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**BILLE NA dTITHE (FORÁLACHA ILGHNÉITHEACHA), 2014  
HOUSING (MISCELLANEOUS PROVISIONS) BILL 2014**

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**EXPLANATORY MEMORANDUM**

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[This Memorandum is not part of the Bill and does not purport to be a legal interpretation.]

**General**

The main purpose of the Bill is to provide for the following—

- issue of a tenancy warning by a housing authority where there has been a breach of the tenancy agreement for one of its rented dwellings and a review of such a warning
- a revised procedure for a housing authority to recover possession of a dwelling where there has been a serious or repeated breach of a condition of the tenancy agreement, where the dwelling has been abandoned by the tenant or where there is no tenancy in the dwelling and the dwelling is occupied by a person who has no lawful authority to reside there
- a scheme of tenant purchase of existing local authority houses broadly along the same lines as the incremental purchase schemes for new local authority houses and existing local authority apartments set out in Parts 3 and 4 of the Housing (Miscellaneous Provisions) Act 2009, respectively
- a new scheme of housing assistance payments (HAP) by housing authorities in respect of rent payable by households qualified for social housing support for private rented accommodation sourced by the households concerned. Households qualified for social housing support that are long-term recipients of rent supplement from the Department of Social Protection will transfer to the new housing assistance scheme
- a mandatory facility for the deduction from social welfare payments due to local authority tenants and HAP and RAS beneficiaries of rents, rent contributions and rent arrears payable to housing authorities.

**Provisions of Bill**

There are 51 sections in the Bill, arranged in 5 Parts.

**Part 1 — Preliminary and General (sections 1 to 5)**

This Part contains standard provisions of a general nature dealing with short title, collective citation, commencement, definitions, regulations, etc.

## **Part 2 — Termination of local authority tenancies, etc. (sections 6 to 20)**

This Part provides that a housing authority may issue a tenancy warning in respect of a breach of the terms of a tenancy agreement, notably relating to anti-social behaviour and non-payment of rent arrears. The Part also makes provision for a review, on request by the tenant concerned, of a tenancy warning to be conducted by a local authority official of higher rank than the official who issued the tenancy warning.

Included in this Part are revised procedures for housing authorities to secure possession of their dwellings where—

- there has been a serious or repeated breach of a condition of the tenancy agreement
- the dwelling has been abandoned by the tenant
- there is no tenancy in the dwelling and the dwelling is occupied by a person without lawful authority.

These procedures will replace the summary procedure set out in section 62 of the Housing Act 1966 and arise from the Supreme Court judgment of 27 February 2012 in the case of Anthony Donegan -v- Dublin City Council, Ireland and the Attorney General. The Court made a declaration in that case, under section 5 of the European Convention on Human Rights Act 2003, that section 62(3) of the 1966 Act is incompatible with the State's obligations under Article 8 of the Convention by reason of the absence of appropriate procedural safeguards in circumstances where there exists a factual dispute as to whether a tenancy has been properly terminated for breach of the tenancy agreement. The revised procedures in the Bill involve an assessment by the District Court (and the Circuit Court on appeal) of the merits of the proposed repossession in cases where there is a dispute about the breach of the tenancy agreement concerned.

This Part also amends the Housing (Miscellaneous Provisions) Act 1997 to strengthen the powers of housing authorities in relation to securing excluding orders where there is anti-social behaviour in their housing stock. The Housing (Miscellaneous Provisions) Act 2009 is also amended to provide that, where an enactment affects terms and conditions of existing local authority tenancy agreements or necessitates the insertion of new terms and conditions into such agreements, the Minister will have the power, in the interest of good estate management, to make regulations requiring housing authorities to revise their existing tenancy agreements accordingly and to notify their tenants of the revisions.

A recurring provision in the Part is that a housing authority shall have regard, in exercising specific functions, to protecting the identity of persons who inform the authority of breaches of tenancy agreements and who might be intimidated if their identities became known.

Under general courts legislation, any District Court decision made under this Part is appealable to the Circuit Court and any issue on a point of law may be referred to the High Court.

*Section 6* sets out definitions for the purposes of Part 2 of the Bill. Under this section, with the exception of affordable housing, *sections 7 to 17* apply to dwellings provided by a housing authority under the Housing Acts 1966 to 2014 or Part V of the Planning and

Development Act 2000 and to buildings owned by housing authorities and required for the purposes of those Acts.

*Section 7* provides for the issue by a housing authority of a tenancy warning to a tenant where he or she, or a household member, has, in the opinion of the authority, breached a term of the tenancy agreement prohibiting or aimed at preventing anti-social behaviour. The warning must specify, among other things, the term of the agreement that has been breached, the nature, occasion and effect of the breach, requirements in regard to cessation of the breach and the action the authority may take in the event of continuation or repetition of the breach, the circumstances in which the housing authority may proceed to apply for a possession order under *section 12* in respect of the dwelling and the tenant's right, under *section 10*, to request a review of the warning.

*Section 8* provides for the issue by a housing authority of a tenancy warning to a tenant who breaches a rent-related obligation, an expression defined in *section 6* to include a term of a tenancy agreement relating to payment of rent and a term of rescheduling arrangements between a household and housing authority in relation to payment of rent arrears. The section sets out the content of the tenancy warning, including the circumstances in which the housing authority may proceed to apply for a possession order under *section 12* in respect of the dwelling and the tenant's right, under *section 10*, to request a review of the warning.

*Section 9* provides for the issue by a housing authority of a tenancy warning to a tenant where he or she, or a household member, has, in the opinion of the authority, breached a term of the tenancy agreement other than a term to which *section 7* or *8* relates. The warning must specify, among other things, the term of the agreement that has been breached, the nature and occasion of the breach, requirements in regard to cessation of the breach, the action the authority may take in the event of continuation or repetition of the breach and the tenant's right, under *section 10*, to request a review of the warning.

