

Land Development Agency Bill 2021

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Abstract

The [Land Development Agency Bill 2021](#) (the Bill) establishes the Land Development Agency (LDA) under primary legislation with an initial funding of €1.25 billion from the Ireland Strategic Investment Fund (ISIF). The existing LDA, established in September 2018, will be dissolved and its functions, assets, staff and liabilities transferred to the new LDA which will be established as a Designated Activity Company (DAC) under the [Companies Act 2014](#). A commercial State entity, the key focus of the LDA is/will be to develop and regenerate State-owned/public lands for the delivery of housing, with a focus on affordable housing.



Contents

Summary.....	2
Introduction	3
Financial implications	6
Pre-legislative scrutiny (PLS)	6
Policy context for a (State) Land Development Agency	6
Programme for Government 2016 and 2020	8
Regulatory Impact Assessment.....	10
Principal provisions of the Bill.....	11
Key issues arising from the Bill's publication.....	22
Disposal of Local Authority lands without vote and Local Authority Board representation	22
Compulsory purchase (CPO) powers	23
Acquisition of public land by the LDA at market value	24
Accountability and transparency.....	25
Part V and social / affordable housing	26
Key provisions of the Bill	29
Part 1: Preliminary and General	29
Part 2: Land Development Agency	29
Part 3: Funding of Agency	30
Part 4: Agency to Establish Subsidiary DACs	30
Part 5: Dissolution of body established by the Order of 2018 (the existing LDA)	31
Part 6: Financial statements and public accountability	31
Part 7: Register and acquisition of relevant public land by agency.....	31
Part 8: Compulsory purchase	32
Part 9: Requirement in relation to development of dwellings on relevant public land and former relevant public land	32
Part 10: Miscellaneous	32
Schedule 1 and 2	32

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Summary

- The [Land Development Agency Bill 2021](#) was published on Friday, 5 February 2021;
- The Bill's purpose is to establish the Land Development Agency (LDA) under primary legislation¹, previously established under Establishment Order [S.I. 352 of 2018](#)², as amended by [S.I. 603 of 2018](#). The LDA has been established (as an interim entity) [since 13 September 2018](#);
- Establishment of the LDA on a statutory basis is a Government commitment in the [2020 Programme for Government](#) under '**Mission: Housing for All**'. In it, the Government parties "mindful of the need to properly manage and utilise state-owned Lands" commit to legislate to establish the LDA on a statutory basis "as a matter of urgency";
- The Bill establishes the LDA as a Designated Activity Company (DAC) under the [Companies Act 2014](#). It will be a commercial State entity;
- The primary objectives of the LDA are to drive strategic land assembly and fully utilise State/public lands to build affordable homes and sustainable/regenerated communities. Affordable homes will be provided through affordable purchase and cost rental schemes;
- The LDA will, as currently, collaborate with Local Authorities, State Agencies and other stakeholders to develop masterplans for strategic sites. The LDA portfolio (as of February 2021) comprises 11 sites across Ireland – 8 of which are being directly developed by it and 3 of which are being developed in conjunction with Local Authorities. Ownership of sites will generally not transfer to the LDA until the primary legislation (this Bill) is enacted;
- The LDA will be initially resourced with funding/capitalisation of €1.25 billion from the [Ireland Strategic Investment Fund \(ISIF\)](#). It will also have a borrowing capacity of €1.25 billion;
- The Bill requires that a proportion (50%) of any housing provided on relevant public land (as defined) and former relevant public land be made available for affordable housing by the LDA or any other party which acquires such land. This is in addition to the existing 10% Part V³ obligation for provision of social housing;
- The Bill also ensures that the LDA will have first refusal to purchase State/public land offered for sale (whether owned by a Local Authority, Government Department, commercial or non-commercial semi-state agency or any other agency);

¹ The LDA is currently established under secondary legislation.

² The current services provided by the LDA are: (a) development and regeneration of land and property, including structures, for the purposes of the delivery of housing and the achievement of wider physical, social and economic development and regeneration; (b) supporting the consolidation and replenishment of the publicly owned development land bank and expediting the most efficient use of such land; (c) establishing appropriate mechanisms and collaborative structures between public and private bodies to develop key strategic sites in public ownership; (d) creation of a database of public lands relevant to the functions of the Agency; (e) master-planning and development appraisal services; (f) securing development consents for relevant lands and development projects; (g) procurement of such technical, administrative or implementation activities as may be necessary; and (h) procurement of development, construction and evaluation services to deliver housing and wider urban regeneration and development projects.

³ Part V of the [Planning and Development Act 2000](#).

- The [Explanatory Memorandum](#) does not explicitly refer to financial implications for the Exchequer arising from the Bill;
- There are specific commitments in the Bill to ensure accountability to the Oireachtas. The LDA will also be subject to the [Freedom of Information Act 2014](#);
- The Bill provides that the LDA will have Compulsory Purchase Order (CPO) powers;
- The General Scheme of this Bill was subject to pre-legislative scrutiny (PLS). The Joint Committee on Housing, Planning and Local Government scrutinised the General Scheme of a Land Development Agency Bill 2019 and [reported in December 2019](#). A [revised General Scheme](#) was published in October 2020, along with a [Regulatory Impact Assessment](#). This (second) General Scheme was not subject to a second PLS process.

Introduction

The [Land Development Agency Bill 2021](#) was published on Friday, 5 February 2021. As noted in the [Explanatory Memorandum](#) accompanying the Bill, the Bill's primary purpose is:

“To give legislative underpinning to the Land Development Agency (LDA), previously established under Establishment Order, [S.I. 352 of 2018](#), as amended by [S.I. 603 of 2018](#).

The Agency will be established as a Designated Activity Company (DAC) under the *Companies Act 2014* to develop and regenerate relevant public land for the delivery of housing.”

Section 2 (a)-(p) of the Bill also lists 16 other specific purposes of the Bill (other than establishment of the LDA (section 2 (q)-(s))). These all relate to the LDA meeting its objective of addressing the demand for housing and addressing deficiencies by sustainably increasing the supply of *all types* of housing in the State and enhancing the utilisation of all public lands for this purpose. These purposes include:

- enabling urgent measures to be taken to increase the supply of housing in the State and in particular affordable and social housing;
- enabling the sustainable development of new and regenerated communities well served by schools, public transport and public amenities;
- developing and regenerating relevant public land for the purposes of the delivery of housing;
- combatting the long-term housing shortage and to increase access to housing in the State;
- promoting best practice in housing development, including best environmental practice, innovative construction methods and climate adaptive housing including in complex development sites; and
- increasing the supply of housing while maintaining balanced land use.

The LDA has been an established entity [since 13 September 2018](#). The overarching objective of the LDA since its establishment has been to implement specific land development strategies, in collaboration with the Approved Housing Bodies (AHBs), the 31 Local Authorities and other State/public bodies, to address these deficiencies with a core focus on housing delivery.

A centralised LDA is a new type of agency for Ireland. The Chief Executive of the LDA, welcoming the Bill's publication, stated the following in a [press release](#):

“The publication of the Bill is a critical step towards confirming the LDA’s mandate and supports the role that the Agency will play in addressing Ireland’s housing and land management needs. Its enactment will provide a legislative grounding for one of our key strategies of partnering and collaborating with Local Authorities. The Bill squarely focuses the LDA on improving housing affordability, which is consistent with our approach to date.

“Since our formation we have been working to create a pipeline of projects and to enable them for delivery by working on designs and planning consents. From a standing start, our work to date has us well positioned to commence the delivery of major new homes projects and to deliver on our forthcoming mandate. We intend to build on our position as a key state entity driving affordable housing supply and strategic land management as we progress our project pipeline.”

A key objective of the LDA is to deliver 150,000 new homes by 2040. On establishment in September 2018, the LDA had access to an initial tranche of 8 publicly owned sites that have near term delivery potential for 3,000 new homes and an additional potential for 7,000 new homes.⁴ The 8 sites are:

1. Central Mental Hospital Site, Dundrum (Dublin)
2. Hampton, Balbriggan (Dublin)
3. Hacketstown, Skerries (Dublin)
4. Devoy Barracks, Naas (Kildare)
5. Former Meath Hospital, Dublin City Centre (Dublin)
6. St. Kevin’s Hospital, Cork (Cork)
7. Columb Barracks, Mullingar (Westmeath)
8. Dyke Road, Galway (Galway)

In addition to these, the following are being developed in conjunction with Local Authorities:

9. Shanganagh (Dublin): Site being developed in conjunction with Dún Laoghaire-Rathdown County Council;
10. Colbert Station (Limerick): Site being developed in conjunction with Limerick City and County Council;
11. Sandy Road (Galway): Site being developed in conjunction with Galway City Council;

Table 1, overleaf, summarises the existing LDA projects/schemes.

