

**GENERAL SCHEME**

**OF**

**HOUSING (MISCELLANEOUS PROVISIONS) BILL 2016**

An Act to amend the Planning and Development Acts 2000 to 2015, the Residential Tenancies Acts 2004 to 2015, the Local Government Act 1998 and the Housing Finance Agency Act 1981

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PART 1  
Preliminary and General

**Head 1: Short title, collective citation, construction and commencement**

**Provide that:**

- (1) This Act may be cited as the Housing (Miscellaneous Provisions) Bill 2016.
- (2)(a) The Planning and Development Acts 2000 to 2015 and Parts 2-4 of this Act may be cited together as the Planning and Development Acts 2000 to 2016 and shall be construed together as one.
- (2)(b) The Residential Tenancies Acts 2004 to 2015 and Part 5 of this Act may be cited together as the Residential Tenancies Acts 2004 to 2016 and shall be construed together as one.
- (3) The Local Government Act 1998 and Part 6 of this Act may be cited together as the Local Government Acts 1998 to 2016 and shall be construed together as one.
- (4) The Housing Finance Agency Act 1981 and Part 7 of this Act may be cited together as the Housing Finance Agency Acts 1981 to 2016 and shall be construed together as one.
- (5) This Act comes into operation on such day or days as the Minister may appoint by order or orders generally or with reference to any particular purpose or provision and different days may be so appointed for different provisions.

**Note**

These are standard provisions relating to the short title, citation and commencement of the Bill when enacted.

## **Head 2: Interpretation**

### **Provide that:**

In this Act –

“Act of 2000” means the Planning and Development Act 2000, as amended;

“Action Plan for Housing and Homelessness” means Rebuilding Ireland - Action Plan for Housing and Homelessness published by the Government on 19 July 2016.

### **Note**

This is a standard Head for definitions.

PART 2  
Strategic Housing Developments

**Head 3: Definitions (Part 2)**

**Provide that:**

Section 2(1) of the Act of 2000 is amended:

(a) in the definition of “permission” by substituting “or 37N” with “37N or 37U”;

(b) in the definition of “permission regulations” by inserting “37U” after “37P”;

(c) in the definition of “strategic infrastructure development” by inserting the following new subparagraph after subparagraph (a) –

“(aa) any proposed development referred to in section 37R(1)”;

(d) by the insertion of the following new definition after the definition of “strategic environmental assessment” –

““strategic housing development” means the development of 100 or more houses or student accommodation units, or the amendment of an existing planning permission where the proposed amendments relate to 100 or more houses or student accommodation units, including houses or student accommodation units and a mixture other uses where the cumulative gross floor area of the houses or student accommodation units comprises no less than eighty five per cent of the proposed development’s gross floor space and whereby other uses do not cumulatively exceed 1,500 square metres gross floor space, or such other proportion as the Minister may prescribe by regulation, on land zoned solely for residential use or for a mixture of residential and other uses.

“student accommodation” means non-permanent residential accommodation for students or related to a Higher Education Institute which shall not be used for the purposes of permanent residential accommodation, as a hotel, hostel, apart-hotel or similar but which may be used as tourist/visitor accommodation only during academic holiday periods;

(e) by the insertion of the following new definition after the definition of “strategic gas development” –

““Strategic Housing Division” means the division of the Board referred to in section 112B(1)”;

(f) in the definition of “unauthorised structure” by substituting in subparagraph (b) “or 37N” with “37N or 37U”;

(g) in the definition of “unauthorised use” by substituting in subparagraph (b) “or 37N” with “37N or 37U”.

**Note**

This section contains amendments to definitions set out in Section 2(1) of the Planning and Development Act 2000, as amended. These amendments arise as a result of the provisions of this Bill.

#### **Head 4: Insertion of new section 37R – Board’s jurisdiction in relation to certain housing related planning applications**

**Provide that:**

(1) (a) Up to and including 31 December 2019, an application for permission for a strategic housing development shall be made to the Board under this section and not to a planning authority.

(b) The period in subsection 1(a) may be extended by the Minister by Regulation for a maximum of a further two years.

(2) The proposed development shall not be carried out unless the Board has approved it with or without modifications.

(3) (a) Notwithstanding subsection (1), where an application for permission is being made in relation to a development specified in subsection (1) that is located in a strategic development zone, the applicant may elect to make the application to the planning authority under section 34 and regulations made thereunder.

(b) Section 170 shall apply to an application made under paragraph (a).

(c) Section 37T shall not apply to an application made under paragraph (a).

(4) Before an applicant makes an application under subsection (1) for permission, it shall—

(a) publish in one or more newspapers circulating in the area or areas in which it is proposed to carry out the development a notice indicating the location and a brief outline of the proposed development, for example the number of houses and unit type, and—

(i) stating that it proposes to make an application to the Board for permission for the proposed development,

(ii) specifying the times and places (including the offices of the Board and the offices of the planning authority for the area or, as the case may be, each planning authority for the areas in which the proposed development would be situated) at which, and the period (not being less than five weeks) during which, a copy of the application and any environmental impact statement or Natura impact statement or both of those statements, if such is required, may be inspected free of charge or purchased on payment of a specified fee (which fee shall not exceed the reasonable cost of making such copy),

(iii) stating that the application contains a statement confirming 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, having regard to a consideration specified in section 37(2)(b).

(iv) stating that in the case of an application referred to in subsection (5), an environmental impact statement or Natura impact statement or both of those statements, as the case may be, has been prepared in respect of the proposed development,



(v) stating that where relevant, the proposed development is likely to have significant effects on the environment of a Member State of the European Communities or other party to the Transboundary Convention,

(vi) inviting the making, during such period, of submissions and observations to the Board relating to —

(I) the implications of the proposed development for proper planning and sustainable development in the area or areas concerned, and

(II) the likely effects on the environment or adverse effects on the integrity of a European site, as the case may be, of the proposed development, if carried out, and

(vii) specifying the types of decision the Board may make, under section 37S, in relation to the application,

(viii) stating that a person may question the validity of a decision of the Board by way of an application for judicial review, under Order 84 of the Rules of the Superior Courts (S.I. No. 15 of 1986) and

(ix) stating where practical information on the review mechanism can be found.

(b) send a printed copy and a digital copy of the application and any environmental impact statement or Natura impact statement or both of those statements, if such is required, to the local authority or each local authority in whose functional area the proposed development would be situate, and a printed copy or a digital copy of the application and any environmental impact statement or Natura impact statement or both of those statements, if such is required, to any prescribed authorities, together with a notice stating that submissions or observations may, during the period referred to in paragraph (a)(ii), be made in writing to the Board in relation to—

(i) the implications of the proposed development for proper planning and sustainable development in the area or areas concerned, and

(ii) the likely effects on the environment or adverse effects on the integrity of a European site, as the case may be, of the proposed development, if carried out, and

(c) in the case that the proposed development is likely to have significant effects on the environment of a Member State of the European Communities or a state which is a party to the Transboundary Convention, send a prescribed number of copies of the application and the environmental impact statement to the prescribed authority of the relevant state or states together with a notice stating that submissions or observations may, during the period referred to in paragraph (a)(ii), be made in writing to the Board.

(5) In the case of development referred to in subsection (1) which belongs to a class of development identified for the purposes of section 176, the applicant shall prepare, or cause to be prepared, an environmental impact assessment or Natura impact assessment or both of those statements, as the case may be, in respect of the development.

(6) (a) The Board may refuse to deal with any application made to it under this section where it considers that the application for permission, or the environmental impact statement or Natura impact statement if such is required, is inadequate or incomplete, having regard in particular to the

permission regulations and any regulations made under section 177 or to any consultations held under section 37T.

(b) Where the Board refuses to deal with any application made to it under this section under subsection (a) it shall, within two weeks from the date of the receipt of the application to the Board return any application documents to the applicant, together with any fee received from the prospective applicant relating to an application made under this section, and shall give reasons for its decision to the applicant.

(7) The planning authority for the area (or, as the case may be, each planning authority for the areas) in which the proposed development would be situated shall, within eight weeks from the making of the application to the Board under this section, prepare and submit to the Board a report of its Chief Executive setting out its views on the effects of the proposed development on the proper planning and sustainable development of the area of the authority and on the environment, having regard in particular to the matters specified in section 34(2) as well as submissions and observations received by the Board under section 37R(4), not including submissions and observations from other planning authorities. The report shall include an opinion on whether the proposed development will be consistent with the relevant objectives of the development plan or local area plan, as the case may be, and whether the planning authority recommends to the Board that permission should be granted or refused, together with the reasons for the decisions. In the case where the planning authority recommends a refusal, the report should also specify the planning conditions and reasons therefor that the planning authority would recommend in the event that the Board decides to grant permission, together with the authority's grounds for such conditions.

(8) In addition to the report referred to in subsection (6), the Board may, where it considers it necessary to do so, require the planning authority or authorities referred to in that subsection or any planning authority or authorities on whose area or areas it would have a significant effect to furnish to the Board such information in relation to the effects of the proposed development on the proper planning and sustainable development of the area concerned and on the environment as the Board may specify.