*Section 10* provides, on request by the tenant, for an internal review by a housing authority of a tenancy warning issued to him or her under *section 7, 8* or *9*. A review request must normally be made within 10 working days of the issue of the warning outlining the grounds for the request and indicating whether the tenant or a household member wishes to make oral representations. Provision is made for extension of the period for making a review request in extenuating circumstances but the extended period shall not in any case exceed 20 working days from the date of issue of the warning.

The chief executive of the local authority will appoint a local authority official to carry out the review who was not involved in the issue of the warning and is senior to the official who decided to issue the warning. The reviewer will review the decision as if the matter were being decided for the first time and on the basis of the information available to him or her at the time of the review, including any information furnished in writing or orally by the tenant, a household member or any other person. The reviewer will normally have to decide on the review request within 20 working days or, if the process involves meeting the tenant or a household member, within 30 working days.

The reviewer may decide to confirm, vary or annul the tenancy warning, giving reasons. Except in the case of clerical errors, a

reviewer proposing to vary a tenancy warning shall consult the tenant before varying the warning.

A tenant may withdraw a review request but a reviewer may, nonetheless, continue with the review where he or she considers it is in order to do so.

Where there is intimidation, the reviewer may accept as evidence a statement by a Garda or local authority official that he or she believes that a person is or has been engaged in anti-social behaviour.

*Section 11* provides that a tenancy warning comes into effect on the second working day after the expiration of the period within which a review request could be received. A tenancy warning that is reviewed comes into effect on the second working day after the reviewer's decision is sent to the tenant, except where the tenancy warning is annulled. Provision is also made for the coming into effect of a tenancy warning where a review request is withdrawn by the tenant.

*Section 12* empowers a housing authority, in the case of a breach of the tenancy agreement or a rent-related obligation, to apply to the District Court for an order for possession of the dwelling, stating the grounds on which the application is being made and, at the authority's discretion, including information on oath by an official of the authority. The housing authority will generally give the tenant at least 10 working days' notice of the Court hearing of its possession application but, in a case where the breach of the tenancy agreement had or is having a significant or persistent detrimental effect on the quality of life of those in the locality of the dwelling, the housing authority must give a copy of the possession application to the tenant not later than the time it applies to the court for the possession order. *Subsection (4)* sets out the matters to be covered in a possession application.

A tenancy warning under *section 7, 8 or 9* will normally precede a possession application but, where a housing authority decides that the seriousness of the breach justifies dispensing with a warning, its possession application must include a statement as to why the authority did not issue a tenancy warning. Where a housing authority makes a possession application in respect of a breach of a tenancy agreement similar to that to which a tenancy warning that is under review relates, the application must include a statement as to why the authority is proceeding while the tenancy warning is under review.

The section provides that, where the tenant does not, without due cause, appear at the hearing of the possession application, the District Court may grant the order where there is a *prima facie* case for doing so. The Court is empowered to adjourn the hearing as it sees fit, with or without conditions.

*Subsection (9)* provides that the Court shall make the possession order if it is satisfied that the housing authority has grounds for the recovery of possession and the Court considers it reasonable, in all the circumstances, to make the order. This provision sets out matters to be taken into account in determining the reasonableness of making an order, including the proportionality of making the order, having regard to the grounds for the possession application.

The Court will have discretion to hear some or all of the possession proceedings "*in camera*".

In the case of anti-social behaviour by a household member other than the tenant, the Court may, as an alternative to terminating a tenancy, make an excluding order against that person under section 3 of the Act of 1997.

*Subsection (10)* provides that the housing authority will have the right to repossess the dwelling within a period starting on a date specified in the court order, which period shall be not less than 2 months and not more than 9 months. Enforcement of the order will have the effect of terminating the tenancy on the date of possession.

*Section 13* applies to a dwelling where there is no tenancy in circumstances other than where the tenant has died (see *section 17*), or a dwelling that has been abandoned by the tenant, and the dwelling is illegally occupied by another person. A housing authority is empowered in such a case to apply to the District Court for an order for possession of the dwelling, stating the grounds on which the application is being made and, at the authority's discretion, including information on oath by an official of the authority. The housing authority must give the occupier at least 10 working days' notice of the Court hearing of the possession application. Where the occupier does not, without due cause, appear at the hearing of the possession application, the District Court may grant the order where there is a *prima facie* case for doing so. The Court is empowered to adjourn the hearing as it sees fit, with or without conditions.

*Subsection (8)* provides that the Court shall make the possession order if it is satisfied that the housing authority has grounds for the recovery of possession and that an order is a proportionate response to the person's occupation of the dwelling and the Court considers it reasonable, in all the circumstances, to make the order.

Under *subsection (9)*, a housing authority will have the right to repossess the dwelling from a date specified in the court order, which date shall not be more than 6 months after the date the order is made.

*Subsection (14)* replaces section 62(7) of the Housing Act 1966 and provides that it is an offence, except in specified circumstances, to enter, use or occupy a dwelling in which there is no tenancy or that has been abandoned by the tenant in circumstances to which *section 14* is applicable. A penalty of a class C fine or a term of imprisonment not exceeding one month, or both, is provided for on summary conviction for this offence.

*Section 14* empowers a housing authority, in specified circumstances, to enter a dwelling that has been abandoned by the tenant and there is risk of significant damage to the dwelling due to vandalism or the operation of any utilities in the dwelling or steps are necessary to prevent access by trespassers. A housing authority may enter such a dwelling with the consent of the tenant or under a District Court warrant. In a case where an abandoned dwelling is being damaged by vandalism or the operation of utilities or there is an imminent risk of such damage, and it is not practical to wait to apply for a warrant, the chief executive of the local authority may authorise an employee of the authority in writing to enter the dwelling and take such measures as are considered appropriate in the circumstances.

