



**Social Housing**  
**Rights Explained**

# Thanks

Ballymun Community Law Centre, Irish Traveller Movement Law Centre, Mercy Law Resource Centre and Northside Community Law Centre would like to thank the Citizens Information Board for their support in publishing this booklet. We would also like to thank Barnardos, CAN, Crosscare, Focus Ireland, the Law School at NUI Galway and also Alan Brady BL who assisted in putting this booklet together. For further details of all of these organisations go to the Useful Contacts chapter at Chapter 18.

# Introduction

This booklet provides information to tenants, those applying for social housing support and supporting service providers on housing issues and information on where they can get further information and support. It also outlines the responsibilities of local authorities. These responsibilities came from legal and case law requirements.

To help you understand some of the key legal terms contained in each chapter, the legal terms are highlighted in red throughout the text and explained in the glossary of legal terms at Chapter 17.

Everyone should have the right to

a place they call home. A home can be described as the physical structure where you live, such as a house or an apartment but also includes the physical experiences. To really be a 'home' it should also be a peaceful and safe place to live.

In Ireland people without the money to get a home can apply for social housing support through their local authority. A local authority, also known as the housing authority; or the Council; help people looking for homes or living in local authority housing. In chapter 1, "your key housing rights" are identified.

## Important notice

We have been very careful in writing this booklet. That said, we as authors, editors, publishers or lawyers cannot accept legal responsibility or liability "warranted or **implied**" for any mistakes gaps or misstatements.

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# 1: Your Key Housing Rights

- 1.1 The right to apply to the local authority to be assessed for **social housing support**.
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- 1.6 The right to repairs and maintenance.
- 1.7 Travellers also have a right to Traveller specific accommodation.
- 1.8 The right of a **spouse** to additional protection in respect of the family home.
- 1.9 The right of children who are homeless to adequate shelter.
- 1.10 The right to fair procedures in any assessment to the local authority for accommodation and support.
- 1.11 The right to apply for an excluding order if you are the victim of anti-social behaviour.
- 1.12 The right to apply to court where the local authority are seeking to evict you.

1.13 The right not to be directly or indirectly discriminated against in relation to access to housing or other services on the grounds of gender, marital status, family status, sexual orientation, religion, age, disability, race or membership of the Traveller Community.

## 1.1 The right to apply to the local authority to be assessed for **social housing support**.

If you need accommodation and cannot afford it from your own resources, you can apply to your local authority to be assessed for **social housing support**. Homes are given to families based on need. If for example, you have exceptional medical or social grounds such as a child with disability then your need may be greater. See Chapter 3 entitled "Applying for Local Authority Housing".

## 1.2 The right to a tenancy agreement if you are a local authority tenant.

You should carefully read this agreement, which sets out the rights and obligations of the local authority and tenant, before you agree to it. There may be other rights and obligations which are not written in the agreement but are required by law for example, the right to a home fit for a person to live in. See Chapter 4 entitled "Tenancy Agreements" and Chapter 7 entitled "Repairs and Maintenance".

### 1.3 The right to certain information from public bodies and other organisations.

Under the Freedom of Information Acts you have the right to:

- see official records held by public bodies listed in the Act;
- access personal information held on you corrected or updated where the information is incomplete, wrong or misleading; and to be given reasons for decisions taken by public bodies that affect you.
- access personal information held by a private entity (such as a hospital; a bank or even a solicitor) under the Data Protection Acts. See Chapter 2 entitled "Enforcing Your Rights".

### 1.4 The right to **appeal**, **complain** and/or seek **redress** before the Courts

You may have a right to **appeal** a local authority decision. If you are not satisfied, you may then make a complaint to the **Ombudsman**. You may also be able to seek **redress** before the Courts. The various claims and remedies are set out in Chapter 2 entitled "Enforcing Your Rights."

### 1.5 You may be entitled to apply for a **hardship clause** if you are having difficulties paying rent.

Your local authority may also have a **tenancy sustainment programme** which could provide assistance. See Chapter 5 entitled "Rent" for more information about hardship clauses.

### 1.6 The right to repairs and maintenance.

Local authorities have to provide houses which are fit for people to live in and to keep houses in good repair. Certain repairs are the responsibility of the tenant while other repairs are the responsibility of the local authority. See Chapter 7 entitled "Repairs and Maintenance".

### 1.7 Travellers also have a right to **Traveller specific accommodation**.

Local authorities have to provide Traveller specific accommodation, such as halting sites, to Travellers eligible for and in need of housing. Local authorities must do this under section 13 of the Housing Act 1988 and the Housing (Traveller Accommodation Act) 1988. See Chapter 8 entitled "Traveller Accommodation".

### 1.8 The right of a **spouse** to additional protection in respect of the family home.

The family home cannot be **mortgaged** or sold without the written consent of the non-owning **spouse** beforehand. Except for the right of **survivorship** of a family home which is a joint tenancy, **spouses** are entitled to a share of the other **spouse's** estate. See Chapter 9 entitled "Families, Children and Housing Law".

### 1.9 The right of children who are homeless to adequate shelter.

This has been recognised as one of the rights of children under Article 42.5 of the **Constitution**. The HSE has an obligation under the Child Care Act 1991 to take

# 1: Your Key Housing Rights

reasonable steps to provide suitable accommodation for children who are homeless. See Chapter 9 entitled “Families, Children and Housing Law” and Chapter 14 entitled “Homelessness”.

## 1.10 The right to fair procedures in any assessment to the local authority for accommodation and support.

This is required under the **Constitution** and the European Convention on Human Rights. In their dealings with you, local authorities have to be fair and to give you a proper opportunity to be heard. Although there is no explicit right to housing in Irish law, local authorities are required to take the needs of homeless persons into account in providing housing under the Housing Acts. See Chapter 14 entitled “Homelessness”.

## 1.11 The right to apply for an excluding order if you are the victim of anti-social behaviour.

This right prevents a person engaging in anti-social behaviour from living in or coming near your home. The assessment is made to the District Court and can also be done for you by the local authority. If the person you want to exclude is your spouse or, in certain circumstances, your partner or **non-dependent child**, then you may also be able to apply for a barring order. See Chapter 10 entitled “Anti-Social Behaviour” and Chapter 11 “Excluding Orders”.

## 1.12 The right to apply to court where the local authority are seeking to evict you.

See Chapter 12 entitled “Evictions” and Chapter 16 entitled “The European Convention on Human Rights”.

## 1.13 The right not to be directly or indirectly discriminated against in relation to access to housing or other services on the grounds of gender, marital status, family status, sexual orientation, religion, age, disability, race or membership of the Traveller Community.

As well as the above grounds, protection against victimisation for having been involved in any way in previous discrimination **proceedings** or for having indicated an intention to bring **proceedings** are also included. A local authority also has an obligation to do all that is reasonable to accommodate the needs of persons with disabilities. See Chapter 15 entitled “Equality Issues”.

## 1.14 Rights under the European Convention on Human Rights (‘the ECHR’).

The ECHR became part of Irish law in 2003. Section 3 of the ECHR Act means that local authorities must perform their duties in line with the Convention, and section 5 empowers the courts to make a statement a law is incompatible with the ECHR. ECHR rights include the right to privacy, right to a fair hearing, right to a private and family life, freedom from discrimination and freedom from inhuman and degrading treatment. See Chapter 16 entitled “The European Convention on Human Rights”.

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## 2.1 Where can you get advice, information and support?

### 2.1.1 Advice and Support

A wide range of different organisations can help provide you with advice and information on issues including questions on housing issues.

Organisations such as Money Advice and Budgeting Services (MABs) can help you in dealing with financial queries and in particular, help you to manage your money. Your Citizen's Information Centre may also provide you with information and advocacy services. Many housing and homeless organisations can also help. These are listed in the Useful Contacts section of the booklet in chapter 17.

### 2.1.2 Legal Advice

Getting legal advice can be a scary daunting experience but can also be very useful.

- There are a number of Law Centres around the greater Dublin area. Some of them are noted in the Useful Contacts section.
- There are also many advice clinics run by FLAC, the Free Legal Advice Centres. The advice clinics are generally based in Citizens Information Centres throughout the country. For more information you should contact FLAC yourself. Their details are in the Useful Contacts section.
- If you can afford it, you should also consider going to a private solicitor.
- Finally, depending on the nature of your query, the Legal Aid Board may be able to help.

## 2.1 Where can you get advice, information and support?

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### 2.2 Can you **appeal** a decision made by a local authority about your housing?

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### 2.3 Who can you contact in the local authority?

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### 2.4 What other ways can you resolve your dispute without going to court?

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### 2.7 The Freedom of Information Acts

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### 2.8 The Data Protection Acts

# 2: Enforcing Your Rights

## 2: Enforcing Your Rights

### 2.1.3 Legal Aid:

The Civil Legal Aid Act 1995 limits the provision of legal aid where the help needed is about disputes about rights and interests in or over land. This means that generally, you will not get legal aid for a housing matter. This happens as the Legal Aid Board sees cases involving your home as a dispute over right or interest about land. However, there are some exceptions for example, if you are an older person; or have a disability; or if you have been defrauded or forced into a decision or situation, you may be entitled to Legal Aid. Other circumstances can also be taken into consideration. Also while legal representation is only provided for cases going before the court and not going before another body, for example a tribunal, the Legal Aid Board may appoint a solicitor to advise you before you go to the tribunal.

### 2.2 Can you **appeal** a decision made by a local authority about your housing?

If you are unhappy with a decision you are entitled to **appeal**. Local authorities have an internal appeals system. Contact your local authority to find out about their internal appeal system.

Ask your local authority for a copy of the information or policy document which describes how it works. If you are still unsure bring the document to your local Citizen's Information Centre and/or get legal advice. If you are unhappy with the response of the local authority to your **appeal** or complaint, you should complain to the **Ombudsman** or get legal advice. This is discussed later in this chapter. A useful way of finding out why a decision was made is using Section 18 of the Freedom of Information Acts 1997- 2003. This is also discussed later in this chapter.

## 2.3 Who can you contact in the local authority?

Your local authority will probably have a customer service team.

If you want to make a complaint about something you should contact the customer service team.

The **Ombudsman** may be able to investigate if you are not satisfied with the response.

You can also contact the customer service team if you need information on something, or if you would like to let them know that you had a particularly good experience with a staff member.

## 2.4 What other ways can you resolve your dispute without going to court?

Alternative dispute resolution involves resolving a dispute without having to go to court. The following are examples of types of alternative dispute resolution. **collaborative practice**;

- **facilitation**;
- **mediation** ;
- **conciliation**;
- **arbitration and**
- **conversation**;

are all ways to resolve disputes without going to court. Often alternative dispute resolution will be quicker, cheaper and lead to less bad-feeling than going to court, so it can be particularly useful for certain types of cases. However, depending on what your case is about these options might not be available. You should, however, find out whether they can be used.

Sometimes you may not feel comfortable talking about something without independent people present. Mediation for example, involves the people who are in dispute coming together to talk about their dispute and coming up with a working agreement. An independent mediator or mediators will facilitate reaching the agreement. **Mediation** may be very useful in ending a dispute with your neighbour; or coming to a working agreement if the local authority are going to carry out construction works in your area and you need to ensure that you and your home are protected during the works. **Mediation** may be useful in other disputes also. For further details on **mediation** services see

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the Useful Contacts section of the booklet.

### 2.5 What is the **Ombudsman's** job and how do you make a complaint to the **Ombudsman**

#### 2.5.1 What is the **Ombudsman's** job?

The **Ombudsman** investigates complaints made about local authorities and other public bodies; government departments; and state agencies.

#### 2.5.2 Making a complaint to the **Ombudsman**

If you are making a complaint to the **Ombudsman** you must first lodge a complaint with the local authority. If you are not satisfied with the response, you can then make your complaint to the **Ombudsman**. You should complain to the **Ombudsman** as soon as possible but not later than 12 months after the action you want to complain about happened or you became aware of it happening.

The **Ombudsman** must report to:

- the person making the complaint;
- the Department who has responsibility for the action complained about;
- any other body who may be involved; and
- any other person whom the **Ombudsman** considers it appropriate to send the complaint to.

#### 2.5.3 Decision:

If the **Ombudsman** decides that the complainant was 'adversely affected' by the actions of the relevant body, the **Ombudsman** will make recommendations. The

**Ombudsman's** recommendation may ask the local authority to review what it has done, change its decision or offer an appropriate remedy including an explanation, an apology and/or financial compensation. The local authority is expected to comply with the recommendations.

#### 2.5.2 Disability Act 2005 and the role of the **Ombudsman**:

The Disability Act 2005 obliges Government Departments and Public Bodies to work to improve the quality of life of people with disabilities. The Act gives powers to the **Ombudsman** to investigate complaints. Local authorities are also subject to this.

### 2.6 Legal **proceedings** and going to court

#### 2.6.1 Get Legal Advice

This publication is an information booklet only. It does not replace legal advice. We cannot stress this enough.

Each type of legal action and remedy has strict **time limits** and legal tests. You may be required to act immediately as some **time limits** are very short.

**Legal proceedings** are costly and any person involved in legal **proceedings** risks having to pay large costs. It is really important that you get legal advice before starting a court case. If any legal **proceedings** are issued or threatened against you, get legal advice immediately.

### 2.6.2 High Court

Generally if you wish to challenge an action of your local authority you have to take a case to the High Court. This is very costly and you should seek legal advice before doing this.

Depending on the nature of the case, the High Court can make orders directing and prohibiting certain actions under **Judicial Review** and **Injunction** application.

The High Court also has the power to declare legislation unconstitutional and/or declare that legislation and or particular actions are in breach of the European Convention on Human Rights. You can also sue for **breach of contract** in the High Court if the sum of money you are claiming is over €38,092.14.

### 2.6.3 Circuit Court

You can sue for **breach of contract** and/or **damages** in the Circuit Court if your claim is for a sum of money between €6,348.69 and €38,092.14. You should get legal advice to make sure you bring your case to the right court. If you don't do this, you may have to pay a large amount of money.

The Circuit Court also has power to grant **injunctions**. An **injunction** is generally an order requiring or prohibiting some action.

### 2.6.4 District Court

If you wish to claim for **damages** or **breach of contract** for less than €6,348.69, contact the District Court.

### 2.6.5 Equality Tribunal - Equal Status obligations

This is discussed in Chapter 15.

### 2.6.6 Injuries Board

If you wish to make a claim for an injury you may need to lodge your claim with the Injuries Board first. In fact, most claims must be lodged with the Injuries Board first. You should get legal advice.

