An Bille um Pleanáil agus Forbairt (Tithíocht) agus um Thionóntachtaí Cónaithe, 2016

Planning and Development (Housing) and Residential Tenancies Bill 2016

Meabhrán Mínitheach agus Airgeadais

Explanatory and Financial Memorandum

AN BILLE UM PLEANÁIL AGUS FORBAIRT (TITHÍOCHT) AGUS UM THIONÓNTACHTAÍ CÓNAITHE, 2016

PLANNING AND DEVELOPMENT (HOUSING) AND RESIDENTIAL TENANCIES BILL 2016

MEABHRÁN MÍNITHEACH AGUS AIRGEADAIS

EXPLANATORY AND FINANCIAL MEMORANDUM

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

General

The purpose of the Bill is to implement and give legislative underpinning to certain actions in Rebuilding Ireland, the Government's Action Plan on Housing and Homelessness published in July 2016, including:

- introducing a fast-track planning procedure for residential developments of 100 units or more and large-scale student accommodation projects (Part 2, Chapter 1);
- streamlining existing arrangements for approval by local authorities of their own development proposals, including proposals for social housing projects and infrastructure servicing both public and private development (Part 2, Chapter 3);
- extending the duration of extant permissions that have already benefitted from one extension of duration but where that extension of duration would not cover the period of this Action Plan and the measures proposed to boost supply (Part 2, Chapter 3);
- amending legislation to enhance the functioning of the private rented sector, including tenant protection issues (Part 3);
- providing for lending by the Housing Finance Agency to certain bodies for specified purposes (Part 4).

The Bill also contains other measures, including—

- amendment of the Planning and Development Act 2000 (No. 30 of 2000) (the 2000 Act) to enable screening for environmental impact assessment (EIA) to be carried out in advance of planning permission being sought for a particular development (Part 2, Chapter 2),
- power for the Minister to make the required payment from the Local Government Fund to the Exchequer in 2016, as envisaged in the Revised Estimates Volume (Part 5).

The Bill comprises 39 sections, arranged in 5 Parts, and a Schedule of consequential amendments to the Residential Tenancies Act 2004.

Part 1 – Preliminary and General *(sections 1 and 2)*

This Part contains standard provisions relating to the short title of the Act, collective citation, construction, commencement and definitions.

Part 2 – Planning and Development (*sections 3 to 23)*

Chapter 1 – Strategic Housing Developments

Section 3 sets out definitions applying to this Chapter, including—

"specified period", which is defined to mean the period from the commencement of the provision until 31 December 2019 and any additional period that the Minister may provide by order (section 4(2) is also relevant), and

"strategic housing development", which is defined to mean, subject to specified limitations on the extent of other uses—

a) the development of 100 or more houses on land zoned for residential use or for a mixture of residential and other uses,

b) the development of student accommodation units which, when combined, contain 200 or more bed spaces, on land the zoning of which facilitates the provision of student accommodation or a mixture of student accommodation and other uses thereon, or

c) the alteration of an existing planning permission granted under section 34 where the proposed alteration relates to development specified in paragraph a) or b).

Section 4 provides that, during the specified period (up to 31st December 2019), applications for permission for strategic housing developments shall be made direct to the Board (An Bórd Pleanála) and not to the local planning authority and that such application may be made only when the specified requirements under this Part have been fulfilled. Under subsection (2) the Minister may, by order, extend the specified period for a further period that shall not extend beyond 31 December 2021.

Subsection (3) provides that a development in respect of which a request is made to the Board during the specified period for a pre-application consultation under section 5 shall continue to be dealt with under this Part notwithstanding the expiry of the specified period.

Under subsection (4), an application for permission for a strategic housing development within a strategic development zone may be made direct to the local planning authority under section 34 of the 2000 Act, in which case section 170 of that Act shall apply with provision for an appeal to the Board against the authority's decision.

Section 5 relates to a request from a prospective applicant to enter into consultations with the Board in relation to a proposed strategic housing development. Subsection (2) provides that, prior to consulting the Board, the applicant must have at least one meeting with the local planning authority for the purpose of pre-application consultations under section 247 of the 2000 Act. Subsection (3) provides that the section 247 consultation meeting must take place within 4 weeks of receipt of the consultation request, and allows for one or more extension of that period in particular circumstances.