*Section 15* provides that where a housing authority intends to repossess a dwelling abandoned by the tenant's household, the authority must serve a notice on the tenant requiring him or her to confirm within 4 weeks if the household intends to occupy the

dwelling as its normal place of residence. Where, at the end of the 4-week period, the housing authority is satisfied that the household does not intend to occupy the dwelling as its normal place of residence, the authority will serve a further notice on the tenant bringing the tenancy agreement to an end with immediate effect. Provision is made for the return to the tenant, at his or her expense, of property found in the dwelling that does not belong to the housing authority and for the disposal of such property if the tenant does not arrange for its return. Where property is found in the dwelling that belongs to a person other than the former tenant, the housing authority shall take all reasonable steps to identify the owner and return the property to him or her, at the owner's expense.

*Section 16* provides that a person who was the tenant of a dwelling before the tenancy in that dwelling was terminated under *section 15*, may, if aggrieved by the termination, apply to the District Court within 6 months of the termination. If the District Court decides that the housing authority did not comply with the notice requirements of *section 15* or did not have reasonable grounds for finding that the dwelling was abandoned, or that the former tenant had reasonable cause, by reason of illness or otherwise, for failing to notify the authority of his or her household's intention to reside in the dwelling, the Court shall, if the dwelling has not been let to a new tenant, declare the notice under *section 15(2)* terminating the tenancy to be of no effect, or direct the housing authority to allocate to the former tenant another suitable dwelling in the same locality as the dwelling in which the tenancy was terminated under *section 15*.

*Section 17* applies to a dwelling where there is no tenancy due to the death of a tenant and which is occupied by a member of the deceased tenant's household who is not entitled to succeed to the tenancy. A housing authority is empowered in such a case to apply to the District Court for an order for possession of the dwelling, stating the grounds on which the application is being made, including the basis on which the housing authority refused any application by the occupier to succeed to the tenancy, and, at the authority's discretion, information on oath by an official of the authority. The housing authority must give the occupier at least 10 working days' notice of the Court hearing of the possession application. Where the occupier does not, without due cause, appear at the hearing of the possession application, the District Court may grant the order where there is a *prima facie* case for doing so. The Court is empowered to adjourn the hearing as it sees fit, with or without conditions.

*Subsection (7)* provides that the Court shall make the possession order if it is satisfied that the housing authority has grounds for the recovery of possession and that an order is a proportionate response to the person's occupation of the dwelling and the Court considers it reasonable, in all the circumstances, to make the order.

Under *subsection (8)*, a housing authority will have the right to repossess the dwelling from a date specified in the court order, which date shall not be more than 6 months after the date the order is made.

*Section 18* repeals section 62 of the Housing Act 1966. The section also amends section 3 of the 1966 Act relating to service of notices to apply its provisions to tenancy warnings under this Part. *Section 18(1)(a)* provides for publication in at least one newspaper circulating locally of *section 15* notices to the tenant of an abandoned dwelling and *subsection (1)(b)* provides for an offence of removing, damaging or defacing a tenancy warning affixed on or near the dwelling concerned in a manner prescribed under *sections 7, 8 or 9*.

*Section 19* provides for a number of amendments to the Housing (Miscellaneous Provisions) Act 1997, which established the right of a tenant, tenant purchaser, housing authority or approved housing body to apply to the District Court for an order excluding a person believed to be engaged in anti-social behaviour from a dwelling used for social housing purposes or purchased from a housing authority and, where appropriate, from its locality.

*Subsection (1)* inserts a new definition of “affordable housing” in section 1 of the 1997 Act and substitutes 3 revised definitions in the enactment. The revised definition of “relevant purchaser” has the effect of bringing all purchasers of local authority housing other than affordable housing within the meaning of the term for the purposes of the 1997 Act.

*Subsection (2)* limits to, generally speaking, 20 years the period following sale during which the excluding order provisions of the 1997 Act will apply to local authority dwellings sold to relevant purchasers.

*Section 19(4)* of the Bill amends section 3 of the 1997 Act to remove the obligation on a housing authority to consult the tenant or tenant purchaser and the Health Service Executive before applying for an excluding order. It also provides that an excluding order may not be sought against a person under 12 years of age and empowers a housing authority to seek an excluding order against a joint tenant.

*Subsection (4)(c)* amends section 3 of the 1997 Act to the effect that an order under the section cannot exclude a person under 18 years of age from his or her home but can exclude such a person from entering or being in the vicinity of another dwelling or a specified place or area where the housing authority controls or manages one or more dwellings.

*Subsection (5)* makes similar amendments to section 3A of the 1997 Act relating to site excluding orders as those made by *subsection (4)* in relation to excluding orders.

*Subsection (6)* makes similar amendments to section 4 of the 1997 Act relating to interim excluding orders as those made by *subsection (4)* in relation to excluding orders. It also expands the basis for the making of an interim excluding order to cover an immediate risk of significant harm to any person living, working or in the vicinity of the dwelling concerned or the estate where it is located.

*Section 19(7)* of the Bill amends section 5 of the 1997 Act to bring the penalties for breaching an excluding order into line with those provided for in respect of corresponding offences under the Criminal Justice Act 2006 and the Children Act 2001. The existing penalty under section 5 of the 1997 Act for a person breaching an excluding order is a fine of €1,904.61 or imprisonment for a term not exceeding 12 months, or both. The amendment provides for a penalty on summary conviction of a person under 18 years of age of a class D fine or detention in a children detention school not exceeding 3 months, or both. The amendment also substitutes a penalty for breach of an excluding order by a person aged 18 years or more of a class B fine or imprisonment for a term not exceeding 6 months, or both.