For further information on the Injuries Board contact:

Postal Address:

InjuriesBoard.ie

PO BOX 8

Clonakilty

Co. Cork

Tel: LoCall 1890 829 121

Fax: 1890 829 122

Email: [enquiries@injuriesboard.ie](mailto:enquiries@injuriesboard.ie)

Website: [www.injuriesboard.ie](http://www.injuriesboard.ie)

## 2.7 The Freedom of Information Acts

### 2.7.1 What do the Acts do?

These Acts give everyone the legal right to have access to records held by a public body, have information relating to you corrected if the record is incorrect, inaccurate or misleading; and be given reasons for actions of a public body (this is covered by section 18)

### 2.7.2 How do I get the information or make the request?

You should make the request in writing to the Information Officer at the local authority giving as much information as you have about the records you want.

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### Example:

If you want information about your rent account write to the local authority explaining that you are a tenant and you want information held by the rents department and any other information about your rent account which may be held by other departments. In the letter give

your name, your account number (if you have it) your address and your date of birth. You should also make it clear that you are asking for this the information under the Freedom of Information Acts.

This is a sample letter:

PUT YOUR ADDRESS HERE

County Secretary/Freedom of Information Officer  
PUT NAME OF COUNCIL HERE Council  
PUT YOUR ADDRESS HERE  
PUT THE DATE HERE  
RE: Tenancy at PUT YOUR ADDRESS HERE

Dear Sir/ Madam,

This is a formal request under the Freedom of Information Act 1997 - 2003 for all contracts, (including, in particular, the tenancy agreement) receipts, letters, emails, memos and any other documentation howsoever arising in relation to my tenancy at <<PUT YOUR ADDRESS HERE>> from <<PUT COUNCIL NAME HERE>> Council all its offices or subdivisions, including in particular <<IF YOUR LOCAL AUTHORITY IS DIVIDED INTO TOWN COUNCILS PUT THE TOWN COUNCIL RELEVANT TO YOU HERE>> Town Council.

Please also provide me with all contracts, (including, in particular, any agreements relating to rent) receipts, letters, emails, memos and any other documentation howsoever arising in relation to the charging and payment of rent at <<PUT YOUR ADDRESS HERE>>, from <<PUT COUNCIL NAME HERE>> Council all its offices or subdivisions, including in particular <<IF YOUR LOCAL AUTHORITY IS DIVIDED INTO TOWN COUNCILS PUT THE TOWN COUNCIL RELEVANT TO YOU HERE>> Town Council.

Under Sections 7(2) and 8(1) of the Act, I expect a decision within two weeks and access to the information within four weeks. As these are personal documents for the purposes of Section 47(4) of the Act, I note that there will be no charge in relation to the documents.

When this information is available, you may call me on <<PUT YOUR TELEPHONE NUMBER HERE>>. A photocopy of the original documents will suffice.

Thank you for your help with this request.  
Yours faithfully,

SIGN YOUR NAME HERE

PRINT YOUR NAME HERE

### 2.7.2.1 If you are looking to change the record you should:

- give your personal details, name and address and so on;
- state that you are making the request under Section 17 of the Freedom of Information Act 1997; explain what record is wrong, incomplete or misleading; and,
- Give the accurate or correct information.

#### Example:

If you are applying for housing and one of your children has not been added to your housing assessment you should:

- provide the local authority with a copy of their birth certificate or other evidence proving who they are,
- point out to them when they were told about your child before, and, that you want the record corrected confirming that they should be on the assessment and the date
- that they should have been added earlier.

### 2.7.2.2 Why/how was a decision made?

If you are looking for an explanation of the reasons then you should write a letter and:

- give your personal details, name and address and other information which might identify you, such as an account number; and
- you should also state that you are making the request under Section 18 of the Freedom of Information Act 1997.

#### Example:

If you have been refused housing on the basis of 'good estate management' or 'estate management' reasons, you could write to ask what the reasons are.

### 2.7.3 Does the local authority have to give the information?

Not always. By law, the local authority can legally keep some information for various reasons, one of which is confidentiality.

### 2.7.4 You can **appeal** a decision made in your Freedom of Information request

If you are not satisfied with the decision you can **appeal** to a more senior member of staff within the local authority.

If you are not satisfied with the outcome of the internal **appeal**, you can then lodge an **appeal** with the Office of the Information Commissioner.

## 2: Enforcing Your Rights

### 2.7.5 Important factors to think about when looking for information:

#### 2.7.5.1 Cost:

There may be a cost for getting the information. Generally, personal information does not cost anything. If you have a medical card the cost may be less. You also have a right to **appeal** the charging of a fee.

#### 2.7.5.2 Time:

There are strict **time limits** on the local authority for giving you the information. After 4 weeks if you have not had any reply from the local authority you can treat this as a refusal and **appeal** to the internal appeals person. There are also strict **time limits** at each stage of the procedure for you if you intend appealing so ensure you do not run out of time.

#### 2.7.5.3 For more information contact the Office of the Information Commissioner at:

Office of the Information  
Commissioner  
18 Lower Leeson Street  
Dublin 2  
Telephone: 01- 639 5689 / Lo call  
1890-223030.  
Fax: 01-639 5674 or 01- 639 5676  
Email: info@oic.ie  
Website: www.oic.ie

### 2.8 The Data Protection Acts

#### 2.8.1 What do the Acts do?

Organisations holding information or data about you are obliged to keep it safe and secure. **They are obliged to make sure that the information is:**

- Used fairly;
- Is kept and used for the purpose given;
- Is used and kept for clearly stated lawful purposes;
- Up to date, factually correct and complete;
- The right amount and not too much;
- Relevant;
- Only be kept for as long as it is needed.

You are entitled to a copy of your information. If you are not happy with the way your data or information is being controlled you can make a complaint to the Data Commissioner.

#### 2.8.2 For Further Information: The Office of the Data Protection Commissioner,

Canal House,  
Station Road,  
Portarlinton,  
Co. Laois  
LoCall: 1890 252 231  
Tel: 057 868 4800  
Fax: 057 868 4757  
Email: info@dataprotection.ie  
Website: www.dataprotection.ie

## Social Housing Support

### 3.1 What is social housing support?

Local authorities, as the Housing Authorities in Ireland, have been the main providers of social housing for people who need accommodation and cannot afford to provide it from their own resources. Local authority housing is sometimes called social housing, council housing or public housing.

Your need for accommodation is generally decided through your assessment to the local authority for social housing support. There are two steps in the assessment, firstly whether you are eligible; and secondly, whether you have a need. The local authority will not consider your need until they have first considered whether you are eligible. Whilst previously, you could apply to a number of different local authorities you can now only apply to one local authority.

Social Housing Support is the method which local authorities use to meet the housing needs of people who are eligible for social housing.

### 3.2 What is the difference between social housing and social housing support?

Social housing describes all types of housing provided and/or funded by the state. This includes housing which is local authority housing; schemes such as the Rental Accommodation Scheme; housing provided by Voluntary Housing Associations.

Social housing support describes the arrangements which a local authority can make to address your housing needs, which include the

### 3.1 What is social housing support?

### 3.2 What is the difference between social housing and social housing support?

### 3.3 What factors are considered in deciding whether you are eligible for social housing support and which local authority should you make your assessment for assessment to?

### 3.4 Do you need social housing support?

### 3.5 What can you do if you are living in Extremely Difficult Circumstances?

### 3.6 What restrictions are there when selecting areas you would live in (Areas of preference)?

### 3.7 What rules are there relating to providing information either when you make your assessment or if you are already receiving social housing support?

### 3.8 How many Assessment Forms can you submit and what is the Assessment Process?

### 3.9 What is the Housing List?

### 3.10 What happens when you are offered social housing support?

# 3: Applying for Local Authority Housing

# 3: Applying for Local Authority Housing

provision of **social housing** and the assistance of this provision by the local authorities.

Until recently, when you applied for housing in Ireland you applied to your local authority. If you were found to be in need of housing you were then placed on the housing list or offered accommodation. Now, the assessment you make is called an assessment for **social housing support**. You are still being assessed as to whether you are **eligible** for housing and whether you have a need for housing, but the process is now called an assessment for **social housing support**. Your application for assessment may result in you being offered housing which is not a local authority tenancy, for example a home under the Rental Accommodation Scheme.

## 3.3 What factors are considered in deciding whether you are eligible for **social housing support** and which local authority should you make your assessment for assessment to?

- Residency status;
- Income;
- Rent;
- Location;
- Availability of alternative accommodation

### 3.3.1 Residency status

If you are applying for **social housing support** the local authority will consider your right to reside in Ireland in deciding whether you are eligible for **social housing support**. If you have been refused **social housing support** as a result of your residency status you should get legal advice.

### 3.3.2 Income

This condition is now controlled by **regulations**. There are different bands (categories) depending on where you live. If you are applying for **social housing support** which is in an area in Band 1: and you are a single person household, your annual income must be less than €35,000. If you are a single person household, and you are applying for **social housing support** in area in Band 2, your annual income must be less than €30,000. Finally, if you are a single person household applying for **social housing support** in an area which is in Band 3, your annual income must be less than €25,000. If there is more than one person in your household, the limits for the annual household incomes increase depending on the numbers and there are also rules about this. Some incomes are exempt from the assessment of income. If you have been refused social housing support as a result of your household income you should get legal advice and also ensure that the calculations have been carried out accurately.

### 3.3.3 Rent

There is law which will allow local authorities find you ineligible for **social housing support** if you or any of your household have been in **arrears** of rent for at least 12 weeks within the three years immediately before you made your application for assessment. If you or the household member who is in **arrears** has made an arrangement with the local authority that money is owed to pay the moneys owed, this should not be a ground to find you ineligible.

If you or a household member are accused of owing **arrears** that you or the household member do not accept then you should get legal advice also.

### 3.3.4 Location

Location is important for different reasons during the entire assessment process. At this part of the assessment, location is important as if you are applying for **social housing support**, you should apply for **social housing support** to the local authority in the area where you reside; or an area which you can show a local connection. If neither of these conditions apply to the applicants the Council can exercise **discretion** and allow you to apply in the area of your choice. Local connection can be proven by any of the following conditions being met:

- You or anyone in your household has resided in the area for a continuous 5 year period at any time; or
- You or anyone in your household are employed in a job in the area concerned or in a job which is located within 15 kilometres of the area; or
- You or anyone in your household is in full time education in any university, college, school or other type of educational establishment in the area concerned; or
- You or anyone in your household has an enduring physical, sensory, mental health or intellectual impairment is attending a medical or residential establishment in the area concerned that has facilities or services specifically related to such impairment; or

- You or anyone in your household lives in the area concerned and has lived there for a minimum period of 2 years

### 3.3.5 Availability of alternative accommodation

One of the factors which will be considered is what property is available to you and/or anyone in your household which you and your household could live in. In considering this factor the local authority will consider:

- Do you or anyone in your household own property you could live in;
- Do you or anyone in your household own property you could sell and use the proceeds of to pay for accommodation;
- The local authority will deem you to have accommodation if you or anyone in your household have an empty property which you can reside in.
- Where any of the above property exists the Council will look at the following in considering the suitability of that available accommodation:
  - If your available accommodation is unavailable to you due to a marital separation or Civil Partnership dissolution (you will probably be asked to produce legal documents to prove this);
  - Where the accommodation available to you is unsuitable due to overcrowding;
  - Where the accommodation available to you is unfit for human habitation;
  - Where the accommodation available to you does not meet the physical, sensory, mental health

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or intellectual impairment of you or some member of your household.

## 3.4 Do you need social housing support?

Once you have been deemed eligible for social housing support only then will the local authority assess your household's need for social housing support. In assessing need the local authority will look at the following:

- What your current accommodation is?
  - Is your accommodation an institution, emergency accommodation or hostel;
  - Is your current accommodation overcrowded;
  - Is your current accommodation fit for human habitation;
  - Is your current accommodation shared and if it is shared – are you making a reasonable assessment for separate housing
  - Are there other factors relevant to your and/or a member in your household which the local authority should consider when deciding on your need for housing
- Whether any priority applies or should apply? For example does medical or exceptional social grounds priority apply
  - Do you or anyone in your household have a disability
  - The location you are applying for and the grounds upon which you are making this application for assessment.

## 3.5 What can you do if you are living in Extremely Difficult Circumstances?

Applicants may be considered for housing on a priority basis in exceptional medical circumstances or on exceptional social grounds.

### 3.5.1 Exceptional Medical Circumstances

Priority status for housing or for a transfer of housing may be given in cases of exceptional medical circumstances only if it relates to the applicant's housing conditions. The decision is made by the Chief Medical Officer. If you are not happy with their decision, you can appeal. You must provide written information from a medical practitioner. Regulations have provided that the medical evidence be from a Consultant or an Occupational Therapist. If you are having difficulty meeting this criteria, for example, if you have a long waiting period to meet your Consultant you should seek support from an advocate or solicitor about this condition. Other evidence from social workers and public representatives will only be considered as supporting evidence.

### 3.5.2 Exceptional Social Grounds

To be considered for the Exceptional Social Grounds Scheme you must write a letter to the Council explaining why your living circumstances are so difficult and how they can only be improved by a change in your accommodation. To qualify for the Scheme: Your circumstances must be exceptional, meaning they must not be experienced by anybody else in

your area, street or housing block. Your circumstances must not already be covered by the 'Scheme of Letting Priorities'.

Your difficulties can only be relieved by a change in your accommodation.

You can include supporting evidence from social workers, Gardaí, public representatives and other people if you wish.

The Chief Welfare Officer will make a decision based on the letters and reports you have sent in. You will be informed of this decision in writing.

If you are not happy with their decision, you can appeal.

### 3.6 What restrictions are there when selecting areas you would live in (Areas of preference)?

There are a lot of new rules relating to areas of preference for where you would like the local authority to offer you a home. Some of the rules relate to specific areas such as Cork; Galway; Limerick; and Waterford and if these are the areas you are applying in you should seek further information about these restrictions.

Some other rules which relate to every household who applies for social housing support include:

- If you wish to apply to reside in an area which is in area outside the local authority's functional area you can do so;
- You cannot change an area of choice within a period of 12 months after you have informed the local authority that you would like that area to be an area of choice.
- If you have removed an area of choice from your selection you cannot include that area for at least

12 months again.

- You cannot select any more than 3 areas of choice at any one time.

### 3.7 What rules are there relating to providing information either when you make your assessment or if you are already receiving social housing support?

#### 3.7.1 What information can local authorities ask you, or anyone in your household, to provide:-

- Who is in the household;
- The ages of people in your household;
- The gender of people in your household;
- The occupations of people in your household;
- The condition of health of people in your household;
- Weekly income including any assistance from the Department of Social Protection;
- The means of transport of each household member and the cost of such transport.

It is very important that up to date and accurate information and documentation is provided as it is an offence under the Housing (Miscellaneous Provisions) Act 2009 for failure to give information sought. It is also an offence to give false misleading information and/or documentation.

