



Provided by the author(s) and NUI Galway in accordance with publisher policies. Please cite the published version when available.

| | |
|-------------------------|--|
| Title | The Housing (Miscellaneous Provisions) Act 2009. |
| Author(s) | Kenna, Padraic |
| Publication Date | 2010-06 |
| Publication Information | Kenna, P. (2010). The Housing (Miscellaneous Provisions) Act 2009. <i>Conveyancing and Property Law Journal</i> , 15(2), 26-52 |
| Publisher | Roundhall Sweet & Maxwell |
| Item record | http://hdl.handle.net/10379/1747 |

Downloaded 2018-01-17T03:02:54Z

Some rights reserved. For more information, please see the item record link above.



†

(2010) 15(2) CPLJ 26 Article: The Housing (Miscellaneous Provisions) Act 2009

†

Dr Padraic Kenna*

†

†

Introduction

†

The *Housing (Miscellaneous Provisions) Act 2009* (the “2009 Act”)^{†[1]†} has updated and expanded many areas of social housing law. This takes place as the significance of social housing rises immeasurably within the financial rescue regime created by NAMA and the collapse of the normative owner-occupier housing market. Traditional notions of communitarianism and concern for the poor are clearly displaced in favour of positioning social housing within owner-occupier and rental market systems. The legislation provides a mechanism whereby unfinished or “ghost estates” appropriated by NAMA can be used for social housing.

†

The Explanatory Memorandum to the Bill, as introduced, stated that its purpose was to improve housing services and their delivery, by amending and extending the Housing Acts 1966 to 2004 to give effect to the programme of social housing reform measures outlined in the *Delivering Homes, Sustaining Communities* policy document.^{†[2]†} Five areas of action will implement this policy, of which legislation is one, and although there are numerous references to consumer choice, this is limited to house purchase and regulation of management companies in relation to apartments and management charges. Social housing legislation in Ireland does not yet recognise tenants as consumers.^{†[3]†}

†

†

New Approaches

†

The 2009 Act includes provision for the making of housing services plans, new provisions on the assessment of social housing needs and the updating of housing authority management and control powers, including the adoption of antisocial behaviour strategies. It provides a legislative basis for a revised Rental Accommodation Scheme (RAS), and adopts a pathways approach to social housing by expanding routes to home ownership through a new incremental purchase scheme.^{†[4]†} The 2009 Act introduces new terminology to housing law such as rental accommodation availability agreements (RAAAS)^{†[5]†} and “eligibility for social housing support”.^{†[6]†} It also provides that Ministerial guidelines,^{†[7]†} Housing Services Plans,^{†[8]†} allocations policies,^{†[9]†} rent schemes,^{†[10]†} Homelessness Action Plans,^{†[11]†} draft proposals to designate an apartment complex for sale^{†[12]†} and schemes of priority for affordable dwelling purchase arrangements^{†[13]†} will be made available on the Internet.

†

The 2009 Act comprises seven parts, 100 sections and four Schedules, covering the housing functions of local authorities, incremental purchase arrangements, local authority tenant purchase of apartments, affordable dwelling purchase arrangements, provisions in relation to grants, and amendments to the *Residential Tenancies Act 2004* (the “2004 Act”). The 2009 Act redesignates “affordable housing” to include dwellings for sale under *Pt V of the Planning and Development Act 2000* (the “2000 Act”) or *Pt 2 of the Housing (Miscellaneous Provisions) Act 2002*, as well as “direct sales” from suppliers to eligible nominated persons, facilitated through Pt 5 of the 2009 Act. Throughout the 2009 Act there is a requirement that “household” shall be read as including a reference to two or more persons, who in the opinion of the housing authority concerned, have a reasonable requirement to live together. The independence and uniformity of housing authorities is preserved in s.5 which enables the Minister to issue guidelines in relation to the performance of functions to which authorities “shall have regard”. Yet, s.4 provides for Ministerial Guidelines with which housing authorities “shall comply”.