Subsections (4) and (5) specify the information to be included in a consultation request to the Board, including details of the prior section 247 consultation with the planning authority and, where the proposed strategic housing development would materially contravene the development plan or local area plan, other than in relation to the zoning of the land, an indication as to why, in the prospective applicant's opinion, permission should nonetheless be granted. Subsection (4) also provides that the appropriate fee

must accompany the request. Subsection (7) sets out the type of additional information that the Minister may prescribe in regulations to be included in a consultation request to the Board.

Under subsection (6), a request shall be in both printed and in electronic form and the prospective applicant must send copies to the planning authority or authorities concerned, as well as to the Board.

Section 6 deals with the Board's handling of a request by a prospective applicant for consultation about a proposed strategic housing development. Subsection (1) provides that the Board must accept or refuse the consultation request within 2 weeks of receipt, based on whether the request complies, or does not comply, with the requirements of section 5 and any regulations made thereunder. Where the Board refuses the request, subsection (2) and (3) provide for return of the request (giving reasons) and the fee to the prospective applicant and for the Board to retain a printed or electronic copy of the request. Under subsection (4), where the Board accepts the request, it is required to notify the prospective applicant and the planning authority accordingly and the authority shall, within 2 weeks, submit to the Board (and send to the prospective applicant) copies of all records relating to its prior section 247 consultation relating to the proposed development and the authority's opinion on, among other things, the proposed development having regard to the provisions of the relevant development plan or local area plan.

Subsections (5) and (6) provide that the Board shall convene a consultation meeting within 4 weeks of receipt of the prospective applicant's request, to be attended by the Board, the prospective applicant or his or her representative and planning authority officials with sufficient knowledge and expertise in the matter concerned.

Under subsection (7), the Board is required, within 3 weeks of the holding of the consultation meeting, to form an opinion as to whether the documents included in the consultation request constitute a reasonable basis for an application for permission for the proposed development, or require further consideration and amendment in order to constitute a reasonable basis for such an application. The Board shall issue a notice accordingly to the prospective applicant and the planning authority and shall, in appropriate cases, set out in the notice its advice as to the issues that need to be addressed in the relevant documents that could result in them constituting a reasonable basis for an application for permission.

Subsection (8) provides that, on receipt of a notice under subsection (7), a prospective applicant may proceed to apply for permission for the proposed development or seek a further re-application consultation with the Board.

Subsection (9) provides that neither the holding of a pre-application consultation nor the forming of an opinion under subsection (7) shall prejudice the performance by the Board, or the planning authority of their functions under the Planning and Development Acts 2000 to 2016 or any other enactment and cannot be relied upon in the formal planning process or in legal proceedings.

Subsections (10) and (11) provide that the Board may consult with any person who may have information that is relevant for the purposes of pre-application consultations relating to a proposed development and that the Board shall keep a record of its consultations under this section with the documents to which any application for permission in respect of that development relates.

Section 7(1) provides that, following the consultation meeting, a prospective applicant may request the Board to do either or both of the following:

- determine, and so inform him or her, if one or both of the following applies:
  - where the development is of a class prescribed under section 176 of the Act of 2000, whether it is likely to have significant effects on the environment;
  - whether the development is likely to have a significant effect on a European site;
- give its opinion on what information will be required to be contained in either both an environmental and Natura impact statement in relation to the proposed development.

Subsection (2) provides that the Board shall consult any bodies prescribed by the Minister for the purpose and shall comply with a request under subsection (1)(a) within 8 weeks of receiving the request. A request relating to both paragraphs (a) and (b) of subsection (1) shall normally be made at the same time, in which case the Board shall deal with the request under subsection (1)(a) within 8 weeks of receipt and with the request under subsection (1)(b) within 16 weeks of receipt. The subsection also provides that the determination made, or opinion given, by the Board on foot of a request (and the main reasons for each) shall be kept with the documents relating to the planning application concerned.