# 3: Applying for Local Authority Housing

## 3.7.2 The Assessment Form:-

Under recent **regulations** local authorities have been given a standard assessment form to assist them in dealing with assessments for **social housing support**. As a result of this form, if you are applying for **social housing support** you can be asked whether you or anyone in your household ever squatted in a local authority house; whether you or anyone in your household have ever been evicted from a local authority house. The form also asks questions about whether you or anyone in your household have ever been the subject of Anti-Social Behaviour Orders (ASBO's). The form also asks questions about a wide range of public order offences, If any of these apply to you or anyone in your household; or if you are unsure whether they apply to you or anyone in your household you should get legal advice before completing the assessment form. Further, if your assessment for **social housing support** has been affected as a result of any of these reasons you should seek legal advice.

## 3.8 How many Assessment Forms can you submit and what is the Assessment Process?

Each local authority now request the same general information when a household is applying for **social housing support**. As already mentioned a household applying only completes one form. If you have already applied for **social housing support** and are on the housing list, you can be asked to complete another form. Also, if you have never applied for **social housing support** but are getting a payment of Rent Allowance under the Supplementary Welfare Allowance Scheme you may also be required by your local authority to complete an assessment form.

There are time limits within which you must provide requested information if you are an applicant for social housing support. If you fail to provide information requested, this can lead to your assessment being refused. Also, if the local authority fail to provide you with information about your assessment within certain time limits this could also deem that your assessment has been processed and that you have been deemed eligible for **social housing support**.

## 3.9 What is the Housing List?

Once you have been deemed eligible for **social housing support**; and your need has been assessed you are then placed on the housing list relevant to your needs.

.....

### 3.10 What happens when you are offered social housing support?

There are different types of offers which may be made including housing under the Rental Accommodation Schemes or Voluntary Social Housing. When you are offered housing, you may be asked to an interview with the local authority. The local authority may ask you if they can carry out a background check. This may include getting Garda reports and details of reports of anti-social behaviour. You should make sure that you have given all relevant information. If you do not your assessment for housing may be refused or deferred.

Depending on the type of accommodation offered to you, your home may or may not be furnished. If you are offered a home and you need furniture or appliances, you may be able to get help to buy them from your Community Welfare Officer. You should contact your Community Welfare Officer for more information about this.

.....

### 3.11 What happens if you turn down an offer of social housing support?

If you are offered housing you do not want, you can turn it down. However, if the local authority thinks that you do not have a good reason for refusing the offer of housing; it may result in you being put further down the waiting list, particularly if you refuse more than one offer. Refusing a number of offers can also result in you being removed from the housing list altogether.

# 4: Tenancy Agreements

4.1 What is a tenancy agreement?  
.....

4.2 What are the terms and conditions of a tenancy agreement?  
.....

4.3 Who are the parties to the tenancy agreement?  
.....

4.4 What is a weekly tenancy?  
.....

4.5 How much rent do you have to pay?  
.....

4.6 What details do you have to give the local authority about your income?  
.....

4.7 Can you leave your home unoccupied without consent from the local authority?  
.....

4.8 Can you **assign** (transfer) your house?  
.....

4.9 What can you use the house for?  
.....

4.10 No **nuisance**, annoyance or disturbance is to be caused  
.....

4.11 Other Clauses  
.....

4.12 Who can inspect your house?  
.....

4.13 What is the right to re-enter?  
.....

4.14 Is there a right to the quiet enjoyment of your house?  
.....

.....  
**4.1 What is a tenancy agreement?**

A tenancy agreement is an agreement between a landlord and a tenant.

The tenancy agreement made between the local authority and the tenant is a very important **legal document**. It gives rights and duties to both the tenant and the local authority.

The statutory tenancy agreement for local authority dwellings comes from Section 58 of the Housing Act 1966. A result of this is that the local authority tenant does not have the same rights and protections in law as a tenant of a standard private rental dwelling.

Once the parties sign the tenancy agreement it is legally binding. That is why you should read it carefully before signing it and, if necessary, you should also get independent legal advice.

.....  
**4.2 What are the terms and conditions of a tenancy agreement?**

After section 29 of the Housing (Miscellaneous Provisions) Act 2009 comes into force (which had not happened at the time of writing this booklet) all tenancy agreements will have to include the following terms and conditions (contained in Schedule 3 of the Act).

- The name(s) of the tenant(s);
- The terms on which the dwelling is let, including any rules about buying, living in, leaving or subletting the dwelling and the rules about changing to another dwelling;
- Details of how the tenancy can be ended;
- Details of rent or any other charges, including when they are to

be paid, how they are to be paid and how unpaid rent or charges are to be recovered by the local authority;

- The duties of the tenant regarding maintenance of the dwelling, keeping animals, preventing **nuisance** to neighbours, changing use or altering the dwelling;
- The rules about anti-social behaviour and exclusion orders;
- The duty of the tenant to allow reasonable access to officers of the local authority.

Most tenancy agreements already includes this information, but after section 29 comes into force, it will be required by law that all such information is always included in all tenancy agreements.

#### 4.3 Who are the parties to the tenancy agreement?

Usually, in a tenancy agreement, the agreement is made between the local authority and the tenant. The prospective tenant needs to know what it means if more than one person takes the tenancy. It means the new people are also part of the **contract** with the local authority and can only be taken off the tenancy by agreement of the parties or by a court order.

There are many clauses in the tenancy agreement and some of the most important ones are set out below.

#### 4.4 What is a weekly tenancy?

Generally, a weekly tenancy is where the tenant's security is on a week-to-week basis and it can be stopped when they have given 28 days' notice – **notice period**. This general rule in a weekly tenancy can be changed by any additional terms in the tenancy agreement and it is also relates to any notice periods under the law.

While the local authority would see itself as, and is generally, providing homes for life as the weeks run into months and years, this situation is not usually reflected in the tenancy agreement. This is different to a standard private rented dwelling tenancy which might be for a period of one year, a number of years or whatever period is agreed and the rent might be payable monthly

#### 4.5 How much rent do you have to pay?

The weekly rent is set out and a rent book must be provided to the tenant under the Housing (Rent Books) **Regulations** 1993 which have been amended by the Housing (Rent Books) **Regulations** 2003. The amount is usually based on the entire income of the household from work and social welfare. Each local authority has its own scheme to assess the amount of rent to be paid. The rent is based on the **assessable income** of all members of the household, with an additional weekly charge where central heating is provided. You will need to look at your own local authority's rent scheme to find out

## 4: Tenancy Agreements

how much rent you and your family should pay. For more information see Chapter 5 on Rent.

### 4.6 What details do you have to give the local authority about your income?

The local authority has wide powers to obtain all information about the total household income. If you have not given the local authority full details of your income, there will be a penalty imposed on you for not being upfront.

It is also important to keep the local authority informed of any changes in your household income.

### 4.7 Can you leave your home unoccupied without consent from the local authority?

Your tenancy agreement may limit you from leaving your home unoccupied longer than the time limit set out in your tenancy agreement, without the consent of the local authority. The **time limits** can be quite short. You need to look at your own tenancy agreement to figure out the time period for which you would be allowed to leave your house unoccupied.

### 4.8 Can you **assign** (transfer) your house?

The tenancy agreement may state that the tenant shall not **assign** (transfer) without the consent of the local authority. If you have this term in your agreement, you cannot pass your tenancy on to someone else without getting the local authority's agreement.

### 4.9 What can you use the house for?

You can only use a local authority house as a **dwelling house** that is a place where you and your family live. No signs shall be put up without consent and no animals other than domestic animals which will not cause annoyance can be kept. Some local authorities also specify conditions for particular breeds of dogs that may be kept by tenants. For example, some tenancy agreements insist that certain dogs must be neutered, micro chipped, and, in line with **regulations** on dog ownership, muzzled when in public places.

## 4.10 No nuisance, annoyance or disturbance is to be caused

Local authorities impose this clause in tenancy agreements to restrict the behaviour of tenants, residents and visitors. Local authorities often have conditions in tenancies as to who the tenant can have visiting their home. If you are found by the local authority to have broken these conditions, a decision can be made by the local authority that you have 'rendered yourself homeless'. This decision is often reached by the local authority without independent fair procedures or a right of appeal. There are on-going court cases trying to change this practice. If this applies to you seek legal advice immediately as there have been recent developments in Irish law relating to these types of proceedings.

## 4.11 Other Clauses

There are usually clauses in the tenancy agreement for external fixtures such as taps; refuse; plants and gardens; bottled gas containers; alteration;, walls and fences; no external painting without consent; internal decoration and damage; and breakage. For more information see Chapter 7 on repairs and maintenance.

## 4.12 Who can inspect your house?

Local authority employees may enter and inspect your house and carry out works. There is sometimes no mention in the tenancy agreement of an obligation on local authority officials having to give notice periods. This is unusual when compared to private tenancies where notice periods would have to be given to a tenant if a landlord wished to inspect the tenant's house.

## 4.13 What is the right to re-enter?

Some tenancy agreements will include a right to re-enter. A right to re-enter is a right of the local authority to re-enter and take back the local authority house if certain conditions are not obeyed. However, if a tenant were to challenge the right of re-entry, the council would have to bring court proceedings for possession as discussed in Chapter 12 on Evictions. If you are served or have been served with legal proceedings seek legal advice immediately as there have been recent developments in Irish law relating to this type of proceedings.

# 4: Tenancy Agreements

## 4.14 Is there a right to the quiet enjoyment of your house?

Local authority tenancy agreements usually contain little or no agreement by local authorities allowing you quiet enjoyment of your house. A 'quiet enjoyment' clause would look like this:

That the tenant paying the rent and observing the agreements hereinbefore contained may peaceably hold the premises during the term without any disturbance by the Council or any person lawfully claiming under or in trust for the Council.

There may be a term like this in your tenancy agreement. If there is not, you can argue that you have the right to quiet and peaceful enjoyment as an 'implied' term of your tenancy agreement (that is it is not written down but it exists in the agreement anyway).

Also there is usually no clause in relation to repairs by local authorities. However, there are laws which impose more implied or unwritten conditions into the tenancy agreement. For more information see Chapter 7 on repairs and maintenance.

Unfortunately, unlike other agreements that are negotiated by parties in similar situations, there is little or no equality of bargaining power and the tenant is usually obliged to accept whatever conditions are laid down by the local authority if they wish to take up the tenancy.

If you are unsure about your tenancy agreement, the terms of your tenancy agreements and any obligations which arise out of the agreement you should get independent legal advice.

## 4.15 Consumer Rights

There are regulations which control unfair terms in consumer contracts where the consumer has had no opportunity to negotiate the terms of the contract. If you think this could affect you should get legal advice.

Consumers of different services and products are often consulted regarding their use of the product or service. A number of services provided by local authorities such as 'Anti-Social Behaviour Strategies' and Schemes of Letting Priorities require the local authorities to engage with different services in the community but there is no obligation on the local authority to engage with tenants the main consumer of the service.

.....  
**5.1 How can you pay your rent?**

Rent is usually paid in the following ways:

- by Standing Order;
  - by Direct Debit;
  - by Household Budget;
  - to the Revenue Collector;
- at the **Finance** Section of the local authority.

.....  
**5.2 What happens if your rent falls into arrears?**

If you have missed payments, you should contact the local authority immediately before the situation gets any worse. You can clear your **arrears** over time, provided you make an arrangement and stay with it. In the majority of cases, such arrangements take the form of the weekly to monthly payments plus an agreed contribution towards the **arrears**. You will be required to commit yourself to such agreements and may have to sign **undertakings** to meet the agreed payments. Please note that the Money Advice and Budgeting Service (MABS) can help you in making this agreement with the local authority (telephone the MABS Helpline on 1890 283438). Chapter 3 Applying for Local Authority Housing also explains how rent arrears can be considered as a factor in your housing needs assessment (application for assessment for **social housing** support).

**5.2.1 Will you have to pay interest on arrears of rent?**

Since the introduction of Section 33 of the Housing (Miscellaneous Provisions) Act 2009 and the

.....  
**5.1 How can you pay your rent?**

.....  
**5.2 What happens if your rent falls into arrears?**

.....  
**5.3 What is a Rent Arrears Assessment?**

.....  
**5.4 What is a hardship clause?**

.....  
**5.5 Can there be a change to the rent you pay**

.....  
**5.6 What are the different types of rent?**

.....  
**5.7 How is rent calculated?**

# 5: Rent

Housing (Interest on Moneys Owed to Housing Authorities) **Regulations 2010** (SI 254/2010), interest at a rate of 6% can be charged by the local authority on:

- Rent;
- Charges;
- Fees;
- Loan repayments (including provision of sites for Travellers, shared ownership leases, housing loans, loans for caravan sites, affordable homes, shared ownership lease, rent schemes and incremental purchase arrangements).

You will only have to pay interest on rent payments that are missed. There is no need to pay interest unless the rent is in **arrears**.

## 5.2.2 Can you be evicted for falling into rent **arrears**?

Yes. If the **arrears** persist and you fail to do anything about it the local authority may serve you with a **Notice to Quit**. Such a notice to quit will request that you leave the property and it is usually followed by an eviction order. As soon as you receive this **notice to quit** you should contact your solicitor or local Law Centre immediately and arrange a consultation. It is very important that you seek legal help once the **Notice to Quit** issues. If any legal document is sent to you, you should get legal advice. Read chapter 12 Evictions for more information.

## 5.3 What is a **Rent Arrears Assessment**?

If you are in **arrears**, the local authority may demand a **Rent Arrears Assessment**. If you are asked for income details when

the local authority is doing a **Rent Arrears Assessment** and you do not give those income details, you may be charged the maximum rent until you give the local authority the full details of your income.

## 5.4 What is a **hardship clause**?

- There is a **hardship clause** that gives local authorities the ability to reduce your rent if there are particular reasons to do so. For example, under the Dublin City Council Rent Scheme 2011 an 'Officer in Charge' may reduce your rent by up to 50% for up to six months in certain circumstances if: a household is badly affected by exceptional social factors that makes it difficult for it to function or to pay rent assessed in accordance with this Rent Scheme, or

- If it would cause undue hardship for a household to pay the full rent.

## 5.5 Can there be a change to the rent you pay

The local authority reviews its scheme every year and you will be asked to complete a Rent Form/ Household Details Form and return it annually. If your household income increases you must inform the local authority and your rent may then increase. If your household income decreases your rent may also decrease. The following change in circumstances must be reported to the local authority:

- A person in your household gets a job;
- A person with an income joins the household;
- A person in the household starts claiming social welfare benefits;

- There is a death in the household;
- There is a birth in the household.

You can let the local authority know of these changes by contacting the Rent Section. Your new rent will be assessed from the date the changes occur. Be sure to keep any documents that prove that any of these things have happened. When changes in your circumstances come to light, your rent will be re-assessed and your account backdated to the date of the change in circumstances.

.....