⁴ Figures provided by the Minister for Housing, Planning and Local Government in his response to a Parliamentary Question ‘[Land Development Agency](#)’, 20 February 2019.

Table 1: LDA projects/schemes (as of February 2021)

Location	Size	Projected no. of Units	Current status	Partners
Central Mental Hospital Site, Dundrum (Dublin)	28 acres	1,300 units	Design team appointed / Public engagement underway .	-
Castlelands, Balbriggan (Dublin)	60 acres	800 units	Design team appointed.	-
Hacketstown, Skerries (Dublin)	16.8 acres	200 units (est.)	Preliminary design complete.	-
Devoy Barracks, Naas (Kildare)	13.9 acres	200 units (est.)	SHD Pre-application Consultation with An Bord Pleanála.	-
Former Meath Hospital (Dublin)	0.5 acres	Under review	Design team appointed.	-
St. Kevin's Hospital (Cork)	14.5 acres	266 units.	SHD planning application lodged.	-
Columb Barracks, Mullingar (Westmeath)	24.7 acres	100	Design team appointed.	-
Dyke Road (Galway)	4.5 acres	200	Preliminary design complete.	-
Shanganagh, Shankill (Dublin)	17.8 acres	597 units	Preliminary design complete.	In conjunction with Dún Laoghaire Rathdown County Council.
Colbert Station (Limerick)	123 acres	c3,200+ units (est.)	Preliminary design stage.	In conjunction with Limerick City and County Council.
Sandy Road (Galway)	21 acres	c1,000 units (est.)	Preliminary design stage.	In conjunction with Galway City Council.

Source: LDA website '[Projects/Schemes](#)', Limerick City and Council (2020) [A Vision for Colbert Station Quarter - Limerick](#), September 2020.

Under Article 13(a) of the LDA's Establishment Order (S.I. 352 of 2018 as amended by S.I. 603 of 2018), the LDA may acquire ownership of lands and buildings, however, ownership of sites will generally not transfer to the LDA until the primary legislation (this Bill) is enacted as this Bill provides for the capitalisation of the LDA from the Ireland Strategic Investment Fund (ISIF).⁵

⁵ Confirmed by the then Minister for Housing, Eoghan Murphy in June 2020 in a written answer '[Land Development Agency](#)', 3 June 2020.

Financial implications

The Explanatory Memorandum does not refer to financial implications for the Exchequer arising from the Bill.⁶ However, it should be noted that the LDA will receive initial capital funding of €1.25 billion from the Ireland Strategic Investment Fund (ISIF) upon enactment of this Bill, as detailed in the [Regulatory Impact Assessment](#) published with the revised General Scheme (see dedicated section '[Regulatory Impact Assessment](#)' of this Digest). The LDA forecasts capital expenditure of €205 million in 2021.⁷

Pre-legislative scrutiny (PLS)

The first General Scheme in respect of a Land Development Agency Bill 2019 was published in July 2019. The Joint Committee on Housing, Planning and Local Government scrutinised this General Scheme under pre-legislative scrutiny (PLS)⁸, held five public hearings⁹ and [reported in December 2019](#). The L&RS published a Briefing Paper as part of this PLS process in September 2019. Subsequently, a [revised General Scheme](#) was published in October 2020, along with the [Regulatory Impact Assessment](#). This (second) General Scheme was not subject to PLS.

A comparison between the Establishment Order and the (first) General Scheme is included in the [L&RS Briefing Paper](#) submitted to the then Joint Committee on Communications, Climate Action and Environment in September 2019 to inform the PLS process.

Policy context for a (State) Land Development Agency

As stated by the National Economic and Social Council (NESC) in its 2020 report "[Housing Policy: Actions to Deliver Change](#)":

"The most critical resource available to the State is land in public ownership. A substantial amount of state-owned land exists in our cities and towns, including large city-centre areas that were former docks or rail depots, and other areas in key locations and along new public transport corridors opened up by infrastructure projects or new dedicated bus routes."

As detailed in the [Regulatory Impact Assessment \(RIA\)](#) accompanying the revised General Scheme, a more active role by the State in land management has been recommended multiple times. This role requires the State to act in a counter-cyclical manner in smoothing out peaks and troughs of the supply and development of land for housing and wider development purposes, to stabilise traditionally volatile development land prices and support the achievement of public policy, including proper planning and sustainable development. As stated by the NESC in its earlier 2018 report '[Urban Development Land, Housing and Infrastructure: Fixing Ireland's Broken System](#)', a substantial volume of development land came under the control of NAMA after the property crash in 2008. This land was not, however, owned by NAMA. The lack of development on this land was highlighted by the [European Commission Country Report for Ireland 2019](#):

⁶ Typically, such implications are detailed in the 'Explanatory and Financial Memorandum'.

⁷ Confirmed by the Minister for Housing, Darragh O'Brien in a [press release](#) related to Budget 2021 housing measures.

⁸ See Library & Research Service (2017) [The legislative review loop of Government legislation](#) [infographic] for more information on the legislative process.

⁹ Hearings were held in 2019 on 2 October, 10 October, 15 October, 16 October and 12 November. Transcripts are available [here](#).

“The low level of residential development on sites sold by the National Asset Management Agency (NAMA) is a concern. In March 2018, only 11% of the 55,000 units sold by NAMA in the last 7 years had been built up. The development of some of these sites may be inhibited by constraints related to commercial viability, infrastructure or suitable planning permission. In addition, land hoarding was also identified by NAMA as one potential cause meriting further analysis.”

The rationale for the an independent State-run LDA (or an Agency of that description) is therefore based on the perceived need to achieve two primary objectives:

- (1) To pursue a strategic and long-term approach to proactive management of State land, with due regard to the lessons from the 2008-2010 banking and fiscal crisis in Ireland; and
- (2) To address the significant delivery gap in terms of housing provision/supply in Ireland.

There is precedence for such an agency. As described by NESC’s 2020 report, citing research by Hall (2014)¹⁰, there are existing examples where the agent is either a city planning department (e.g. Stockholm and Freiburg) or dedicated public agency (e.g. Hamburg, Leipzig or Dutch VINEX developments), where the key unifying characteristic is a single State-led and owned agent responsible for leading the development process by engaging and collaborating with private actors and community stakeholders. As framed by the NESC:

“Achieving tangible progress with regard to housing and active land management will require creative thinking, a multi-dimensional approach and intensive and ongoing collaborative action between public and private sector actors.”

The two primary objectives mentioned previously are also reflected in Government commitments and policy. The establishment of a dedicated ‘Regeneration and Development Agency’ to coordinate and consolidate master-planning and development of strategic State lands became a commitment under [Project Ireland 2040](#), the Government’s long-term infrastructural investment strategy to 2040. Project Ireland 2040 comprises both the [National Development Plan \(2018-2027\)](#) and the [National Planning Framework](#). In the National Planning Framework, the reference (p.12) is as follows [under ‘Using State Lands for Strategic Purposes’]:

“In the context of the overall management of the development potential of State lands to support implementation of the National Planning Framework, **a new national Regeneration and Development Agency will be established** to work with Local Authorities, public bodies and the business community, harnessing public lands as catalysts to stimulate regeneration and wider investment.”

National Policy Objective 12 (p.77) of the National Planning Framework further elaborates and commits that:

“The Government **will establish a National Regeneration and Development Agency** to work with Local Authorities, other public bodies and capital spending departments and agencies to co-ordinate and secure the best use of public lands, investment required within the capital envelopes provided in the National Development Plan and to drive the renewal of strategic areas not being utilised to their full potential. The Government will consider how

¹⁰ Hall, P. (2014), Good Cities, Better Lives: How Europe Discovered the Lost Art of Urbanism, Oxon: Routledge.

best to make State lands available to such a body to kick-start its development role and to legislate for enhanced compulsory purchase powers to ensure that the necessary transformation of the places most in need of regeneration can take place more swiftly and effectively.”

As the NESC notes, referring to its [2018 report](#) and its assessment of the then published NPF and NDP commitments:

“System change necessitates not only recognition and articulation of need, but overt articulation of the method to deliver on it. There must be a follow-through from accepted principles to explicit supporting actions.”