Section 8 sets out the detailed procedure for the making of an application for permission in respect of a proposed strategic housing development. Subsection (1) specifies the information that must be included in a notice that a prospective applicant is required to have published in one or more local newspapers before making an application for permission to the Board. The information includes—

- the times and places and the period, not being less than 5 weeks, during which a copy of the application and any environmental or Natura impact statement, if such is required, may be inspected free of charge or purchased on payment of a specified fee,
- a statement that the application sets out how the proposal will be consistent with the objectives of the relevant development plan or local area plan, and, where the proposed development materially contravenes the said plan other than in relation to the zoning of the land, indicating why permission should, nonetheless, be granted,
- an invitation to the public and any person or body to make submissions and observations to the Board in the period during which the application, etc., may be inspected, and
- a statement that a person may question the validity of a decision of the Board by way of an application for judicial review and of where practical information on the review mechanism can be found.

The prospective applicant is also required, before applying for permission for the proposed development, to send a copy of the notice to the planning authority and any bodies prescribed by the Minister for the purpose. The prospective applicant must also notify the prescribed bodies that they can make submissions or observations to the Board concerning the proposed development in the period during which the application, etc., is open for public inspection.

Under subsection (3), the Board may refuse to deal with an application made under this section where it considers that the application for permission,

or the environmental or Natura impact statement, if such is required, is inadequate or incomplete, having regard to any relevant regulations under the Planning and Development Acts 2000 to 2016 or any pre-applications consultations under section 6. Where the Board refuses to deal with an application, subsection (3) provides for return of the application (giving reasons) and the fee to the applicant and for the Board to retain a printed or electronic copy of the request.

Subsection (4) requires the Board to send copies of any submissions and observations to the planning authority according as the Board receives them and provides that the planning authority shall, within 8 weeks of the authority's receipt of a copy of the application, submit to the Board a report setting out—

- a summary of the points raised in the submissions and observations made,
- the authority's views on the effects of that proposed development on the proper planning and sustainable development of the area of the authority and on the environment, and
- the authority's opinion as to whether the proposed strategic housing development would be consistent with the relevant objectives of the development plan or local area plan, together with a statement as to whether the authority recommends that permission should be granted or refused, together with the reasons for its recommendation, and, in the case that the authority recommends that permission be refused, the planning conditions (and the reasons for them) that the authority would recommend in the event that the Board decides to grant permission.

In addition to the planning authority's report under subsection (4), the Board is empowered, under subsection (5) and in the case where the proposed development would have a significant effect on the area of a planning authority, to require the authority to furnish to the Board such information as the Board may specify in relation to the effects of the proposed strategic housing development on the proper planning and sustainable development of that area concerned and on the environment.

Section 9 deals with the Board's decision-making process in relation to an application for permission for a strategic housing development. Subsection (1) provides that, before making a decision, the Board shall consider—

- the proper planning and sustainable development of the area,
- any observations or submissions duly received, and
- any other relevant information,

in so far as they relate to the likely consequences for proper planning and sustainable development in the area in which it is proposed to situate the development and the likely effects on the environment or the likely effects on a European site, as the case may be, of the proposed development, if carried out, and

- any environmental or Natura impact statement, where such is required, and
- any report or recommendation prepared for the Board in relation to the application under section 146 of the 2000 Act, including the report of the person conducting any oral hearing of the proposed development.

Subsection (2) sets down the matters, including any guidelines issued by the Minister under section 28 of the 2000 Act, to which the Board shall have regard in considering the likely consequences for proper planning and

sustainable development in the area in which it is proposed to situate the strategic housing development.

Subsection (3) requires that the Board, when making a decision on an application, shall apply, where relevant, specific planning policy requirements of guidelines issued by the Minister under section 28 of the 2000 Act, and that, where such requirements differ from the provisions of a development plan, then those requirements shall apply instead of the provisions of that plan.

Subsection (4) empowers the Board to grant permission, with or without modifications or in part only, or to refuse permission. The Board may also attach conditions to a grant of permission under this subsection and subsections (7) and (8) set out matters to which such conditions could relate.

Under subsection (5), the Board may refuse to grant permission for a proposed strategic housing development where the Board considers that development of the kind proposed would be premature by reference to the inadequacy or incompleteness of the environmental or Natura impact statement submitted with the application for permission, if such is required, notwithstanding that the Board did not exercise its functions under section 8(3) to refuse to deal with that application.

Subsection (6) provides that the Board shall not grant permission where the proposed development, or a part of it, contravenes materially the development plan or local area plan relating to the area concerned, in relation to the zoning of the land. The Board may grant permission where a proposed development, or a part of it, contravenes materially the development plan or local area plan, other than in relation to the zoning of the land, but only where at least one of the considerations set out in section 37(12) of the 2000 Act applies.