(9) A person shall not question proceedings under this section by reason only that the procedures as set out in the section were not completed within the time required.

## **Note**

A large proportion of planning approvals of larger housing developments for 100 new homes or more are being appealed to An Bord Pleanála, meaning that there is a two-stage planning application process which can take 18 to 24 months to secure ultimate approval to go on site and start to build. This can impact adversely on viability of the development, given the up-front cost of land acquisition accumulating over that, or a longer, period and the consequent time delays in securing a return on investment.

The purpose of Heads 4 to 7 is to give effect to Action 3.6 of the Action Plan for Housing and Homelessness and provide for the introduction of a temporary fast-track planning consent procedure for strategic large scale housing developments (100 units +) which will be determined by

a new Strategic Housing Division to be established within an An Bord Pleanála. This new procedure draws on the existing consent procedures for other Strategic Infrastructure development such as major roads, railways and power transmission lines.

Head 4 provides that, for a period of three years up to end 2019, applications for planning permission for strategic housing developments will be made directly to the Board and not to the local planning authority, as is currently the case. The Minister may extend the period by a further two years maximum by way of Regulation.

An exception to the new arrangements may be for an application for permission for a housing development within a Strategic Development Zone, in which case the development may apply directly to the local planning authority and in such cases no appeal may be made to the Board, as is the norm.

The Head sets out the detailed procedure under the new arrangements for the making of an application as required, and outlines the requirements in relation to public notification, public participation and the notification of the relevant planning authority(s) and other prescribed bodies.

The procedures envisage close involvement by the relevant planning authority(s) in the process and they will be required to prepare a report setting out their views on the proposed development for submission to the Board within specified timeframe of 8 weeks from the date of the application to the Board. As with other cases, the Board is empowered to seek any additional information it considers is necessary for the determination of the application from the relevant planning authority(s).

**Head 5: Insertion of new section 37S – Discussions with Board before making of application under section 37R**

**Provide that:**

(1) A person (a 'prospective applicant') who proposes to apply for permission under section 37R shall, before making the application, enter into consultations with the Board in relation to the proposed development by way of written request.

(2) Notwithstanding the provisions of this section, the prospective applicant shall, in advance of entering into consultations under subsection (1), consult with the appropriate planning authority, or planning authorities as the case may be, under the provisions of Section 247 of this Act relating to the same development proposal, to include but not limited to consideration of relevant provisions under Part V of this Act.

(3) A request by a prospective applicant to enter into consultations with the Board under subsection (1) shall be accompanied by:

(a) 2 printed copies and 2 digital copies stored on data storage devices of the following –

(i) the name and address of the prospective applicant,

(ii) a site location plan sufficient to identify the land,

(iii) a brief description of the nature and purpose of the development and of its possible effects on the environment,

(iv) a draft layout plan of the proposal,

(v) a statement confirming how the proposal will be consistent with the relevant objectives of the 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, having regard to a consideration specified in section 37(2)(b), and the statement may include but shall not be limited to a brief description of: proposed house types and design including proposed internal floor areas, housing density, plot ratio, site coverage, building heights, proposed layout and aspect, public and private open space provision, landscaping, play facilities, pedestrian permeability, vehicular access, parking provision, provision of ancillary services where required including child care facilities, proposals to address or, where relevant, integrate with surrounding land uses, proposals to provide for services infrastructure (including water, wastewater and cabling, including broadband provision), and any phasing proposals. The statement shall also confirm how the proposal will be consistent with relevant guidelines issued by the Minister under section 28,

(vi) such other information, drawings or representations as the prospective applicant may wish to provide or make,

(vii) details of any pre-application consultation that may have taken place with the planning authority under section 247, prescribed bodies or the public,

and

(b) the appropriate fee.

(4) A prospective applicant shall also submit a copy of their request to enter into consultations with the Board under subsection (1) to the appropriate planning authority or planning authorities at the same time as the submission of the request to the Board under subsection (1), also enclosing 2 printed copies and 2 digital copies of the documents referenced in subsection (2)(a).

(5) The Board shall refuse to consider a request by a prospective applicant to enter into consultations under subsection (1) where the prospective applicant has not complied with subsections (2) or (3).

(6) Where the Board refuses to consider a request by a prospective applicant to enter into consultations under subsection (5) it shall, within two weeks from the date of the receipt of the request to enter into consultations under subsection (1) return the documents referenced in subsection (3) to the prospective applicant, together with any fee received from the prospective applicant, and shall give reasons for its decision to the prospective applicant.

(7) (a) Where the prospective applicant complies with subsections (2) and (3) the Board shall serve a notice on the prospective applicant and the appropriate planning authority, or planning authorities as the case may be, within two weeks from the date of the receipt of the request by a prospective applicant confirming its agreement to commence consultations under subsection (1).

(b) Within two weeks of the date of service of the notice under subsection (a), a planning authority shall submit all records of a consultation or consultations referenced in subsection (2) to the Board.

(c) In addition to submitting the records referenced in subsection (b), the appropriate planning authority shall also submit to the Board its opinion of what considerations, related to proper planning and sustainable development of the area, may have a bearing on the Board's decision in relation to the application, particularly with regard to the provisions of the relevant development plan or local area plan as the case may be, and to set out the appropriate planning authority's or authorities' reasons for such opinion.

(8) A consultation meeting pursuant to subsection (1), to be attended by the prospective applicant and representatives of the Board and the appropriate planning authority, or planning authorities as the case may be, shall be arranged by the Board to take place within two weeks of the date of service of the appropriate planning authority' or authorities' records and opinion or opinions under subsection (7)(b) and (c).

(9) In attending a consultation meeting pursuant to subsection (1), the appropriate planning authority, or planning authorities as the case may be, shall ensure that relevant officials shall attend and input to the consultation under subsection (1).

(10) Within three weeks of the consultation meeting pursuant to subsection (1), the Board shall—

- (a) having regard to the consultation that has taken place under this section, form an opinion as to whether the documents referred to in subsection (3) —
  - (i) constitute a reasonable basis for an application under section 37R, or
  - (ii) require further consideration and amendment in order to constitute a reasonable basis

for an application under section 37R, and

(b) issue a notice accordingly to the prospective applicant and to the planning authority or planning authorities concerned and, in the case where the Board is of the opinion referred to in subsection (a)(ii), the Board shall set out in the notice its advice as to the changes to the documents referred to in subsection (3) that could result in them constituting a reasonable basis for an application under section 37R.

(11) The Board may also give advice on the procedures involved in making a planning application and in considering such an application.

(12) Following receipt by a prospective applicant of a notice referred to in subsection (10), or, in the event that a determination or an opinion or both has been requested under subsection 16, following receipt by the prospective applicant of a determination or opinion or both as the case may be -from the Board under subsection 16, may either –

(a) proceed to apply for permission under section 37R, or

(b) seek a further pre-application consultation with the Board pursuant to the provisions of this section.

(13) Neither the holding of a consultation or the forming of an opinion under this section shall prejudice the performance by the Board or by the appropriate planning authority of any other of their functions under this Act or regulations under this Act, or any other enactment and cannot be relied upon in the formal planning process or in legal proceedings.

(14) The Board may, at its absolute discretion, consult with any person who may, in the opinion of the Board, have information which is relevant for the purposes of consultations under this section in relation to a proposed development, including but not limited to Irish Water, Transport Infrastructure Ireland, and the National Transport Authority.

(15) The Board shall keep a record in writing of any consultations under this section in relation to a proposed development, including the names of those who participated in the consultations, and a copy of such record shall be placed and kept with the documents to which any application in respect of the proposed development relates.

(16) Following the consultation meeting pursuant to subsection (1), a prospective applicant may separately request the Board to either or both of the following –

(a) to make a determination of whether a development of a class specified in regulations made under section 176 which it proposes to carry out is likely to have significant effects on the environment or adverse effects on the integrity of a European site as the case may be in accordance with section 176 (and inform the prospective applicant of the determination), or

(b) to give to the prospective applicant an opinion in writing prepared by the Board on what information will be required to be contained in an environmental impact statement or Natura impact statement or both of those statements as the case may be in relation to the proposed development.

(17) (a) On receipt of a request under paragraph (a) or b) of subsection (16) the Board, after consulting the prospective applicant and such bodies as may be specified by the Minister for the

purpose, shall comply with the request within eight weeks.

(b) Where a prospective applicant simultaneously makes a request to the Board in relation to both paragraphs (a) and (b) of subsection (16), the Board shall comply with the request under paragraph (a) within 8 weeks and shall then comply with the request under paragraph (b) within a further 8 weeks.

(c) A determination of the Board as per section 16(a) or an opinion of the Board as per section 16(b), including the main reasons and considerations on which the determination or opinion are based, as the case may be, shall be placed and kept with the documents relating to the planning application.

(18) A person shall not question proceedings under this section by reason only that the procedures as set out in the section were not completed within the time required.