## 5.6 What are the different types of rent?

### 5.6.1 Fixed Rent

A **fixed rent** is not based on household income. The rent of a local authority dwelling let on a **fixed rent** may be increased as new Rent Schemes come into force. Tenants on fixed rents usually have the option of converting to a differential rent (please see below) if they so wish. The assessment of **fixed rent** is rare in local authority housing.

### 5.6.2 Differential Rent Scheme

Local authority rents may be based on a system called the “**differential rent scheme**”. Most households are subject to this scheme. This means that your rent is based on your ability to pay. The scheme is based on a percentage of your income and allows deductions in rent for each dependant. Your local authority may have a minimum and/or maximum rent depending on the size of your home. The minimum rent is usually based on the basic social welfare rate of payment.

.....

## 5.7 How is rent calculated?

### 5.7.1 Assessable Income:

The **Assessable Income** is income from the following sources, assessed in full, but reduced by any Pay Related Social Insurance (PRSI) contributions, Income Tax and Pension deductions payable on such income:

- Net weekly income of an employed person;
- Shift allowance;
- Bonus;
- Commission;
- Overtime.

Income from the following sources is usually disregarded for the purpose of calculation of rents, although this may vary:

- Child Benefit, orphans allowances or orphans pensions, payable under the Social Welfare (Consolidation) Act 1981;
- Scholarships;
- Allowances payable under the Boarding out of Children **Regulations** 1954;
- Allowances for domiciliary care of handicapped children under the Health Act, 1970.
- Lump sum compensation payments.
- Carer’s Allowance
- In the case of Community Employment Scheme and Back to Work Schemes, the difference between the appropriate rate Jobseeker’s Benefit/Allowance and the allowance being paid to the tenant is disregarded.
- Fuel Allowance and Living Alone Allowance.

# 5: Rent

## 5.7.2 Allowances

Weekly rent will be reduced by €1 for each **dependent child** in your household. A **dependent child** is someone who is 18 years or under or who is under 22 but is attending a full time course of education.

### Example

Here is an example of a rent calculation for a household in Dublin City Council based on the 2011 Rent Assessment Scheme which is a **Differential Rent Scheme**:

- Pat earns the highest salary of €342.60 / week. (**Principal Earner**)
- Pat's wife June is not working.
- Their daughter Caroline earns €180/ week. (**Subsidiary Earner**)
- Their daughter Bridget earns €180/ week. (**Subsidiary Earner**)
- Their son Peter earns €100/ week. (**Subsidiary Earner**)
- Their son Adam earns €100/ week. (**Subsidiary Earner**)
- Their son Craig is 20 years old and in full time education.

| **Principal Earner** - Pat's income: €342.60 - €64 (couple allowance) = €278.60.  
15% of €278.60 = €41.79  
June's income: €00.00 so rent due is €00.00

### | **Subsidiary Earner**

- Caroline's income: €180 - €32 (single allowance) = €148. | 15% of €148 = €22.20, but maximum any 'subsidiary earner' can pay is €19\* so rent due is €19

- Bridget's income: €180 - €32 (single allowance) = €148. | 15% of €148 = €22.20, but maximum any 'subsidiary earner' can pay is €19\* so rent due is €19

- Peter's income: €100 - €32 (single allowance) = €68. | 15% of €68 = €10.20

- Adam's income: €100 - €32 (single allowance) = €68. | 15% of €68 = €10.20

- Craig (**dependant child**): €00.00 so rent due is €00.00

Total Principal earner: €41.79

Total subsidiary earners: €58.40, maximum subsidiary earners under 2011 Scheme €57\* so €58.40 reduced to €57.00

**Total rent the household** must pay €41.79 + €57 = €98.79

\*The maximum amount for a **subsidiary earner** is €19 up to a total maximum of €57

## 5.7.3 Assessment of self-employed persons

Persons who become self-employed after 7th March 2011 will be assessed on the following assumed net incomes (based on Dublin City Council rates):

Taxi Drivers & Licence Plate owners: €500.00 / week.  
Hackney Drivers & Cosey Drivers: €500.00 / week.  
Tradesmen: €560.00 / week.  
Non-Trade/ Other Businesses: €500.00/ week.

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**6.1 How can you, a tenant, buy your home from a local authority? (What is tenant purchase?)**

There are a number of ways in which tenants can buy their homes from local authorities. New schemes were introduced under the Housing (Miscellaneous Provisions) Act 2009; you should enquire whether any of these schemes apply to you and also check whether the Minister for the Environment, Community and Local Government has started the scheme.

The various schemes discussed in this chapter try to give the option of buying a home to those who would ordinarily be unable to do so because of a lack of financial resources. They tend to involve special loans from the local authority or discounted purchase prices. Many of these schemes are technical and so you should make sure you get legal advice before availing of any of them. It is only the general details of the schemes that are explained in this booklet.

The ways in which a home can be purchased from the local authority are as follows:

- Buying a dwelling under the Tenant Purchase Scheme.
- Buying a dwelling under the Shared Ownership Scheme.
- Buying a house under various Affordable Housing Schemes.
- Buying a dwelling under the Incremental Purchase Scheme (Housing (Miscellaneous Provisions) 2009 Act).
- Buying an apartment under the Housing (Miscellaneous Provisions) 2009 Act.

6.1 How can you, a tenant, buy your home from a local authority? (What is tenant purchase?)

6.2 What is the Tenant Purchase Scheme?

6.3 Are there different ways by which you can purchase your local authority home?

6.4 What is a Shared Ownership Lease?

6.5 What are Affordable Housing Schemes?

6.6 What is an Incremental Purchase Scheme?

6.7 Can a tenant buy their apartment?

# 6: Tenant Purchase

# 6: Tenant Purchase

At the time of printing some of the schemes mentioned in this chapter were ceased by the intervention of the Department of the Environment, Community and Local Government so if you are interested in any of them you need to establish that they are still in operation.

PURCHASING PROPERTY HAS MANY LEGAL CONSEQUENCES. YOU ARE STRONGLY ADVISED TO GET INDEPENDENT LEGAL ADVICE BEFORE PURCHASING A HOME IN ANY OF THESE WAYS. ALSO, REMEMBER THAT YOU RISK LOSING YOUR HOME IF YOUR MORTGAGE FALLS INTO ARREARS.

## 6.2 What is the Tenant Purchase Scheme?

Section 90 of the Housing Act 1966 enabled local authorities to sell or lease any dwelling to a tenant or, if the dwelling was not occupied, to any other person. This section was subsequently amended by Section 26 of the Housing (Miscellaneous Provisions) Act 1992.

The Tenant Purchase scheme is **regulated** by the Housing (Sale of Houses to Long Standing Tenants) **Regulations** 2011. Under the **Regulations**, a local authority will adopt a Tenant Purchase scheme which allows the local authority to sell the dwelling in which you are residing to you at a discounted price.

Under the Housing (Miscellaneous Provisions) Act 2009, there is provision for a purchase scheme (known as an Incremental Purchase Scheme) to apply to dwellings. The Minister for the Environment, Community and Local

Government has issued **regulations** also relating to this.

### 6.2.1 What is the purchase price?

Under the 1995 scheme, you may buy the dwelling in which you live at a price equal to the market value less a discount. The discount is 3% of the market value for each year of the tenancy (subject to a maximum of 45% or fifteen years).

### 6.2.2 What are the **qualifying conditions**?

The following **qualifying conditions** apply under the Tenant Purchase Scheme:

- the minimum tenancy period is one year;
- the tenancy does not have to relate to the specific dwelling being sold;
- a tenant of one house could purchase another house but this fact may be taken into account in deciding the discount to be given on the purchase price.

### 6.2.3 Who decides on how are your means assessed?

The Minister for the Environment, Community and Local Government has the power to introduce guidelines on how your means and your ability to pay for the purchase of your home under a tenant purchase scheme can be assessed. The Minister for the Environment, Community and Local Government has done this<sup>1</sup>.

Amongst the guidelines are the following:

- How; whose and what types of income are assessable as means.
- Income that is not assessable

(mainly different types of social welfare payments).

- You are not eligible to purchase if:
- You have been declared bankrupt or are currently subject to bankruptcy **proceedings**, or
- You have a court order (judgement) for recovery of debts granted against you, which has not been paid off, or
- You are the subject of legal action for debt recovery.
- Information which can be sought as part of the assessment of means.

<sup>1</sup> Scheme for tenant purchase of apartments under Part 4 of the Housing (Miscellaneous Provisions) Act 2009 Tenant Means Guidelines issued by the Minister for the Environment, Community and Local Government on 21 December 2011 under section 5 of the Housing (Miscellaneous Provisions) Act 2009

### 6.2.4 What state of repair (condition) does the house have to be in when you purchase it?

The 1992 Act excludes any (express or **implied**) **warranty** (that is a guarantee) by the local authority as to the state of repair or condition of the dwelling to be sold and, in particular, excludes anything that might imply that the dwelling is fit for human habitation. In this particular context see section 26 of the 1992 Act.

This means that the local authority will not accept responsibility if it becomes apparent later on that there are any defects in the dwelling or that it is unfit for human habitation. For this reason, it is most important that you should satisfy yourself as to the condition of the house before agreeing to any

purchase. This will normally involve you arranging for a professional survey of the dwelling to be carried out.

### 6.3 Are there different ways by which you can purchase your local authority home?

The sale of the dwelling to the tenant may take place by selling the **fee simple** (i.e. full freehold ownership, see Glossary at end of booklet) or by granting a shared ownership lease (see below).

Where the fee simple is sold, you buy the dwelling with one lump sum payment and acquire full ownership of the property immediately.

Where a shared ownership lease is granted, you get full ownership over a period of time. This helps you to buy your dwelling even if you cannot afford full ownership immediately. You make an initial lump sum payment and get share of the property (a minimum of 50%) immediately. You also get the right to buy out the remaining interest of the local authority either by a further lump sum payment in the future or by paying a proportionately reduced rent over 25 years. After 25 years, you can buy the interest of the local authority for a nominal sum and become the full owner of the property.

#### 6.3.1 How can you **finance** the purchasing of your local authority home?

You can apply for a **mortgage** loan from a bank, building society or from a local authority. A local authority can offer you a variable or fixed annuity loan or shared ownership

# 6: Tenant Purchase

loan. Certain terms and conditions are attached to getting a loan from a local authority and you, as the buyer, will have to meet certain requirements before you will be considered for such a loan. For the shared ownership lease, a mortgage is made available by the local authority to you for the initial payment and after three years you have the option to take up a 100% mortgage.

## 6.3.2 What conditions apply to the dwelling when purchased?

Under the 2011 Regulations, the following conditions (set out in Section 89 of the Housing Act 1966) apply to the dwelling for a period of 20 years from the date the sale is completed (a longer period may be prescribed in a shared ownership lease):

- The dwelling must be occupied as a normal place of residence by you or by a member of your family unless the local authority consents otherwise.
- The dwelling shall not, without the consent of the local authority, be mortgaged, charged or passed on to someone else otherwise than by leaving it to somebody in your will or by operation of law.

Further terms and conditions may be included in the transfer order or the lease (if it is shared ownership).

## 6.4 What is a Shared Ownership Lease?

Shared ownership allowed you to buy out part of your home while continuing to pay rent to the local authority on the share you have not yet bought out. Over time, you

can increase the share you own by making a further lump sum payment or by making payments in stages until you eventually become the full owner of the house. This scheme is being replaced by Incremental Purchase Schemes which are set out below.

## 6.4.1 How did this form of sale operate?

Shared ownership leases were established under Section 2 of the Housing (Miscellaneous Provisions) Act 1992 and are also subject to the 1995 Regulations. The sale took place by the granting of a lease which allowed the tenant buying the property to acquire full ownership of the house over a period of time. Under the Act, if you were buying the property you made an initial lump sum payment to the local authority (currently this payment must be at least 50% of the market value of the house). In return, the local authority granted a long lease (between 20-100 years) to you which gave you the right to buy out the remaining interest of the local authority. At any time within the next 25 years, you could make further payments towards buying out the local authority's share. After 25 years, the local authority can require the purchaser to buy out the remaining share, by mortgage or otherwise.

## 6.4.2 What happens if you fall into arrears of rent during the shared ownership lease?

While the house is held under a shared ownership lease, you must pay rent to the local authority for the

share of the house that it still owns. If the rent falls into **arrears**, the local authority can repossess the house for the purpose of recovering the value of its share of the property. You will be entitled to whatever is left over from the part that you own once the money owed to the local authority has been paid.

### 6.4.3 How did you **finance** a shared ownership lease?

**Finance** was made available for purchase by shared ownership lease in the same way as under the tenant purchase scheme. A **mortgage** was made available by the local authority for the initial payment and after three years you have the option to take up a 100% **mortgage**.

### 6.4.4 What other conditions apply to a shared ownership lease?

Under the 1995 **Regulations**, the same provisions apply to shared ownership leases regarding conditions and state of repair as to the tenant purchase scheme. See paragraph 6.6.

### 6.4.5 What is the **clawback** on the resale of the house?

Under Section 10 of the Housing (Miscellaneous Provisions) Act 2002, if you sell the house within a period of 20 years from the granting of the lease, you will have to pay a percentage of the sale price to the local authority. The percentage will be based on the local authority's remaining share of the house.

## 6.5 What are Affordable Housing Schemes?

Affordable housing schemes allow

people to purchase homes from their local authority at a discount on the open market price. In this way, it enables people, who might not otherwise be able to afford it, to purchase a home.

Provision is made for affordable housing schemes under Part V of the Planning and Development Act 2000, Part 2 of the Housing (Miscellaneous Provisions) Act 2002 and Part 5 of the Housing (Miscellaneous Provisions) Act 2009.

### 6.5.1 Who can be considered for affordable housing?

Local authorities are to setup a scheme of priority to determine who is entitled to the affordable housing made available. The schemes take into account matters such as accommodation needs, current housing circumstances, income, and distance of affordable housing from a person's place of employment, period of residence in the area and so on. The details of the schemes differ between local authority areas. The Affordable Homes Partnership (a government agency set up to promote the availability of affordable housing) sets out the qualifying **conditions** as follows:

- You must be a first-time buyer (with some exceptions if you are separated or divorced).
- You must have enough income to meet your mortgage repayments after you have paid all your other costs.
- As a guide, you must earn between €25,000 and €58,000 if you are applying on your own and up to €75,000 between two people if you are applying with someone else. (These are approximate limits only –

## 6: Tenant Purchase

lower and higher income limits may apply.)

- If you are applying under Part V of the Planning Act 2000, you will be eligible only if you are in need of accommodation and if 35% of your annual net income would not be sufficient to meet **mortgage** repayments on a house suitable to your needs. Your accommodation needs will include the needs of any person who might reasonably be expected to live with you but that person's financial circumstances will also be taken into account.