“...the Council has highlighted the need for public institutions with a strong developmental mandate to have the political authorisation and executive capacity to take the necessary action and drive sustainable urban development, including the increased provision of affordable housing. This recommendation reflected the view that effective land management and sustainable urban development **require authoritative public actors with the capacity to work collaboratively with relevant public agencies and private and not-for-profit development and housing organisations**. This means well-staffed and well-led urban development agencies that are dedicated to the task and have the professional competence to draw up masterplans and engage in complex arrangements for implementation with other public agencies, the private sector and community groups.”
[Emphasis the authors].

Programme for Government 2016 and 2020

The [2016 Programme for a Partnership Government](#) agreed between Fine Gael and Fianna Fáil contained no direct reference to the establishment of a dedicated LDA but referred to the following

“Steps will be taken to introduce more coordination between local authorities, housing agencies and voluntary housing associations, to ensure value for money for the taxpayer when purchasing housing or land.”

The LDA features in the [2020 Programme for Government](#) under ‘**Mission: Housing for All**’. In it, the Government parties “mindful of the need to properly manage and utilise state-owned Lands” commit to legislate to establish the LDA on a statutory basis “as a matter of urgency” (p. 56). In particular, the PfG commits the parties to the following:

“We will:

- Ensure that development of sustainable communities is the core objective of the LDA, delivering sustainable, climate resilient, low-carbon housing.
- Task the LDA with driving strategic land assembly, to ensure that the sustainable development of new and regenerated communities is well served by essential services.
- Provide homes for affordable purchase, cost rental and social housing through the LDA.
- Ensure that the LDA Board includes a cross-spectrum of housing, financial, governance and other independent experts needed to fulfil its remit.
- Allocate Compulsory Purchase Order powers to the LDA.
- Complete the audit of state lands, identifying land banks in public ownership that are suitable for housing and other purposes.
- Mandate the LDA to work with local authorities, state agencies and other stakeholders to develop masterplans for strategic sites.
- Ensure that the LDA is subject to Freedom of Information.
- Require the LDA to give regular updates to the Oireachtas and review the legislation underpinning the LDA after a three-year period.

- Ensure that the LDA uses modern methods of construction, including offsite construction, to deliver high-quality, sustainable homes quickly and at scale. Local supply chains and labour should be used to increase community gain.
- Ensure that any state lands being offered for sale, whether owned by a local authority, government department, commercial or non-commercial semi-state agency or any other agency, would automatically be offered first to the LDA.
- Ensure that the public housing rental stock on public lands is under the control of local authorities, Approved Housing Bodies, or other similar bodies.

Responses to/commentary on these commitments has been provided by Sinn Féin in a [policy document](#) published in September 2020.¹¹

¹¹ Sinn Féin (2020) [The LDA is not the solution to the housing crisis](#), 1 September 2020.

Regulatory Impact Assessment

A [Regulatory Impact Assessment](#) was published with the revised General Scheme of the Bill in October 2020. The RIA is informative in that it elaborates on the identification, description and analysis of options. Two options were analysed, as replicated below.

Table 2: Identification, description and analysis of options– Land Development Agency Bill

Option #	Cost	Benefit	Impact
<u>Option 1:</u> No intervention	Land prices will continue to rise. Some developable land will remain undeveloped. No centralised system for monitoring and developing state lands.	€1.25 billion in ISIF (Ireland Strategic Investment Fund) funding could be invested in other activities.	Residential and Commercial Construction Delivery of development land and construction of housing in particular may not reach required levels in the most appropriate and sustainable locations. Housing access will continue to trend towards being unaffordable. State Land Bank The full potential of the State land bank may not be fully realised and key sites in very suitable locations may not come forward or their development co-ordinated with wider private developments. Risk that State lands will be under or un-utilised.
<u>Option 2:</u> Formation of the LDA [Selected option]	Enabling legislation would be required. €1.25 billion in ISIF funding could not be invested in other activity.	By bringing extra land supply on stream, upward pressure on land prices would be reduced. LDA will have a positive effect on housing affordability. A mechanism for the more proactive management of the State's extensive land bank would be created. The State will have a centralised platform of expertise to maximise the potential of its land bank.	Residential Construction: Increased level of continued commercial and residential construction in the most sustainable and urban locations, even in economic downturns. Housing becomes more affordable. Land values moderated due to increased visibility on land supply. State Land Bank A mechanism for the more proactive management of the State's extensive land bank would be created which would counteract boom-bust cycles.

Source: Department of Housing, Local Government and Heritage (2020) [Regulatory Impact Assessment in relation to the Land Development Agency Bill 2020](#), October 2020.

Principal provisions of the Bill

The Bill contains 78 sections, arranged in 10 Parts and 2 Schedules, as summarised below:

Table 3: The Land Development Agency Bill 2021 – principal provisions (summary)

Part	Section	Title	Effect
1 (Preliminary and general)	1.	Short title and commencement	Provides for the short title which may be cited as the <i>Land Development Agency Act 2021</i> . The Act will come into operation on such day/days as the Minister for Housing, Local Government and Heritage appoints.
	2.	Purposes of the Act	Refers to the 19 specific purposes (a)-(s) of this Bill. Three ((q)-(s)) refer to the establishment of the LDA on a statutory footing and 16 ((a)-(p)) refer to objectives of the LDA, broadly.
	3.	Interpretation	Provides a list of 27 definitions, including: <ul style="list-style-type: none"> ▪ “Act of 2000” means the Planning and Development Act 2000; ▪ “Act of 2009” means the Housing (Miscellaneous Provisions) Act 2009; ▪ “Census town” means the area of a town (including all the environs of the town for the purpose of the census of population concerned) the population of which, when rounded to the nearest 500 as shown in the latest census report of the Central Statistics Office, is equal to or greater than 10,000 persons”; ▪ ‘Companies Act’ means the Companies Act 2014; ▪ “DAC limited by shares” has the same meaning as it has in Part 16 of the Companies Act 2014; ▪ “Minister” means the Minister for Housing, Local Government and Heritage;
	4.	Relevant public body and relevant public land	Provides for the definition of “relevant public land” and a “relevant public body” for the purposes of the Bill. <ul style="list-style-type: none"> ▪ Relevant public land is defined as “all land within a census town (see definition above) owned by a relevant public body shall be relevant public land”. ▪ A relevant public body shall be: <ol style="list-style-type: none"> a Local Authority; a person or body specified in Schedule 1 (in this Act referred to as a “Schedule 1 public body”); a person or body specified in Schedule 2 (in this Act referred to as a “Schedule 2 public body”).

	5.	Orders and regulations	Enables the making of orders and regulations by the Minister.
	6.	Expenses of Minister	Enables expenses of the Minister in the administration of the Bill to be paid out of moneys provided by the Oireachtas.
	7.	Directions of Minister	Provides for the making of directions by the Minister to the Agency in the performance of its functions.
	8.	Review of achievement of purposes of Act.	Provides that the Minister may review the extent to which the Agency has made progress towards achieving its overall purposes based on a report furnished to the Minister by the Agency.
	9.	Giving of notices	Provides for the giving of notices under this Bill.
	10.	Revocation	Provides for the revocation of the Orders of 2018, under which the existing LDA entity is established.
2 (Land Development Agency)	11.	Formation of Land Development Agency	Provides for the formation of a Designated Activity Company (DAC) limited by shares under the Companies Acts, to name it the "Land Development Agency" and for the Agency to be independent in carrying out its functions.
	12.	Constitution of Agency	Provides that the constitution of the Agency when formed will be consistent with the provisions of the Companies Act and this Bill. It also provides that no alterations to those documents will be valid without the prior approval of the Minister and the Minister for Public Expenditure and Reform.
	13.	Functions of Agency	Sets out the functions of the Agency (15 are specified, (a)-(o)). The main function of the Agency is to develop and manage relevant public land and, where applicable, other lands for the provision of housing for the public good.
	14.	Services to local authorities	Outlines how the Agency can provide services to the 31 Local Authorities, located in the area of a town the population of which is equal to or greater than 30,000, in relation to land owned by the local authority to assist the local authority in the performance of its functions.
	15.	Board of Agency	Provides for the Agency to have a board of between five and ten directors including a chairperson, each of whom is appointed by the Minister. The Board will require a quorum of three Directors to act. Directors can be appointed up to a maximum of two terms, each term not exceeding 5 years in length.