*Subsection (8)* amends section 12 of the 1997 Act to remove the requirement that a Garda must receive a complaint from the tenant

or the housing authority in order to arrest a person who contravenes an excluding order.

*Subsection (9)* amends section 14(1) of the 1997 Act to empower a housing authority, on anti-social behaviour or estate management grounds relating to any member of a household, to refuse to allocate, or to defer the allocation of, a dwelling to that household, and, on similar grounds, to refuse permission for a person to come to reside, or to resume residence, in a local authority dwelling.

*Subsection (10)* amends section 14A of the 1997 Act to empower a housing authority, on anti-social behaviour or estate management grounds relating to any member of a household, to refuse or defer an authorisation to a person to occupy a caravan on a site provided by the authority.

*Section 19(11)* of the Bill updates section 18 of the 1997 Act relating to the offence of intimidation to cover this Part of the Bill and to take account of amendments of the 1997 Act in this section. *Subsection (12)* updates section 21 of the 1997 Act relating to evidence to cover this Part of the Bill.

*Section 20* of the Bill inserts a new section 29A into the Housing (Miscellaneous Provisions) Act 2009 providing that, where new or existing legislation affects terms and conditions of existing local authority tenancy agreements or necessitates the insertion of new terms and conditions into such agreements, the Minister will have the power to make regulations, in the interest of good estate management, requiring housing authorities to revise their existing tenancy agreements in the prescribed manner and to notify their tenants accordingly.

### **Part 3 — Purchase of houses by tenants (sections 21 to 32)**

This Part provides for a scheme of tenant purchase for existing local authority houses along incremental purchase lines. The provisions of the new scheme are similar to those set out in the incremental purchase schemes operating under Parts 3 and 4 of the Housing (Miscellaneous Provisions) Act 2009.

Under *Part 3*, the tenant will pay the housing authority a discounted price related to his or her income to purchase the fee simple in the house, in exchange for which the authority will place an incremental purchase charge on the house of the proportion of its value equal to the discount. This charge will wither away in equal annual proportions over the charged period, provided the tenant purchaser complies with the terms and conditions of the sale, notably use of the house as the household's normal residence. If the purchaser breaches a condition of the sale during the charged period, the authority may suspend the annual release on its charge for the year concerned, in which case the owner must, on expiry of the charged period, make a payment to the authority to clear the outstanding charge on the property. Provision is made for the tenant purchaser to pay off one or more annual releases of the incremental purchase charge during the charged period.

If the tenant purchaser wishes to resell the house during the charged period, the housing authority has first option on buying it back at its current market value, less the value of the outstanding incremental purchase charge. Where the authority does not buy back the house, the tenant purchaser must, on sale of the house, pay to the authority the value of the outstanding incremental purchase

charge on the property, subject to not incurring a net loss on the resale.

This Part provides the framework for the incremental purchase arrangements, allowing some of the terms to be addressed in regulations.

*Section 21* sets out the definitions for the purposes of this Part of the Bill. “Purchaser” is defined to include any person succeeding to the title of the house by inheritance.

*Section 22* provides that the new scheme will cover housing authority houses other than newly-built or newly-acquired houses that may be purchased by tenants under Part 3 of the 2009 Act. Specific provision is made to enable a house to be sold under this Part that was provided for affordable housing but is no longer required for that purpose and has been allocated to a tenant as social housing support. The section excludes from the scheme local authority dwellings located in buildings that contain more than one dwelling and which require arrangements for the regular upkeep and management of common areas, structures, works and services other than by the dwelling owner. *Section 30* provides that the Minister may prescribe other classes of houses to which the scheme shall not apply.

*Section 23* sets out circumstances in which a tenant is disqualified from purchasing a house under this Part. *Subsection (a)* provides that a housing authority shall not sell a house to a tenant where, in the 3 years prior to applying to purchase, he or she or a household member was in arrears of rent, rent contributions, charges, fees or any other monies owed to a housing authority or an approved housing body for an accumulated period of more than 12 weeks in respect of a dwelling or site provided as social housing support. This disqualification will not apply where the tenant or household member concerned enters into rescheduling arrangements with the authority for paying off these debts and complies with his or her obligations under these arrangements. *Subsection (b)* prohibits the sale of a house under this Part to a tenant who previously purchased a dwelling from a housing authority.

*Section 24* provides that the reckonable income of all tenants, and of the spouse, civil partner or cohabitant of a tenant who is living with him or her, shall be taken into account in calculating the annual income of a tenant who has applied to purchase a house under this Part. *Subsection (3)* empowers the Minister to issue directions to housing authorities on the determination of reckonable income for the purposes of this Part. The directions may specify matters such as the level, type and sources of household income that are reckonable, any deductions to be made from gross income and the information that a tenant must provide to enable reckonable income to be calculated and verified. A housing authority is required to comply with directions issued under this section.

*Section 25* provides for the sale to the tenant by a housing authority of a house in its existing state of repair and condition by way of a transfer order, subject to conditions that apply for the duration of the charged period fixed in a charging order placed by the authority on the house. These conditions include conditions relating to occupation of the house as the normal place of residence of the purchaser or a household member, proposed changes to the status of the house in the future that require the prior consent of the housing authority, and prohibitions relating to anti-social behaviour.

*Subsection (3)* provides that, subject the provisions of other legislation, the sale of a house under this Part will not imply any warranty as to its state of repair or condition or its fitness for human habitation.

*Section 26* requires a housing authority to make a charging order in the prescribed form, placing a percentage incremental purchase charge on a house sold under the scheme. The charging order creates a charged share in the house in favour of the housing authority equivalent to the percentage discount granted to the purchaser off the purchase price. The charge applies for the charged period specified in the charging order, the duration of which is determined in accordance with regulations made by the Minister. The charge will reduce annually over the charged period in equal proportions (referred to as “incremental releases”) on the anniversary of the vesting date, provided that the purchaser complies with the terms and conditions of the transfer order. The reduction in the charge for the first 5 years of occupancy will not be applied until that period has expired.

