

The Housing (Miscellaneous Provisions) Act 2009

and the Private Rented Sector:

A quick guide to changes in the legislation governing standards in the private rented sector introduced by the Housing (Miscellaneous Provisions) Act 2009

This leaflet is not a statement or interpretation of the law and has been prepared for information purposes only. It is not intended as a substitute for professional legal advice.

Contents

• Background	3
○ Action Programme on Rental Standards	3
○ Housing (Miscellaneous Provisions) Act 2009	3
○ Strengthened Sanctions Regime	3
○ Definition of a “Proper State of Structural Repair”	4
○ Commencement of Provisions	4
• Summary of Amendments to the Housing (Miscellaneous Provisions) Act 1992	5
• The Housing (Standards for Rented Houses) Regulations 2009	8

Background

- **Action Programme on Rental Standards**

In the Partnership Agreement Towards 2016 the Government committed to updating and effectively enforcing minimum standards for rented housing. The Government delivered on this commitment in 2008 by approving a package of measures to update the minimum standards regulations. As part of that package, new regulations to replace the Housing (Standards for Rented Houses) Regulations 1993 were signed by Michael Finneran, T.D., Minister for Housing and Local Services on the 10th of December 2008. These new regulations, the Housing (Standards for Rented Houses) Regulations 2008 came into effect generally on the 1st of February this year. Further elements of the package to update and enforce the minimum standards regulations required primary legislation and these have now been addressed in the context of the passage through the Oireachtas of the Housing (Miscellaneous Provisions) Act 2009 (No. 22 of 2009).

- **Housing (Miscellaneous Provisions) Act 2009**

The Housing (Miscellaneous Provisions) Act 2009 makes a number of amendments to the Housing (Miscellaneous Provisions) Act 1992, under which housing authorities currently carry out the majority of their functions in relation to private rented housing. The two most significant changes to the legislation are the introduction of a strengthened sanctions regime and a new definition of what constitutes a “proper state of structural repair” for the purpose of the Housing (Standards for Rented Houses) Regulations 2008.

- **Strengthened Sanctions Regime**

The introduction of a new sanctions regime is facilitated by the insertion of two new sections, sections 18A and 18B, in the Housing (Miscellaneous Provisions) Act 1992. These new sections will provide for the issuing by housing authorities of Improvement Notices and Prohibition Notices where landlords are in breach of their obligations under the Housing (Standards for Rented Houses) Regulations 1993 and 2008. An Improvement Notice sets out the works a landlord must carry out, within a set timeframe, to remedy any breach of the regulations. Where an Improvement Notice is not complied with, a housing authority may issue a Prohibition Notice, which directs a landlord not to re-let a property until the breach of the regulations has been rectified.

- **Definition of a “Proper State of Structural Repair”**

In addition, there is a significant amendment to the current definition of “a proper state of structural repair” as set out in section 18(7)(b) of the 1992 Act and Article 5 of the Housing (Standards for Rented Houses) Regulations 2008. The new definition provides a comprehensive list of components against which a dwelling can be assessed to verify that it is structurally sound. The inclusion in this definition of a requirement to maintain gardens and common areas in good condition means that there is now an obligation on landlords to maintain the external appearance of rented accommodation.

- **Commencement of Provisions**

The relevant amendments are made under section 8 of the Housing (Miscellaneous Provisions) Act 2009 and are set out in Part 4 of Schedule 2 of the Act. They will come into operation, by way of commencement order, on the 1st of December 2009. It is also intended that regulations, which will make minor amendments to the Housing (Standards for Rented Houses) Regulations 2008 for compatibility with the 2009 Act, will come into operation on the 1st of December 2009. A summary of the main amendments to the Housing (Miscellaneous Provisions) Act 1992 are set out below together with a summary of the main provisions of the Housing (Standards for Rented Houses) Regulations 2009.

Summary of Amendments to the Housing (Miscellaneous Provisions) Act 1992

The Housing (Miscellaneous Provisions) Act 2009 makes amendments to the following sections of the Housing (Miscellaneous Provisions) Act 1992 in relation to standards for rented houses:

- **Section 18(1):** This section gives the Minister the power to make regulations prescribing standards for rented houses. The amendment to the section inserts the words “or available for letting” after the word “let” in the section. The purpose of the amendment is to enable standards regulations to be made under section 18 of the Act in relation to houses that are available for letting, as well as for houses that are actually let. This change empowers housing authority inspectors to enter a property for inspection purposes between lettings whereas, prior to this, the house had to be let for rent and a tenancy in place for the regulations to apply. The words “works and services appurtenant thereto and enjoyed therewith” are deleted as they are included in the new definition of “common areas” in section 18(9).
- **Sections 18(3) to 18(6):** These sections, which allow a housing authority to carry out remedial works themselves and recoup the money from the landlord, are deleted as new remedies are now available under sections 18A and 18B.
- **Section 18(7)(b):** The amendment inserts the term “and any common areas” after the term “house”. The purpose of this is to provide for a requirement to maintain common areas associated with the house.
- **Section 18(7)(h)** This inserts the words “fire safety” into the section.
- **Section 18(8)** This is an important amendment, which expands and updates the definition of a “proper state of structural repair” referred to in section 18(7)(b). The new definition provides a comprehensive list of components, against which a dwelling can be assessed to verify that it is structurally sound. The new definition sets out that “a proper state of structural repair” means “sound, internally and externally, with roof, roofing tiles and slates, windows, floors, ceilings, walls, stairs, doors, skirting boards, fascia, tiles on any floor, ceiling and wall, gutters, down pipes, fittings, furnishings, gardens and common areas maintained in good condition and repair and not defective due to dampness or otherwise.” As such, landlords are now obliged to maintain the exterior of rental accommodation.