(19) A member or official of an appropriate planning authority or the Board is guilty of an offence if he or she takes or seeks any favour, benefit or payment, direct or indirect (on his or her own behalf or on behalf of any other person or body), in connection with any consultation entered into or any advice given under this section.

(20) In this section, 'appropriate planning authority' means whichever planning authority for the area (or, as the case may be, each planning authority for the areas) in which the proposed development would be situated would, but for the enactment of section XX of this Act/ the Planning and Development (Strategic Housing) Act 2016, be the appropriate planning authority to deal with the application referred to in subsection (1).

## Note

The purpose of Head 5 is to provide for a focused time-bound mandatory pre-application consultation process in relation to strategic housing developments, between the Board and the prospective applicant with a key input from the relevant planning authority(s). The pre-application consultation stage is designed to improve the quality and the efficiency of the application process and is a vital element of the new fast track procedure.

This Head sets out defined actions and timeframes for each stage of the pre-consultation process required to be undertaken by the relevant body, ultimately managed by the Board. The pre-application consultation process would be concluded within a 9 week period. It also requires that the Board maintains details of any consultations under this section.

Importantly this Head provides that, prior to any pre-consultation process with the Board, the applicant must engage in section 247 consultation with the relevant planning authority including consultation regarding Part V of the Planning and Development Act 2000, as amended, and its application to the development in respect of the obligation to provide for social housing.

## Head 6: Insertion of new section 37T - Decisions on applications under section 37R

### Provide that:

(1) Before making a decision in respect of a proposed development the subject of an application under section 37R, the Board shall consider –

(a) any submissions or observations made in accordance with section 37R(4) or (7) relating to –

(i) the likely consequences for proper planning and sustainable development in the area in which it is proposed to situate the development,

(ii) the likely effects on the environment or adverse effects on the integrity of a European site, as the case may be, of the proposed development, if carried out,

and

(b) where required, an environmental impact statement or Natura impact statement or both of those statements as the case may be submitted pursuant to section 37R(5).

(2) The Board may, in respect of an application under section 37R for permission for proposed development—

(a) grant permission for the proposed development,

(b) make such modifications to the proposed development as it specifies in its decision and grant permission for the proposed development as so modified,

(c) grant permission, in part only, for the proposed development (with or without specified modifications of it of the foregoing kind), or

(d) refuse to grant permission for the proposed development,

and may attach to a permission under paragraph (a), (b) or (c) such conditions as it considers appropriate.

(2A) Notwithstanding any determination made by the Board under section 37R(6), the Board may, refuse to grant permission for proposed development in respect of an application under section 37R where the Board considers that development of the kind proposed would be premature by reference to the inadequacy or incompleteness of the environmental impact statement or natura impact statement submitted with the application for permission, if such is required.

(3) The Board may decide to grant a permission for development, or any part of a development, under this section even if the proposed development, or part thereof, contravenes materially the development plan or local area plan relating to any area in which it is proposed to situate the development.

(4) Without prejudice to the generality of the Board's powers to attach conditions under subsection (2) the Board may attach to a permission for development under this section—



(a) a condition with regard to any of the matters specified in section 34(4),

(b) a condition requiring the payment of a contribution or contributions of the same kind as the appropriate planning authority could require to be paid under section 48 or 49 (or both) were that authority to grant the permission (and the scheme or schemes referred to in section 48 or 49, as appropriate, made by that authority shall apply to the determination of such contribution or contributions).

(5) The conditions attached under this section to a permission may provide that points of detail relating to the grant of the permission may be agreed between the planning authority or authorities in whose functional area or areas the development will be situated and the person carrying out the development; if that authority or those authorities and that person cannot agree on the matter the matter may be referred to the Board for determination.

(6) In subsection (4)(b) 'appropriate planning authority' means whichever planning authority would, but for the enactment of section XX of the Planning and Development (Strategic Housing) Act 2016, be the appropriate planning authority to grant the permission referred to in this section.

(7) Without prejudice to the generality of section 18(a) of the Interpretation Act 2005, a reference, however expressed, in this section or sections 37R, 37T or 37U to the area in which the proposed development would be situated includes, if the context admits, a reference to the 2 or more areas in which the proposed development would be situated and cognate references shall be construed accordingly.

## **Note**

Head 6 provides for the procedures and considerations to be applied by the Board when determining an application received under the new section 37R relating to strategic housing developments.

It provides that when making a decision, the Board shall consider, among other things, the proper planning and sustainable development of the area; any environmental matters, including any environmental and/or Natura impact statements prepared; any submissions or observations made on the application; and any other relevant information provided in respect of the application.

It applies powers to the Board to make decisions to grant permission, with or without modifications, or to grant permission in part only, or to refuse permission. The Board may also attach conditions to a permission granted to a development. These are similar provisions to the Board's powers in relation to appeals or other strategic infrastructure development applications it currently determines.

## Head 7: Insertion of new section 37U – Section 37T: Supplemental provisions

### Provide that:

(1) The Board shall send a copy of a decision under section 37T to the applicant, to any planning authority in whose area the development would be situated and to any person who made submissions or observations on the application for permission.

(2) (a) The Board shall cause to be published in one or more newspapers circulated in the area a notice informing the public of a decision under section 37T.

(b) The notice shall state that a person may question the validity of any such decision by the Board by way of an application for judicial review, under Order 84 of the Rules of the Superior Courts (S.I. No. 15 of 1986), in accordance with section 50.

(c) The notice shall identify where practical information on the review mechanism can be found.

(3) A decision of the Board under section 37T(2) shall state—

(a) the main reasons and considerations on which the decision is based,

(b) where conditions are imposed in relation to the grant of any permission, the main reasons for imposing them,

(c) the sum to be paid to the Board towards the costs incurred by the Board of—

(i) conducting consultations, making determinations or giving a written opinion under section 37S, and

(ii) determining the application made under section 37T,

and, in such amount as the Board considers to be reasonable, state the sum to be paid and direct the payment of the sum to any planning authority that incurred costs during the course of consideration of that application and to any other person as a contribution to the costs incurred by that person during the course of consideration of that application (each of which the sums the Board may, by virtue of this subsection, require to be paid).

(4) A reference to costs in subsection (3)(c) shall be construed as a reference to such costs as the Board in its absolute discretion considers to be reasonable costs, but does not include a reference to so much of the costs there referred to as have been recovered by the Board by way of a fee charged under section 144.

(5) A notice of a decision given under section 37T(2) shall be furnished to the applicant as soon as may be after it is given but shall not become operative until any requirement under subsection (3)(c) of this section in relation to the payment by the applicant of a sum in respect of costs has been complied with.

(6) Where an applicant for permission fails to pay a sum in respect of costs in accordance with a requirement under subsection (3)(c), the Board, the planning authority or any other person

concerned (as may be appropriate) may recover the sum as a simple contract debt in any court of competent jurisdiction.

(7) The Minister may make regulations to provide for such matters of procedure and administration as appear to the Minister to be necessary or expedient in respect of this part including —

- (a) consultations or the giving of opinions or making determinations under section 37S,
- (b) applications for permission under section 37R, and
- (c) decisions under section 37T.

(8) Without prejudice to the generality of subsection (7), regulations under that subsection may provide for the following matters-

- (a) make provision for matters of procedure in relation to the making of an application under section 37R, including the giving of public notice and the making of applications in electronic form or otherwise;
- (b) the making available for inspection in electronic format or at the offices of the Board or the relevant planning authority, by members of the public, of any specified documents, particulars, plans or other information with respect to applications under section 37R;
- (c) the making of submissions or observations to the Board in relation to applications;
- (d) requiring the Board to publish or give notice in respect of its decision regarding the proposed development for which permission is sought, including the giving of notice thereof to prescribed bodies and to persons who made submissions or observations in the prescribed manner.

(9) In considering under section 37T(1) information furnished relating to the likely consequences for proper planning and sustainable development of a proposed development in the area in which it is proposed to situate such development, the Board shall have regard to—

- (a) the provisions of the development plan or plans (including local area plan or plans if relevant) for the area,
- (b) the provisions of any special amenity area order relating to the area,
- (c) if the area or part of the area is a European site or an area prescribed for the purposes of section 10(2)(c), that fact,
- (d) if the proposed development would have an effect on a European site or an area prescribed for the purposes of section 10(2)(c), that fact,
- (e) the matters referred to in section 143, and
- (f) the provisions of this Act and regulations made under this Act where relevant.

(10) (a) No permission under section 34 shall be required for any development which is approved under this section.

(b) Part VIII shall apply to any case where development referred to in section 37R(1) is carried out otherwise than in compliance with a permission under section 37T or any condition to which the permission is subject as it applies to any unauthorised development with the modification that a reference in that Part to a permission shall be construed as a reference to a permission under this section.

(11) A person shall not be entitled solely by reason of a permission under section 37T to carry out any development.

(12) Subject to subsection 37R(6) and subsection (14) of this section, the Board shall make its decision under section 37T on an application made under section 37R —

(a) except where an oral hearing is held in which case the period may be prescribed, within a period of sixteen weeks beginning on the day the planning application is lodged with the Board,

or

(b) otherwise within such other period as may be prescribed.

