wish to proceed with its application.

Subsections (5) to (7) provide that, notwithstanding the repeal by section 7 of the 2009 Act of legislation governing existing affordable housing schemes, the repealed legislation will continue to apply in respect of affordable dwellings sold or leased under such schemes before the relevant provisions of section 7 come into operation.

Part 6 — Provisions in respect of certain grants (sections 97 to 99)

This Part deals with Exchequer funding for the provision by housing authorities of low-cost sites for private housing, and the application of clawbacks on profits from the resale of dwellings built on such sites and from resale of dwellings extended under the adaptation grants scheme for older people and people with a disability.

Section 97 Grants in respect of provision of sites under section 57 of Principal Act

This section replaces section 14 of the Housing Act 1988 and strengthens the basis for the Minister to pay grants to housing authorities in respect of-

- the sale, at less than market value, of sites for private housing to households in receipt of social housing support or qualified for such support, and
- the provision of sites, for less than market value, to approved bodies for the provision of housing for letting or sale for specified social housing purposes.

The Minister is also empowered to regulate grant-related matters, including terms and conditions as to-

- the ownership of sites provided to an approved body for the provision of housing for sale to households in receipt of social housing support or qualified for such support, and
- the occupation of the dwellings built on sites as the normal residence of purchasers.

Section 98 Control on resale of certain sites or dwellings thereon

This section provides for a time-limited clawback on the first resale of a site grant-aided under section 97 (including a site on which a house was subsequently built) within 20 years of site purchase, by way of similar provisions to those in the Housing (Miscellaneous Provisions) Acts 2002 and

2004 applying a clawback charge on profits from the resale of affordable houses.

Section 98(1) applies the clawback to sites provided by housing authorities to qualified purchasers. In order to apply the clawback to sites provided by housing authorities to approved housing bodies for development and onward sale, section 97 regulations will provide that housing authorities will retain ownership of such sites until the approved bodies sell the dwellings built on them to qualified purchasers. Under subsection (3), the clawback is calculated as that proportion of the market value of the site (exclusive of any dwelling built on it) at the time of resale, equivalent to the proportionate value of the discount granted to the purchaser off the site's market value at the time of its original sale. Subsection (4) provides that the amount of the clawback is discounted by 10 per cent for each complete year of ownership after the 10th year. Under subsection (5), the amount of the clawback is reduced where necessary to avoid bringing the net proceeds from resale of the site below the price originally paid by the purchaser for the site.

Subsections (6) to (13) are technical provisions relating to the status, registration, etc., of the housing authority's charge on the site. Under subsection (12), a housing authority may enter into an agreement with a lending institution to the effect that the authority's charge will have a different (i.e. lower) priority relative to the institution's mortgage charge, than it otherwise would have. Subsection (13) provides that a housing authority may enter into a subsection (12) agreement only if this will enable a purchaser to-

- obtain a mortgage from the lending institution in order to purchase the site;
- or
- refinance an existing advance of moneys from the lending institution; or
- obtain a further advance of money from the lending institution.

Subsection (14) provides that moneys due to the housing authority under this section may be recovered as a simple contract debt through the courts, without affecting any other powers that the authority may have to recover it.

Subsection (15) provides that, where the vendor disputes the current market value of the site as determined by the housing authority for the purpose of the section, the market value shall be determined by an independent valuer

nominated by the vendor from a panel of valuers drawn up by the housing authority in accordance with regulations made by the Minister under section 49. Subsection (16) provides that the housing authority is not liable for any expenses incurred by a vendor under subsection (15).

Section 99 Repayment of adaptation grant

This section makes provisions, similar to those in the Housing (Miscellaneous Provisions) Acts 2002 and 2004 applying a clawback charge on profits from the resale of affordable houses, in respect of a clawback on grants paid for the provision of additional accommodation under the adaptation grant scheme for people with a disability. Subsection (2) provides that the clawback will apply in the event of the extended dwelling being sold within 5 years of the grant payment, and that the proportion of the grant that must be repaid falls by specified amounts over the 5-year period, with no liability for clawback in the case of sales after 5 years. Subsections (3) to (8) are technical provisions relating to the status, registration, etc., of the housing authority's charge on the dwelling. Subsection (9) provides that moneys due to the housing authority under this section may be recovered as a simple contract debt through the courts, without affecting any other powers that the authority may have to recover it.

Part 7 — Amendments to the Residential Tenancies Act 2004

(section 100)

This one-section Part provides for a number of amendments to the Residential Tenancies Act 2004, including-

- subsection (2)(b), which amends section 3 of the 2004 Act to provide that the Act's scope does not extend to owner-occupied leasehold dwellings (such as apartments) where the relevant lease is for a term in excess of 35 years,
- subsection (3)(b), which amends section 12 of the Act to require landlords to provide receptacles for storing refuse outside the dwelling, except where such provision is outside their power or control (normally in cases where this is the management company's responsibility), and
- subsection (5), which inserts a new section into the Act providing that the Private Residential Tenancies Board may disclose register information to the Revenue Commissioners required by the Commissioners for tax-related purposes.

Schedules

There are 4 Schedules to the 2009 Act.

Schedule 1 Repeals

This Schedule, in conjunction with section 7, repeals provisions in 4 Housing Acts and in the Planning and Development Act 2000. 20 sections in total are repealed.