- **Section 18(9)** This is a new section, which introduces definitions of “common areas”, “landlord”, “tenancy” and “tenant” for the purpose of sections 18, 18A and 18B. The introduction of the definition of “common areas” is considered necessary in light of the proposed reference to this term in 18(7)(b) above. It clarifies that, for the purposes of the standards regulations, common areas are those which are specifically in the ownership or under the control of the landlord. Where the common areas are in the ownership or under the control of a management company, the landlord is not held responsible for their maintenance or upkeep.
- **Section 18A:** This is a new section, introducing the first element of the new sanctions regime – **Improvement Notices**. Where a landlord contravenes a requirement of the standards regulations, it will be open to a housing authority to issue an Improvement Notice to the landlord informing him of the contravention, the remedial works necessary, a time limit in which the works must be carried out and information on the appeal process. The Improvement Notice must be served on the tenant and the landlord must inform the tenant and the local authority when the remedial works have been carried out. The landlord may object to the Improvement Notice and, if the objection is not upheld by the local authority, may appeal that decision to the District Court. The section sets out the dates on which Improvement Notices may come into effect. A local authority may withdraw an Improvement Notice, but is not precluded from issuing a further Improvement Notice in respect of the property.
- **Section 18B:** This is also a new section and introduces the second part of the new sanctions regime - **Prohibition Notices**. Where a landlord fails to comply with an Improvement Notice, it will be open to a housing authority to issue a Prohibition Notice. Prohibition Notices inform the landlord that he has failed to comply with an Improvement Notice and direct that, at the end of the existing tenancy, the landlord shall not re-let the house until the contravention of the regulations has been remedied. Prohibition Notices come into effect when the property becomes vacant, thereby protecting the rights of existing tenants, who may, if they wish, terminate the tenancy under the Residential Tenancies Act 2004. A copy of the Prohibition Notice must be served on the tenant of the property concerned and the landlord may appeal the Prohibition Notice to the District Court. The section specifies the various dates on which a Prohibition Notice will come into effect, depending on whether or not the appeal process is

invoked. Where a landlord has remedied the contravention, he is required to confirm this to the housing authority and to the tenant. The local authority must issue written notice of compliance with the Prohibition Notice to the landlord, with a copy to the tenant of the house. It will be open to a housing authority to withdraw a Prohibition Notice but it retains the power to issue further notices in respect of a property. The housing authority, in the interests of public health and safety, may make whatever arrangements they consider appropriate or necessary, to bring the contents of a Prohibition Notice to the attention of the public e.g. publishing the notice on their website.

- **Section 34:** Under this section a person who obstructs an authorised person in the lawful exercise of their powers under the Act or who contravenes the regulations is guilty of an offence. The amendment to the section extends this to provide that failure to comply with an Improvement Notice or a Prohibition Notice is also an offence within the meaning of the section. The maximum fines payable for an offence under the section are increased from €3,000 to €5,000 and from €250 to €400 for each day of a continuing offence.
- **Section 34(3):** This new subsection provides that, where a person is guilty of an offence under this Act, the court shall, unless there are particular reasons for not doing so, order that person to pay the costs and expenses incurred by the housing authority in relation to the prosecution of the offence.

The Housing (Standards for Rented Houses) Regulations 2009

Regulations, which make minor amendments to the Housing (Standards for Rented Houses) Regulations 2008 for compatibility with the 2009 Act, will come into operation on the 1st of December 2009. These regulations are called the Housing (Standards for Rented Houses) Regulations 2009 and amend the Housing (Standards for Rented Houses) Regulations 2008 as follows:

- By inserting the words “or available for letting” after the word let in Articles 3(5), 4(1), 8(1) and 14(3) of the 2008 regulations to reflect the amendment to section 18(1) of the Housing (Miscellaneous Provisions) Act 1992.
- By inserting the new definition of “a proper state of structural repair” into Article 5(2) to reflect the amendment to section 18(8) of the Housing (Miscellaneous Provisions) Act 1992.
- By amending Article 8 to provide that rented houses must have either a dryer or communal drying facility where the house does not contain a garden or yard for the exclusive use of that house. Prior to this amendment, a communal drying facility was not acceptable.
- By deleting the words “linked to the fire alarm system” from Article 11(3) regarding fire safety.