	16.	Chief Executive of Agency	Provides for the appointment of a CEO of the Agency by the Board and with the consent of the Minister. The CEO's appointment will be subject to terms and conditions as determined by the Board with the prior approval of the Minister and the consent of the Minister for Public Expenditure and Reform. This section provides that the CEO will at all times be a member of the Board but may not be Chairperson.
	17.	Accountability to Public Accounts Committee	Provides that the Agency CEO will give evidence to the Committee of Public Accounts (PAC) on the matters specified in this section whenever required. This section provides that if the CEO is unavailable, he or she shall nominate a member of the Board or a senior officer of the Agency to appear on his or her behalf.
	18.	Accountability to other Oireachtas committees	Provides that the Agency CEO will give evidence to any other Oireachtas Committee on the general administration of the Agency when requested. This section provides that if the CEO is unavailable, he or she shall nominate a member of the Board or a senior officer of the Agency to appear on his or her behalf.
	19.	Appointed directors ceasing to hold office	Provides for the resignation of a Director of the Board. This section also provides for the removal of a Director of the Board, by the Minister, for specified reasons. It also provides for a Director to cease to hold office in specified circumstances.
	20.	Staff of Agency	Provides for the staffing of the Agency. This section provides that staff may be appointed under terms and conditions as determined by the Agency. This section also provides for the making of a superannuation scheme by the Agency with the approval of the Minister and the consent of the Minister for Public Expenditure and Reform.
	21.	Membership of either House of Oireachtas or European Parliament or local government	Sets out that the CEO or a board member will cease to be CEO or a member of the Board if he or she becomes a member of either House of the Oireachtas, the European Parliament or a local authority. Staff members who become members of these bodies shall stand seconded from the Agency for their term of office.

	22.	Disclosure of interests	Provides for the disclosure of interest by a board member, or a member of staff of the Agency or subsidiary DAC. This section provides that the Agency may alter the terms and conditions of a staff member's contract, or terminate the contract, where the staff member fails to disclose an interest to the Agency.
	23.	Disclosure of Confidential Information	Provides that the unauthorised disclosure of confidential information by a board member or a member of staff of the Agency or subsidiary DAC or an advisor or consultant will lead to appropriate action, up to and including the termination of a contract or the removal of a director from the Board, subject to the exemptions specified.
3 (Funding of Agency)	24.	Share capital of Agency	Provides for shares of the Agency with a total nominal value of €1,000,000 to be allotted and issued to the Minister and shares of the Agency with a total nominal value of €99,000,000 to be allotted and issued to the Minister for Public Expenditure and Reform. Provision is also included for the Agency to allot and issue more shares to the Minister for Public Expenditure and Reform from time to time.
	25.	Shares in Agency	Provides for the holding of shares by the Minister and the Minister for Public Expenditure and Reform as well as arrangements for share redemption.
	26.	Payment of dividends	Provides that the Agency may pay dividends to the Minister and the Minister for Public Expenditure and Reform of the amount decided by the Board of the Agency in consultation with both Ministers.
	27.	Borrowing by Agency and subsidiary DAC	Provides that the Agency and any subsidiary DAC may borrow money subject to the consent of the Minister, in consultation with the Minister for Public Expenditure and Reform, and the consent of the Minister for Finance. This section limits the amount that the Agency can be liable to repay at any given time to €1.25 billion. Note: This amount is <i>in addition</i> to the amount referenced in section 29 (€1.25bn).
	28.	Grants to Agency	Provides for the payment of grants to the Agency from funding provided by the Oireachtas as the Minister, with the consent of the Minister for Public Expenditure and Reform, determines. These grants may be granted to enable the Agency to carry out specific functions as set out in this section.

	29.	Amendment of <i>National Treasury Management Agency (Amendment) Act 2014</i>	Allows the Minister for Finance, at the request of the Minister, to direct the NTMA to provide funds to the Agency from the Ireland Strategic Investment Fund (ISIF) on certain terms. The total value of these funds is not to exceed €1.25 billion at any one time. No account will be taken of money loaned to the LDA under section 29 when calculating the liability of the LDA under section 27.
	30.	Amendment of <i>Housing Finance Agency Act 1981</i>	Allows for the provision of financing to the Agency by the Housing Finance Agency with the approval of both the Minister and the Minister for Public Expenditure and Reform.
	31.	Agency's capital commitments	Provides that the Agency, or any subsidiary DAC, shall not enter into any capital commitment which exceeds a certain amount, without the prior consent of the Minister and the approval of the Minister for Public Expenditure and Reform. An amount may be specified by the Minister with the approval of the Minister for Public Expenditure and Reform.
4 (Agency to establish subsidiary DACs)	32.	Establishment of subsidiary DAC	Enables the Agency to establish one or more subsidiary DACs for the purposes of carrying out any one or more of its functions. The formation and winding up of a subsidiary DAC will require the consent of the Minister and the Minister for Public Expenditure and Reform.
	33.	Provision of staff and services by Agency to subsidiary DAC	Provides for the Agency to supply services, including administration, business and support services and staff to a subsidiary DAC. Costs incurred for the provision of such services or staff will be payable by the subsidiary DAC to the Agency.
5 (Dissolution of body established by Order of 2018)	34.	Dissolution of body established by Order of 2018	Provides for the dissolution of the body established by the Land Development Agency (Establishment) Order 2018 on a day as appointed by the Minister through Ministerial Order. This shall be the dissolution day. The LDA was established in September 2018.
	35.	Transfer of functions to Agency	Provides that all functions vested in the dissolved body will transfer to the Agency on the dissolution day.
	36.	Transfer of members of staff to Agency	Provides for the transfer of staff from the dissolved body to the Agency.

	37.	Transfer of land and other property	Provides for the transfer of all land and property that was vested in the dissolved body to the Agency on the dissolution day.
	38.	Transfer of rights and liabilities, and continuation of leases, licences and permissions granted by dissolved body	Provides for the transfer of rights and certain liabilities from the dissolved body to the Agency.
	39.	Preservation of contracts made by dissolved body	Provides that all contracts, agreements and arrangements entered into by the dissolved body will continue and will be construed as referring to the Agency.
	40.	Records of dissolved body	Provides that all records held by the dissolved body will be the property of the Agency on the dissolution day.
	41.	Liability for loss occurring before dissolution day	Provides that any legal proceedings taken against the dissolved body, including claims in respect of loss or injury alleged, will be continued after the dissolution day with the substitution in the claim or proceedings of the Agency for the dissolved body.
	42.	Final accounts and final report of dissolved body	Provides for the preparation of a final report and the final audited accounts of the dissolved body to be submitted to the Minister. A copy of both the final report and the audited accounts must be laid before the Oireachtas.
	43.	Provisions consequent upon transfer of functions, assets and liabilities to Agency	Includes various miscellaneous provisions and provides that anything commenced but not completed by the dissolved body in the performance of its functions will be carried on or completed by the Agency on or after the dissolution day.
	44.	First chief executive on dissolution day	Provides for the appointment of the first Chief Executive of the Agency as designated by the Minister on or before the dissolution day.
6 (Financial statements and public accountability)	45.	Accounts of Agency and subsidiary DACs	Provides that the Agency and any subsidiary DACs must prepare statutory financial statements in accordance with the <i>Companies Act 2014</i> in such a form as may be approved by the Minister and the Minister for Public Expenditure and Reform. The Agency and any subsidiary DACs must submit its accounts to the Comptroller and Auditor General for audit within four months after the end of the financial year to which they relate. The audited accounts will be presented to the Minister and laid before the Houses of the Oireachtas.

	46.	Appointment of statutory auditor or firm	Provides that the Agency, or any subsidiary DAC, after prior consultation with the Minister may appoint a statutory auditor or statutory audit firm to be the statutory auditor of the Agency or subsidiary DAC.
	47.	Reporting arrangements	Provides that the Agency must prepare and submit a report on the performance by it and any subsidiary DAC of its functions to the Minister no later than the 30 June of each year. The report will be laid before the Houses of the Oireachtas. The Minister may, at any time, request a report from the Agency on the performance of its or its subsidiary DAC functions.
7 (Register and acquisition of relevant public land by agency)	48.	Register of Relevant Public Land	Provides that the Agency will establish a register of all relevant public lands (lands owned by relevant public bodies in areas with a population greater than 10,000). The Property Registration Authority, Valuation Office and Ordnance Survey Ireland and relevant public bodies are obliged to provide information to the Agency to maintain the Register. It also provides that the Register shall be publicly available on the Agency's website .
	49.	Obligations of relevant public body	Provides that relevant public bodies must co-operate with the Agency in relation to its functions relating to the relevant public land of the body. It details the information that the Agency can request from a relevant public body and also provides that the Agency may, with the agreement of a relevant public body, enter onto any relevant public land to carry out surveys or inspect the site.
	50.	Report of Agency to Government relating to certain land	Provides that the Agency must submit reports to the Government every 2 years on relevant public lands and land owned by the Agency. The report shall include information on such lands assessed by the Agency to be fit for the purposes of the Act. The first report will be submitted within 1 year of the commencement of this Section.
	51.	Proposal to dispose of relevant public land	Provides that a relevant public body may not dispose of land unless the body has offered the land for sale to the Agency in the first instance. The Agency must assess whether the land is fit for use for the purposes of the Bill and can decide to acquire or refuse to acquire the land.