Schedule 2 Consequential Amendments

This Schedule, in conjunction with section 8, makes consequential amendments to provisions in 9 Acts, viz. 5 Housing Acts, the Housing Finance Agency Act 1981, the Planning and Development Act 2000, the Civil Registration Act 2004 and the Social Welfare Consolidation Act 2005. Some of the amendments are summarised below.

Section 100 of the 2009 Act separately amends provisions in the Residential Tenancies Act 2004.

Part 3, Item 1

This provision amends section 12 of the Housing Act 1988 to exclude an apartment complex designated under Part 4 of the Act from eligibility for financial assistance under the remedial works scheme.

Part 4, Items 3 and 4

These provisions expand the powers of housing authorities in relation to the enforcement of standards for private rented accommodation. Item 3 amends section 18(8) of the Housing (Miscellaneous Provisions) Act 1992 (“the 1992 Act”) to specify the elements of the property which must be kept in a proper state of structural repair, including any garden and common areas, works and services.

Item 4 adds 2 sections to the 1992 Act, providing for the issue by housing authorities of Improvement Notices and Prohibition Notices on foot of breaches by landlords of regulations relating to the standard of private rented dwelling made under section 18 of that Act.

Section 18A sets out the detailed procedure in relation to the issue by a housing authority of an improvement notice to a landlord in respect of alleged breaches of the standards regulations. The notice may specify the works that the landlord must carry out to remedy the identified contravention of the regulations and must specify the period following the coming into force of the notice within which the remedial works must be carried out.

The section provides that, where a landlord carries out necessary works on foot of an improvement notice before the notice comes into force, the housing authority must confirm in writing that the contraventions of the regulations specified in its improvement notice have been remedied.

In addition to giving a landlord the right to appeal against the notice to the District Court, section 18A gives the landlord an initial right to object to the authority about the notice. The submission of such an objection will be a prerequisite to appeal proceedings in the District Court.

Section 18A provides that the tenant of the rented accommodation must be kept informed of each step of the improvement notice procedure. The section also provides for the notice to come into force on different dates, depending on whether the landlord has availed of the rights to object to the notice and to appeal against the notice in the District Court. Once the notice comes into effect, if the landlord fails to carry out the necessary remedial works within the period specified in the notice, he or she is liable to prosecution for an offence under the 1992 Act.

Section 18B provides for the issue by a housing authority of a Prohibition Notice in the case of a landlord's failure to comply with an Improvement Notice. A Prohibition Notice directs the landlord not to re-let the house until the contravention of the regulations specified in the Improvement Notice has been remedied. The section includes a right of appeal by the landlord to the District Court. The section also provides that a housing authority may, in the interests

of public health and safety, bring the contents of a Prohibition Notice to public notice in any manner it considers appropriate.

Part 4, Item 5

This provision amends section 23 of the 1992 Act, which defines the expression “housing authority” in terms of the classes of local authorities that are responsible for implementing specified provisions of the Housing Acts 1996 to 2009. The amendment provides that city and county councils only are deemed to be housing authorities for the purposes of Chapters 2 and 6 of Part 2 of the 2009 Act.

Part 4, Item 6

This provision amends section 34 of the 1992 Act to provide-

- that failure to comply with an Improvement Notice or a Prohibition Notice issued under section 18A or 18B of the 1992 Act shall be an offence,
- for increased fines for offences under section 34, and
- that, except where there are special and substantial reasons for not doing so, the court shall order a person guilty of a section 34 offence to pay the housing authority’s prosecuting costs.

Part 5

This Part of the Schedule update provisions relating to anti-social behaviour in the Housing (Miscellaneous Provisions) Act 1997, including-

- extending the definition of “anti-social behaviour” to take account of behaviour that impairs the use or enjoyment of a person’s home and of damage to or defacement of property,
- applying certain provisions of the 1997 Act to dwellings that are the subject of a rental accommodation availability agreement under Chapter 4 of the Act, and
- extending to incremental purchase dwellings and tenant purchase apartments the power of a housing authority to refuse to sell a dwelling to a household engaged in anti-social behaviour or where the sale to that household would not be in the interest of good estate management.

Schedule 3 Terms and conditions of tenancy agreement

This Schedule, in conjunction with section 29, sets out terms and conditions that must be included in tenancy agreements relating to dwellings owned by a housing authority and dwellings not owned by an authority but which are the subject of a contract or lease, other than a rental accommodation availability agreement, between the authority and the owner. These terms and conditions include provisions relating to restrictions on purchasing or subletting the dwelling and prohibitions on anti-social behaviour.

Section 29(3) provides that the tenancy agreement may contain other terms and conditions considered necessary and appropriate by the housing authority.

Schedule 4 Information to be included in property services agreement

This Schedule, in conjunction with section 73, sets out general terms and information which must be included in a property service agreement entered into between the management company of a designated apartment complex and a specified body, viz. the relevant housing authority, a company established by the authority for the purpose and an approved housing body. These terms and information include-

- the name and address of the management company and specified body,
- details of the property services to be provided,
- the fees payable by the management company under the agreement,
- the period of the agreement, and
- the reporting obligations of the specified body to the management company.