(13) *[Insert penalty clause for ABP failure to make a decision within the period specified in subsection (12) which has the same payment of an “appropriate sum” as the provision in Section 34(8)(f) of the Act, except that references to the planning authority shall be construed as references to the Board and there shall be no deemed decision].*

(14) The Board may, at any time after the expiration of the period specified in section 37R(6), make its decision under section 37S on the application.

(15) The Minister may by regulations vary the period referred to in subsection (12)(a), where it appears to him or her to be necessary, by virtue of exceptional circumstances, to do so and, for so long as the regulations are in force, this section shall be construed and have effect in accordance therewith.

(16) The Board shall include in each report made under section 118 a statement of the number of matters which the Board has determined within a period referred to in paragraph (a) or (b) of subsection (12) and such other information as to the time taken to determine such matters as the Minister may direct.

## **Note**

Head 7 provides for supplementary provisions that apply to a decision by the Board under new section 37T relating to strategic housing developments. It outlines the details to be contained in the decision – such as, the reason and considerations for the decision and any planning conditions imposed, the awarding of costs etc. - and the process for the notification of such a decision to the relevant parties - the applicant, the planning authority(s) and any person who made a submission or observation and the public in general.

It also outlines that when making a decision on an application, the Board shall have regard to a range of factors including, the provisions of the relevant development plan(s), Government and national policies and objectives and any provisions of the Planning Acts.

Under this Head, the Board shall, save in exceptional circumstances where an oral hearing is held, make a decision on an application within 16 weeks from the date an application is lodged.

The Head also enables the Minister to make Regulations to provide for procedural and administrative matters relating to the new provisions and their practical implementation including such matters as the making applications process, public notification provisions, public access to documentation etc. The Minister may also by Regulations vary the timeframe for decision making mentioned above.

The Board is also required to report to the Minister on its activity under these new provisions.

**Head 8: Amendment of section 41 of the Act of 2000 – Power to vary appropriate period**

**Provide that:**

Section 41 of the Act of 2000 is amended by –

(1) by substituting “or 37N” with “, 37N or 37T” in the first grouping of sections referred to in the section;

(2) by substituting “or 37N” with “, 37N or 37T” in the second grouping of sections referred in the section.

**Note**

The amendments in this Head allow for the section 41 provisions in relation to extensions of the duration of planning permissions to apply to new strategic housing development permissions granted under new section 37T, as it currently applies to other developments including strategic infrastructure development.

## **Head 9: Amendment of section 42 of the Act of 2000 – Power to extend appropriate period**

### **Provide that:**

Section 42 of the Act of 2000 is amended –

(a) by the insertion of the following subsection after subsection (1):

“(1A) Notwithstanding subsections (1) and (4), a planning authority shall, as regards a particular permission in respect of a development of the type referred to in subsection (1)(a)(i) relating to 20 or more houses, further extend the appropriate period by such additional period not exceeding 5 years, or until 31 December 2021, whichever is the earlier, as the authority considers requisite to enable the development to which the permission relates to be completed provided that –

(a) the application is in accordance with such regulations under this Act as apply to it,

(b) any requirements of, or made under those regulations are complied with as regards the application, and

(c) the application is duly made prior to the end of the expiration of the period by which the appropriate period was extended.”;

(b) in subsection (2), by the insertion of “or subsection (1A)” after “subsection (1)”; and

(c) in subsection (7), by the insertion of “(1A)” after “subsection (1)”.

### **Note**

The Action Plan for Housing and Homelessness indicates that further consideration will be given to amending the Planning and Development Acts to extend the duration of current permissions that have already benefitted from one extension of duration. In this regard, the Planning and Development Act 2000, as amended, provides that a planning permission may, in certain circumstances, on application by the holder, be extended once only for a maximum period of 5 years, subject to compliance with certain conditions.

Due to the economic recession and the downturn in construction activity arising from same, certain housing developments which commenced and, even though benefitting from an extension of duration of planning permission, still remain to be completed.

In recognition of this scenario and so that certain developers/ housing providers are not required to re-enter the planning process in respect of uncompleted portions of specified developments, Head 9 of the General Scheme proposes to amend the provisions relating to the extension of duration of

planning permission and provide that a further extension of duration of permission may be granted by a planning authority where it is satisfied that the relevant development has not been completed due to circumstances beyond the control of the person carrying out the development.

This possibility of a further extension of duration of permission under this section shall be limited to housing developments of 20 or more units where the application for a further extension of duration is made prior to the expiry of the current extended permission. Furthermore, the additional period further extending the duration of permission in such cases shall not exceed 5 years or go beyond the 31 December 2021 (the end date of the Action Plan for Housing and Homelessness), whichever is the earlier.



**Head 10: Amendment of section 96 of the Act of 2000 – Provision of social and affordable housing etc**

**Provide that:**

(1) Section 96 of the Act of 2000 is amended –

(a) in subsection (1), by substituting “sections 34 or 37R” for “section 34”;

(2) in subsection (4), by inserting “or the Board” after each reference to “the planning authority”.

**Note**

Section 96 of the Act of 2000 sets out ways in which an applicant for permission for development may comply with the housing supply requirements of Part V in relation to the provision of social and affordable housing. The Urban Regeneration and Housing Act 2015 amended these provisions to streamline and enhance the operation of Part V and increase the level of social housing provided as an integral part of new housing developments. The Act revised the arrangements and the options open to a developer and a local authority in agreeing arrangements to fulfil the Part V obligations.

Head 10 provides for the expansion of Section 96(1) of the Act of 2000 to cover applications under the new section 37R and also to ensure that the Board has regard to any proposals an applicant has specified to meet their obligations under this Part.

As outlined in Head 5, under the new proposed arrangements for strategic housing development it will be a requirement that early engagement between the developer and the relevant planning authority takes place regarding the Part V provision, and prior to any pre-consultation with the Board.

## **Head 11: Insertion of new section 112B – Strategic Housing Division**

### **Provide that:**

112B.— (1) A division of the Board which shall be known as the Strategic Housing Division is established on the commencement of section XX of the Planning and Development (Strategic Housing) Act 2016.

(2) That division is in addition to any division for the time being constituted under section 112 or 112A.

(3) The Strategic Housing Division shall, subject to subsections (8) and (9), determine any matter falling to be determined by the Board under this Act in relation to development referenced in section 37R.

(4) For the purpose of business of either of the foregoing kinds, the Strategic Housing Division shall have all the functions of the Board.

(5) The Strategic Housing Division shall consist of 4 ordinary members, nominated by the chairperson of the Board to be, for the time being, members of the Division, one of whom shall act as chairperson of the Strategic Housing Division.

(6) (a) The chairperson of the Board and/or deputy chairperson of the Board may act in place of any member of the Strategic Housing Division referred to in subsection (5) where the latter member is absent, or

(b) The chairperson of the Board may authorise any other ordinary member to act in place of any member of the Strategic Housing Division referred to in subsection (5) where the latter member is absent.

(7) The quorum for a meeting of the Strategic Housing Division shall be 3.

(8) Either—

(a) the chairperson of the Board or

(b) the person acting as chairperson of a meeting of the Division,

may, at any stage before a decision is made by the Division, transfer the consideration of any matter from the Strategic Housing Division to a meeting of all available members of the Board where he or she considers the matter to be of particular complexity or significance.

(9) The chairperson may, if he or she considers that the issues arising in respect of any particular case of development as described in section 37R, or any particular class or classes of such case, are not of sufficient complexity or significance as to warrant that case, or that class or those classes of case, being dealt with by the Strategic Housing Division, transfer the consideration of that case, or that class or those classes of case, to another division or part of the Board.

**Note**

Head 11 provides for the establishment of a new Strategic Housing Division within the Board dedicated to dealing with decisions on all strategic housing development applications received under the new provisions as set out in new section 37R above. It makes provision for the assigning of duties, membership and other matters of procedure for the new Division.

It is envisaged that this new Division, along with supporting Planning Operations' management, professional/technical and administrative resources, will focus on and prioritise strategic housing applications, through the pre-application consultation process to the final determination stage, thus ensuring that decisions within the 16 week timeframe are delivered.

**Head 12: Amendment of section 125 of the Act of 2000 – Appeals, referrals and applications with which the Board is concerned**

**Provide that:**

Section 125 of the Act of 2000 is amended in paragraph (b) by substituting “sections 37E, 37L or 37R” for “section 37E or section 37L”.

**Note**

This Head provides for a consequential amendment required on foot of the insertion of new section 37R above.

Section 125 provides that Chapter III of the Act regarding general provisions relating to appeal procedures within the Board applies to appeals and applications made directly to the Board under the existing strategic infrastructure consent procedure.

This Head provides for an amendment to the effect that the general procedures set out in Chapter III of the Act will also apply to applications made to the Board in respect of strategic housing developments as proposed in this General Scheme.