	52.	Direction to acquire land	Provides that the Government having considered a report under Section 50 can direct that land of a Schedule 1 public body shall be acquired by the Agency.
	53.	Provision for determination of value of relevant public land	Provides that where relevant public land is being acquired by the Agency, the relevant public body shall receive the market value for the land, taking into account the requirement in relation to the development of houses on relevant public land in Part 9. It also provides that the Minister can prescribe how the market value of the land shall be determined where there is no agreement between the Agency and the relevant public body.
	54.	Vesting of certain relevant public land in Agency	Provides that where a decision has been made to transfer relevant public land to the Agency, the Minister may by vesting order transfer the land to the Agency.
	55.	Disposal of land by Agency	Provides that the Agency may with Ministerial consent dispose of land where it is no longer required by it for the performance of its functions.
	56.	Provision relating to local authority land under this Part	Provides that Section 211(2) of the Planning and Development Act 2000 and Section 183 of the Local Government Act 2001 [notification of members of the authority] will <u>not</u> apply to the disposal of land owned by a Local Authority to the Agency.
	57.	General provision relating to operation of this Part	Miscellaneous provisions for the purposes of Part 7 including in relation to the State Property Act 1954 .
	58.	Definitions	Provides the definitions that will apply to this Part.
8 (Compulsory Purchase)	59.	Agency's power to acquire land compulsorily	Provides that the Agency may acquire land compulsorily where the land is required to provide access to relevant public land or land owned by the Agency or to facilitate the provision of infrastructure required by housing on relevant public land or land owned by the Agency. It may only acquire such land compulsorily if it has first made a reasonable attempt to acquire the land by agreement.
	60.	Application to Court for acquisition order	Provides that the Agency must apply to the Court for an order where it proposes to acquire land compulsorily.

	61.	Notice of intention to apply to Court for order	Provides that the Agency will publish a notice of an application in a daily newspaper in the form (if any) prescribed by the Minister. It also provides that the Agency will, so far as is reasonably practicable, serve a copy of the initial notice on every person who appears to have an interest in the land concerned. This is intended to allow the holder of an interest the opportunity to object to the proposed acquisition.
	62.	Maps, plans and books of reference to be deposited	Provides that the Agency will cause maps, plans and books of reference to be deposited for inspection at such place or places as the Agency considers suitable.
	63.	Consideration by Court of objections	Provides that a person claiming an estate or interest in land may lodge an objection with the Court within 21 days after publication of the initial notice. The Court will consider any objection to the application of the Agency.
	64.	Acquisition order	Provides for the circumstances in which the Court will make an order authorising the Agency to compulsorily acquire land.
	65.	Notice to treat	Provides that where an acquisition order has been made, the Agency may serve a notice on every owner, lessee and occupier of the land (except tenants for a month or shorter period) stating that the Agency is willing to treat for the purchase of interests in the land. It also provides for related matters.
	66.	Agency's power to take possession	Provides for the Agency's power to take possession of land, subject to certain conditions.
	67.	Determination of compensation	Provides that the amount of compensation to be paid by the Agency for land will in default of agreement be fixed under and in accordance with the Acquisition of Land (Assessment of Compensation) Act 1919 . It also provides for related matters.
	68.	Court may make compulsory transfer order	Provides the circumstances under which the Court may make a compulsory transfer order vesting land in the Agency. It also makes provision for related matters.

	69.	Agency to inform Revenue Commissioners if certain liabilities exist	Provides that where the Agency becomes aware before the making of a compulsory transfer order that a person from whom an estate or interest in land to be transferred is subject to a liability for estate duty, succession duty or inheritance tax, the Agency will notify the Revenue Commissioners of the Court's intention to make the order.
	70.	Form and effect of compulsory transfer order	Provides for the form of a compulsory transfer order. It also provides that the effect of the compulsory transfer order is to vest the specified land in the Agency on a date specified in the order.
	71.	Effect of compulsory acquisition without compulsory transfer order	Provides that upon the completion of a compulsory acquisition otherwise than by compulsory transfer order, all rights or easements in or relating to the land will (except so far as otherwise agreed) vest in the Agency without any conveyance or transfer. A person who suffers loss by the vesting of such a right or property is entitled to be paid compensation by the Agency determined in accordance with the Acquisition of Land (Assessment of Compensation) Act 1919 .
9 (Requirement in relation to development of dwellings on relevant public land and former relevant public land)	72.	Interpretation – Part 9	Provides for the definitions that will apply to this Part.
	73.	Requirement in relation to development of dwellings on relevant public land and former relevant public land	Provides that the provisions of this Part will apply to an application for permission for a development of 10 or more dwellings on land that is relevant public land on the day this section comes into operation. The Government may, by order, exempt certain relevant public land from the provisions of this Part where the land is owned by a body that is required to act in a commercial manner, is referred to in Schedule 3 to the Grangegorm Development Agency Act 2005 [properties of the former Dublin Institute of Technology] and owned by the Technological University Dublin, or is owned by a Local Authority that wishes to dispose of land for the purposes of the performance of its public functions. As a condition of a grant of permission, the applicant must enter into an agreement with the planning authority to provide 50% of the housing for cost rental dwellings or dwellings for sale at a price in accordance with Section 76. It also provides for related matters.
	74.	Referrals to Board	Provides where there is a dispute in relation to an agreement under Section 73 it can be referred to An Bord Pleanála for determination.

	75.	Minister may set percentage	Provides that the Minister may set a percentage of housing higher or lower than that set out in Section 73 and may also set different percentages for different geographical or administrative areas.
	76.	Price under agreement	Provides that dwellings provided under Section 73 will be below the prevailing market price or market rent. Prevailing market price is the median purchase price in the relevant administrative or geographical area based on the Residential Property Price Index published by the CSO and the prevailing market rent is the standardised median rent for the relevant administrative or geographical area according to the Rent Index published by the Residential Tenancies Board. It further provides that the Minister may prescribe the price or a method for calculating the price and may prescribe different prices for different geographical or administrative areas.
10 (Misc.)	77.	Amendment of Act of 2000	Provides that the Planning and Development Act 2000 is amended to provide the Agency with certain powers to act as a development agency under the Act.
	78.	Application of Freedom of Information Act 2014 to Agency	Provides that the Freedom of Information Act 2014 will apply to the Agency on establishment day and will include records held by the dissolved body.
	S1,	Schedule 1 Public Bodies	Contains all relevant public bodies which are deemed to be Schedule 1 public bodies.
	S2.	Schedule 2 Public bodies	Contains all relevant public bodies which are deemed to be Schedule 2 public bodies.

Source: [Explanatory Memorandum](#) (with additional L&RS clarifications in parts).

Key issues arising from the Bill's publication

This section of the Digest examines a selection of key issues arising from the Bill's publication.

Disposal of Local Authority lands without vote and Local Authority Board representation

It has been widely reported that, as a result of this Bill, Ireland's 31 Local Authorities may transfer State lands to the LDA **without a vote from elected Councillors**.¹²

Local Authorities feature strongly in the Bill. Section 56 provides that Section 211(2) of the *Planning and Development Act 2000* and Section 183 of the *Local Government Act 2001* will not apply to the disposal of land owned by a Local Authority to the LDA. Section 183 of the *Local Government Act 2001* refers to the provisions in place for any proposed disposal of land held by a Local Authority, including how the Local Authority (i.e. the elected Councillors) may resolve not to carry out the disposal.

In the [press release](#) accompanying the publication of the Bill, the Minister explicitly states that [the Bill's enactment will mean that:

“Local Authorities can transfer lands to the LDA without requiring a council vote, accelerating the process, clearing blockages and driving on development.”

It should be noted that this refers to *disposal* (or transfer) of public land from the Local Authority to the LDA and does not refer to *development* of public land by the Local Authority as the local planning authority.