### 6.5.2 Do you have to be in occupation of your affordable house?

It is intended that affordable housing is made available to persons in need of a home rather than investors. Section 99 of the 2000 Act and Section 9 of the 2002 Act both contain provisions about the occupation of the home by the owner. That means affordable homes cannot be rented out, with the exception of renting a room under the Revenue 'Rent a Room Scheme.'

### 6.5.3 What is the **clawback** on the resale of the house?

If you resell your home within 20 years, the local authority must be notified and you will have to pay a percentage of the sale price to the local authority. After 10 years, the amount repayable will be reduced by 10% in respect of each complete year after the first ten years of occupation.

### 6.5.4 How can you **finance** your affordable house?

To buy an affordable home, you will have to take out a long-term loan known as a **mortgage**. This loan will be secured against the value of your home.

You may get a **mortgage** from your local authority up to a maximum of €220,000. The term of the mortgage can be up to 30 years. The **mortgage** repayments cannot be more than 35% of your net income. If you are applying with someone else, the repayments cannot be more than 35% of your combined net income.

It may be possible to buy a home of greater value than the maximum by taking part in the shared ownership scheme (see above).

Loans can also be taken out from other designated financial institutions.

### 6.5.6 What changes to affordable housing will be made by the Housing (Miscellaneous Provisions) Act 2009?

Section 83 of the 2009 Act empowers local authorities to enter into arrangements to sell affordable dwellings to eligible households. Sales may take place between local authorities and purchasers but they may also involve public private partnerships (PPPs), developers who have made arrangements under Part V of the Planning and Development 2000 Act or sellers on the open market. Local authorities may provide financial assistance to those who wish to purchase on the open market or it may invoke the assistance of approved housing bodies.

In carrying out its responsibilities to make affordable dwellings available, local authorities must take into account the need to counteract undue segregation between persons of different social backgrounds and it ensures that a mixture of dwelling types and sizes is provided.

### 6.5.7 Who will be considered for affordable housing?

Where a household applies to buy an affordable dwelling, the local authority is obliged under the new Act to carry out an assessment of the household's **eligibility**. The assessment must take the following matters into account:

- The accommodation needs of the household including; their current housing circumstances distance from employment and attendance at school, college or other educational establishment in the area.
- The income and assets of the household and whether 35% of the annual net income would be sufficient to meet **mortgage** repayments on a house suitable to the needs of the household.
- Whether any member of the household has previously purchased or built a dwelling in the State (except where that person is separated or divorced and no longer retains an interest, including beneficial interest, in the family home).
- Whether any member of the household owns or is beneficially entitled to an interest in any dwelling or land (except where that person is separated or divorced and no longer retains an interest, including beneficial interest, in the family

home).

The Minister for the Environment, Community and Local Government may also make **regulations** providing for further matters to be considered in the assessment.

Local authorities are also to set up a scheme of priority within one year of these provisions coming into force which will determine a person's entitlement to purchase an affordable dwelling or to get financial assistance to purchase a dwelling on the open market. The matters to be taken into account are set out at Section 85(2) of the 2009 Act and include financial circumstances and length of time a person has spent on the waiting list.

### 6.5.8 What is a charging order?

A **charging order** is an order which will, in certain circumstances, require you to pay back the amount of the discount you received on the affordable dwelling. Sales of affordable dwellings are now subject to a **charging order** made in favour of the local authority over a percentage share of the dwelling. This share is calculated in accordance with Section 86 of the 2009 Act and is based on the difference between the market value of the dwelling and the purchase price to be paid. After five years, the purchaser can make further payments which will reduce the amount of the charge. The charge will last for a period of time which is not specified in the Act but will be specified in the transfer order. The outstanding amount of the charge must be paid within one month after that period of time expires.

# 6: Tenant Purchase

## 6.5.9. What conditions apply to the dwelling when purchased?

Conditions applying after the purchase include that it must be occupied as the purchaser's normal place of residence and that it must not be let or sublet during the charged period without the consent of the local authority. There may also be further terms and conditions that could be imposed by the local authority.

## 6.5.10 What state of repair (condition) does the dwelling have to be in when purchased?

The same provision applies here as under the Tenant Purchase Scheme. See paragraph 6.6.

## 6.5.11 What is the **clawback** on resale of the dwelling?

If the buyer resells the dwelling within the charged period, they will have to pay a percentage of the market value (equal to the outstanding amount of the charge) to the local authority. There is no provision for this amount to be reduced after 10 years.

## 6.6 What is an Incremental Purchase Scheme?

An Incremental Purchase Scheme was introduced under the 2009 Act and replaces the purchase of property by way of a shared ownership lease. This scheme applies to dwellings constructed or let for the first time after this part of the Act comes into operation. Dwellings provided by approved housing bodies will also be available for purchase. To be eligible, you must apply within five years of first

residing in the dwelling concerned. Under this scheme, a charge (that is a **mortgage**) will be created in favour of the local authority (or approved housing body) over a percentage share of the dwelling. This share is calculated in accordance with Section 46 of the 2009 Act and it depends on the difference between the purchase price and the amount of purchase money you are able to offer.

Regular repayments will be made by you to the local authority (or approved housing body) in accordance with the terms of the charge. The charged share will be reduced by the amount of the repayments until the dwelling is fully owned by you. The charge will continue as long as you are required to make **mortgage** repayments and, in any case, will last for a minimum of 20 years.

## 6.6.1 What conditions apply during the **charged period**?

The charge will be subject to a number of terms and conditions and, if you fail to comply with these, the reduction of the charged share will be suspended. This means that you will have to pay more money to the local authority and wait longer to acquire full ownership.

The following are the terms and conditions which the purchase of the dwelling is subject to during the **charged period**:

- If you want to resell the dwelling to a person other than the local authority (or approved housing body), you must pay back a certain amount which is calculated in accordance with Section 48 (a

financial 'clawback' provision).

- Unless the local authority gives its prior written consent, the dwelling must be occupied as your normal place of residence or a member of your household.

- The dwelling, or any part of it, must not be sold, mortgaged, let or otherwise disposed of without the prior written consent of the local authority.

- The purchaser shall not make material improvements to the dwelling without the prior written consent of the local authority.

- Terms and conditions relating to maintenance and insurance of the dwelling may also be provided.

- The local authority may refuse to allow the resale of the dwelling to any person where it is of the opinion that:

- the proposed sale price is for less than the market value; or

- the proposed purchaser is, or was, engaged in anti-social behaviour or the sale would not be in the interests of good estate management; or

- the intended sale would, if completed, leave the person selling, or any person who might reasonably be expected to reside with him/her, without adequate housing.

The Minister for the Environment, Community and Local Government has the power to make further terms and conditions and has set some out in the Housing (Miscellaneous Provisions) Act 2010. These regulations include details which can be requested; times limits for furnishing information sought; and the type of property the Scheme applies to. The transfer order, or

charging order, can also contain further terms and conditions.

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**6.7 Can a tenant buy their apartment?**

The Housing (Miscellaneous Provisions) Act 2009 gives local authorities the power to sell apartments to its tenants under certain conditions. These provisions came into force on the 1st January 2012.

**6.7.1 What are the conditions for designating an apartment complex for sale?**

Firstly, an apartment complex must be designated by the local authority for the purpose of making the apartments owned by the local authority available for sale. Before an apartment complex can be designated, the following conditions must be met:

- The sale of the apartments must be considered by the local authority to be consistent with good estate management and management of its overall dwelling stock.

- The apartment complex must be suitable for designation having regard to factors such as design and layout, future costs and the number of apartments for sale.

- The apartment complex must be in good structural condition.

- The apartment complex must not be subject to plans for reconstruction or improvement under Section 12 of the Housing Act 1988 or for regeneration.

- Good and marketable title can be transferred.

- The sale of the apartments is permitted by regulations.

# 6: Tenant Purchase

In addition, tenants must be allowed to vote on a proposal to designate their apartment complex for sale within two months of the proposal being adopted. Voting is to be carried out in line with provisions set down in the Act. Each apartment will have one vote which will be exercised by the tenant of the apartment.

For the designation to take effect, at least 65% of votes must be in favour of designation and a sufficient number of voters must show their willingness to serve as directors of a management company to be established. The management company will be the owner of the apartment complex and will be responsible for management and maintenance of common areas.

If it is decided not to go ahead with the designation of an apartment complex for sale, the tenants will be informed of the decision and of the reasons for it.

Once the apartment complex is designated, the tenants will be invited within six months to apply to purchase their apartment and the apartments will be available for sale for an initial selling period of three years (which may be extended by the local authority to five years).

The Minister for Environment, Community and Local Government has also issued **regulations** relating to the sale of apartments to tenants. There are significant rules governing how any ballots should occur; the **regulations** restrict the sale of the apartments to tenants who have at least

one year's tenancy; apartments cannot be sold if the apartments are apartments for older persons. There are also **regulations** relating to the purchase price and deposit.

## 6.7.2 How does the sale take place?

The sales of the apartments will take place by way of assignment of a lease by the local authority and will be subject to a **charging order** in favour of the local authority in terms similar to the incremental purchase scheme (see paragraph 6.6).

## 6.7.3 Do you have to pay a deposit?

If you apply to buy your apartment you will have to pay a deposit to the local authority. This will not be given back if you pull out of the sale within six months. If the local authority does not go ahead with the sale, the local authority shall (a) notify you in writing; (b) refund any deposit paid and give you back your legal expenses; and (c) pay you interest on the amount of the deposit refunded.

## 6.7.4 What conditions apply during the **charged period**?

As with the incremental purchase scheme, the charge will be subject to a number of terms and conditions. If you don't follow the terms and conditions, the reduction of the charged share will be stopped. This means that you will have to pay more money and wait longer to get full ownership.

The following are the terms and conditions which the buying of an apartment is subject to during the **charged period**:

- Unless the local authority gives its prior written consent, the dwelling must be occupied as the normal place of residence for you or for a member of your household.
- The dwelling, or any part of it, must not be sold, mortgaged, let or otherwise disposed of without the prior written consent of the local authority.
- If you decide to sell the apartment, the local authority must first be notified and it may purchase the apartment at a price based on the current market value.
- The local authority may refuse to allow the resale of the dwelling to any other person where it is of the opinion that:
  - the proposed sale price is for less than the market value;
  - the proposed purchaser is or was engaged in anti-social behaviour or the sale would not be in the interests of good estate management; or
  - the intended sale would, if completed, leave the person selling, or any person who might reasonably be expected to reside with him/her, without adequate housing.

Further terms and conditions may be set by regulations to be made by the Minister for the Environment, Community and Local Government or may be included in the apartment assignment order or charging order themselves.

## 6.7.5 What other conditions apply to the purchase of an apartment?

Similar provisions apply to the buying of an apartment in relation to arrears of rent, the state of repair of an apartment and finance as it applies to the purchase of dwellings. See the section on tenant purchase of dwellings for details.

PURCHASING PROPERTY HAS MANY LEGAL CONSEQUENCES. YOU ARE STRONGLY ADVISED TO GET INDEPENDENT LEGAL ADVICE BEFORE PURCHASING A HOME UNDER ANY OF THE SCHEMES MENTIONED ABOVE. ALSO, REMEMBER THAT YOU RISK LOSING YOUR HOME IF YOUR MORTGAGE FALLS INTO ARREARS.

# 7: Repairs and Maintenance

7.1 Does the local authority have to have certain minimum standards for housing?

7.2 Are there any **regulations** which outline the standard your home should be maintained at?

7.3 What condition does the structure of the house have to be in?

7.4 What are the consequences (for the local authority) of being in breach of the **regulations**?

7.5 Are there any other obligations separate and in addition to the above **regulations**?

7.6 Does the tenant have any obligation regarding repairs and maintenance?

7.7 What does the 'normal wear and tear' rule mean?

7.8 How can you **finance** the repairs and maintenance to your house?

7.9 GET LEGAL ADVICE:

7.1 Does the local authority have to have certain minimum standards for housing?

Yes there are obligations on housing authorities to have minimum standards for housing.

## 7.1.1 Fit for human habitation

Following the High Court case, *Siney v Dublin Corporation*<sup>2</sup>, there is an **implied** term (that is even if it is not written or said anywhere, it is still part of the agreement) in the tenancy agreement that when the tenancy agreement is entered into that the home provided is fit for people to live in. Another case, *Burke v Dublin Corporation*<sup>3</sup>, decided that if a house or flat was not new at the start of the tenancy that it still should be fit for people to live in when being offered to a tenant for renting. To prove that a home is unsuitable for people to live in, you may need to get reports from engineers or other experts.

<sup>2</sup> [1980] IR 400

<sup>3</sup> [1991] IR 341

## 7.2 Are there any regulations which outline the standard your home should be maintained at?

- Housing (Standards for Rented Houses) Regulations 1993,
- Housing (Standards for Rented Houses) 2008, and
- Housing (Standards for Rented Houses) 2009

There are a number of different regulations which set out the maintenance standards for your home. The law has recently changed in this area so depending on when you signed your tenancy agreement different rules may apply to you. They have been set out in the chart below.

The regulations place an obligation on local authorities to keep the homes to a standard of repair that is reasonable in all the circumstances. In deciding what standards to be expected factors such as the age, character and expected life of the house are important.

The regulations exclude demountable houses which have been let by a local authority. Demountable houses are quite rare and were typically provided to families living in rural areas. You should get advice as to whether your home falls within this category but generally, most homes which are rented will fall within the regulations.

## 7.3 What condition does the structure of the house have to be in?

Regardless of whether you signed your tenancy agreement before the 31st January 2009 or after the 31st January 2009 local authorities are obliged under these Regulations to keep houses in a 'proper state of structural repair'.

Proper State of Structural Repair: This means the house must be sound, with roof, floors, ceilings, walls and stairs in good repair. It also means that the roof, floors, ceilings, walls and stairs are not subject to serious dampness or liable to collapse because they are rotted or defective in other ways. Other standards included are that the building is a sound structure. Roofing includes fascia; guttering and down pipes. Gardens and common areas must also be maintained in good condition.

See chart on paragraph 7.3.