†

†

Functions of Housing Authorities

†

Part 2 of the 2009 Act summarises the main functions of housing authorities. Section 10 sets out the

†

array of services which may be provided, extending from social housing support, affordable housing, share ownership leases, sales of authority dwellings, loans, grants, services and assistance to homeless and formerly homeless people, provision of sites, to management, maintenance and refurbishment of its own and other properties. Section 11 replaces *s.56(2) of the Housing Act 1966* empowering authorities to provide and maintain ancillary services. A new statutory obligation is created in s.14 to prepare and adopt, as a reserved function, a written Housing Services Plan, setting out the objectives which the authority considers to be reasonable and necessary for the provision of housing services, having regard to the requirements of the housing strategy or strategies relating to housing supports for its administrative area.†[14]† This Plan will relate to the authority's development plan. New provisions include the requirement to have regard to the need to ensure that housing services are delivered in a manner which promotes sustainable communities, including but not necessarily limited to the need to (i) counteract undue segregation in housing between persons of different social backgrounds, and (ii) ensure that a mixture of dwelling types and sizes and of classes of tenure is provided to reasonably match the different types of housing support required in its administrative area.†[15]† This Plan will be implemented by the manager of a housing authority through a Housing Action Programme.†[16]†

†

The role of housing authorities will be shifted significantly by this legislation from direct provision of social housing to the indirect or enabling approach, described as providing social housing support, but subject to and serving an overarching market system. Section 19(5) provides that a housing authority may, with the approval of the Minister, enter into a public-private partnership for the provision of its social housing support functions.

†

The scope of housing authority management and control functions have been widened legislatively to cover common areas in mixed tenure housing not vested in the authority, as well as properties leased to the authority, including under the RAAA scheme. However, s.30 permits a housing authority to delegate some or all of its functions to a designated body, established by and representing residents of the relevant housing, or established by the authority, the residents and another body. Section 31 requires housing authorities to make and publicise a "rent scheme" for housing provided under the Housing Acts 1966-2009, Pt V of the 2000 Act and properties it has leased.†[17]† Rents charged will be subject to Ministerial regulations in relation to family circumstances, type and location of dwellings, market rents for similar properties, maintenance obligations on tenants, and other matters.†[18]† Management and services charges in multi-occupied blocks may be passed on to tenants.

†

†

Housing assessments and allocations

†

Section 20 replaces *s.9 of the Housing Act 1988* in relation to social housing assessments, with "eligibility for social housing support" rather than the traditional housing need approach of the 1988 Act criteria. Ministerial regulations will prescribe eligibility, and methods of these assessments. Section 20(8) maintains the intentionality test in determining eligibility for social housing support, whereby an authority may disregard the current accommodation occupied by an applicant.†[19]† A housing authority must create and make publicly available an "allocation scheme" within one year of the commencement of s.22, determining the order of priority accorded in the allocation of dwellings in its own stock, property leased under rental accommodation availability agreements and State-funded housing association and cooperative housing.†[20]† The housing authority may make provision in its allocation policy for the proportion of dwellings in any part of its administrative area for particular classes of households, forms of tenure, or for households transferring from other forms of social housing support. Residency criteria can be used, as well as distance of family members from employment and education.†[21]† However, the legislation provides for greater oversight by the Minister, who may direct an amendment of the policy or issue directions regarding the operation of the policy. A written report on allocations under the allocation scheme specifying the different categories of dwellings and households and the proportions of lettings to each will be prepared for Councillors annually.