The relationship between the LDA and Local Authorities was raised during the PLS process. Mr. John Coleman, Chief Executive of the LDA, stated that the LDA will act with commercial bodies on a *commercial basis* and with Local Authorities on a *partnership basis* rather than seeking to acquire Local Authority lands. Any *disposal* must produce Part V housing (social housing provisions) with the Local Authority remaining the housing authority.

Local Authorities already receive support from the Housing Agency in terms of project feasibility assessment and advisory services on, among other things, Part V delivery, tenders, financial assessments and contracts preparation. In addition to these existing supports, however, the [2020 NESC report](#) (p.18-19) also elaborates on the current and proposed collaborative relationship between the Local Authorities and the LDA and concludes that Local Authorities may benefit from access to national expert specialist advice to position them as “truly robust development institutions capable of playing the fullest role in developing affordable public and private housing” particularly around complex tasks such as procurement (including using CPOs, if necessary), site-unblocking and master planning.

¹² For example, see: Irish Examiner (2021) '[Councils to transfer lands to Land Development Agency without vote from councillors](#)', 5 February 2021, Irish Times (2021) '[Plans to bypass councillors in local authority land sales 'outrageous'](#)', 5 February 2021, TheJournal.ie (2021) '[Councillors to be bypassed with transfer of local authority lands to State agency without council vote](#)', 5 February 2021, Sinn Féin (2021) '[Undermining local democracy to force councils to use public land for unaffordable private housing is not acceptable – Eoin Ó Broin TD](#)', 5 February 2021.

In relation to section 183 of the *Local Government Act 2001*, in its [PLS report](#) (p.34) the Committee cited submissions by the Irish Planning Institute (IPI) and the County and City Management Association (CCMA) which advised that ‘relationship clarity’ is required regarding the role of elected representatives/members of the Local Authorities considering land disposal is a reserved function under section 183. The Committee also recommended clarity on this issue.

Related to this, the Committee recommended that a **Local Authority representative be appointed to the Board of the LDA**. Section 15 of this Bill (‘Board of the Agency’) makes no explicit reference to a Local Authority representative. However, responsibility for appointment of the Board (between 5-10 directors, including the chair) rests with the Minister for Housing, Local Government and Heritage (section 15(1)) and the Minister must, in appointing the Board, ensure that among those directors there are persons who in the opinion of the Minister “have satisfactory experience, competence or qualifications in relation to construction, delivery of housing, which may include delivery of social and affordable housing, finance, and corporate governance.”

Compulsory purchase (CPO) powers

It is proposed that the LDA will have compulsory purchase order (CPO) powers. Part 8 (sections 58-71) of the Bill deals exclusively with these powers.

In July 2019, it was reported that the existing (and then proposed) CPO powers of the LDA (a commercial State agency) may be in breach of EU competition rules, with specific concerns raised by the then Attorney General Séamus Woulfe.¹³ Ultimately, the (first) General Scheme did not include provisions for CPO powers, as acknowledged by the Joint Committee in its [PLS report](#) (p.17) wherein it noted “with concern’ that CPO powers were not (then) included and recommended that “robust CPO powers be provide for in the legislation” and that “clarity be given to how the LDA’s proposed CPO powers will interact with the CPOs of other State bodies and Local Authorities”.

The Committee’s report acknowledged that the Department was legally assessing the issue and engaging with the European Commission to ensure compliance with EU rules. However, In its report the Committee noted that several stakeholders (NESC, TU Dublin, the Irish Council for Social Housing, Property Industry Ireland, Engineers Ireland, Society of Chartered Surveyors Ireland (SCSI), Royal Institute of Architects Ireland (RIAI)) agreed that CPO powers were critical. Notably, in his response, Mr. John Coleman of the LDA noted that the *existence* of CPO powers as a “negotiation and bargaining chip” often has the most significant impact, rather than having to *utilise* them. The [NESC 2020 report](#) (p.16-17), noting that CPO powers were not required for the original 8 LDA sites, also endorsed the need for CPO powers:

“A credible system of compulsory purchase for urban development land is key to making sustainable urban development happen. It is also an integral characteristic of robust and authoritative public development institutions in some other EU states. This reaffirms the importance of reforming the CPO system for designated development sites.”

...

¹³ Irish Independent (2019) [‘New land agency could lose powers over EU rules fear’](#), 28 July 2019.

“Updating the CPO process and implementing a mechanism to capture the value added to land from public investment is central to controlling land costs and providing affordable housing.”

The NESC 2020 report also identifies when CPO powers be used:

“CPO powers should be used where it is not possible to reach voluntary agreements with landowners. Land readjustment is a potential mechanism that can be used to assemble land for development in a co-operative manner, while landowners retain the opportunity to develop their land.”

Ultimately, the [2020 Programme for Government](#) committed the Government parties to, among other things, “Allocate Compulsory Purchase Order powers to the LDA.”

However, as confirmed in an [analysis by William Fry](#), the LDA may, under this Bill, only acquire land compulsorily **through application to Court** where it is required to provide access to or infrastructure for relevant public land or land owned by the LDA and where it has failed to acquire the land via agreement. Section 60 of the Bill provides for application to Court for an acquisition order and specifies that:

“60. (1) If the Agency proposes to compulsorily acquire any land, the Agency shall apply to the Court for an acquisition order authorising it to acquire the land.”

The decision to issue a CPO rests with the Court. A notice period applies before application to the Court (section 61) and following the acquisition order (section 65). An affected person is entitled to compensation which is to be paid by the LDA. Section 67 states that the level of compensation is fixed under and in accordance with the *Acquisition of Land (Assessment of Compensation) Act 1919*.

Acquisition of public land by the LDA at market value

Section 53 of the Bill provides that where relevant public land is being acquired by the LDA (it will have first refusal on all public/relevant public land), the relevant public body must receive the market value for the land, taking into account the requirement in relation to the development of houses on relevant public land in Part 9. This section also provides that the Minister will determine the market value where there is no agreement between the LDA and the relevant public body.

The acquisition of sites at ‘market value’ is an issue raised during the PLS process. Mr. John Coleman of the LDA [responded](#) during the PLS hearing on 2 October 2019 stating:

“The consideration is that if it gets it at market value, will it fuel the process again [volatility of land values]. That is not the case. The land will transfer at a value, taking account of the affordability requirement. Effectively, the value will be reduced to facilitate the delivery of affordable accommodation on the land. At Shanganagh [Co. Dublin], where the site comprises entirely social and affordable housing, there will be a vastly reduced value attached to the land. It will be reduced near enough to zero in order that social and affordable housing can be delivered on it. The risk of the agency fuelling the process is somewhat mitigated by the values taking account of the affordability requirement.”

“Ultimately, the value of the site will derive from the cost of the product built on it, whether for rent or sale.”

Accountability and transparency

Accountability

Section 17 provides that the LDA CEO (or, if unavailable, a nominated Board member or senior officer) will give evidence to the Dáil Committee of Public Accounts (PAC) on certain matters as listed in sections 17(1)(a)-(d), namely:

- The **regularity and propriety of the transactions recorded or required to be recorded** in any book or other record or account subject to audit by the Comptroller and Auditor General (C&AG) that the LDA or a subsidiary is required to prepare;
- The **economy and efficiency of the LDA** and each subsidiary in its use of the resources;
- The **systems, procedures and practices employed by the LDA** and each subsidiary DAC for the purposes of evaluating the effectiveness of its operations;
- **Any matter affecting the LDA** (or any subsidiary DAC) referred to in any special C&AG report or any other report of the C&AG;

During the PLS process, the Department noted that accountability to the PAC is not the norm for commercial matters, but this aspect has due regard to the fact that valuable State monies and lands are going to the LDA.¹⁴

Section 18 of the Bill furthermore provides that the Agency CEO (or, if unavailable, a nominated Board member or senior officer) will give evidence to *any other* Oireachtas Committee on the general administration of the LDA when requested.

Section 8 provides that the Bill (when enacted) will be reviewed in 3 years' time (before 31 March 2024) and every 5 years thereafter. Section 8(1) also provides that the Minister may, at any time, require the LDA to report on its progress toward achieving the purposes of the Act. Section 47 also provides that the LDA shall prepare/submit a report on the *performance* of the agency or subsidiary for the Minister no later than 30 June of each year, in addition to statutory financial statements (as detailed in sections 45-46) and provides for the Minister to request a performance-related report from any LDA entity at any time.