*Subsection(3)(a)* provides that a housing authority will discharge the incremental purchase charge when the charge is fully paid off or expires or when the house is resold, whichever occurs first. An authority will meet the costs of executing and registering a deed of discharge but will not be liable otherwise for expenses of the purchaser. A housing authority may recover any monies due to it in respect of an incremental purchase charge as a simple contract debt through the courts. A charging order is deemed to be a legal mortgage under Part 10 of the Land and Conveyancing Reform Act 2009 and must be registered as a burden on the title in the Registry of Deeds or Land Registry as soon as possible after the sale.

Under *subsection (10)*, a housing authority may enter into an agreement with a lending institution to the effect that the authority’s incremental purchase charge will have a lower priority, relative to the institution’s mortgage charge, than it otherwise would have. Such an agreement may only be made to enable a purchaser to obtain a mortgage from the lending institution to finance the purchase of the house, refinance an existing advance of moneys from the lending institution, or obtain a further advance of money from the lending institution for any purpose.

*Section 27* provides that a housing authority may suspend an annual incremental release of the authority’s incremental purchase charge where the purchaser breaches a term or condition of the transfer order. When the charged period expires, the tenant purchaser will have 2 months to repay to the authority the amount of the outstanding incremental purchase charge, based on the authority’s current market valuation of the house.

*Section 28* sets out the circumstances in which a purchaser may pay off one or more incremental releases during the charged period. The purchaser, on the fifth or any subsequent anniversary of the vesting date and with the consent of the housing authority, may pay the full outstanding incremental purchase charge in the house (including a suspended incremental release) or the value of one or more incremental releases (other than a suspended incremental release), based on the authority’s current market valuation of the house. Where part only of the outstanding charged share is paid to the housing authority, the charged period will be reduced by the number of years equating to the number of incremental releases represented by the payment.

*Section 29* deals with the resale during the charged period of houses sold under *Part 3* of the Bill. A purchaser wishing to resell must first offer to sell the house to the housing authority for its current market value, less the outstanding incremental purchase charge on the house. Where a housing authority decides not to buy back the house, the tenant purchaser must, on sale of the house in the market, pay the authority a proportion of the market value equal to the outstanding incremental purchase charge on the house, subject to the purchaser not making a net loss on the sale.

Under *subsection (3)*, the resale in the market of a house sold under this Part is subject to the consent of the housing authority, which may refuse to consent for specified reasons, including anti-social behaviour by the prospective purchaser, good estate management grounds, or where the authority considers that the sale would leave the vendor or anyone who might reasonably be expected to reside with him or her without adequate housing.

In the case of dispute over the authority's valuation of a house under *section 27, 28 or 29*, the current market value of the house will be determined by an independent valuer nominated by the purchaser from a panel of valuers drawn up by the authority, with the purchaser paying for the cost of the valuation.

*Section 30* empowers the Minister to regulate different aspects of the incremental purchase scheme under *Part 3* of the Bill. Under *paragraph (e)*, the Minister may prescribe the method that a housing authority uses to determine the purchase price of the house, including taking into account the cost of replacing that house in the authority's stock of housing. *Paragraph (f)* empowers the Minister to prescribe the method of determining the discount to be granted to a purchaser off the purchase price of the house, having regard to the annual income of the tenant. Other aspects of the scheme that are subject to regulations include the minimum period for which a tenant is required to be in receipt of social housings support in order to be able to purchase a house under this Part and the minimum annual income of a tenant in order to be able to purchase.

*Section 31* of the Bill amends *section 14(2)* of the Housing (Miscellaneous Provisions) Act 1997 to empower a housing authority, in the case of anti-social behaviour or on good estate management grounds, to refuse to sell a house to a tenant under *Part 3*.

*Section 32* amends certain provisions of the Housing (Miscellaneous Provisions) Act 2009 to take account of provisions in *Part 3* of the Bill. *Paragraph (c)* substitutes a new provision in *section 20(5)* of the 2009 Act, under which a household shall be ineligible for social housing support where, in the 3 years prior to the carrying out of a social housing assessment, the household or a household member was in arrears of rent, rent contributions, charges, fees or any other monies owed to a housing authority or an approved housing body for an accumulated period of more than 12 weeks in respect of a dwelling or site provided as social housing support. This amendment also provides that this ineligibility will not apply where the household or household member concerned enters into rescheduling arrangements with the authority for paying off these debts and complies with the terms of those arrangements. *Section 32(f)* and *(g)* amend *Parts 3 and 4* of the 2009 Act in similar terms to *section 32(c)*.

#### **Part 4 — Housing assistance (sections 33 to 48)**

This Part provides for the introduction of the Housing Assistance Payment (HAP), a new scheme that will be operated by housing authorities to assist households that qualify for social housing support, including long-term rent supplement recipients, to pay rent for private rented accommodation. Under *Part 4*, a qualified household will source their own accommodation in the private rented sector and will enter into a tenancy agreement with the landlord concerned. The housing authority will pay the full rent (“housing assistance”) for the accommodation direct to the landlord on behalf of the household, subject to the maximum rent limit applicable under the scheme. The household will be required to pay a rent contribution to the housing authority calculated in accordance with the housing authority’s differential rent scheme. In order to be included in the scheme, the accommodation concerned must meet the statutory standards for rented accommodation and the landlord must be tax-compliant.