Subsection (9) and (10) provide that the Board shall make its decision on an application for permission for a strategic housing development within 16 weeks of the lodging of the application or within such other period as the Minister may prescribe, where it appears to him or her to be necessary, by virtue of exceptional circumstances, to do so. Where an oral hearing is held, the Board shall make its decision on the application within such period as the Minister may prescribe. Subsection (11) provides that the Board may make its decision on an application at any time after the expiry of the period of 8 weeks from the receipt by a planning authority of a copy of the application for permission.

Under subsection (12), the Board shall include in its annual report to the Minister of its proceedings a statement of the number of matters that the Board has determined within each of the relevant periods referred to in subsection (9) and such other information as to the time taken to determine such matters as the Minister may direct.

Subsection (13) provides that, where the Board fails to make a decision in relation to an application within the period specified in subsection (9) or prescribed under subsection (9) or (10), as appropriate, and becomes aware that it has so failed, the Board shall proceed to make the decision notwithstanding that the period has expired. Where the Board fails to make a decision within the relevant period, it shall pay to the applicant a sum equal to the lesser amount of €10,000 or 3 times the prescribed fee paid by the applicant in respect of his or her application for permission.

Section 10 sets out supplementary provisions concerning a decision by the Board relating to a strategic housing development. Subsection (1) provides that the Board shall send a copy of the decision to the applicant, the

planning authority, and any person who made submissions or observations on the application for permission. Under subsection (2), the Board shall have a notice published in one or more local newspapers informing the public of its decision, stating that a person may question the validity of a decision of the Board by way of an application for judicial review and indicating where practical information on the review mechanism can be found. Subsection (3) provides that the decision shall state the main reason and considerations on which the decision was based and the main reasons for imposing any conditions imposed, if the permission was granted. Subsection (5) provides that the enforcement provisions in Part VIII of the 2000 Act shall apply to a strategic housing development that is carried out otherwise than in compliance with a permission under section 9 or any condition to which the permission is subject. Subsection (6) provides that a person shall not be entitled solely by reason of a permission under section 9 to carry out any development.

Section 11 provides for the establishment of a new Strategic Housing Division within the Board comprising 4 Board members to deal with decisions on all strategic housing development applications received under this Part of the Bill. The section makes provision for the appointment of the Chairperson and members of the Division, other matters of procedure for the Division and for dissolution of the Division at the appropriate time following the expiry of the specified period applying to this Part.

Section 12 enables the Minister to make Regulations providing for procedural and administrative matters relating to the content of sections 4 to 10. Subsection (2) sets out some of the matters that may be the subject of regulations, including the erection or fixing of a site notice concerning an application for permission and the making of submissions or observations to the Board in relation to applications for permission.

Sections 13 to 19 make amendments to sections 2, 41, 96, 104, 134, 144 and 174 of the Planning and Development Act 2000 that are consequential to Part 2 of the Bill and, therefore, apply only for the duration of the specified period provided for in sections 3 and 4 of the Bill. These consequential amendments of limited duration include the following:

- *section 13* of the Bill inserts a definition of "student accommodation" in section 2 of the 2000 Act (the definition of "strategic housing development" in section 3 of the Bill is also relevant in this regard);
- *section 15* amends section 96 (relating to the provision of social and affordable housing, etc.) of the 2000 Act to apply to applications for permission for strategic housing developments;
- *section 17* of the Bill amends section 134 of the 2000 Act to provide that, before deciding to hold an oral hearing for an application for permission for a strategic housing development, the Board shall have regard to the exceptional circumstances requiring the urgent delivery of housing as set out in the Action Plan for Housing and Homelessness, and shall only hold an oral hearing if it decides, having regard to the particular circumstances of the application, that there is a compelling case for such a hearing;
- *section 18* of the Bill amends section 144 of the 2000 Act to enable the Board to determine, with the Minister's approval, fees for—
    - an application for permission for a strategic housing development,
    - a request for a pre-application consultation,

- a request for a written opinion on the information to be contained in an environmental impact statement relating to a strategic housing development, and
- a submission or observations on an application for permission for a strategic housing development.