†

†

Antisocial behaviour strategies

†

†

A significant new development in the legislation is the statutory obligation on authorities to draw up antisocial behaviour strategies in relation to parts of its administrative area in which are situated social housing rented under the Housing Acts, “chapter 4” tenancies, formerly owned local authority housing and sites provided by local authorities. The principal objectives of a strategy are the prevention and reduction of antisocial behaviour, the coordination of services dealing with this, cooperation with other persons, including the Garda Síochána, and the promotion of good estate management. The strategy will set out proposals in relation to procedures for making complaints concerning antisocial behaviour, initiatives for its prevention and reduction and the provision of education and research into antisocial behaviour.†[22]† The existence of an antisocial strategy will not confer any new legal rights for failure of a housing authority to act in performing any of its functions under the Housing Acts.†[23]†

†

When drawing up a strategy, or before amending a strategy (which is a reserved function), a housing authority must consult with any joint policing committee established under *s.36 of the Garda Síochána Act 2005* in respect of its administrative area, the Garda Síochána, the Health Service Executive, and any other person as the authority considers appropriate.†[24]† Remarkably, there is no obligation to consult with the authority’s tenants. The antisocial behaviour strategy is not intended to create any new liabilities on housing authorities in relation to its functions or antisocial behaviour, or enable anyone to seek damages for a housing authority’s failure to perform any particular function.†[25]†

†

This approach of applying a definition of antisocial behaviour only on the actions of social housing tenants, subsidised purchasers and ex-tenants has been described as the criminalisation of a section of society. In a street where there are social housing units and owner-occupied units, only those living in rented housing are subject to the legislative sanctions and definition of antisocial behaviour. Owner occupiers, who may be engaging in exactly the same behaviour, will not be subject to these legislative sanctions. In many ways, the approach mirrors that of feudal incidents, where tenants of the local lord were subject to certain obligations while others were not.†[26]†

†

†

Homelessness, leasing and new tenancy agreements

†

There is a new statutory basis for homelessness action plans to be drawn up after consultation with specified groups.†[27]† Setting out the proposed measures to prevent and reduce homelessness and assist homeless and formerly homeless people, the plans will take into account the costs of proposed measures and the financial resources available.†[28]†

†

The statutory provisions on long-term private sector leasing systems, previously known as the Residential Accommodation Scheme, marks a significant change in policy. The housing authority guarantees the payment of rent to the owner/landlord, which may be for-profit or non-profit agencies, creating a highly secure return for investors in such properties. It is unclear what level of subsidy this will involve for this category of housing service providers compared to other private landlords and what public procurement methods will be used to select the beneficiaries of such largesse.†[29]†

†

A standard housing authority tenancy agreement, with mandatory terms for accommodation provided by authorities, other than under the RAAA scheme, has been created in s.25 and Sch.3 of the 2009 Act. The tenancy agreement may also include such other terms and conditions as the housing authority considers necessary and appropriate.†[30]† However, the terms and conditions of the tenancy agreement must include “conditions relating to, and procedures for, termination of the tenancy...”.†[31]† This would effectively supersede the unchallengeable landlord powers of eviction which characterise *s.62 of the Housing Act 1966*, although the use of that provision has been found to breach the provisions of the *European Convention on Human Rights Act 2003*.†[32]†

†

†

Incremental Purchase Arrangements

†

†

Part 3 of the 2009 Act sets out the new scheme whereby existing and new social housing tenants can purchase, over time, new houses (but not apartments) provided by housing authorities or approved housing bodies. The reasoning for this scheme, redolent of the burgeoning asset values of the last decade, is set out in the Explanatory Memorandum:

†

The incremental purchase scheme provides a positive opportunity for the State to extract additional value from the annual capital investment in the social housebuilding programme, as it will allow capital moneys to be recycled quickly to provide additional social housing without extra Exchequer funding.