As with other forms of social housing support, housing authorities may refuse to provide, or cease providing, housing assistance in respect of a household where a household member is engaged in anti-social behaviour and may refuse to allow such a person to reside in a dwelling the subject of housing assistance. Households in receipt of forms of social housing support other than housing assistance, notably those in dwellings provided by the local authority or an approved housing body, will be eligible to avail of housing assistance only in the case, and for the duration, of an emergency. Households benefitting from housing assistance will not be permitted to move from one dwelling to another within a prescribed period, except in specified circumstances. The Minister may also prescribe the manner in which a housing authority may provide housing assistance in respect of the rent payable by a tenant of an approved housing body in a dwelling under the Capital Assistance Scheme.

Housing assistance will constitute a form of social housing support and households benefitting from housing assistance will be deemed to have their housing need met. Households benefitting from housing assistance or in receipt of other forms of social housing support will cease to be eligible for such support if, in the preceding 4 years, the household has failed to comply with the terms of a prescribed number of rescheduling arrangements for the payment of arrears of rent or rent contributions to a housing authority. A household benefitting from housing assistance that refuses, within a prescribed period, a prescribed number of reasonable offers of other forms of social housing support, including offers of the tenancy of a dwelling provided by the local authority or an approved body, will not be considered for a transfer to other forms of social housing support for a prescribed period. In order to facilitate the phasing-in of HAP, the Minister may prescribe that particular housing authorities will operate the scheme from particular dates and that particular authorities will deal with particular classes of household seeking housing assistance.

*Section 33* sets out the definitions for the purposes of *Part 4* of the Bill. The term “qualified household” is defined to mean a household qualified for social housing support for whom housing assistance is an appropriate form of such support.

*Section 34* confirms that the payment of housing assistance in respect of a dwelling will not, except in the case of dwellings provided by approved housing bodies under the Capital Assistance Scheme, mean that the dwelling is a dwelling let by a public authority

for the purposes of the Residential Tenancies Act 2004. The effect of the provision is that the 2004 Act will apply to dwellings supported under HAP, except for dwellings provided under CAS.

*Section 35* provides that housing assistance will be deemed to be an appropriate form of social housing support for a qualified household, subject to any regulations made under section 20(4) of the Housing (Miscellaneous Provisions) Act 2009 in relation to support previously provided to a household being taken into account in determining an appropriate form of support for that household.

*Section 36* provides that housing assistance may be provided for a qualified household of a prescribed class in respect of a dwelling shared by that household with persons who are not household members, provided that the arrangement does not result in overcrowding in the dwelling.

*Section 37* sets out the main conditions for the provision of housing assistance. It is the responsibility of the qualified household to source the accommodation that will be supported under the scheme. The dwelling in respect of which housing assistance is payable must meet the statutory standards for rented accommodation and the landlord must be tax-compliant. The household member who is the tenant of the dwelling the subject of housing assistance must pay a rent contribution to the housing authority, and the housing authority must be satisfied that the tenancy or prospective tenancy is a tenancy in good faith.

*Section 38* provides that payment by the housing authority of housing assistance to a landlord or his or her agent does not imply any liability on the authority's part for rent payable by the benefitting household to the landlord or any other obligation under the tenancy concerned.

*Section 39* provides that, in order for a dwelling to be supported under housing assistance, the housing authority must be satisfied on inspection that the dwelling complies with the standards for rented accommodation prescribed under section 18 of the Housing (Miscellaneous Provisions) Act 1992. This condition will be met if the housing authority carried out an inspection of the dwelling with a satisfactory outcome in the prescribed period prior to the qualified household notifying the housing authority of the dwelling in respect of which they are seeking housing assistance. If this is not the case, the authority is required to carry out an inspection within a prescribed period after housing assistance commences in respect of the dwelling concerned and may continue to pay housing assistance until the inspection is carried out. The housing authority may pay housing assistance in respect of a dwelling that is the subject of improvement notice proceedings under section 18A of the 1992 Act. Housing assistance may not be paid in respect of a dwelling the subject of a prohibition notice in force under section 18A of the 1992 Act, except where a qualified household is living in the dwelling, in which case housing assistance may be paid in respect of the dwelling for a prescribed period while the qualified household secures alternative accommodation.

Under *subsection (3)*, if a housing authority determines that a dwelling does not meet a qualified household's accommodation need due to overcrowding, that dwelling shall not be eligible, or shall cease to be eligible, for housing assistance. The authority may, however, continue to provide housing assistance in respect of the dwelling for a prescribed period while the benefitting household sources another dwelling.

*Subsection (4)* empowers a housing authority to designate an area that has been specified as a regeneration area by the Minister or an area where there is a need to counteract undue social segregation, and housing assistance shall not be payable in respect of a dwelling located in such an area, unless the dwelling was the subject of housing assistance on the date of designation. The Minister's consent is required to the designation of an area where there is a need to counteract undue social segregation, in the case that the number of local government electors in an area exceeds a prescribed number.

*Section 40* sets out information that a landlord must, on request, supply to the housing authority in order for one of his or her dwellings to be the subject of housing assistance under this Part, including:

- his or her public service card where this has been issued to the landlord, or his or her tax reference number
- a current tax clearance certificate
- details of his or her bank account (for the purposes of the authority paying housing assistance)
- any other information which the authority may need to determine if housing assistance is payable.

In the case of a landlord who does not present a current tax clearance certificate and owns no other dwelling which is the subject of housing assistance, a housing authority may pay housing assistance for a prescribed period until the landlord produces a current tax clearance certificate or a further payment to the landlord by that authority would result in total payments to the landlord in any period of 12 months exceeding a prescribed amount. Where a landlord fails to produce the certificate within the prescribed period or where a further payment to the landlord would result in total payments to the landlord by the housing authority in any period of 12 months exceeding a prescribed amount, the authority may continue to pay housing assistance in respect of the dwelling for a further prescribed period to allow the benefitting household time to source alternative accommodation. The Minister may prescribe the circumstances in which housing assistance may be provided or continue to be provided pending the supply of a current tax clearance certificate in cases where the transfer of an interest in the dwelling concerned results in a person becoming a landlord for the purposes of payment of housing assistance.