### **Head 13: Amendment of section 134 of the Act of 2000 – Oral hearings of appeals, referrals and applications**

#### **Provide that:**

Section 134 of the Act of 2000 is amended –

(a) in subsection (1),

(i) by inserting “(a)” after “(1)”;

(ii) by inserting a new subparagraph (b) –

“(b) Notwithstanding subsection (1), having regard to the exceptional circumstances requiring the urgent delivery of housing as set out in the Action Plan for Housing and Homelessness, there shall be a presumption against holding an oral hearing for an application under section 37R except where the Board decides that the particular circumstances of the application warrant a hearing.”;

(b) in subsection (2)(a), by inserting “or 37R” after “section 37E” wherever the latter expression occurs;

(c) in subsection (2)(c)(iii), by inserting “or 37R” after “section 37E”;

(d) in subsection (2)(d), by inserting “or 37R” after “section 37E”;

(e) in subsection (2)(d)(ii), by inserting “or 37R” after “section 37E”;

(f) in subsection (3)(a), by inserting “or 37R” after “section 37E”;

(g) in subsection (4)(b)(i), by inserting “or 37R” after “section 37E”.

#### **Note**

Section 134 of the Act provides that the Board has a discretionary power to hold an oral hearing in relation to an appeal, referral or application it is determining.

This Head amends section 134 to provide that the Board may hold an oral hearing in respect of an application for a strategic housing development under new section 37R. However, it also provides that the Board would only consider the holding of an oral hearing in particular circumstances where the Board may consider it is necessary. This is for the purpose of ensuring and maintaining the speed and efficiency of the determination process, particularly in the context of the urgent need to facilitate the delivery of housing as provided for in the Action Plan for Housing and Homelessness.

**Head 14: Amendment of section 144 of the Act of 2000 – Fees payable to Board**

**Provide that:**

Section 144 of the Act of 2000 is amended in subsection (1A) –

(1) in paragraph (c) by inserting “37S,” after “37B”;

(2) in paragraph (e) by inserting “or 37S” after “173(3)”; and

(3) in paragraph (j) by inserting “37R” after “37F”.

**Note**

Section 144 of the Act of 2000 provides for the determination of fees payable to the Board. The Board, with the approval of the Minister, may set its own fees relating to, among other things, the making of appeals, applications and submissions. These fees may be only changed by the Board without the Minister’s approval when changes are in line with the Consumer Price Index. The Board must give notice of any new fees it determines.

This Head provides for a consequential amendment to section 144, required on foot of the insertion of new sections 37R and 37S, to provide that the Board may determine fees payable for the making of applications for strategic housing development, the making of submissions on such applications, and the making of request for the opinion on the information to be contained in an environmental impact statement.

**Head 15: Amendment of section 174 of the Act of 2000 – Transboundary environmental impacts**

**Provide that:**

Section 174(2) of the Act of 2000 is amended by inserting “37T(1)” after “37N(2)”.

**Note**

Section 174 of the Act makes provisions for the carrying out of an environment impact assessment (EIA) in relation to developments which could have significant effects on the environment in other countries. It gives effect to the EIA Directive and to the provisions of the UNECE Convention on Transboundary Environmental Impact Assessment (Espoo Convention).

It provides, inter alia, that the planning authority or the Board shall, when considering applications, appeals or referrals etc., where appropriate, give consideration to the views of any other State in the case of a transboundary EIA and may impose conditions on a grant of permission to reduce the transboundary effects of the proposed development.

This Head provides for a consequential amendment to section 174 to insert a necessary reference to the new section 37T, in the context of the Board’s consideration of applications for strategic housing development, prior to making a decision.

**Head 15A: Amendment of the Fourth Schedule of the Act of 2000 – Reasons for the Refusal of Permission which Exclude Compensation**

**Provide that:**

The Fourth Schedule of the Act of 2000 is amended by the insertion of the following after paragraph 18:

18A. The planning authority considers that development of the kind proposed would be premature by reference to the inadequacy or incompleteness of the environmental impact statement or natural impact statement submitted with the application for permission, consent or approval as the case may be, if such is required.

**Note**

This provision amends the Fourth Schedule to the Act of 2000 to provide that compensation is not payable by the planning authority in respect of a refusal of planning permission for the reason that the EIS or NIS submitted with the planning application is inadequate or incomplete.



PART 3  
Environmental impact assessment – screening

**Head 16: Application for screening decision in respect of environmental impact assessment**

**Provide that:**

The Act of 2000 is amended by inserting the following after section 176:

176A. (1)(a) Subject to section 176B, a person who proposes to undertake a development of a class specified in Part 2 of Schedule 5 of the Planning and Development Regulations 2001 that does not exceed the relevant quantity, area or other limit specified in that Part may submit an application to the planning authority for a determination as to whether the development would be likely to have significant effects on the environment.

(b) Subject to section 176B, a person who proposes to undertake a development of a class prescribed under this section shall submit an application to the planning authority for a determination as to whether the development would be likely to have significant effects on the environment.

(2) An application under subsection (1) shall contain –

- (a) the name and address of the applicant,
- (b) the name and address of the owner or the occupier of the land the subject of the proposed development, in the event that the applicant is not the owner or occupier,
- (b) a location map for the proposed development,
- (c) a description of the nature and extent of the proposed development, including the anticipated outcomes of the development, and
- (e) any such other information as the planning authority considers necessary.

(3) A planning authority may do either or both of the following:

- (a) consult any body prescribed by the Minister for the purpose and consider any views of such a body,
- (b) make such enquiries or request information from any person as it considers necessary, for the purposes of enabling it to decide on the application.

(4) In the event that the applicant is not the owner or occupier of the land the subject of the proposed development, a planning authority shall invite the owner or the occupier to make a submission on an application made under subsection (1).

(5) A planning authority may reject an application under subsection (1) if in the opinion of the planning authority the application is incomplete in any material detail.

(6) Where the planning authority refuses an application under subsection (5) it shall return the documents referenced in subsection (2) to the applicant, together with any fee received from the applicant, and shall give reasons for its decision to the applicant. In the event that the applicant is not the owner or occupier, the planning authority shall also notify the owner or the occupier of its decision under subsection (5).

(7) Section 246(1)(c) is amended by inserting “applications for determinations under section 176A” after “*section 5*”.

#### **Note**

Part 3 of the General Scheme, comprising Head 16 to 19, provides for new screening arrangements for environment impact assessments (EIA) for certain types of works, and is aimed at streamlining the process of determining planning consent for the undertaking of such works.

At present, there is no formal mechanism for a planning authority to assess the potential environmental impacts of a proposed development and determine if an environmental impact statement (EIS) is required outside the existing planning application process, set out in section 34 of the Act of 2000.

The proposed new screening arrangements, which are in compliance with the requirements of the EIA Directive, have the potential to reduce the necessity for the preparation of a full EIS for proposed works, where a screening decision by a planning authority determines it is not required.

It would also provide greater clarity when relying on exempted development provisions. The Planning and Development Regulations 2001, as amended, provides for exemptions from the need to obtain planning permission for certain works, including flood relief or related works. However, these exemptions are lost if an EIA is required. The proposed new screening arrangements would provide a mechanism where the necessity for an EIA can be determined within a short period of time and avoids planning permission having to be sought in order to clarify whether EIA is required.

Head 16 provides that a person may, and in the case of certain prescribed developments shall, seek a screening decision from a planning authority as to whether, in any particular case, the preparation of an environmental impact assessment is required in relation to proposed development works.

The Head outlines the type of development to which this section will apply and the application process to be followed to obtain a screening decision. It also provides that the planning authority may undertake consultations with relevant prescribed bodies and the owner/occupier (in the event that either is not the applicant) is not in relation to such an application for screening decision, as appropriate, or seek further information from the applicant, prior to making a decision.

The Head also provides for the Minister to prescribe a fee for an application under this section.

## **Head 17: Screening decision in respect of environmental impact assessment**

### **Provide that:**

The Act of 2000 is amended by inserting the following after new section 176A:

176B. (1) A planning authority shall make a screening decision on an application under section 176A(1), or a decision to refuse an application under section 176A(5) -

(a) within four weeks of the receipt of the decision review or application referral, or

(b) where further information is requested to be submitted with regard to the decision review or application referral in order to enable the authority to make a decision, within three weeks of the receipt of the further information.

(2) Before making a decision on an application under section 176A(1), the planning authority shall consider the criteria for determining whether a development would or would not be likely to have significant effects on the environment, as set out in Schedule 7 of the Planning and Development Regulations 2001, and having regard to any submissions or observations received in accordance with section 176A(3) and section 176A(4) where relevant.

(3) Where a planning authority decides that the proposed development is not likely to have significant effects on the environment, the authority shall so inform the applicant, as well as notifying the owner or occupier if the applicant is not the owner or occupier, and indicate that an environmental impact assessment will not be required to be carried out in respect of an application for permission in respect of the proposed development. In so doing, the planning authority shall give reasons for such decision.

(4) Where a planning authority decides that the proposed development is likely to have a significant effect on the environment, the authority shall so inform the applicant, as well as notifying the owner or occupier if the applicant is not the owner or occupier, and indicate that an environmental impact assessment will be required to be carried out in respect of an application for permission in respect of the proposed development. In so doing, the planning authority shall give reasons for such decision.