# 7: Repairs and Maintenance

## 7.3 What condition does the structure of the house have to be in?

	<p>Tenants who signed their tenancy agreement on or before 31st January 2009 (these rules will apply until 31st January 2013 and from the 1st February 2013 the next column will apply to all tenants)</p>	<p>Tenants who signed their tenancy on or after the 1st February 2009 (these rules will apply to all tenants after 1st February 2013)</p>	<p>Rules which apply to all tenants now regardless of when the tenancy was entered into</p>
<p>Sinks, toilets, fixed baths, showers and water supply</p>	<p>Sinks; toilets; fixed bath or showers must be provided with a supply of cold water and effective drainage. In the case of each sink, bath and shower hot water facilities must be provided. Every sink, toilet, bath, shower, room, stairway, landing, passage, open space and other part of the building containing the house shall be kept in good repair and in a clean condition.</p>	<p>The following must be provided and it must be for the sole use of the household:</p> <ul style="list-style-type: none"> <li>- Sink with hand wash basin attached;</li> <li>- a continuous supply of cold water and the sink must be plumbed and piped for hot water;</li> <li>- a bath or shower with continuous supply of cold water and the bath must be plumbed and piped for hot water.</li> </ul> <p>The sink bath and/or shower and the water supply going into them must be:</p> <ol style="list-style-type: none"> <li>1. maintained in good working order</li> <li>2. have safe and effective means of drainage</li> <li>3. be properly insulated and secured</li> <li>4. have capacity for storing hot &amp; cold water</li> <li>5. be provided in a room separated from other rooms by a wall and a door and containing separate ventilation</li> </ol>	

# 7: Repairs and Maintenance

## 7.3 What condition does the structure of the house have to be in?

Cooking and food storage			Cooking facilities must be provided. Storage for food must also be provided. All means of preparation, cooking and storage of food, shall be maintained in good repair and safe working order.
Ventilation			Every room used, or intended for use, by the tenant of the house for living in shall have adequate ventilation. All means of ventilation should be maintained in good repair and working order. Adequate ventilation should be provided for the adequate removal of water vapour from kitchens and bathrooms.
Lighting			Every room used, or intended for use, by the tenant of the house for living in shall have adequate natural lighting. Every hall, stairs, and landing within the house and every room used or intended for use, by the tenant of the house shall have a suitable and adequate means of artificial lighting, e.g. electric lights and/or lamps. The windows of every room containing a bath and/or shower and a sink shall be suitably and adequately covered to ensure privacy.

# 7: Repairs and Maintenance

## 7.3 What condition does the structure of the house have to be in?

Fire Safety			<p>Each house must contain the following:</p> <p>(a) fire blanket and</p> <p>(b) a mains – wired smoke alarm or at least two ten year battery operated smoke alarms</p> <p>Each self-contained house in a multi – unit building (e.g. apartment/flat) must contain</p> <p>(a) a mains – wired smoke alarm</p> <p>(b) An emergency evacuation plan.</p> <p>(c) Emergency lighting must be provided in all common areas of a multi – unit building.</p>
Refuse Facilities			<p>The home shall have access to suitable and adequate pest and vermin proof refuse storage facilities</p>
Electricity and Gas			<p>Installations in the house for supply of electricity and gas shall be maintained in good repair and safe working order with provision, where necessary, for the safe and effective removal of fumes to the outside air, e.g. vents etc.</p>

## 7.4 What are the consequences (for the local authority) of being in breach of the regulations?

If you feel that your home is not meeting the standards set out in the regulations, you should let the local authority know and to ask them to carry out the repairs or improvements needed. If the works

are not carried out or completed you should contact your local Environmental Health Officer through your Local Health Office who can come and inspect and depending on their view pursue the local authority to repair and/or improve the standards at your home.

## 7.5 Are there any other obligations separate and in addition to the above regulations?

### 7.5.1 Protection of the Dwelling House:

The Constitution of Ireland, Bunreacht na hEireann 1937 says that the dwelling house is very important. The courts have decided that just as one is entitled to the security of their home when in it; they are also entitled to the privilege of coming and going from their home without restraint. The case which decided this related to a broken lift in a large flat complex<sup>4</sup>. As the lift was not repaired, the tenants were restricted from leaving their home and therefore this right had been breached. This Supreme Court decision places some responsibility on the local authority to ensure that common facilities such as a lift be in working order.

<sup>4</sup>Heeney v Lord Mayor of Dublin Unreported, Supreme Court, 17 August 1998

### 7.5.2 Health and Safety/Planning and Building Legislation/Fire Safety

There is legislation covering health and safety; planning; building requirements; fire safety and also the use of gas and electricity. Depending on when your home was built the building may need to comply with certain legislation. The Fire Department of your Council; the Planning Department; and the Environmental Department of your Council may provide more information on this.

There are obligations on local authorities with regard to repairs relating to gas.

There are also the previously mentioned obligations regarding fire blankets; fire alarms and emergency lighting to protect tenants in such emergencies.

### 7.5.3 Duty of Care

**Duty of care** is a legal term which governs the relationship between the parties for example: the relationship between the local authority and the tenant or potential tenant, resident or visitor. Where a **duty of care** exists, certain responsibilities arise due to this relationship particularly in relation to any negligent or careless activity which results in injury or harm. It may apply in some circumstances but you should get legal advice on this.

### 7.5.4 Equal Status obligations

In relation to repairs, there are obligations on local authorities relating to provision of accommodation and/or services suitable to meet needs, in particular, the obligation to provide 'reasonable accommodation' to people with disabilities. This is discussed further in Chapter 15: Equality Issues.

### 7.5.5 Contractual Obligations / Breach of Contract

The tenancy agreement between the tenant and the local authority is a **contract**. If there are obligations in the agreement which a local authority/or a tenant must comply with and they fail to do so they

# 7: Repairs and Maintenance

may be liable for breaching the **contract**. (It should also be noted that a tenant may be evicted for breach of contractual conditions and you should seek legal advice if this arises.) Further, as mentioned previously, your home must be fit for human habitation. Even if this is not written into your **contract** the case law mentioned above says that this term is an unwritten term of the **contract**.

## 7.6 Does the tenant have any obligation regarding repairs and maintenance?

Most tenancy agreements will state whose responsibility it is to repair or maintain the house. Your tenancy agreement will set out which repairs are the responsibility of your local authority and which are your responsibility. The relevant part in your tenancy agreement will look something like the following:

*'the tenant shall be responsible for all internal decoration, any breakage of glass in the windows, damage to the fixtures, fittings or structures of the dwelling, the proper of maintenance of fences of the garden or plot and shall cause to make good any breakage carried out and repaired by the Authority, and shall pay the costs of such works to the Authority'*

This term in the agreement makes the tenant responsible for damage done to the property. It is also important to note that while your tenancy agreement may make you responsible for the surrounding areas there are certain obligations on the local authority under the **Regulations** which are mentioned

earlier. If an issue arises you should seek legal advice on this.

### For Example:

If you are a tenant in a Dublin City Council home on which you are obliged to pay rent, the following repairs will be carried out by the Council:

- Structural repairs
  - Roof repairs, repairs to external walls and doors
  - Electrical faults
  - Window Repairs (excluding glass)
  - Flooding
  - Any other repairs due to the normal wear and tear
- You are responsible for certain repairs to your home such as:
- Redecoration of your home
  - The upkeep of your garden
  - Replacement of broken glass
  - Repairs to all appliances of fittings installed by you i.e. cookers, fireplaces, internal doors, floor and wall coverings
  - Any damage that has not been caused by normal wear and tear

Much information is set out in this document. You may need to compare the different rules in law; the tenancy agreement (which is the **contract**); and what your local authority might say also. (We have used the example of Dublin City Council although the Council rules and tenancy agreement may vary from area to area, the law will generally be the same.) As with all things legal, you should get legal advice.

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## 7.7 What does the 'normal wear and tear' rule mean?

Generally, the rule is that the tenant is not responsible for any damage to a property which comes from normal wear and tear – factors to be considered when dealing with this are: age of tenants; number of residents in property; age of property; length of tenancy agreement; weather conditions, e.g. is the area prone to flooding would be an example of weather conditions factor.

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## 7.8 How can you finance the repairs and maintenance to your house?

Local authorities will carry out some works depending on the nature of the works and whether the tenant's rent is paid. Local authorities will often have time periods during which works will be completed. If there are repairs needed in your home, make sure you notify the local authority immediately to inform them and also to find out whether they will carry out the works.

### For Example:

If you need something repaired you must contact your local authority. They will then arrange a date and time for it to be fixed.

- Routine repairs: Fixed within 8 weeks, for example, replacing a toilet.
- Urgent repairs: Fixed within 5 days, for example, heating.
- Emergency repairs: Fixed immediately, for example, water leak or faulty sockets.

There are a number of different schemes offering grants towards specific improvement works such as for disabled or older tenants. Many local authorities run loan schemes whereby tenants can apply for loans to cover the cost of carrying out improvement works. The benefit of these particular schemes is that quite often they are interest free. Your bank or credit union will generally charge interest on loans which means you pay back more than you borrowed. Your local Citizen's Information Centre and your local authority will be able to tell you more about these schemes. Generally the types of works funded are:

### 7.8.1 Window replacement loans:

Some local authorities run schemes whereby tenants can apply for an interest free loan to replace the windows in their house. There are maximum amounts which can be borrowed. The loans are repaid with the tenant's weekly rent, over a period of time until the loan is paid off.

# 7: Repairs and Maintenance

**7.8.2 Adaptations and alterations:**  
Under schemes for Persons with Disabilities, tenants can apply for changes to their Council home, to meet their, or a member of their family's medical or mobility needs. Example of these works include: grab rails; access ramps; stair lifts; shower and bathroom alterations; ground floor extensions. To apply for works to be carried out to your home under this scheme, medical evidence and assessment may be required. You may also need planning permission and should get legal advice on this.

**7.8.3 Overcrowding Extensions:**  
There is a duty on local authorities not to allow overcrowding to occur. Local authorities will have their own policy guidelines on overcrowding but the law says overcrowding occurs in the following situations:  
- If two people of opposite sex aged over 10 and not husband and wife (this would probably also include a couple living together who are not married) are expected to sleep in the same room.  
- If any room being used as a bedroom is less than four hundred cubic feet it should not be counted as a bedroom – also if the room height is higher than 8 feet the maximum room height to calculate is 8 feet.

If you are a local authority tenant you can apply for a bedroom extension to your home if you are living in overcrowded conditions. Your assessment will be assessed on the number of persons living in the house and the number of

bedrooms available to them. You may need planning permission and should get legal advice on this.

**7.8.4 Central Heating Installations, Repairs and Servicing:**  
You may be able to get central heating installed in your home that you rent from the local authority. Your gas central heating system should be serviced every year. The local authority may charge you extra on your rent account to cover this annual servicing and necessary repairs to your system.

**7.8.5 Alterations:**  
Before carrying out improvements and or alterations to your home, you will have to inform your local authority and get their permission. Remember that if you want to make a lot of alterations, you need to get planning permission and consent from the local authority.

.....  
**7.9 GET LEGAL ADVICE:**  
If you are unsure as to what is your responsibility and what is the responsibility of the local authority get legal advice. See Chapter 2 of this booklet, Enforcing Your Rights.

.....

### 8.1 What is the definition of Travellers?

Travellers are an indigenous ethnic minority who have been part of Irish society for centuries. Travellers long shared history, cultural values, language, customs and traditions make them a self-defined group, and one that is recognisable and distinct. Their culture and way of life, of which **nomadism** is an important factor, distinguishes them from the settled population.

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### 8.2 What responsibility do local authorities have to Travellers?

At a national level the Department of the Environment, Community and Local Government are responsible for housing and Traveller accommodation. This is delegated to local authorities at a local level. Local authorities will usually have a dedicated Traveller Accommodation Unit.

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### 8.3 What types of Traveller accommodation are there?

- Private housing from own resources
- Private rented accommodation
- Standard local authority accommodation
- Traveller-specific accommodation: serviced halting sites, group housing schemes and transient sites.

The first three of these types of accommodation operate in much the same way for Travellers and settled people.

#### 8.3.1 What is Traveller Specific Accommodation?

Traveller specific accommodation was first mentioned in the Report

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### 8.1 What is the definition of Travellers?

.....

### 8.2 What responsibility do local authorities have to Travellers?

.....

### 8.3 What types of Traveller accommodation are there?

.....

### 8.4 What housing law is relevant to Travellers?

.....

### 8.5 What types of accommodation **contracts** are there?

.....

### 8.6 Are there any organisations which monitor the implementation of Traveller accommodation programmes?

.....

### 8.7 What is Adverse Possession (Squatters' Rights)?

# 8: Traveller Accommodation

## 8: Traveller Accommodation

of the Task Force on Travellers published by the Department of Justice 1995. They recommended that 2,200 units of this type of accommodation be provided by 2000. By 2004 only 315 units has been provided. In all, 17 of the 34 local authorities had failed to meet their own targets by 2004. If your preference is for Traveller specific accommodation you should state this on your housing assessment. Many local authorities encourage Travellers to accept standard accommodation with a promise that their first preference for halting sites will be given on eventually. However, you should be careful in accepting such an offer, as once accommodated in standard housing, it is unlikely, in practice, that you will be re-accommodated in the near future.

### 8.3.2 Serviced Halting Sites

These are authorised sites maintained by the local authority and serviced with electricity and water. It will usually consist of a number of bays each of which will have a forecourt that can accommodate two caravans and a service unit or hut for washing and cooking. There has been little or no progress on the provision of permanent serviced halting sites and there is no evidence that local authorities are prepared to support their implementation.

### 8.3.3 Group Housing Schemes

These are one off developments of a group of houses (e.g. six to eight houses) provided for members of an extended family usually for rent.

### 8.3.4 Transient Sites

These are sites provided for short periods to facilitate nomadism. Despite the fact that many local authorities claim to provide these sites and despite the requirement of the provision of transient halting sites, no such sites exist.

8.4 What housing law is relevant to Travellers?

All Housing Acts apply equally to Travellers and the settled population. However, the local authority has additional obligations under s.13 of the Housing Act 1988 and the Housing (Traveller Accommodation Act) 1998. The 1998 Act obliges the local authority to:

- adopt by 31st March 2000 a 5 year Programme for the provision of accommodation for Travellers (TAP);
- take 'reasonable steps' to implement the programmes (s.16);
- review the programme every 3 years;
- provide loans for the purchase or repair of caravans;
- establish a Local Traveller Accommodation Consultative Committee (LTACC).

The range of accommodation to be provided under the 1998 Act includes:

- standard local authority housing;
- group housing schemes;
- permanent caravan parks;
- transient halting sites;
- emergency provision.

A failure to deliver on Traveller specific accommodation has been challenged in the High Court on a number of occasions with varying degrees of success.

- In University of Limerick v Ryan & Ors<sup>5</sup> (1991) the court said: "Section 13 [of the Housing Act 1988] must be taken to intend that the obligation of the Council to provide for housing needs extends ...to the provision not of dwellings but of caravan sites".
- In Ward v South Dublin County Council<sup>6</sup> (1996) the court stated

that it would intervene for inactivity on the part of the council in respect of the delivery of Traveller specific accommodation. However, it is for the council to decide who priority is given to in these circumstances.

- In County Meath VEC v Joyce<sup>7</sup> (1997) the judge said the council must bring their assessment of the need for serviced campsites up to date and to acquire these sites.
- In O'Reilly v Limerick County Council<sup>8</sup>(2006) an order was made that the council provide accommodation to the applicants.