Chapter 2 – Environmental impact assessment – screening

For the purposes of further implementing Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment, this Chapter provides for a determination, in advance of making a planning application, as to whether an environmental impact assessment (EIA) is required (i.e. screening for environmental impact assessment) in respect of a proposed development of a class specified in regulations made under section 176 of the 2000 Act. The Chapter also provides for EIA screening and screening in respect of appropriate assessment (also a requirement under EU Directives) to be carried out together.

Section 20 of the Bill amends the Planning and Development Act 2000, as amended, by inserting new sections 176A to 176C into that Act, relating to EIA screening.

New section 176A of the 2000 Act: Application for screening for environmental impact assessment

Subsection (1) defines "screening for environmental impact assessment" to mean a determination as to whether a proposed development would be likely to have significant effects on the environment, and, if so, that an environmental impact assessment is required (referred to in this Memorandum as an EIA screening).

Subsection (2) provides that a person—

- may apply to the appropriate planning authority for an EIA screening in respect of a proposed development of a class that is prescribed in Part 2 of Schedule 5 to the Planning and Development Regulations 2001 but that does not exceed the threshold specified for that class in the regulations,
- shall apply to the appropriate planning authority for an EIA screening in respect of a proposed development of a class that is prescribed for the purposes of section 176A.

Subsection (3) sets out the information that must be included in an application for an EIA screening and provides that the prescribed fee must accompany the application.

Subsection (4) provides that a planning authority may, either or both, –

- seek further information relating to an EIA screening application from the applicant or any other person, or
- consult any other body prescribed by the Minister about the application,

specifying the period within which the information or views must be received by the authority.

Subsection (5) provides that, where the applicant is not the owner or occupier of the land the subject of the proposed development, the planning authority shall invite the owner (and the occupier where the owner is not the occupier of the land) to make a submission on the EIA screening application, specifying the period within which the submission must be received by the authority.

Subsections (6) and (7) provide that a planning authority may reject an EIA screening application if it is incomplete in any material detail, in which case the authority shall return the application and the fee to the applicant, giving reasons for its decision, and shall also notify the owner of the land and the occupier, where appropriate, of its decision. Under subsection (8), the planning authority may retain a printed or electronic copy of the request.

New section 176B of the 2000 Act: Screening for environmental impact assessment

Subsection (1) provides that a planning authority shall, where appropriate, carry out a screening for appropriate assessment in respect of a proposed development at the same time as it carries out an EIA screening for that development.

Under subsection (2), a planning authority shall carry out an EIA screening on foot of an application that is not rejected—

- where further information, views or submissions are sought by the planning authority, within the period of 3 weeks from the date that such information, views or submissions are duly received, or
- otherwise, within the period of 4 weeks from receipt of the application.

Subsections (3) and (4) specify the matters to which a planning authority must have regard in carrying out an EIA screening and provide that the authority shall give notice of its screening determination, the reasons therefor and information concerning referral of the determination to the Board for review, to the applicant, any person or body consulted by the authority and, as appropriate, the owner and the occupier of the land. Subsection (5) requires the planning authority to publish its EIA screening determination on its website or in a local newspaper, or both, together with a notice stating that a person may question the validity of the determination by way of an application for judicial review and indicating where practical information on the mechanism for questioning the validity of the determination can be found.

New section 176C of the 2000 Act: Review of screening determination for environmental impact assessment and referral of application for screening for environmental impact assessment

Subsection (1) provides that an EIA screening determination by a planning authority may, within 3 weeks of the date of the determination, be referred to the Board for review. Subsection (2) provides that, where a determination is not made on foot of an EIA screening application within the relevant period specified in section 176B(2), the applicant may refer the application to the Board for determination.

Subsection (3) provides that, in the case of a referral to the Board for review of either an EIA screening determination or an EIA screening application, the person so referring shall notify the planning authority accordingly and the authority shall forthwith forward to the Board a copy of the relevant application and any determination made and any information, views or submissions received in respect of the application.

Subsection (4) provides that the Board shall, where appropriate, carry out a screening for appropriate assessment in respect of a proposed development at the same time as it carries out an EIA screening for that development.

Subsections (5) and (6) specify the matters to which the Board must have regard in making a determination under this section and provide that the Board shall make a determination under this section—

- within 5 weeks of receiving the documents referred to in subsection (3) from the planning authority, or
- where the Board requests further information from the applicant or any other person, within 4 weeks of the receipt of the further information.