(5) A planning authority shall publish a decision made under this section and enter it in the register.

### **Note**

Head 17 sets down the process and considerations to be applied by a planning authority when making a decision on a screening application made under proposed section 176A. It also provides that such a decision shall be made with 4 weeks of the screening application being received. The Head provides that a planning authority shall notify the applicant of its decision and the reasons for the decision and the consequences of the decision, viz. either where the proposed development is not likely to have significant effects on the environment, an environmental impact assessment will

not be required to be carried out in respect of a planning application in respect of the proposed development or where the proposed development is likely to have significant effects on the environment, an environmental impact assessment will be required to be carried out in respect of a planning application in respect of the proposed development . The planning authority is required to also publish and maintain a register of all EIA screening decisions it makes.

## **Head 18: Review or referral of screening decision in respect of environmental impact assessment**

### **Provide that:**

The Act of 2000 is amended by inserting the following after new section 176B:

176C. (1) Where a decision is made by a planning authority under section 176B, any person issued with such a decision may, on payment to the Board of such fee as may be prescribed, refer a decision for review (in this Act referred to as a “decision review”) by the Board within four weeks of the issuing of the decision.

(2) Without prejudice to section 176B, in the event that no decision is issued by a planning authority within the timeframes specified in section 176B(1), any person who made an application under section 176A may, on payment to the Board of such fee as may be prescribed, refer the application in question for decision (in this Act referred to as a “application referral”) to the Board within 4 weeks of the date that a decision was due to be issued under section 176(B)(1).

(3) Before making a decision on an application under section 176A, the Board shall consider the criteria for determining whether a development would or would not be likely to have significant effects on the environment, as set out in Schedule 7 of the Planning and Development Regulations 2001, and having regard to any submissions or observations made in accordance with section 176A(3) and section 176A(4) where relevant and any decision made by the planning authority under section 176B.

(4) The Board shall make a decision on the decision review or the application referral—

(a) within four weeks of the receipt of the decision review or application referral, or

(b) where further information is requested to be submitted with regard to the decision review or application referral in order to enable the Board to make a decision, within three weeks of the receipt of the further information.

(5) The Board shall publish a decision made under this section, the details of a decision made under this section shall be issued to the planning authority and the planning authority shall enter the details in the register.

(6)(a) The Board shall keep a record of any decision made by it under section 176C and the main reasons and considerations on which its decision is based and shall make it available for purchase and inspection.

(b) The Board may charge a specified fee, not exceeding the cost of making the copy, for the purchase of the record specified in paragraph (a).

(c) The Board shall, from time to time and at least once a year, forward to each planning authority a copy of the record referred in paragraph (a).

(7) Section 144 of the Act of 2000 is amended in subsection (1A) by inserting the following after paragraph (h) –

“(hh) in respect of a decision review or an application referral under 176C”;

**Note**

Head 18 provides that a screening decision by a planning authority under proposed section 176B may be appealed to An Bord Pleanála within 4 weeks of the date of the decision being made or when the decision was due to be made. The Board is then required to review the screening decision and make a final determination generally within 4 weeks of the request to review the decision. The Head also provides that the Board must publish the decision. Provision is also made for the Board to charge a fee in respect of review or referrals relating to EIA screening decisions.

## **Head 19: Screening for appropriate assessment**

### **Provide that:**

Section 177U of the Act of 2000 is amended by inserting the following after subsection (9):

“(10) In deciding up an application under section 176A or a decision review or an application referral, a planning authority or the Board, as the case may be, shall, where appropriate, conduct a screening for appropriate assessment in accordance with the provisions of this section.”

### **Note**

This Head amends section 177U of the Act of 2000 to provide that a planning authority or the Board shall, where appropriate and at the time that it is screening a proposed development to determine whether an environmental impact assessment is required in respect of any planning application for the development in accordance with Head 16, also screen the proposed development to determine whether appropriate assessment under Article 6.3 of the EU Habitats Directive is required in respect of any planning application for the development

PART 4  
Local authority own development

**Head 20: Amendment of section 179 of the Act of 2000 – Local authority own development**

**Provide that:**

Section 179 of the Act of 2000 is amended –

- (1) in subsection (3)(a), by the insertion of “within 8 weeks” after “shall,”;
- (2) in subsection (4)(a), by the substitution of “within 6 weeks of the receipt of the report of the manager” for “as soon as may be”;
- (3) in subsection (4), by substituting the following for paragraph (c):

“(c) a resolution under paragraph (b) must –

  - (i) be adopted by a majority of the members of the authority,
  - (ii) be passed not later than 6 weeks after the receipt of the manager’s report, and
  - (iii) in the case of a resolution not to proceed with a development, state the reasons for such resolution.”.

**Note**

Section 179 of the Act of 2000 sets out provisions and processes to be followed relating to local authority own development. It outlines the requirements for such proposed development including public notice arrangements; public consultation including consultation with prescribed bodies and the public display of plans and other documents. It includes a requirement to submit a planning report to local authority members on the proposed development. The elected members must consider the report and may vote to vary or modify the proposed development, or not to proceed with it, and it is provided that the development may proceed if the members fail to make a decision on the matter.

In line with commitments in the Action Plan for Housing and Homelessness (Appendix 3), this Head makes a number of amendments to the existing provisions aimed at streamlining and expediting the process, by providing clear timelines for key stages of the process. As such, it provides that the Chief Executive must prepare and submit a report on a proposed development to the elected members, within 8 weeks of the end of the consultation period. The elected members must then consider the



proposed development, and may within 6 weeks, and by resolution of a majority of the total council membership, vary, modify or reject the recommendation, stating their reasons in the case of rejection.

Part 5  
Amendments to the Residential Tenancies Acts 2004 to 2015

**Head 21: Interpretation**

**Provide that:**

In this Part “**Act of 2004**” means the Residential Tenancies Act 2004.

**Note**

This is a standard provision containing definitions of terms used in the draft Heads.

## **Head 22: Amendment of section 3 of Act of 2004**

### **Provide that:**

Section 3(4)(b) of the Act of 2004 is amended in subparagraph (i) by deleting the words “owned and”.

### **Note**

The purpose of Head 22 is 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 3(4) of the 2004 Act<sup>1</sup> provides for the application of the Residential Tenancies Act to dwellings let by approved housing bodies to social housing tenants. These dwellings are divided into 2 categories:

- Dwellings referred to in section 3(4)(a): these are dwellings provided by public authorities (including a local authority) to AHBs and subsequently let by the AHBs to a tenant on the social housing list.
- Dwellings referred to in section 3(4)(b): these are dwellings owned and provided by AHBs and let by the AHBs to a tenant on the social housing list.

Under the Social Housing Current Expenditure Programme (SHCEP), the Department supports the delivery of social housing by providing financial support to AHBs for the long term leasing of houses and apartments from private owners and developers, including the National Asset Residential Property Services Limited (NARPS)<sup>2</sup>. In order to ensure that dwellings leased under SHCEP by AHBs, and subsequently let to social housing tenants, come within section 3(4) of the Residential Tenancies Act, Head 2 deletes the words “owned and” from section 3(4)(b)(i), as these dwellings are leased, not owned, by AHBs.

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<sup>1</sup> As inserted by section 3(2) of the Residential Tenancies (Amendment) Act 2015.

<sup>2</sup> NARPS is an SPV, set up by NAMA.

**Head 23: Amendment of section 4 of Act of 2004****Provide that:**

Section 4(1) of the Act of 2004 is amended in the definition of “approved housing body” by deleting the words “owned by it”.

**Note**

The purpose of Head 23 is to amend the definition of approved housing body in section 4(1) of the 2004 Act. The current definition provides that an AHB is a body approved under section 6 of the Housing (Miscellaneous Provisions) Act 1992, and to which assistance is given for the provision of dwellings owned by it or to which assistance is given by means of a local authority leasing dwellings to it.

Head 23 removes the words “owned by it” from the definition of approved housing body 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 Head 22 above.

**Head 24: Amendment of section 22 of Act of 2004**

**Provide that:**

Section 22(2A) of the Act of 2004 is amended in paragraph (d) by substituting “paragraph (c)” for “paragraph (d)”.

**Note**

Head 24 corrects a typographical error in section 22(2A) of the 2004 Act – paragraph (d) should read paragraph (c).

## Head 25: Restriction on termination of tenancies of dwellings in housing developments

### Provide that:

(1) For the purposes of this Head-

*“development”* means a development being land on which there stands erected a building or buildings comprising a unit or units and that-

- (a) as respects such units it is intended that amenities, facilities and services are to be shared, and
- (b) the development contains not less than 20 dwellings;

*“at the same time”* means within any 6 month period beginning with the offering for sale of the first dwelling the subject of a tenancy and ending with the offering for sale of the last dwelling the subject of a tenancy.