†

Under this scheme a property is sold to the “eligible household”^{†[33]†} with a registered charging order/mortgage order (minimum 20 years) in favour of the authority, for a subsidised “purchase price”. The outstanding charge diminishes each year so long as the purchaser uses it as his/her main residence and makes the required payments, unless there is a breach of the terms. The charge may later be relegated to a second charge to facilitate further borrowing by the purchaser.^{†[34]†} The title held by the incremental purchaser is restricted in a number of ways. Incremental purchasers who wish to resell must give first refusal to the housing authority or approved body concerned, who may purchase the property at its market value less an amount equal to the proportion of the value corresponding to the charged share of the dwelling.^{†[35]†} However, s.48(3) enables the housing authority or approved body to refuse consent to the resale where the proposed sale price is less than market value, the purchaser has engaged in antisocial behaviour, the sale would not be in the interests of good estate management, or the intended sale would result in the vendor or any person who might reasonably be expected to reside with him or her without adequate housing. This scheme offers the possibility for all prospective social housing tenants to become owners, and symbolises the State perspective of housing, primarily as an asset, within a market system, even for the poorest in society. In many ways it is the ultimate sub-prime lending scheme, now codified in Irish State law and policy.

†

†

Tenant purchasers of housing authority apartments

†

Part 4 of the 2009 Act overcomes the historical anomaly between tenants of local authority housing and those occupying apartments seeking to purchase their accommodation. This Part provides that where an authority considers an apartment complex is suitable for sales to tenants, it must hold a tenant plebiscite. At least 65 per cent of tenants entitled to vote must vote in favour of the proposal, and a minimum number must indicate that they are willing to serve as directors of the owner’s management company (OMC) which will accept ownership of the complex from the housing authority, leasing back to the authority those apartments not sold to individual tenants. Tenants will continue to be able to purchase under the incremental purchase scheme and similar conditions apply on resale as that scheme. However, for the establishment of the OMC to proceed, a minimum number of sales must take place, and a minimum number of tenants must have indicated their willingness to act its directors in the “initial selling period”.^{†[36]†} The OMC to be established in this instance is based on the model proposed by the Law Reform Commission’s *Report on Multi-Unit Developments* ^{†[37]†} and now in the legislative process of the Multi-Unit Developments Bill 2009.^{†[38]†}

†

†

Affordable Dwelling Purchase Arrangements

†

Part 5 of the 2009 Act standardises the securitisation and clawback arrangements for the various affordable housing schemes, including dwellings made available for sale under existing and new procurement methods. The scheme involves a registered charge for the amount of the discount (as a proportion of the market value, but not more than 40 per cent), repayable by instalments or on resale as a proportion of the current market value. This charged amount may be repaid after five years by minimum or greater instalments or on resale, which is not subject to the controls applying to incremental purchase in relation to prospective purchasers. The authority may grant a higher priority charge to a licensed financial institution on the property.^{†[39]†}

†

†

Part 5 also introduces new arrangements for housing authorities to make dwellings available for sale to eligible persons at a discount. A variety of means of procuring these units are set out, including arrangements with an approved body, public private partnership arrangements, or its own efforts.†[40]† The Minister may make a grant towards the cost of making these dwellings available to the housing authority, approved body or other person on behalf of the authority or to the Affordable Homes Partnership. Section 80 enables a housing authority to enter a “direct sales agreement” with one of the specified classes of suppliers of affordable dwellings for the direct sale to the eligible person nominated by the housing authority, in a form prescribed.†[41]†

†

Housing authorities may go even further in providing subsidised housing within the market, by providing financial assistance to eligible households to purchase dwellings in the market, known as an “open market dwelling”.†[42]†

†

Eligibility for these affordable dwelling purchase arrangements is subject to assessment by the housing authority, taking into account the accommodation needs of the household, including current housing, distance to preferred locations of employment and education and other matters, such as a means test. This test, which takes into account “any other assets of the household which could be used to defray all or part of the cost of providing accommodation”,†[43]† requires the applicant to show a net household income, not more than 35 per cent of which would be required to service the repayments on the mortgage on not more than 90 per cent of the purchase of the affordable dwelling.†[44]† There are special provisions where a member of the household was married, or previously purchased or built a dwelling in the State. Section 85 requires housing authorities to make and publicise a scheme of priority for affordable dwelling purchase arrangements (which shall be a reserved function but subject to Ministerial regulations), within one year of the commencement of Pt 5.†[45]† Section 94 establishes an Affordable Dwellings Fund where housing authorities shall pay all monies received under this Part and previous affordable schemes.