The [2020 Programme for Government](#) committed the Government parties to, among other things, "Requir[ing] the LDA to give regular updates to the Oireachtas and review the legislation underpinning the LDA after a three-year period."

Transparency and FOI

The LDA will be subject to Freedom of Information (FOI). Section 78 provides that the [Freedom of Information Act 2014](#) will apply to the LDA on establishment day and will include records held by the existing LDA (the "dissolved body"). This represents a change compared to the (first) General Scheme. In the Committee's PLS report, it noted that Head 39 provided for LDA records to be

¹⁴ As noted by the Committee's December 2019 [PLS report](#) (where the Committee scrutinised the first General Scheme).

excluded from the provisions of the *FOI Act 2014* due to commercial sensitivity. A number of stakeholders during the PLS process noted this with concern. However, the report notes that:

“The Department explained that the Minister is open to proposing alternative approaches to Government where measures are identified that can enhance accountability without compromising on the LDA’s capacity to execute its proposed statutory role, and as such will consider any recommendations of the Committee in this regard.”

The Committee report notes the position of Mr. John Coleman of the LDA:

“John Coleman of the LDA acknowledged that the exemptions in the Act are helpful in term of commercial sensitivity, and that the exemptions in the General Scheme are purely to protect the LDA and taxpayer resources going into it, for instance, regarding information on the analysis of sites or on sites the LDA are interested in acquiring in the future.”

However, the report also noted that certain State bodies were previously deemed appropriate to be included in part having regard to the nature of their commercial activities such as the National Treasury Management Agency (NTMA), the National Asset Management Agency (NAMA), the National Pension Reserve Fund and the National Development Finance Agency. The Committee consulted with the Office of the Information Commissioner with the report stating (p.15):

“[The Information Commissioner] sees no reason why [the LDA] cannot be included within the scope of the Act in part at least, and it would seem appropriate that the Agency would at a minimum be subject to the provisions of the Act in respect of records relating to its general administration.”

In its conclusion, the Committee recommended the deletion of Head 39 (i.e. removing the exemption) and noted:

“The Committee is of the view that there is no logic that would override the exemptions already within the Freedom of Information Act 2014 and that would override the prerogative of the Information Commissioner to adjudicate on any commercially sensitive issues. The importance of Freedom of Information in proving an organisation with public trust, and the particular importance of this for the LDA, which will have considerable funding and resources, is paramount.”

The [2020 Programme for Government](#) committed the Government parties to, among other things, “Ensure that the LDA is subject to Freedom of Information.”

Part V and social / affordable housing

Background – a reminder

Section 94(4)(c) of the *Planning and Development Act 2000* requires that a development / housing strategy requires a specified percentage of all land zoned for residential use to be reserved under Part V of the Act for the purposes of providing social and affordable housing. The current requirement is 10% (both categories, not in respect of each). This was previously 20% but this was reduced under the *Urban Regeneration and Housing Act* to stimulate housing construction.¹⁵ The

¹⁵ The L&RS Bill Digest on the (then) Bill is available [here](#). Note: This was published prior to second stage debate and does not reflect amendments made during the Bill’s passage through the Houses of the Oireachtas.

reasoning is further outlined in the [L&RS Bill Digest](#) on that Bill which, referencing the General Scheme, states:

“There is evidence that many existing planning permissions are not being acted upon by developers because the previous “20% social and affordable” provisions of Part V placed too onerous a cost burden on developers.

...

The expectation is that halving the Part V obligation for developers to 10% would stimulate housing construction. Part V housing supply would increase in line with the general increase in housing supply and benefit those on the housing waiting lists. Matching housing supply with demand would help maintain sustainable house prices.”

Note that the section says social and/or affordable housing in the 10% specification, not 10% of each category. However, with this reduction, the **cash-in-lieu / ‘buy off’ option** whereby private developers could pay a monetary sum to a Local Authority equivalent to their Part V obligations was scrapped. Similarly, the *2015 Act* also removed the provision that allowed a private developer to **transfer a site or sites equivalent to the monetary value** of their Part V obligations to the Local Authority.

Box 1: Note on affordable housing and Part V of the *Planning and Development Act 2000*

It should be noted that provisions relating to affordable housing in the *Planning and Development Act 2000* have not been repealed. However, the [Housing Policy Statement of June 2011](#) announced the “standing down” of all existing affordable housing programmes (the 1999 Affordable Housing Scheme, affordable housing provision under Part V of the *Planning and Development Act 2000* and the Affordable Housing Initiative) as part of a review of Part V.¹⁶

The Land Development Agency (LDA) Bill 2021

Part V of the *Planning and Development Act 2000* applies to residential development on all land in Ireland and this is unchanged by this Bill. The LDA, as with any developer, must meet this obligation. In addition to the Part V obligation, Part 9 of LDA Bill 2021 provides that any development on relevant public land and former relevant public land by the LDA or any other party which acquires the land must reserve a specified percentage (50%) of all land zoned for residential use to provide affordable housing.

However, notably, under **section 75** this percentage may be *raised or lowered* by order of the Minister for the purposes of an agreement under **section 73(3)** and he/she may *set different percentages* based on geographical or administrative areas (i.e. within counties, by Local Electoral Area, etc.).

This Part applies to all State/public land except those lands exempted under **section 73(3)** where the land:

¹⁶ Housing Agency (2014). [Part V Review Report and Recommendations by Housing Agency](#), 18 September 2017

- is owned by a body that is required to act in a commercial manner;
- is referred to in Schedule 3 to the *Grangegorman Development Agency Act 2005* and owned by the Technological University Dublin, or
- is owned by a Local Authority that wishes to dispose of land for the purposes of the performance of its public functions.

Under these exemptions, the following applies, as outlined in the Explanatory Memorandum:

“As a condition of a grant of permission, the applicant must enter into an agreement with the planning authority to provide 50% of the housing for cost rental dwellings or dwellings for sale at a price in accordance with Section 76. It also provides for related matters.”

Site valuation is a key issue and was discussed during PLS stage in [October 2019](#) where Mr. John Coleman of the LDA noted:

“... if the LDA is looking to target an affordability level, it will impact on what can be paid for the site because the costs of delivery are relatively fixed in that they are the market costs of going to a contractor, etc. The affordability requirement will effectively reduce the value of the site.”

The Bill provides that any State land offered for sale, whether owned by a Local Authority, Government Department, commercial or non-commercial semi-State agency (or any other agency) would automatically first be offered to the LDA (i.e. the LDA will be offered first refusal). Acquisition of this land at no or minimal cost is therefore preferable. However, the NESC 2020 report (p.16) highlights an important consideration:

“...it should be recognised that there is a cost to the Exchequer as these public lands do have a value to the existing owners. In some cases, land-sale revenues are used to help finance public capital projects (e.g. Technological University Dublin Grangegorman).”

This suggests that there is an inherent trade-off between the low-price acquisition of public land by the LDA and maximising the realised proceeds of that sale by a public /State body required to operate in a commercial manner, e.g. TU Dublin.

Regardless, the LDA will have an overall mandate to develop lands for affordable housing including where it acquired such land from a commercial body. Section 76 of the Bill provides that any dwelling provided under section 73 must be *below* the prevailing market price or market rent (depending on whether it refers to an affordable purchase or cost rental agreement). This shall be determined with reference to the CSO's Residential Property Price Index (purchase) or the Rent Index published by the Residential Tenancies Board (rent). The section also provides for the Minister to prescribe a price or calculation method based on geographical or administrative area.

Key provisions of the Bill

This section of the Digest briefly explores each Part of the Bill.

Part 1: Preliminary and General

Part 1 of the Bill comprises sections 1-10 which contain standard provisions as well as some important definitions. Three sections merit highlighting:

- **Section 4** provides for the definition of “relevant public land” and a “relevant public body” for the purposes of the Bill. Relevant public land is defined as “all land within a census town (see definition above) owned by a relevant public body shall be relevant public land”. A relevant public body shall be:
 - a. Local Authority;
 - b. a person or body specified in Schedule 1 (in this Act referred to as a “Schedule 1 public body”);
 - c. a person or body specified in Schedule 2 (in this Act referred to as a “Schedule 2 public body”).
- **Section 5** of the Bill deals with Ministerial orders and regulations and gives the Minister the power to make regulations and orders in order to enable any provision in the Bill to have full effect. Every order and regulation made by the Minister¹⁷ must be laid before both Houses of the Oireachtas, and can be annulled by a resolution passed by either House.
- **Section 8** provides that the Minister may review the extent to which the Agency has made progress towards achieving its overall purposes based on a report furnished to the Minister by the Agency. A Minister may request a report at any time (Section 8(1)) and a report must be provided within 3 years (by 31 March 2024) and every five years thereafter (Section 8(2)). The Minister shall then assess the progress of the LDA (Section 8(3)) and give directions or take actions to ensure greater progress, if necessary (Section 8(4));
- **Section 10** provides for the revocation of the Orders of 2018, under which the existing LDA entity is established.