(2) A Part 4 tenancy may not be terminated by the landlord on the ground specified in paragraph 3 of the Table to section 34 where-

- (a) the landlord intends to enter into an enforceable agreement for the transfer of 20 or more dwellings the subject of such a tenancy,
- (b) within a development, and
- (c) at the same time.

(3) This head applies to all tenancies, including a tenancy created before the coming into operation of this section.

(4) Section 34 of the Act of 2004 is amended by substituting “Subject to subhead (2), a Part 4 tenancy may be terminated” for “A Part 4 tenancy may be terminated”.

(5) Subhead (2) shall not apply in circumstances where the landlord can show that the price to be obtained by selling the dwelling subject to an existing tenancy is more than 20% below that which could be obtained with vacant possession.

(6) ) Where, immediately before the coming into operation of subhead (2), a notice under section 34 of the Act of 2004 has been served on a tenant specifying as one of the grounds for termination the

ground in paragraph 3 of the Table to that section, section 34 shall continue to apply to that notice as if subsection (2) had not been enacted.

#### **Note**

Head 25 gives effect to Action 4.2 of the Action Plan for Housing and Homelessness to legislate to deal with circumstances where there are sales of property with tenants in situ.

The rental market in Ireland has doubled between 2006 and 2011 to about 320,000 households; almost one fifth of the population now lives in the private rental sector. However, the rental sector in Ireland faces a number of challenges, in particular severe supply pressures and high rents. The RTB Rent Index<sup>3</sup> for Q2 2016 found that rents in Dublin are now 3.9% higher than their previous peak in Q4 2007 and on an annual basis, rents nationally were almost 10% higher than in Q2 2015. The Daft.ie Rental Report for Q2 2016 recorded the highest quarterly increase in rents since 2010. The Report also illustrated the very serious supply challenges facing the market with 20% fewer homes available to rent nationally in Q2 2016 compared to the same period in 2015. There were just 3,600 homes to rent nationwide on August 1<sup>st</sup> 2016, one thousand fewer than on the same date a year previously.

Having regard to these challenges, the purpose of this Head is to prevent a future recurrence of situations where large numbers of residents in a single development are served with termination notices simultaneously. This scenario arose earlier this year in a development in Tyrelstown where about 40 households were served with notices of termination at the same time. Large volumes simultaneous terminations lead to significant numbers of tenants being forced to compete with each other for already scarce accommodation in a particular area, further driving rental inflation and distorting the market. In addition, supply is further constrained as the vacated dwellings lie empty for long periods during the sale process.

The purpose of Head 25 is not to prevent a landlord from selling a dwelling; rather, it seeks to restrict the number of dwellings that a landlord may sell at one time, in a single development. There is also no restriction on a landlord selling any number of dwellings subject to an existing tenancy. It is believed that the figure of 20 dwellings is the appropriate number of dwellings to allow the legislation to be effective, but which is least likely to distort the market. A 6 month period was chosen as the period most likely to achieve the objective of the proposed legislation while also being the least restrictive on the right of the landlord to sell his property.

Subhead (1) defines the terms 'development' and 'at the same time' for the purposes of this Head.

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<sup>3</sup> The RTB National Rent Index was launched in May 2013 and is based on rents being paid for rented properties. It is compiled by the ESRI and based on the RTB's register of tenancies. The Daft.ie Rental Report is published on the Daft.ie website and the statistics are based on properties advertised on Daft.ie for a given period.

The definition of the term 'development' is intended to include all multi-unit residential developments, including housing estates, apartment blocks and mixed use developments (i.e. a mix of commercial and residential).

The term 'at the same time' is defined as any period of 6 months between the offering for sale of the 1st and 20th dwelling. This is to prevent a developer selling, for example, 19 units a week over a number of months so as to avoid the operation of the provision.

Subhead (2)

Paragraph 3 of the Table to section 34 provides that a landlord may terminate a tenancy where he intends to sell a dwelling. Subhead (2) provides that a landlord may not terminate a tenancy on the ground that he wishes to sell a dwelling in circumstances where-

- a) he is selling more than 20 dwellings,
- b) at the same time,
- c) in the same development.

Subhead (3) provides that this provision will apply to all tenancies, including tenancies that were created before the coming into operation of this provision.

Subhead (4) provides for a consequential amendment to section 34.

Subhead (5) provides that subhead (2) does not apply where the price to be obtained by selling the dwelling subject to an existing tenancy is more than 20% below that which could be obtained with vacant possession.

Subhead (6) provides that a notice of termination validly served before the coming into operation of subhead (2) will not be affected by subhead (2).



## **Head 26: Repeal of section 42 of Act of 2004**

### **Provide that**

- (1) Section 42 of the Act of 2004 is repealed.
- (2) Section 40(2) of the Act of 2004 is amended by substituting “A reference in section 41(4) to section 34 or Chapter 3 is a reference” for “References in section 41(4) and 42 to section 34 or Chapter 3 are references”.
- (3) Section 41(4) of the Act of 2004 is amended-
  - (a) in paragraph (a) by deleting “(b) or”, and
  - (b) by deleting paragraph (b).
- (4) Section 45(4) of the Act of 2004 is amended-
  - (a) in paragraph (a) by deleting “(b) or”, and
  - (b) by deleting paragraph (b).
- (5) Section 47 of the Act of 2004 is amended-
  - (a) in subsection (4) by substituting “Section 33” for “In section 33, “section 34 or 42” shall be substituted for “section 34”, and section 33”, and
  - (b) by deleting subsection (6).
- (6) Section 55(2) of the Act of 2004 is amended by deleting paragraph (b).
- (7) Section 62(3) of the Act of 2004 is amended by inserting “or the tenancy is a further Part 4 tenancy,” after “6 months,”.

### **Note**

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 (section 28). The landlord may only terminate that tenancy on specific grounds set out in the Act (section 34). Where that tenancy lasts in excess of 4 years, the tenant acquires the right to a “further Part 4 tenancy” (section 41). A six month probationary period applies at the beginning of each further Part 4 tenancy during which the landlord may terminate the tenancy without stating any reason (section 42). In other words, despite having completed a four year tenancy, the tenant finds themselves effectively ‘on probation’ again.

Head 26 provides for the repeal of section 42 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 (section 34(b)) or on the grounds set out in the Table to section 34.

This proposal will enhance security of tenure for tenants and will also facilitate rental certainty and stability for landlords. It is also in line with recommendations made in the Department’s review of the Homeless Strategy - Ending Homelessness – A Housing Led Approach - which was published by the Department in May 2012. Government approval was given for this amendment on 21 January 2014 in the context of the Residential Tenancies (Amendment) Bill 2012, but it was not included in the Residential Tenancies (Amendment) Act 2015 due to pressures of time. This Head has also been the subject of legal advice from the Office of the Attorney General. The amendments in subheads (2) to (7) are consequential amendments to subhead (1).

**Head 27: Amendment of section 100 of Act of 2004****Provide that:**

Section 100 of the Act of 2004 is amended in subsection (2) by substituting “10 days” for “21 days”.

**Note**

Head 27 gives effect to Action 4.2 of the Action Plan for Housing and Homelessness to legislate to accelerate dispute resolution timeframes by reducing the time period for appeals. Specifically, Head 27 reduces the time for a party to appeal to the Tribunal against a determination of an adjudicator from 21 days to 10 days. The 10 day period is based on the appeal period from the Circuit Court to the High Court.

A person may appeal to the tribunal by completing the appropriate form and sending it to the RTB, either by post or on-line. The RTB will also accept a simple letter/email indicating a person's intention to appeal. The RTB give 21 days' notice of any hearing date and documents for the appeal must be submitted 5 days before the hearing date. Section 88 of the 2004 Act provides that the Board may extend the time for the referral of an appeal where there are good grounds for why the time should be extended. An appeal lies to the Circuit Court against a decision of the Board to extend, or refuse to extend, the time concerned.

## **Head 28: Amendment of section 103 of Act of 2004**

### **Provide that:**

(1) Section 103 of the Act of 2004 is amended-

(a) by substituting the following for subsection (1):

“Subject to subsection (1A), the number of members of the Tribunal shall be 3.”,

and

(b) by inserting the following new subsections after subsection (1):

“(1A) (a) In such matters to be determined by the Tribunal as may be prescribed by the Minister, the number of members of the Tribunal shall be 1.

(b) Without prejudice to the generality of paragraph (a), the particular matters to be prescribed by the Minister may include-

(i) the retention or refund of a deposit;

(ii) the amount that ought to be initially set (in compliance with section 19, or as the case may be, section 19A) as the amount of rent under a tenancy;

(iii) the time at which a review of rent referred to in Part 3 should take place or the amount of rent that should be determined on foot of that review;

(iii) an alleged failure by the tenant to comply with any of the obligations applicable to the tenant, including those contained in any lease or tenancy agreement;

(iv) an alleged failure by the landlord to comply with any of the obligations applicable to the landlord, including those contained in any lease or tenancy agreement;

(v) a claim by a landlord for arrears of rent or other charges;

(vi) such other matters as may be prescribed.

(c) There may be included in the same reference to the Tribunal disputes, and where

appropriate complaints, in respect of 2 or more matters prescribed under this subsection.”