†

Part 6 of the 2009 Act sets out provisions in respect of certain grants and sites provided, including the repayment of adaptation grants to older people and people with disabilities, where the relevant property is sold within five years.†[46]†

†

†

Amendments to other Acts

†

Part 7 or s.100 of the 2009 Act significantly amends the 2004 Act, adding obligations on landlords to provide receptacles suitable for the storage of refuse outside the dwelling, save where the provision of such receptacles is not within the power or control of the landlord in respect of the dwelling concerned.†[47]† There are also amendments in respect of definitions used in the 2004 Act, in relation to repayment of deposits, and in relation to incomplete applications for registration. A significant insertion relates to the requirement on the PRTB to disclose information contained in the register of rented properties to the Revenue Commissioners.†[48]†

†

Schedule 2, Pt 4 inserts a significant set of amendments into *s.18 of the Housing (Miscellaneous Provisions) Act 1992*, upgrading the requirements in relation to housing standards, including the definition of “proper state of structural repair”. A new s.18A is inserted creating enforceable improvement notices on landlords for breaches of s.18. A prohibition notice, where a landlord fails to comply with an improvement notice, prohibits re-letting until compliance takes place,†[49]† with penalties of a fine not exceeding €5,000 or imprisonment for a term up to six months and a fine up to €400 per day for continuing breaches.†[50]†

†

There is an amendment to the *Housing (Miscellaneous Provisions) Act 1997* (the “1997 Act”) inserting “alarm” within the definition of antisocial behaviour and bringing “Chapter 4” tenancies, incremental purchase schemes and affordable dwelling purchase arrangements within the provisions of the 1997 Act.

†

†

†

Conclusion

†

The *Housing (Miscellaneous Provisions) Act 2009* symbolises a significant shift in the way local authorities carry out their housing functions. It further facilitates the move away from the traditional direct supply of rented housing by local authorities to a wider array of activities involving State-subsidised home ownership, long leases from private landlords or developers and the existing programmes established under legislation. Reflecting the cultural and political changes of the past decade, there is an important focus of directing who may be eligible for social housing support into subsidised home-ownership, or at least owning some of any equity arising from an increased value in the accommodation where they live. There has been a corresponding shift in the methods of assessing the housing requirements of people in housing need. In this era of participation and inclusion it is significant that the only opportunity for tenant participation is in voting to designate an apartment complex eligible for sales.

†

Some sections of the 2009 Act have been commenced in S.I. No. 449 of 2009 and S.I. No. 562 of 2009 for the incremental purchase scheme.

†

† [*] [*Lecturer in law, School of Law, NUI Galway. The author is completing Housing Law, Rights and Policy (Dublin: Clarus Press, 2010).*]

†

† [1] [*No. 22 of 2009.*]

†

† [2] [*Department of Environment, Heritage and Local Government, Delivering Homes, Sustaining Communities - Statement on Housing Policy (Dublin: The Stationery Office, 2007). This policy document draws heavily from the NESC “vision of society” as set out in Housing in Ireland: Performance and Policy, No. 112 (Dublin: NESC, 2004) and the Social Partnership Agreement - Towards 2016, which states: “The Social Partners subscribe to the NESC vision of Ireland in the future, the key foundations of which are: a dynamic, internationalised, and participatory society and economy, with a strong commitment to social justice, where economic development is environmentally sustainable, and internationally competitive” (p.5). Indeed, it is really only possible to understand fully the reasoning within the legislation by relating it to these documents. A sustainable community is defined in the policy report Delivering Homes, Sustaining Communities - Statement on Housing Policy (Dublin: The Stationery Office, 2007) at p.7 as: “Sustainable communities are places where people want to live and work, now and in the future. They meet the diverse needs of existing and future residents, are sensitive to their environment, and contribute to a high quality of life. They are safe and inclusive, well-planned, built and run, offer equality of opportunity and good services for all”. The report acknowledges that this terminology is borrowed from the EU Ministerial Informal Meeting on Sustainable Communities, UK Presidency, Policy Papers, ODPM, March 2006.*]