Part 2: Land Development Agency

Part 2 of the Bill comprises sections 11-23 which contains provisions relating to the administration and operation of the LDA.

- **Section 11** provides that the LDA be established as a Designated Activity Company (DAC) under the Companies Acts. A DAC is a relatively new company type designation in Ireland and is private company limited by shares, similar to a limited company (LTD). The specific features of a DAC can be viewed [here](#);
- **Section 13** details the various functions (15) of the LDA;

¹⁷ Except for commencement orders made under s. 1(2) or the order made under s.34(1) dissolving the LDA as it was established under [S.I. 352 of 2018](#),

- **Section 14** specifically details the services the LDA may offer to a Local Authority in relation to development of sites for housing and urban development including:
 - a. preparation of masterplans and carrying out appraisal of development potential of sites;
 - b. application for development consents, permissions and other approvals in relation to sites;
 - c. provision of infrastructure to service sites for housing;
 - d. provision of housing and carrying out of ancillary works as part of wider urban development;
 - e. management of cost rental housing.
- **Section 16-17** provides for accountability to the Oireachtas (see '[Accountability and Transparency](#)' section of this Digest);

Part 3: Funding of Agency

Part 3 of the Bill comprises sections 24-31 which contains provisions relating to the funding of the LDA. The LDA will receive €1.25 billion in initial funding from the Ireland Strategic Investment Fund (ISIF) upon enactment.

- **Section 24** provides that the share capital of the LDA will be €1 million allotted to the Minister for Housing, Local Government and Heritage with share of €99 million allotted to the Minister for Public Expenditure and Reform;
- **Section 25-26** provide for share redemption and payment of dividends;
- **Section 27** provides for the LDA (and its subsidiaries) borrowing, The LDA may borrow only subject to the consent of the Minister and the Minister for Finance, in consultation with the Minister for Public Expenditure and Reform. However, the LDA's liability may not exceed €1.25 billion;
- **Section 28** provides that grants may be paid to the LDA in the carrying out of certain functions by the exchequer (the Minister) subject to the consent of the Ministers for Public Expenditure and Reform;

Similarly, the other sections provide for the facilitation of funding/financing to the LDA by the NTMA (**section 29**) and the Housing Finance Agency (**section 30**).

Section 31 provides that the LDA or a subsidiary shall not assume capital (loan) commitments beyond a certain amount without the consent of the Minister with the approval of the Minister for Public Expenditure and Reform who may also specify the amount.

Part 4: Agency to Establish Subsidiary DACs

Part 4 of the Bill comprises sections 32-33 and contains provisions related to establishment of subsidiaries by the LDA.

Part 5: Dissolution of body established by the Order of 2018 (the existing LDA)

Part 5 of the Bill comprises sections 34-44 and contains provisions related to the treatment of the existing LDA established in September 2018 by the [Land Development Agency \(Establishment\) Order 2018](#).

- **Section 34** provides for the dissolution of the existing LDA;
- **Section 35** provides for the transfer of functions;
- **Section 36** provides for the transfer of staff;
- **Section 37** provides for the transfer of land/property;
- **Section 38** provides for the transfer of rights and liabilities and continuation of leases, licences and permissions granted;
- **Section 39** provides for contracts made to be preserved;
- **Section 40** provides for the transfer of records;
- **Section 41** provides that any legal proceedings taken against the dissolve body shall be continued;
- **Section 42** provides for the preparation of a final report and final audited accounts to be submitted to the Minister and laid before the Oireachtas;
- **Section 43** provides for various miscellaneous aspects;
- **Section 44** provides that the appointment of the first Chief Executive of the LDA as designated by the Minister;

Part 6: Financial statements and public accountability

Part 6 of the Bill comprises sections 45-47 and contains provisions related to the statutory obligation to prepare financial statements and submit them to the Comptroller and Auditor General (C&AG) within four months after the end of the financial year to which they relate. These statements must also be laid before the Oireachtas. **Section 47** also provides that the LDA shall prepare/submit a report on the performance of a subsidiary for the Minister no later than 30 June of each year.

Part 7: Register and acquisition of relevant public land by agency

Part 7 of the Bill comprises sections 48-58 and contains provisions related the establishment by the LDA of a register of State/public lands. Relevant public bodies are obliged (under **section 49**) to cooperate with the LDA in the compilation and maintenance of this register. The LDA will be obliged to report to Government every 2 years (**section 50**) with the first report due within 1 year of the commencement of this section. Arising from this report, the Government may direct that land of a public body be acquired by the LDA (**section 52**).

A particularly important section is section 51 which states that a relevant public body (whether acting with a commercial remit or not) must not dispose of land unless it has offered it to the LDA in the first instance. In other words, the LDA has first refusal on all State/public lands offered for sale or disposal. The LDA may, under **section 55**, dispose of land held by it if it deems it no longer required.

Under **section 56**, land *disposed* by a Local Authority will not be subject to ‘notification of members of the authority’ i.e. a vote. This issue is examined separately in this Digest – see [‘Disposal of Local Authority lands without vote and Local Authority Board representation’](#)).

Part 8: Compulsory purchase

Part 8 of the Bill comprises sections 59-71 and contains provisions related the LDA’s compulsory purchase powers.

See [‘Compulsory purchase order \(CPO\) powers’](#) section of this Digest.

Part 9: Requirement in relation to development of dwellings on relevant public land and former relevant public land

Part 9 of the Bill comprises sections 72-76 and contains provisions related to the affordability requirement attached to all State/public lands, in addition to the existing Part V (of the *Planning and Development Act 2000*) 10% requirement in relation to social housing. See [‘Part V and social / affordable housing’](#) section of this Digest.

Part 10: Miscellaneous

Part 10 of the Bill comprises sections 77-78 and Schedule 1/2 and contains miscellaneous provisions.

Schedule 1 and 2

The two Schedules contain the names of relevant public bodies (see Table 4, overleaf).

Table 4: Public bodies under Schedule 1 and Schedule 2 of the Land Development Agency Bill 2021

Schedule 1 public body	Schedule 2 public body
<ol style="list-style-type: none"> 1. A Minister of the Government. 2. An Education and Training Board established under the <i>Education and Training Boards Act 2013</i>. 3. Central Bank of Ireland. 4. Courts Service. 5. Digital Hub Development Agency. 6. Dublin Institute for Advanced Studies. 7. Enterprise Ireland. 8. Environmental Protection Agency. 9. The Garda Síochána. 10. Grangegorman Development Agency. 11. Health Service Executive. 12. Housing and Sustainable Communities Agency. 13. Industrial Development Agency (Ireland). 14. An Institute of Technology being a college within the meaning of section 2 of the <i>Regional Technical Colleges Act 1992</i>. 15. Institute of Public Administration. 16. Prison Service of the Department of Justice which is charged with the management of prisons. 17. Legal Aid Board 18. Marine Institute. 19. National Archives. 20. Oberstown Children Detention Campus. 21. Commissioners of Public Works in Ireland. 22. Ordnance Survey Ireland. 23. Sport Ireland. 24. State Laboratory. 25. Teagasc – the Agriculture and Food Development Authority. 26. A technological university established by virtue of an order under section 36 of the <i>Technological Universities Act 2018</i>. 27. An tSeirbhís Oideachais Leanúnaigh agus Scileanna. 	<ol style="list-style-type: none"> 1. An Post. 2. Bord na Móna, public limited company 3. Coillte Teoranta. 4. Córas Iompair Éireann. 5. daa, public limited company. 6. EirGrid. 7. Electricity Supply Board. 8. Ervia. 9. Home Building Finance Ireland. 10. Horse Racing Ireland. 11. Irish Aviation Authority. 12. Irish National Stud Company, Limited. 13. Irish Water. 14. A port company within the meaning of section 7 of the Harbours Act 1996. 15. Raidió Teilifís Éireann. 16. Rásaíocht Con Éireann. 17. Shannon Airport Authority. 18. Teilifís na Gaeilge. 19. Voluntary Health Insurance Board. 20. A subsidiary of a body referred to in this Schedule, including a subsidiary of such a subsidiary

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