These cases give an indication of how the courts have applied the duty to provide Traveller accommodation. However, the facts of every case are different, so you should not assume that these cases automatically apply to you. Before considering any court case, you should get legal advice (see Chapter 2 of this booklet, Enforcing Your Rights)

<sup>5</sup> Unreported, High Court, 21 February 1991, Barron J

<sup>6</sup> [1996] 3 IR 195.

<sup>7</sup> [1997] 3 IR 402

<sup>8</sup> [2007] 1 IR 593

# 8: Traveller Accommodation

## 8.5 What types of accommodation contracts are there?

If you are a Traveller living on a site that you do not own, your rights will depend on what type of **contract** you have with the owner of the land.

### 8.5.1 Lease

A lease is a **contract**, usually in writing, about your tenancy. It will say what your obligations as a tenant are and it will also outline the landlord's obligations. The agreement will also usually say how much **notice periods** you will get in the event of your eviction. If there is no **contract** you will be entitled to **notice periods** according to how frequently you pay rent (e.g.: weekly, one week's notice periods, etc.) If it is a **contract** between you and a private landlord you gain more rights after the first 6 months. For a local authority to evict you they must first serve you with a **Notice to Quit** and you should seek legal advice as soon as you receive this (see Chapter 6 Tenancy Agreements).

### 8.5.2 License

A license agreement provides less protection for a tenant than a lease. It simply makes it lawful for the person to occupy the land but they do not gain any interest in the land. If there is a **contract** for the license it may be revoked (i.e. brought to an end) according to the timeline set out in the **contract**. If none is set out it may be revoked after a reasonable time. If there is no contract you have what is called a bare license and this may be revoked at will (i.e. at any time).

### 8.5.3 None

If you do not have a **contract** for your accommodation you risk being evicted summarily i.e. without redress to the courts.

## 8.6 Are there any organisations which monitor the implementation of Traveller accommodation programmes?

### 8.6.1 National Traveller Accommodation Consultative Committee (NTACC)

The Minister for the Environment, Community and Local Government established the NTACC in 1996, to monitor the preparation, adequacy and implementation of Local Traveller Accommodation Programmes. This group includes representatives of Travellers and the government. The NTACC has proved to be a useful structure for consultation. However, because it is not in a position to influence the implementation of the Traveller Accommodation Programmes its role is limited.

### 8.6.2 Local Traveller Accommodation Consultative Committees (LTACC)

Since 1998, LTACC's have been established in each local authority comprising elected representatives and officials of the local authority, Travellers and Traveller organisations. The role of the LTACC is set out in section 21 (3) of the Housing (Traveller Accommodation) Act, 1998 to 'advise in relation to the preparation and implementation of any accommodation programme for the functional area of the appointing authority concerned.' An evaluation

of the LTACCs revealed lower levels of satisfaction among Traveller representatives than other members.

.....  
**8.7 What is Adverse Possession (Squatters' Rights)?**

Generally you cannot become the owner of land without being given ownership by the previous landowner. There are, however, a number of exceptions to this rule. One of these exceptions is adverse possession.

Adverse possession is where a non-owner takes possession of a property and keeps possession of that property for a set period of time. The non-owner must be in the property with the intention to exclude all others, including the true owner.

- The period within which claims by the land owner to recover land must be brought is normally 12 years (section 13 Statute of Limitations 1957);
- The period is 30 years for actions by a State authority to recover land, and 60 years where the claim relates to the foreshore, or 40 years from the date on which land ceased to be foreshore but remained in the ownership of State.

The legal owner can break the period of possession by certain acts demonstrating ownership.

You cannot acquire Adverse Possession:

- if you are a tenant paying rent;
- if you have the permission of the land owner to be there;
- if you have not taken any action to "possess" the land (this will be judged by the court);

against the State/local authority unless you have been in adverse possession for 30 years.

**8.7.1 What guidelines are there in relation to Adverse Possession and in relation to members of the Travelling Community?**

The Department of the Environment, Community and Local Government have produced guidelines to assist local authorities develop their Local Accommodation Programmes.

- Published guidelines include:
- Memorandum on Implementation, Housing (Traveller Accommodation) Act 1998;
  - Guidelines for Residential Caravan Parks for Travellers (1998) and the Guidelines for Traveller Accommodation, Basic Services and Facilities for Caravans Pending the Provision of Permanent Accommodation (November 1998);
  - Guidelines for Accommodating Transient Traveller Families (November 1999);
  - Guidelines for Group Housing Schemes (2002);
  - Guidelines for the Operation of the Local Traveller Accommodation Consultative Committees (LTACC's).

# 8: Traveller Accommodation

# 9: Families, Children and Housing Law

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**9.1 What do families, children and housing law refer to?**  
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**9.2 What is Family Law?**  
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**9.1 What do families, children and housing law refer to?**  
.....

Families, children and housing law is a complex area of law involving in particular housing law, family law, child law and **succession** law and also the individual procedures of each local authority and possibly involving the HSE as well. You may encounter a lack of clarity and you should be prepared to have to search for a result. Even the definition of family itself is complicated in that the constitutional family is based on marriage while the European Convention on Human Rights definition of a family is much broader and includes unmarried couples living together and same-sex couples.

.....  
**9.2 What is Family Law?**  
.....

Family law covers property including housing that is owned by partners in a relationship. Marriage and engagement have been **regulated** by law for a long time. Since 1 January 2011, there are also laws regulating same-sex civil partners and cohabiting couples (both homosexual and heterosexual) who are not married or civil partners.

**9.2.1 Marriage**

When couples marry they acquire a status that controls their legal relationship and all their property including their housing.

## 9.2.2 Family Home

The residence of a couple who get married becomes the family home. Neither the husband nor the wife can do anything with the family home without the other's consent or a court order (although **creditors** can seek to obtain payment from the debtor's share of the family home). The Family Home Protection Act 1976 applies to tenancies and you cannot do anything that would affect the other's interest in the home.

## 9.2.3 Joint Tenancy

Most family homes are held under joint tenancy, which means that there is a right of "**survivorship**." (You should note that 'tenancy' in joint tenancies does not mean the home must be rented, it also includes a home that is owned outright). **Survivorship** means that when one **spouse** dies the property in its entirety automatically goes to the surviving **spouse**. This means that **spouses** cannot pass anything out of the proceeds of the family home to a third party in a will because their interest is passed on to the other **spouse**. It is possible for spouses to own the family home as what are called 'tenants in common' which would mean that they have individual shares that they could pass on in a will to a third party. However, it is very unusual for **spouses** to hold the family home as tenants in common.

## 9.2.4 Succession

Under the Succession Act 1965 **spouses** have legal rights to a share in the other **spouse's** estate when they die and they might require that the family home be transferred to him/her as part of the legal share. Children can bring an application to the court if they consider that the parent has failed to make proper provision for them. Local authority tenancies are subject to the local authority scheme which would have its own rules on **succession**, e.g. family members may have had to be in residence for a particular period to be entitled to succeed to the tenancy.

## 9.2.5 Marriage Breakdown

Where marriages breakdown if the parties cannot agree about the family home then it is up to the court in **judicial separation** and **divorce** proceedings to decide what is to happen to the home. The legislation gives wide powers to the judge in relation to the orders that can be made including an order for sale or transfer of tenancy. If you are in a situation where a relationship/marriage is breaking down you should seek legal advice about family law entitlements.

# 9: Families, Children and Housing Law

## 9.2.6 Civil Partnerships

Since January 2011, it is possible for a same-sex couple to become 'civil partners'. Civil partnership has some (but not all) of the same rights and obligations as marriage. Where a civil partner couple live in a shared home, one partner cannot sell the home or any interest in the shared home without the consent of the other partner.

## 9.2.7 Cohabitation

What is often called 'common law marriage' where couples live together through the years has no legal standing. However, as of January 2011, the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, provides for some legal recognition of couples (whether gay or straight) who live together in a committed relationship for a defined period. The relevant sections of the Act provide for financial support between the couple.

## 9.2.8 Domestic Violence

Despite having an interest in the home one's right to reside there can be affected by court orders, such as a barring order, under domestic violence legislation or by an **injunction**. If you are in a situation where your safety or welfare is at risk, seek legal advice immediately.

## 9.2.9 Children

Children's interests in the home are mostly related to the interest of their parents or carers. The Superior Courts have stated that they would be entitled to at least a right to shelter. Under the Child Care Act 1991 the HSE is required to promote the welfare of children who are not receiving adequate care and protection. This usually arises where there has been a failure by the parents or carers. It would appear that in addition to its duty to the homeless generally, the HSE also has to enquire into a child's housing situation should it arise and ensure that the necessary provision is made. This could mean that the HSE would seek to take the child into care. duty to make reasonable efforts to make alternative accommodation arrangements.<sup>9</sup>

<sup>9</sup> Section 5 of the Child Care Act 2001

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### 10.1 What is anti-social behaviour?

Anti-social behaviour has been given a wide meaning in the relevant legislation. The definition of anti-social behaviour includes:

- Making, importing, selling, supplying or possessing illegal drugs;
- Behaviour which causes (or is likely to cause) significant or persistent danger, injury, damage, alarm, loss or fear to anyone living or working near local authority housing. This includes:
  - Violence, threats, intimidation, coercion, harassment or serious obstruction
  - Preventing someone's enjoyment or use of their home;
  - Damaging or defacing property.

.....

### 10.2 How do you make a complaint about anti-social behaviour?

If you are the victim of anti-social behaviour you should contact the Gardaí. You should also make a complaint to the local authority. Ask your local authority for the procedure for making a complaint about anti-social behaviour and follow the guidelines. If you have made a complaint or are thinking about doing so, it is a good idea to seek legal advice.

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### 10.3 What is the local authority's role?

Most local authorities have 'Estate Management' Departments. The Estate Management Department usually deals with anti-social behaviour.

Like anti-social behaviour, Estate Management also has a meaning

### 10.1 What is anti-social behaviour?

.....

### 10.2 How do you make a complaint about anti-social behaviour?

.....

### 10.3 What is the local authority's role?

.....

### 10.4 Is there an 'Anti-social Behaviour Strategy'?

.....

### 10.5 What is the tenant's role?

.....

### 10.6 What can you do as a tenant?

.....

### 10.7 Do Not Place Your Tenancy At Risk:

# 10: Anti - Social Behaviour

# 10: Anti - Social Behaviour

in law. It includes the 'securing or promotion of the interests of any tenants, lessees, owners or occupiers... in the enjoyment of any house, building or land provided under the Housing Acts...'

The purpose of Estate Management is to secure and promote the interests of tenants and other occupiers to ensure enjoyment of their home. It may include provision of play areas and other amenities which would enhance enjoyment of their home. Estate Management also includes preventing and responding to anti-social behaviour. When complaints are made to the local authority, they are investigated by the 'Estate Management' Department. Most local authorities will have a system of dealing with anti-social behaviour. You should contact your local authority if you wish to get a copy of their policy. Investigations should comply with constitutional fair procedures and the European Convention on Human Rights.

**Note:** Anti-social behaviour actions under housing law should not be confused with 'Anti-Social Behaviour Orders' (ASBOs). ASBOs are not specific to local authority tenants and they are dealt with by the criminal law.

## 10.4 Is there an 'Anti-social Behaviour Strategy'?

Since the 1st December 2009, local authorities must have an 'anti-social behaviour strategy'. The strategy must include plans for the following:

- prevention and reduction of anti-social behaviour;
- co-ordination of services directed at dealing with, preventing or reducing anti-social behaviour;
- promoting co-operation with other persons, including the Gardaí with the purpose of dealing with, preventing or reducing anti-social behaviour;
- the promotion of good estate management;

The strategy should provide procedures for making complaints; initiatives for preventing and reducing anti-social behaviour; and provide education and research into how to prevent and reduce anti-social behaviour.

.....  
**10.5 What is the tenant's role?**

If the allegation is criminal, it will probably form part of a Garda investigation. You, and/or the person accused (if it is not you who is accused), should get legal advice.

Most tenancy agreements specifically state that acts of Anti-Social Behaviour are a breach of the tenancy agreement. If a complaint is made, true or untrue, your tenancy is at risk. There is a risk you could be evicted so you should take the complaint seriously and get legal advice and other support immediately.

If an allegation is made about you; someone who lives with you or someone who visits your home, the local authority may investigate. While there is no legal obligation on local authorities to interview tenants about allegations, generally the policy is to hold an interview. During such interviews, you as the tenant may have to respond to allegations being made about you, your family members or visitors to your home. The local authority may get information about anti-social behaviour from various sources; for example, from a report from Gardai, or a complaint by an individual or feedback from community organisations. Interviews investigating allegations of anti-social behaviour are usually done by officials within the local authority. Often the allegations are not about the tenant but are about some other person (for example, the tenant's child) who might not be present during the interview.

If you are called for interview you should also contact the local authority before the meeting to get written details in advance of any allegation being made, including the dates, times and locations. It might be helpful as the tenant to bring along a person who might help and support you and even take notes on your behalf. You also have the option of writing to your local authority under the Freedom of Information Acts to seek a copy of your file, although some information may be withheld, for example, confidential information. These meetings are very important as often the outcome of them can form the basis of a local authority evicting you from your home. (See Chapter 12 of this Booklet for further information on Eviction).

.....  
**10.6 What can you do as a tenant?**

**10.6.1 If a complaint is made against you:**

Many local authorities have **Tenancy Sustainment Programmes** which help support you, particularly if you have complaints made against you or are in **arrears** of rent. You should enquire in your local authority for this assistance as early as possible. The more help you get the better chance of staying in your home.

# 10: Anti - Social Behaviour

## 10.6.2 If you are affected by anti-social behaviour:

If the behaviour is by someone else, you can apply to the District Court for an Excluding Order. An Excluding Order, if granted, prevents that person from coming near your home. It is a criminal offence to breach an Excluding Order and you should contact the Gardaí if you have any problems in relation to this. (See Chapter 11 on Excluding Orders).

## 10.7 Do Not Place Your Tenancy At Risk:

### 10.7.1 Take Action

If an allegation of anti-social behaviour is made against you and you do nothing you are placing your tenancy at risk and you are at risk of being evicted. If you are evicted or asked to leave your local authority home due to anti-social behaviour, you will seriously risk any assessment for rent supplement under the Supplementary Welfare Assistance Scheme. Legally, the Community Welfare Officer is entitled to refuse to give you assistance in circumstances of eviction on grounds of anti-social behaviour.

### 10.7.2 Legal Advice

As already mentioned, complaints of anti-social behaviour about you or other residents/tenants/visitors to your home can affect your security in your home. We strongly advise that if a complaint is made that you seek legal advice immediately. Similarly, if you are thinking of applying for an Excluding Order or if you have been served with a **summons** to apply to exclude you; you should get legal advice as the consequences are serious. (See Chapter 11 of this Booklet for further information on Excluding Orders).