†

† [3] [*See European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 (S.I. No. 27 of 1995 as amended by S.I. No. 307 of 2000). See also Breslin, J., “What makes a term in a standard contract form contract unfair” (2002) Bar Review, Jan/Feb, pp.131-134.*]

†

† [4] [*This “pathways” approach, adopted by the Irish State in recent years, is based on the notion that people’s housing situation is based on decisions taken in the past and pathways open to them in the present. It marks a shift away from a provision-oriented approach by the State in favour of a market approach. See Clapham, D., The Meaning of Housing. A Pathways Approach (Bristol: The Policy Press, 2005). Part 3 of the legislation directs even more people on low incomes towards subsidised homeownership by offering the incremental purchase scheme to every prospective new social housing tenant, rather than the traditional renting option from the social housing provider. The State is in danger of being seen as the ultimate sub-prime lender.*]

†

† [5] [*This is a long-term lease between an owner of a property and a housing authority, used to house those who are eligible for social housing support. Section 25 states that these “Chapter 4” tenancies*

†

will be between the private landlord/developer and the nominated or qualified tenant and will not be construed as public authority lettings, and thus will avoid public law scrutiny, such as the ECHR Act 2003 . They will incorporate some of the terms of the Residential Tenancies Act 2004 , which arguably contain more protection than existing local authority or housing association tenancies, although rent is paid to the local authority rather than the owner. Section 24 sets out the requirements of the RAAA, which must be in writing. These “Chapter 4” tenancies will be used to bring into use many of the properties acquired by NAMA for housing of those eligible for social housing support.]

†

† [6] *[This new term replaces the concept of assessment of need under s.9 of the Housing Act 1988 to a “social housing assessment” under s.20 of the 2009 Act, which determines whether the household is qualified for social housing support and the most appropriate form of such support. Section 19(2) states that social housing support may include all or any of the following: (a) dwellings provided by a housing authority under the Housing Acts 1966 to 2009 or provided under Part V of the Planning and Development Act 2000 , other than affordable housing; (b) dwellings provided by an approved body; (c) the sale of a dwelling under Part 3; (d) entering into and maintaining rental accommodation availability agreements; (e) the provision of sites for caravans referred to in s. 13 of the Act of 1988 and any accommodation provided to travellers under the Housing (Traveller Accommodation) Act 1998 ; (f) the provision of sites for building purposes under s.57 of the Principal Act. Section 21 provides that the housing authority must prepare a summary of the social housing assessments for purposes of estimating housing need under s.94(4)(a)(i) of the 2000 Act and s.7 of the 1998 Act.]*

†

† [7] *[Section 4.]*

†

† [8] *[Section 16.]*

†

† [9] *[Section 22.]*

†

† [10] *[Section 31.]*

†

† [11] *[Section 40.]*

†

† [12] *[Section 52.]*

†

† [13] *[Section 85.]*

†

† [14] *[Section 14. Section 16 requires the authority to send a copy of the draft plan to the Minister, adjoining authorities, the HSE, local approved bodies, the homelessness consultative forum, local traveller consultative committee and “such local community bodies in the administrative area concerned and any other person, as the housing authority considers appropriate”.]*