(1B) (a) Where a dispute is referred to the Tribunal, and the number of members of that Tribunal is 1, the Tribunal may, if in the particular circumstances of the case it considers it appropriate to do so, adjourn the hearing by it of the matter and request the Board to refer the dispute to a Tribunal the number of members of which shall be 3.

(b) Where the Board is requested to refer a dispute to the Tribunal under paragraph (a), the Board shall refer the dispute to a Tribunal the number of members of which shall be 3.

(1C) Subsections (4) and (7) shall not apply where the number of members of the Tribunal is 1.”.

(2) Section 104 of the Act of 2004 is amended in subsection (1)-

(a) in paragraph (b), by deleting “or”, and

(b) by substituting the following for paragraph (c):

“(c) is the subject of an appeal under section 100 from a determination of an adjudicator of the matter, or

(d) has been referred to it by the Board under section 103(1B).”.

#### **Note**

Head 28 gives effect to Action 4.2 of the Action Plan for Housing and Homelessness to legislate to enhance the RTB’s dispute resolution powers. Specifically, Head 8 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.

The reduction in the number of members of tribunals for these types of cases will enable the RTB to have more tribunals and thereby reduce dispute processing times. Where a 1 member Tribunal feels that a matter should be more appropriately heard by a Tribunal of 3 persons, the matter may be adjourned so as to be referred by the Board to a Tribunal of 3 persons. There is currently no

differentiation between the members of the Tribunal other than one member is appointed as chairperson under section 103(4) and the chairpersons usually writes the report in consultation with the other members.

Head 28(1)(a) provides for a consequential amendment to section 103(1) of the 2004 Act.

Head 28(1)(b) inserts 2 new subsections, (1A) and (1B) into section 103. Subsection (1A) gives the Minister the power to make regulations setting out the type of disputes that may be determined by a 1 person Tribunal. The type of matters that it is envisaged will be heard by a 1 person Tribunal include, for example, deposit retention or rent arrears cases, or disputes in relation to the setting of the rent under a tenancy. Matters relating to the termination of a tenancy, or serious anti-social behaviour, would continue to be heard by 3 person Tribunals. Subsection (1B) provides that where a 1 person Tribunal believes a dispute would be more appropriately dealt with by a 3 person Tribunal, the matter may be adjourned for that purpose.

Head 28(1)(c) is based on section 79 of the 2004 Act

Head 28(2) provides for consequential amendments to section 104.

## **Head 29: Amendment of section 121 of the Act of 2004**

### **Provide that:**

(1) Section 121 of the Act of 2004 is amended-

- (a) in subsection (1), by substituting “by the Director and issued by him or her” for “by the Board and issue by it”;
- (b) in subsection (2), by substituting “Director” for “Board”;
- (c) in subsection (3), by substituting “Director” for “Board”;
- (d) in subsection (4), by substituting “Director” for “Board”;
- (e) in paragraph (a) of subsection (4), by substituting “to him or her” for “to it”;
- (f) in paragraph (b) of subsection (4), by substituting “to him or her” for “to it”;
- (g) in subsection (5), by substituting “Director” for “Board”.

(2) Section 95 of the Act of 2004 is amended in subsection (5), by substituting “Director” for “Board”.

(3) Section 96 of the Act of 2004 is amended-

- (a) in paragraph (a) of subsection (1), by substituting “Director” for “Board”, and
- (b) in subsection (1), by substituting “the Director shall prepare” for “the Board shall prepare”.

(4) Section 99 of the Act of 2004 is amended in subsection (4) by substituting “Director” for “Board”.

(5) Paragraph (d) of subsection (2) of section 109 of the Act of 2004 is amended-

- (a) in subparagraph (vi), by substituting “the Director must, from the date of receipt by the Board” for “the Board must, from the date of receipt by it”, and
- (b) in subparagraph (ix), by substituting “the Director must, from the date of receipt by the Board” for “the Board must, from the date of receipt by it”.

(6) Section 159 of the Act of 2004 is amended in subsection (1) by deleting “, 121”.

## Note

Head 29 gives effect to Action 4.2 of the *Action Plan for Housing and Homelessness* to enhance the RTB's dispute resolution powers by restructuring the administration process. As such, Head 29 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, thereby providing for more efficient processing of RTB determination orders. Section 161(2) provides that functions of the Director may be delegated to a member of staff of the Board and it is intended that the drafting and issuing of the orders would be delegated by the Director to be carried out by members of staff.

A determination order is the written record of an RTB determination. Section 121 gives the Board, *inter alia*, the power to draft and issue the determination order, affixed with the seal of the Board. The Board does not have the power to change the terms of a determination order, even if it does not agree with it. However, the Board may express the terms of a determination in a different manner so as to aid compliance or remove ambiguity<sup>4</sup>.

While general administrative functions may be delegated by the Board to the Director<sup>5</sup>, and in turn may be delegated by the Director to a member of staff<sup>6</sup>, the functions under section 121 of the Act are specifically excluded from delegation to anyone and cannot pass to the Director.

The fact that the functions under section 121 must be carried out by the Board and may not be delegated to the director results in a minimum delay in the processing time for a determination order of 3 to 4 weeks. The proposal in Head 29 would allow for the functions under section 121 to be carried out by a member of staff of the Board and allow for the faster processing of disputes. Given the limited nature of the Board's power to change an order under section 121, the Department believes that this is a function which could be carried out by a member of the executive, in a similar way to the drafting of court orders by court officials. It is intended that the Board's other dispute resolution functions, e.g. under sections 5, 82(5), 122 and 123, will continue to be carried out by the Board. Subheads (2) to (7) provide for consequential amendments.

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<sup>4</sup> Section 121(2) and 121(3).

<sup>5</sup> Section 160(5).

<sup>6</sup> Section 161(2).

**Head 30: Amendment to section 124 of Act of 2004****Provide that:**

Section 124 of the Act of 2004 is amended in subsection (7) by inserting “,including an order for possession of a dwelling the subject of a determination order ,” after “ancillary or other orders”.

**Note**

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.

Where an application is made to the Circuit Court for the enforcement of an RTB determination order directing a tenant to vacate a dwelling, the Circuit Court also makes an order for possession of the dwelling which may be executed by the Sherriff.

The power of the Circuit Court to make such an order for possession comes from the Courts (Supplemental Provisions) Act 1961. However, there is no analogous provision for the making of such an order in the District Court in the context of the enforcement of an order under section 124. Therefore, on foot of legal advice, Head 30 provides for an express power under section 124 to enable the District Court to make orders of possession when enforcing RTB determination orders under section 124.



## PART 6

### Amendment of the Local Government Act 1998

#### **Head 31:** Amendment to section 6 of the Local Government Act 1998

##### **Provide that:**

Section 6 of the Local Government Act 1998 is amended in subsection (2C) (inserted by section 7 of the Motor Vehicle (Duties and Licences) Act 2013 –

(a) by substituting for paragraph (a) (inserted by section 44 of the Environment (Miscellaneous Provisions) Act 2015) the following:

“(a) Subject to paragraphs (b) and (c), the Minister may, on or before 31 December 2016, pursuant to a request from the Minister for Finance, make one, or more than one, payment from the Fund in the amount requested by the Minister for Finance.”,

and

(b) by substituting for paragraph (c) (inserted by the said section 44) the following:

“(c) The total amount of all payments made under paragraph (a) shall not exceed €420 million.”.

##### **Note**

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

##### **Additional Note:**

Section 6 of The Local Government Act 1998 provides power to the Minister for Environment, Community and Local Government 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.

## PART 7

### Amendment of the Housing Finance Agency Act 1981

**Head 32:** Amendment of sections 1, 4 and 5 of the Housing Finance Agency Act 1981

**Provide that:**

The Housing Finance Agency Act 1981 is amended –

- (a) in section 1, by inserting the following definitions:
  - “ ‘institution of higher education’ has the same meaning as it has in the Higher Education Authority Act 1971;,”
  - ‘Housing Agency’ has the same meaning as it has in the Pyrite Resolution Act 2013;”
  
- (b) in section 4(2)(c) by inserting the following subparagraphs after subparagraph (iii):
  - “(iv) to an institution of higher education, to be used by it in respect of the provision or management of housing accommodation for students, including the acquisition of land by such a body for that purpose,
  
  - (v) to the Housing Agency, to be used by it for the purpose of the performance of its functions,” and
  
- (c) (i) in paragraph (d) of section 5, by deleting “or”,  
(ii) in paragraph (e), by substituting “section 94 of that Act,” for “section 94 of that Act.”,  
and  
(iii) by inserting the following paragraphs after paragraph (e):
  - “(f) an institution of higher education, to be used by it in respect of the provision or management of housing accommodation for students, including the acquisition of land by such a body for that purpose, or
  - (g) the Housing Agency, to be used by it for the purpose of the performance of its functions.”.

**Note**

Further to commitments and actions in *Rebuilding Ireland – An Action Plan for Housing and Homelessness*, this Head 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.