Subsection (7) provides that a determination by the Board under section 176C is a determination as to whether a proposed development would be likely to have significant effects on the environment, and, if so, that an environmental impact assessment is required.

Under subsection (8), the Board shall give notice of a determination under this section and the reasons therefor to the planning authority, the applicant, any person or body consulted by the authority and, as appropriate, the owner and the occupier of the land.

Subsection (9) provides that, on notification by the Board of a determination under this section, the planning authority shall publish the determination on its website or in a local newspaper, or both, together with a notice stating that a person may question the validity of the determination by way of an application for judicial review and indicating where practical information on the mechanism for questioning the validity of the determination can be found.

Subsection (10) requires the Board to—

- keep a record of any determination made under this section and the main reasons and considerations on which its determination was based,
- forward to each planning authority a copy of the record at least once a year, and
- make the record available for purchase and inspection during office hours or available on its website, or both.

Section 21 makes 4 amendments to the Planning and Development Act 2000 that are consequential to the provisions of Chapter 2 of the Bill. These amendments include amendments to-

- section 144 of the 2000 Act to enable the Board to charge a fee for making determination in relation to EIA under proposed new section 176C of the 2000 Act, and
- section 246 of the 2000 Act to enable a planning authority to charge a fee for carrying out an EIA screening under proposed new section 176B of the 2000 Act.

Chapter 3 – Miscellaneous constructions and amendments to Planning and Development Act 2000

Section 22 of the Bill amends section 42 of the 2000 Act (relating to the extension of duration of certain planning permissions) for the duration of the specified period provided for in sections 3 and 4 of the Bill. Section 22 inserts a new subsection (1A) into section 42 providing that a further extension of duration of permission may be granted by a planning authority in the case of a housing development under construction that comprises 20 houses or more where the authority considers that a further extension is requisite to enable the development to be completed. Subsection (1A) also provides that the period of the further extension shall not exceed 5 years, or extend beyond 31 December 2021, whichever first occurs. It also provides that—

- in the case of a development where the extended appropriate period of the planning permission expired or expires between 19 July 2016 (the date of publication of Rebuilding Ireland, the Government's Action

Plan on Housing and Homelessness) and the date of commencement of section 22 of the Bill, an application for a further extension shall be made within 6 months of that commencement date, and

- in the case of a development where the extended appropriate period of the planning permission expires after the date of commencement of section 22 of the Bill, an application for a further extension shall be made before the extended appropriate period expires.

Section 23 makes a number of amendments to section 179 of the Act of 2000 aimed at streamlining and expediting the existing approval process for local authority own development. The proposed amendments are as follows:

- the Chief Executive of the local authority will be required, within 8 weeks of the end of the public consultation period relating to the proposed development, to prepare and submit a report on the development to the local authority elected members;
- the elected members will be required, within 6 weeks of receipt of the Chief Executive's report, to consider the proposed development and the report;
- the existing procedure, whereby the elected members may, by resolution, decide to vary or modify the development, otherwise than as recommended in the Chief Executive's report, or decide not to proceed with the development, will continue to apply. However, this procedure will be subject to new requirements that the resolution has to be adopted by a majority of the members of the local authority and has to be passed not later than 6 weeks after the receipt of the Chief Executive's report, and that a resolution not to proceed with a proposed development shall state the reasons for such resolution.

Part 3 - Amendments to the Residential Tenancies Act 2004 (sections 24 to 37)

Part 3 of the Bill gives effect to the commitment in Pillar 4 of Rebuilding Ireland - Action Plan for Housing and Homelessness to amend the Residential Tenancies Acts by providing for measures to prevent a future recurrence of situations where large numbers of residents in a single development are simultaneously served with termination notices. Part 3 also provides for the enhancement of the Residential Tenancies Board's (RTB's) enforcement and dispute resolution powers and for the abolition of a landlord's right, during the first 6 months of a further Part 4 tenancy, to terminate that tenancy for no stated ground.

Section 24 relates to definitions within Part 3, and the Schedule, of the Bill and defines the "Act of 2004" as meaning the Residential Tenancies Act 2004 (the 2004 Act).

Section 25 amends the 2004 Act to ensure that dwellings leased by Approved Housing Bodies (AHBs) from private owners are treated in the same way under the Residential Tenancies Act as dwellings owned by AHBs and dwellings leased by AHBs from local authorities.