†

† [15] *[Section 15(1)(f). The Minister for Housing, Michael Finneran TD pointed out in the Seanad Committee that in this context “the word ‘social’, in its normal usage, embraces economic, cultural, social, ethnic and other issues ... I do not want to exclude any group or person.” Seanad Eireann, Vol.192, No.5., November 19, 2008, 271. A proposal to establish a disability housing forum within each housing authority area, which would develop and implement a local disability action plan was proposed by Ciaran Lynch TD, but not accepted. See D-il Debates, Thursday, June 25, 2009. Housing (Miscellaneous Provisions) Bill 2009: Report and Final Stages.]*

†

† [16] *[Section 18. It is significant that although the adoption of the housing services plan is a reserved function, the housing action programme is not, and is subject to the financial resources available.]*

†

† [17] *[This replaces s.58(3)(3A) and (3B) of the 1966 Act.]*

†

†

† [18] [Section 31(6).]

†

† [19] [Section 20(8) specifies that current accommodation may be disregarded “where the authority has reason to believe that the household, or any member of it, has deliberately or without good and sufficient reason done or failed to do anything (other than an act or omission in good faith) in consequence of which the accommodation the household is occupying is less suitable for its adequate housing than other accommodation which it would have been, or would be, reasonable for the household to occupy”.]

†

† [20] [This repeals the relevant provisions of the 1988 Act. Section 22(4) enables the Minister to make regulations providing for matters to be included in an allocation scheme. Section 22(9) and (10) state that while the making of an allocation scheme is a reserved function the allocation of a dwelling is an executive function.]

†

† [21] [This may well be contrary to EU regulations.]

†

† [22] [Section 35(3).]

†

† [23] [Section 35(7). But see Stack, S., “Anti-Social Behaviour of Local Authority Tenants: When will the authority be liable” [1999] Conveyancing and Property Law Journal, Vol.4, No.1, pp.2-6.]

†

† [24] [It is significant that the list of organisations to be consulted is so narrow, when compared to the requirements in relation to the preparation of homeless action plans. Section 36 lists the organisations to be consulted in relation to homelessness action plans as FAS, the Irish Prison Service, the Probation Service, the VEC and other bodies to be specified by the Minister. This probably reflects the strength of NGOs involved in homelessness and the absence of any tenants’ organisations in Ireland.]

†

† [25] [Section 35(7).]

†

† [26] [See Paper presented by Cormac O’Dulachain SC to the IHRC Conference - Economic, Social and Cultural Rights - making States Accountable, November 21, 2009, Dublin, The Law Society.]

†

† [27] [Chapter 6.]

†

† [28] [Section 37. There are elaborate rules in the Act in relation to the Homelessness Consultative Forum, which must be established by each authority, with specified membership, where representatives of the State sector must be in the majority, to provide information, advice, reports etc.]

†

† [29] [Section 24(1). There will be regulations in respect of standards for these properties, and tax compliance by the owner. The requirements of the “chapter 4” tenancy agreement are set out in s.25. The tenant pays rent to the housing authority, yet the owner is required to serve a notice to quit on the tenant for failure to pay the rent, as well as in situations of breach of other terms of the agreement, or for allowing a person against whom an excluding order under the 1997 Act has been served to reside in the property. The provisions of the 2004 Act apply to notice periods and for dealing with antisocial behaviour when the owner has been notified by a housing authority that the tenant has breached the terms of the tenancy or engaged in antisocial behaviour. Section 25(6)(c) stipulates that the dwelling provider shall act upon this notification and serve notice of termination on the tenant. Section 25(9) permits a housing authority to apply for an excluding order under the 1997 Act against a person in respect of a dwelling subject to as “chapter 4” tenancy. Section 8 and Pt 5 of Sch.2 to the Act amend the 1997 Act to apply certain antisocial behaviour provisions to dwellings the subject of a rental accommodation availability agreement. Where housing associations are involved in managing properties with Chapter 4 tenancies they will have supervision under the Private Residential Tenancies Board.]