*Section 41* provides that a housing authority will pay housing assistance (i.e. the full amount of rent payable by a tenant, subject to the maximum rent limit applicable under the scheme) monthly by electronic funds transfer to the landlord or his or her agent, unless the authority comes to an alternative arrangement in particular cases. *Subsection (2)(a)* provides that the Minister may, with the consent of the Minister for Public Expenditure and Reform, prescribe the maximum amount of rent in respect of which housing assistance will be provided by a housing authority for prescribed classes of household, taking account of their composition and the location of the dwelling. *Subsection (2)(b)* provides that the Minister may determine the maximum amount of rent in respect of which housing assistance will be provided for classes of qualified household, other than classes prescribed under *paragraph (a)*, taking account of their composition and the location of the dwelling. In the case where the prescription of the maximum rent results in a maximum permissible rent for housing assistance purposes that is less than the amount of

rent payable under a tenancy, the housing authority will inform the household and advise them to renegotiate the rent payable under the tenancy. If the rent payable under the tenancy is not reduced to, or below, the maximum amount of housing assistance permissible, the housing authority will be empowered to continue to pay housing assistance in respect of the actual rent payable until the tenancy expires, where it is economically advantageous to do so or where it is necessary to avoid undue hardship for the benefitting household concerned. In any other case, the housing authority may continue to pay housing assistance in respect of the rent payable under the tenancy for a prescribed period to allow the benefitting household time to source alternative accommodation.

Under *section 42* of the Bill, the tenant of the dwelling in respect of which housing assistance is being provided is required to pay a rent contribution to the housing authority determined in accordance with *section 31* of the Housing (Miscellaneous Provisions) Act 2009 and the Minister may prescribe the method by which the tenant pays the rent contribution to the housing authority (see *section 49* below).

*Section 43* sets out circumstances in which a household will be ineligible for housing assistance or a household benefitting from housing assistance will cease to be eligible for housing assistance. *Subsection (1)* provides that a local authority or approved body tenancy or a Chapter 4 (Rental Accommodation Arrangements) tenancy constitutes specified forms of social housing support for the purposes of this section. Under *subsections (2)* and *(3)*, a household benefitting from housing assistance who has applied to the housing authority to transfer to a specified form of social housing support but refuses a prescribed number of reasonable offers of specified forms of social housing support in a continuous prescribed period will not be considered by the housing authority for a further offer of support for a prescribed period after the last refusal and the latter period will not be taken into account in determining the priority of that household for a transfer to a specified form of support.

*Subsection (5)* provides that a household in receipt of a form of social housing support other than housing assistance will be eligible for housing assistance only in an emergency that was not due to an action by, or inaction on the part of, the household concerned. In the case of an emergency, the housing authority may provide an amount of housing assistance in excess of the maximum rent applicable for the household concerned under *section 41(2)*, provided the housing authority is satisfied that the household have a reasonable need to remain in the same locality as the dwelling the subject of the emergency and cannot source accommodation in that area within the limit. The benefitting household will cease to be eligible for housing assistance when the original dwelling is available for re-occupation by the household, or the authority offers suitable alternative social housing support to the household in the same locality as the original dwelling.

A housing authority will be empowered, under *subsection (6)*, to refuse to provide or to cease providing housing assistance in respect of a qualified household where the authority considers that any household member is or has been engaged in anti-social behaviour, or the household fails to provide information about persons living in or proposing to live with the household. The housing authority is empowered to refuse to permit a person who is or has been engaged in anti-social behaviour to take up or resume residence or enter or be in a dwelling the subject of housing assistance if the benefitting household or person concerned does not provide the authority with

the information it needs to decide whether to grant or refuse such permission.

*Section 44* provides that a household will cease to be eligible for housing assistance if the household leaves the dwelling the subject of housing assistance and seeks housing assistance in respect of another dwelling within a prescribed period that runs from when housing assistance was first provided in respect of the original dwelling. *Subsection (2)* sets out circumstances in which this ineligibility will not apply, including:

- the tenancy concerned was terminated by the landlord either prior to the tenancy becoming a Part 4 tenancy under the Residential Tenancies Act 2004 or on one of the grounds specified in section 34 of the 2004 Act
- the term of the tenancy concerned expired
- the housing authority is satisfied that the household moved on account of overcrowding, for employment or educational reasons, or due to exceptional circumstances, including fire, flood or other emergency or for exceptional medical or compassionate reasons.

*Section 45* provides that the Minister may, where he or she considers it just and equitable to do so, prescribe the manner in which a housing authority shall, having regard to the financial circumstances of a household residing in a dwelling provided by an approved housing body under the Capital Assistance Scheme, pay housing assistance to that body in respect of the rent payable for the dwelling. The matters that may be prescribed by the Minister include the manner in which a housing authority shall determine whether housing assistance should be provided in respect of a particular household, the maximum amount of housing assistance that may be paid having regard to household composition and the manner in which housing assistance shall be provided.

Under *subsection (4)*, where housing assistance is provided in respect of a household under this section, the tenant remains responsible for the payment of the rent due to the approved body (net of the housing assistance provided) and failure to pay that amount of rent to the approved body will result in the household concerned ceasing to be eligible for housing assistance. Payment of housing assistance by the housing authority to the approved body does not imply any liability on the authority's part for rent payable by the benefitting household to the approved housing body or any other obligation under the tenancy concerned.