Section 26 amends the definition of Approved Housing Body in section 4(1) of the 2004 Act by removing the words "owned by it" from the definition so as to also include AHBs which only lease dwellings from private owners (and don't own any dwellings), and to provide consistency with the amendment in section 25 above.

Section 27 corrects a typographical error in section 22(2A)(d) of the 2004 Act – 'paragraph (d)' should read 'paragraph (c)'.

Section 28 is a consequential amendment to section 34 (grounds for termination by landlord) of the 2004 Act, made on foot of the amendment in section 29 of the Bill.

Section 29 - Section 35 of the 2004 Act provides that where a landlord is terminating a tenancy under paragraph 3 of the Table to section 34, the notice of termination must be accompanied by a statutory declaration, made by the landlord, stating that they intend to sell the dwelling. Section 29 of the Bill provides for additional declarations that must be included in the statutory declaration where section 35A(2) of the 2004 Act – as inserted by section 30 of the Bill - does not apply.

Section 30 inserts a new section 35A into the 2004 Act and provides that where a landlord proposes to sell 20 or more units within a single multi-unit development, at the same time, the sale will be subject to the existing tenants remaining in situ, other than in exceptional circumstances.

Subsection (1) provides for the definition of the terms 'development' and 'relevant period of time' for the purpose of the new section 35A. The term 'development' is intended to include all multi-unit residential developments, including housing estates, apartment blocks and mixed use developments. The term 'relevant period of time' is defined as any period of 6 months between the offering for sale of the 1st dwelling the subject of a tenancy and ending with the offering for sale if the last dwelling the subject of a tenancy.

Subsection (2) provides that a landlord may not terminate a tenancy on the ground that they wish to sell a dwelling in circumstances where a) they are selling more than 20 dwellings, b) at the same time, and c) in the same development. Subsection (3) provides that subsection (2) does not apply where the landlord can show that the application of subsection (2) would be unduly onerous or cause unfairness or hardship on that landlord.

Subsection (4) provides that section 35A will not apply to a relevant notice of termination served prior to the commencement of the section. Subsection (5) provides that section 35A applies to all tenancies, including tenancies that were created before the coming into operation of the section.

Section 31 of the Bill provides for the repeal of section 42 of the Residential Tenancies Act 2004. The 2004 Act provides that where a tenancy lasts in excess of 6 months, a tenant acquires the right to a four year tenancy meaning that they may continue to rent the dwelling for a further 3½ years. The landlord may only terminate that tenancy on specific grounds set out in section 34 of the 2004 Act. Where that tenancy lasts in excess of 4 years, the tenant acquires the right to a "further Part 4 tenancy". Section 42 of the 2004 Act provides that a six month probationary period applies at the beginning of each <u>further</u> Part 4 tenancy during which the landlord may terminate the tenancy without stating any reason.

Subsection (1) provides for the repeal of section 42 of the 2004 Act and will extinguish the landlord's right of termination in this situation. The landlord will retain the right to terminate the tenancy at the end of each four year period or on the grounds set out in the Table to section 34 of that Act. Subsection (2) provides that where a further Part 4 tenancy has already commenced and is within its first 6 months before the coming into operation of this section, section 42 shall continue to apply to that tenancy. Subsection (3) provides that where a notice of termination has been served on a tenant prior to the coming into operation of this section, section 42 shall continue to apply to that tenancy. Subsection (4) provides for a number of consequential amendments to this section as set out in Part 1 of the Schedule to the Bill.

Section 32 is a consequential amendment to the amendment in section 31 of the Bill and amends section 62(1)(e) of the 2004 Act to provide that, if a tenancy is a "further Part 4 tenancy", the notice of termination, where the termination is by the landlord, must include the reason for the termination.

Section 33 amends section 100 of the 2004 Act by reducing the time for a party to appeal to the Tribunal against a determination of an adjudicator from 21 days to 10 days.

Section 34 provides that the Minister may prescribe by regulation particular types of dispute that may be determined by a Tribunal made up of 1 rather than 3 members.

This section inserts 4 new subsections into section 103 of the 2004 Act. Subsection (1A) gives the Minister the power to make regulations to provide for the type of case that may be heard by a 1 member Tribunal. Subsection (1B) provides that where a 1 member Tribunal considers that the matter would be more appropriately heard by a 3 member Tribunal, the matter may be adjourned and the Board may refer to the dispute to a 3 member Tribunal.