†

†

† [30] *[Section 29(2)(b). These will be subject to the unfair contract terms in consumer contracts regulations and the provisions of the ECHR Act 2003 . See Governors of the Peabody Trust v Reeve [2008] EWHC 1432 (Ch) ; Case C243/09, Pannon GSM Zrt v ErzsÉbet SustiknÉ Gyurfi ; McCann v UK (2008) 47 EHRR 913 .]*

†

† [31] *[Schedule article (c).]*

†

† [32] *[See Pullen v Dublin City Council [2008] IEHC 379 ; Donegan v Dublin City Council [2008] IEHC 288 ; Dublin City Council v Gallagher [2008] IEHC 354 .]*

†

† [33] *[See s.43(1).]*

†

† [34] *[Section 46(10).]*

†

† [35] *[Section 48.]*

†

† [36] *[Section 56.]*

†

† [37] *[LRC 90-2008.]*

†

† [38] *[However, under the provisions of s.65(6), where existing housing authority tenants occupy less than 20 per cent of the apartments in a complex managed by an OMC, there may be no representation of these occupiers on the board of the OMC.]*

†

† [39] *[Section 88(5).]*

†

† [40] *[Section 79.]*

†

† [41] *[Section 80(2), (4) and (5). This can also apply to providers of units under Pt V of the Planning and Development Act 2000 , and where the total amount due under a direct sales agreement is less than the amount due under the Part V agreement the difference will be paid to the housing authority by the developer.]*

†

† [42] *[Section 81. The level of subsidy will be the amount between the market price and the “purchase price”, defined in s.78 as the “monetary value of the proportion of the purchase price of the dwelling fixed by the housing authority as the proportion that is required to be paid by an eligible household to purchase the dwelling under the affordable dwelling purchase arrangement.” Similar conditions as to residency, compliance with terms and clawback on resale apply to the incremental purchase scheme.]*

†

† [43] *[Section 84(3).]*

†

† [44] *[Section 84(2)(b). The Minister may make regulations in relation to income and financial circumstances, determination of prices of dwellings, and other matters relating to these assessments.]*

†

† [45] *[This scheme will replace those established for shared ownership housing and units provided under Pt V of the 2000 Act.]*

†

† [46] *[Section 99.]*

†

† [47] *[Section 100(3) amending s.12 of the 2004 Act.]*

†

† [48] *[Section 100 (5) adding a new s.147A to the 2004 Act. While there is a new requirement in*

†

s.24(2)(b) of the 2009 Act that owners of properties entering RAAAs be tax compliant, no such requirement applies under existing RAS schemes, where details of ownership of properties leased are not always provided to housing authorities, who often only deal with managing agents.]

†

† [49] *[Schedule 2, Pt 4 creates a new s. 18B in the 1992 Act as well as a revised definition of housing authority and transfer of functions between authorities under a revised s.23 of the 1992 Act.]*

†

† [50] *[Schedule 2, Pt 4 amends s.34 of the 1992 Act by substituting subs.1 with the following: “Any person who—(a) by act or omission, obstructs an authorised person in the lawful exercise of the powers conferred by, or contravenes a provision of, or a regulation made under, section 17, 18 or 20, or (b) fails to comply with an improvement notice, or (c) re-lets a house in breach of a prohibition notice, shall be guilty of an offence and shall be liable, on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 6 months or both and if the obstruction, contravention, failure to comply or re-letting is continued after conviction the person shall be guilty of a further offence on every day on which the obstruction, contravention, failure to comply or re-letting continues and for each such offence shall be liable, on summary conviction, to a fine not exceeding €400.”.(b) Insert the following subsection: “(3) Where a person is convicted of an offence under this Act, the court shall, unless it is satisfied that there are special and substantial reasons for not doing so, order the person to pay to the housing authority, the costs and expenses, measured by the court, incurred by the housing authority in relation to the investigation, detection and prosecution of the offence.”]*

†

†

†