*Section 46* amends certain provisions of the Housing (Miscellaneous Provisions) Act 2009 to take account of provisions in *Part 4* of the Bill. Section 19 of the 2009 Act is amended to include housing assistance as a form of social housing support. *Section 46(2)* makes a number of amendments to section 20 of the 2009 Act, as follows:

- references in section 20 of the 2009 Act to determination of “the most appropriate form of housing support” for a qualified household are amended to refer to “an appropriate form of housing support”
- a housing authority may carry out a social housing assessment in respect of a household in receipt of rent supplement from the Department of Social Protection

- *subsection (2)(e)* deals with the case of households seeking social housing support whose qualification for such support cannot be determined because a household member who is separated no longer resides, but has an interest, in the family home. Where the household is otherwise qualified for social housing support, the housing authority may determine that the household is qualified for support in the form of housing assistance or a Chapter 4 (Rental Accommodation Arrangements) tenancy. This determination is subject to review at prescribed intervals. When the interest of the separated household member in the family home has been determined and the household qualifies for social housing support, the period during which the household benefitted from housing assistance or held a Chapter 4 tenancy will be reckonable by the housing authority where the household applies to transfer to another form of social housing support
- Under the amendment in *subsection (2)(f)* inserting a new subsection (5A) in section 20, a household in receipt of social housing support shall cease to be eligible for such support if, in the preceding 4 years, the household has failed to comply with the terms of a prescribed number of rescheduling arrangements for the payment of arrears of rent or rent contributions, etc. This ineligibility will not apply where the housing authority is satisfied that the household's failure to comply with the terms of the rescheduling arrangements was due to circumstances outside their control
- a qualified household on a local authority waiting list that refuses, within a prescribed period, a prescribed number of reasonable offers of a specified form of social housing support, shall be ineligible for social housing support for a prescribed period after the last refusal
- a housing authority will not be required to carry out a social housing assessment in respect of a household in receipt of social housing support that applies to transfer to another form of such support.

*Subsection 46(3)* amends section 31 of the Housing (Miscellaneous Provisions) Act 2009 relating to rent schemes and charges to provide that references to rent in that enactment include rent contributions payable by a tenant under a Chapter 4 tenancy agreement and a tenant who is a member of a household benefitting from housing assistance.

*Subsection 46(4)* makes a number of amendments to section 32 of the 2009 Act relating to information requirements, including a provision empowering the Minister to make regulations in respect of information that must be provided by a qualified household and the landlord in support of a request for housing assistance, and the verification of such information by the housing authority.

*Section 47* provides that, to facilitate the phasing-in of HAP, the Minister may prescribe that particular housing authorities will operate the scheme from particular dates and that particular authorities will deal with particular classes of household seeking housing assistance.

Under *section 48*, the Minister may provide funding to a housing authority for some or all of the expenses, including administration expenses, incurred by a housing authority in operating HAP.

## **Part 5 — Miscellaneous (sections 49 to 51)**

*Section 49* of the Bill provides for a system of mandatory deduction by the Minister for Social Protection from social welfare payments of rent, rent contributions and arrears payable by local authority tenants and households who have Chapter 4 (Rental Accommodation Arrangements) tenancy agreements or are benefitting from housing assistance, and the transmission to housing authorities of the amounts so deducted.

*Subsection (1)* sets out definitions for the purposes of the section. “Rent” is defined to mean rent payable under section 31 of the Housing (Miscellaneous Provisions) Act 2009 and to include rent contributions payable by households who have entered into Chapter 4 (Rental Accommodation Arrangements) tenancy agreements or are benefitting from housing assistance. The term “net scheme payments” is defined so that any deductions made by the Minister for Social Protection from the amounts payable to a welfare recipient under specified social welfare schemes for the purposes of recovering overpayments of social welfare will have priority over deductions made for rent purposes, which, in turn, will have priority over deductions in respect of rent arrears.

Under this section, the Minister for Social Protection will deduct the amount requested by a housing authority in respect of rent from the net scheme payments due to a welfare recipient and transmit the amount deducted to the housing authority. The same process will apply to rent arrears, subject to the amount deducted in respect of such arrears being reduced, as necessary, to ensure that the total amount deducted in respect of social welfare overpayments and rent arrears does not exceed 15% of the rate of benefit or assistance payable to a welfare recipient, except where the recipient otherwise agrees in writing. Provision is made for appropriate notification by the Minister for Social Protection of housing authorities in cases where it is not possible to deduct the full amount, or any portion, of the deduction sought in respect of rent or rent arrears. Provision is also made for recoupment by a housing authority to the Minister for Social Protection of amounts deducted from social welfare payments and transmitted to the authority in excess of the amounts requested by the authority or where the net welfare payment concerned is not received by the beneficiary. The Minister for Social Protection is required to keep records relating to the deduction of rent or rent arrears for a prescribed period and to make them available, if requested by a housing authority.

*Section 50* provides for data sharing and exchange between housing authorities and specified persons and bodies of information required for the purpose of enabling housing authorities to perform their functions under the Housing Acts 1966 to 2014 and the specified persons and bodies to perform their functions under specified enactments. *Subsection (2)* specifies the Minister for Social Protection, the Private Residential Tenancies Board and the Revenue Commissioners for the purposes of the section.

*Section 51* amends section 31 of the Housing (Miscellaneous Provisions) Act 2009 relating to rent schemes and charges. A new *subsection (2A)* is inserted into section 31 of the 2009 Act providing that payment of rent, rent contributions or arrears by a household member or rescheduling arrangements involving a household member, shall not of themselves create a tenancy arrangement between the housing authority and the member concerned and, that other than in respect of the tenant, no tenancy rights shall arise or continue as a consequence. A new *subsection (5A)* is also inserted

into section 31 providing that arrears of rent under section 58(3) of the Housing Act 1966 shall be deemed to be arrears of rent under section 31 of the 2009 Act for the purposes of that section and sections 33 and 34 of the 2009 Act.

*An Roinn Comhshaoil, Pobail agus Rialtais Áitiúil,  
Bealtaine, 2014.*