Subsection (1C) provides that subsections (4) appointment of a Chairperson and (7) majority decisions, do not apply to a 1 member Tribunal. Subsection (1D) provides that where 2 or more matters are the subject of one dispute and one of those matters is not prescribed for the purpose of being heard by a 1 member Tribunal, that the dispute shall be referred to a 3 person Tribunal.

Section 35 provides for consequential amendments to section 104 of the 2004 Act (which contains the principal provisions regarding the procedures to be adopted by the Tribunal in relation to the determination by it of a dispute), arising from section 34.

Section 36 - A determination order is the written record of an RTB determination. Section 121 of the 2004 Act gives the Board, inter alia, the power to draft and issue the determination order, affixed with the seal of the Board. This power is limited in practice as the Board does not have the power to change the terms of a determination order. Section 36 of the Bill provides that the drafting and issue of determination orders under section 121 of the 2004 Act will now be carried out by the Director, rather than the Board, of the RTB. This section also inserts a new section 121(5A) into the 2004 Act to provide for the receipt of RTB determination orders, signed by the Director, in any proceedings in court. A number of consequential amendments to this section are provided for in Part 2 of the Schedule to the Bill.

Section 37 - Section 124 of the Residential Tenancies Act 2004 provides a mechanism for the enforcement of RTB orders in the Circuit Court. Section 57 of the Residential Tenancies (Amendment) Act 2015, which has not yet been commenced, transfers the enforcement of RTB determination orders under section 124 to the District Court. Section 37 provides for an express power under section 124 of the Residential Tenancies Act 2004 to enable the District Court to make orders of possession when enforcing RTB determination orders under section 124 of that Act.

Part 4 – Amendments to Housing Finance Agency Act 1981 (section 38)

Section 38 amends the Housing Finance Agency Act 1981 to provide that the Housing Finance Agency may lend finance to Institutes of Higher Education for the provision of student accommodation, and to the Housing Agency for the purchase of vacant properties for onward sale to local authorities and approved housing bodies for social housing purposes.

This Section also amends sections 1, 4(2) and 5 of the Housing Finance Agency Act 1981 whereby the consent to borrow and the purposes and terms and conditions to which the borrowing will be utilised shall be subject to the consent of the Minister for Housing, Planning, Community and Local Government and the Minister for Public Expenditure and Reform.

Part 5 – Amendments to Local Government Act 1998 (section 39)

Section 39 provides that the Minister may make a payment from the Local Government Fund to the Exchequer in 2016, not exceeding €420 million.

Section 6 of the Local Government Act 1998 provides power to the Minister to make payments to specified recipients from the Local Government Fund. It is necessary to make an amendment to Section 6(2)(C) of that Act to provide that payments up to a maximum of €420 million, can be made from the Local Government Fund to the Exchequer in 2016, in accordance with requirements arising from the Local Government Fund budget for 2016, which was published as part of the Revised Estimates Volume.

A similar power was included in the Local Government Reform Act 2014 to facilitate payment to the Exchequer in 2014 (section 79) and in the Environment (Miscellaneous Provisions) Act 2015 (section 44) to facilitate payment to the Exchequer in 2015.

Schedule - Consequential Amendments to Residential Tenancies Act 2004

Part 1 - Amendments Relating to the Repeal of Section 42 of Act 2004

Part 1 of the Schedule sets out the amendments to the Residential Tenancies Act 2004, consequent to the repeal of section 42 of that Act (section 31).

Part 2 - Amendments Relating to the Board and the Director

Part 2 of the Schedule sets out the amendments to the Residential Tenancies Act 2004, consequent to the amendment of section 121 of that Act, which provides that the drafting and issue of determination orders under section 121 of the 2004 Act will now be carried out by the Director, rather than the Board (section 36).

Financial implications

There will be some temporary additional costs for the Exchequer associated with the staffing of the new Strategic Housing Division in An Bord Pleanála to implement the fast-track planning arrangements in respect of large scale housing developments.

An Roinn Tithíochta, Pleanála, Pobal agus Rialtais Áitiúil,
Samhain, 2016.

Wt. —. 326. 11/16. Essentra. (62414). Gr. 30-15.