.....  
**11.1 What is an Excluding Order?**

An Excluding Order is a Court order excluding a tenant/resident or visitor from a particular house and sometimes the street or neighbourhood where the house is situated. It is a criminal offence to breach an Excluding Order. The person can be excluded for engaging in anti-social behaviour. Anti-social behaviour is discussed in chapter 10.

**11.1.2 What is an Interim Excluding Order?**

In the case of emergency – where there is an immediate risk of serious harm to the tenant or other occupant of the house if the order is not made immediately – a Judge can grant a temporary Interim Excluding Order, whilst waiting for the full hearing to go ahead. In exceptional cases the Judge can even make this temporary order without having heard evidence from the person to be excluded.

.....  
**11.2 What is the effect of an Excluding Order?**

If the court is satisfied that there are reasonable grounds for believing that a person is or has been engaged in anti-social behaviour, the Court may make an order:

- Requiring the person to leave the house if they are residing at the house;
- Banning the person, be they a tenant or not, from entering, or being near the house;
- Banning the person, be they a tenant or not, from being in the area of or near any specified housing

**11.1 What is an Excluding Order?**

.....  
**11.2 What is the effect of an Excluding Order?**

.....  
**11.3 Who can apply for an Excluding Order?**

.....  
**11.4 How do you apply for an Excluding Order?**

.....  
**11.5 What happens if someone applies for one against you?**

.....  
**11.6 What are the consequences of an Excluding Order?**

.....  
**11.7 What are the differences between an Excluding Order and a Barring Order?**

.....  
**11.8 Legal Advice**

# 11: Excluding Orders

# 11: Excluding Orders

estate;  
- Banning the person from causing or attempting to cause any intimidation, coercion, harassment or obstruction of, threat to, or interference with the tenant or other occupant of the house concerned.

## 11.3 Who can apply for an Excluding Order?

A tenant may apply for an Excluding Order against any person (including a joint tenant) who is believed to be engaging in anti-social behaviour. An owner of a home which was previously owned by the local authority can apply for an excluding order. A local authority may also apply to the District Court for, and be granted an Excluding Order in the following situation:

- If they believe that a person is engaging in anti-social behaviour, and
- They have consulted the tenant, and
- They have consulted with the Health Board or Health Authority in the local area and
- The tenant is not going to apply for an Excluding Order as they are deterred or prevented from doing so because of :
  - Violence
  - Threat
  - Fear
- If the local authority consider that in all the circumstances it is necessary in the interests of good estate management.

## 11.4 How do you apply for an Excluding Order?

The person applying for the Excluding Order is called the **Applicant**. The **Applicant** goes to the local District Court Office and completes a **summons**. A fee is payable to the District Court Office. The local District Court Office should give the **applicant** a date for the Court hearing to be put on the **summons**. The person at risk of being excluded is called the **respondent**. A copy of the **summons** is then served on the **respondent**. A document called a **statutory declaration of service** must then be completed and returned with the original **summons** to the District Court Office.

When an application is made for an Excluding Order, the Court must be of the opinion that there are reasonable grounds for believing that the **respondent** (i.e. the person against whom the order is sought) has been engaging in anti-social behaviour.

When you appear in court you must give evidence of the alleged behaviour. It may be necessary for other witnesses to be called to prove the behaviour and you may have to serve the witness with a **witness summons**, which requires them to come to court to give evidence. If you are the tenant applying, you may also need to prove that you are a tenant.

The **respondent** will also get the opportunity to defend the allegation of anti-social behaviour. Depending on the Judge's view as to the law and evidence in the case, he/ she

may or may not grant the order. The **applicant**, local authority or **respondent** can apply to vary (i.e. change) the Order. The Excluding Order can be for any period of time up to a maximum of three years. There is a right to **appeal** any decision to the Circuit Court.

.....  
**11.5 What happens if someone applies for one against you?**

As a **respondent** you will get a **summons** telling you when the Court date is on. At the Court hearing as a **respondent** you will get the opportunity to defend the allegation of anti-social behaviour. You can give evidence if you wish to and you can call witnesses on your behalf. You may have to serve the witness with a **witness summons** to ensure they attend court to give evidence. Depending on the Judge's view as to the law and evidence in the case, he/ she may or may not grant the order.

The **applicant**, local authority or **respondent** can apply to vary (that is change) the Order. The Excluding Order can be for any period of time up to a maximum of three years. There is a right to **appeal** any decision to the Circuit Court.

.....  
**11.6 What are the consequences of an Excluding Order?**

If an excluding order is made, it can have serious consequences for the **respondent** in terms of accessing housing. The local authority will probably be aware that the person has been excluded from their home and this may affect a person being offered a house with the local authority.

An applicant for rent supplement can also be **refused rent supplement** from a Community Welfare Officer if they have had an excluding order made against them or have been found to be engaged in anti-social behaviour. (See sections 10.7 and 11.2 of this Booklet for more information).

Breaching an Excluding Order or an Interim Excluding Order is a criminal offence. If convicted the person charged could get up to 12 months in prison and / or a fine.

.....  
**11.7 What are the differences between an Excluding Order and a Barring Order?**

Excluding Orders are different from Barring Orders. Barring Orders are applied for in the family law courts. For Excluding Orders, the parties do not have to be living together, the local authority can apply and the hearings are generally in public, although a Judge can make an Order to clear the court.

.....  
**11.8 Legal Advice**

If you are thinking of applying for an Excluding Order or if you have been served with a **summons** to apply to exclude you, you should get legal advice as the consequences are very serious. If you are charged with breaching an Excluding Order you may be entitled to Legal Aid under the Criminal Justice (Legal Aid) Scheme.

# 12:Eviction

12.1 Can a local authority remove you from your home?

12.2 What usually happens?

Each local authority uses different approaches and the information here is how some local authorities proceed to recover possession.

12.3 What is a Summons for Court?

12.4 The Court Hearing

12.1 Can a local authority remove you from your home?

Yes, it is possible for a local authority to remove you from your home. The power local authorities generally use is contained in Section 62 of the Housing Act 1966: Recovery of Possession of Dwellings by A Local Authority. If a local authority takes the view that you are in breach of your tenancy agreement, they may decide to evict you.

There are certain conditions that need to be met and a formal process that must be followed.

12.1.2 Get Legal Advice

Where proceedings are brought or threatened against you or you think that they might be, you should get legal advice immediately. Housing Authorities have strong powers so do not delay. Section 62 has recently been found to be in breach of rights under the European Convention on Human Rights and if you are served with any type of eviction proceedings you should seek legal advice immediately.

12.2 What usually happens?

Each local authority uses different approaches and the information here is how some local authorities proceed to recover possession.

12.2.1 Tenancy agreement

For anything to happen with the local authority in relation to your home you have to be their tenant. So check your tenancy agreement and if you have not got a copy get a copy. Also check if the Minister

for the Environment, Community and Local Government has made rules for the termination of local authority tenancies.<sup>10</sup>

<sup>10</sup> Note: Under s29 of the Housing (Miscellaneous Provisions) Act 2009 (Schedule 3 (c)) (not yet in force at the time of writing) every tenancy agreement must explain the rules and procedures for termination of the tenancy including termination for breach of any of the terms or conditions of the agreement. Under s29(4)(b) the Minister can make rules for the termination of Local Authority tenancies. These rules had not been made at the time of writing this Booklet.

### 12.2.2 Important Stages

There are generally three main stages leading up to an eviction. These are:

- Local Authority Procedure
- **Notice to Quit**
- Court **Proceedings**

These steps are explained in more detail below.

### 12.2.3 Letter from local authority

This is usually how the local authority procedure starts. You may receive a letter from a local authority official telling you that they are concerned about something, for example anti-social behaviour, or some other possible breach of your tenancy agreement. The letter may ask you to attend a meeting to discuss the situation. You should make sure you attend the meeting. Before the meeting, you should write and ask for details in writing of any causes of complaint or your obligations to be sent to you in advance of the meeting.

### 12.2.4 Meeting

At the meeting you will be told what the local authority's concerns are and you will be asked for your response to them. You will be interviewed by a local authority official and usually there will also be a note-taker at the meeting. You should get somebody to come to the meeting with you, such as a community worker. It is important that you get a note of what took place. Maybe everyone present could agree the note. Make sure to keep a copy of the note. It may be that at the meeting it is suggested that you do something or refrain from certain behaviour. It is a good idea to try to reach agreement on this. If an agreement is made, you should note what is to be done and do it.

### 12.2.5 Internal Review

Housing Authorities sometimes hold internal reviews and if this happens they may ask you to submit a letter giving reasons why they should not terminate your tenancy. This is your opportunity to explain your side of the story, so you should make sure you put all relevant information into your letter.

### 12.2.6 Manager's Order

If the local authority wishes to proceed with the **repossession** they will get a manager's order or a similar administrative procedure to allow them to proceed. You will not be notified of this step; however, if you are aware that the Authority is seeking a **manager's order** you could ask to be given a chance to put your side of the story to the

# 12: Eviction

manager.

## 12.2.7 Notice to Quit

If after all meetings and an internal review (if one is held) the local authority still wants you to leave, they will serve you with a type of letter called a 'Notice to Quit' which is a formal request for you to leave the property. The Notice to Quit will give you a period of time to leave the property after which the local authority will bring Court proceedings to remove you. If you do not leave, after the relevant time period has passed they can apply to the District Court for a 'warrant for possession' or possession order. If you have not already gotten legal advice it would be recommended to seek advice immediately if a Notice to Quit is served on you.

## 12.3 What is a Summons for Court?

### 12.3.1 Summons

The local authority will serve a summons on you to attend at court. The court date will be on the summons. The summons will state that the relevant law is Section 62 of the Housing Act 1966. You must make sure you go to court on the date given in the summons.

### 12.3.2 Solicitor

As already mentioned in paragraph 12.1.2 you should get legal advice immediately.

12.3.3 the procedure local authorities generally use, Section 62 of the Housing Act 1966 has been found to breach people's rights under the European Convention on Human

**Rights.** If you are served with any type of eviction proceedings you should seek legal advice immediately.

If you have not already got a solicitor then you should arrange legal representation for the hearing immediately after you get the summons. Your solicitor will prepare your case for court: any documents you need, any reports or any witnesses you need to attend will have to be arranged. You may need to get documents or information from the local authority. It might be a good idea to issue a Freedom of Information request.

## 12.4 The Court Hearing

### 12.4.1 The Hearing

You will have to attend the court hearing and be ready to go ahead with the case. You can ask the court for an adjournment, which will put the case back to a later date. However, you will not necessarily get an adjournment unless you have a very serious reason e.g. medical certificate. If you need an adjournment, it is best to ask the local authority (or their lawyer) to agree in advance.

As already mentioned in paragraph 12.3.3 the procedure local authorities generally use, Section 62 of the Housing Act 1966 has been found to breach people's rights under the European Convention on Human Rights. If you are served with any type of eviction proceedings you should seek legal advice immediately.

12.4.2 How does Section 62 of the Housing Act 1966 operate?

Under Section 62 the local authority only has to serve the **Notice to Quit** to terminate the tenancy and then make an assessment to the Court. If the **Notice to Quit** has been properly served the Court must give the local authority a **possession order**. The local authority does not have to prove to the Court that they had a good reason for asking you to leave and it may seem to you that they did not have any reason. The Court is not allowed to consider whether there was a good reason. You should get legal advice about whether the recent Supreme Court case which found that Section 62 of the Housing Act 1966 is breach of European Convention on Human Rights applies to your case.

#### 12.4.2 In Court

If you appear in court in respect of **proceedings** under Section 62 of the Housing Act 1966, when your case is called, the local authority will have to prove certain things to get the possession order:

- Tenancy Agreement
- **Notice to Quit**
- **Summons**

You will be able to

**12.4.3 Make your case in relation to these matters and anything else that the Judge allows but you are confined to the three narrow issues set out above.** The reasons that the local authority is seeking a possession order are not considered by the Court, nor does it consider any of your particular circumstances. If a **possession order** is being granted, you can ask the Court for a 'stay' on the Order. This means that the Order will not take effect for a certain period of time. You may ask for a stay if you want to **appeal** or if you want longer time to leave the house. It is a matter for the Judge to decide if a stay should be granted.

#### 12.4.4 Appeal

It is open to you to **appeal** the decision if it goes against you but remember that you will be confronted with the same law in the higher court. If you lose your **appeal**, you may have to pay the local authority's legal costs. It will be necessary to appeal without delay as you only have 14 days.

Take legal advice.

If the local authority take any steps to evict you from your home you should make sure you get legal advice.

# 13: Eviction of Unaccommodated Travellers

Unaccommodated Travellers are sometimes forced to live on the roadside, on unauthorised sites or without permission on land that does not belong to them. In this situation you risk eviction under a number of pieces of legislation. This chapter explains some of the common ways that the law is used to evict Travellers in these situations.

13.1 What is a **prohibition order**/notice?

13.2 Notice of temporary dwelling causing a **nuisance**

13.3 What can happen if the temporary dwelling is in a public place?

13.4 What is trespass?

13.5 What can happen if the temporary dwelling is on a public road?

13.1 What is a **prohibition order**/notice?

Under the Local Government (Sanitary Services) Act 1948 a person may receive a “**prohibition order**”/notice from a sanitary authority (a sanitary authority is a local authority carrying their functions with regard to sanitation). This prohibits someone putting up a temporary dwelling, such as a caravan, or keeping a temporary dwelling that is already there on land or water, if it threatens:

- public health (e.g.: overcrowded);
- ‘amenities’ (e.g.: parks) or;
- traffic (and the **prohibition order** may specify the distance the person needs to move the dwelling from a road).

If a **prohibition order** or notice is going to be made against you, you have the opportunity to make representations to the local authority and you should seek legal advice. Once the order has been made, if you do not follow it you may receive a **summons** to appear in court for breaching the order. If you are found guilty of failing to follow the order, the maximum fine is €1,270 and €454 for every day you do not remove the dwelling. If you are found guilty a second time for the same offence the Sanitary Authority can take the dwelling and dispose of it. If the Authority’s **bye-laws** on this are unreasonably wide they may be open to challenge. You should consult a solicitor on this matter to see if the **bye-laws** could be subject to change.

## 13.2 Notice of temporary dwelling causing a nuisance

Under the Public Health Act (Ireland) 1878 as amended by the Environmental Protection Agency Act 1992 a person may receive a notice that their dwelling is causing a nuisance. If you receive such a notice, you will be given a certain amount of time to move your temporary dwelling. You will have the opportunity to make representations to the local authority at this stage and you should seek legal advice. After that the local authority may get a summons from the court which they will give to you and you must then appear in court to defend the matter. The judge can then make an order to have your dwelling removed.

## 13.3 What can happen if the temporary dwelling is in a public place?

Under Section 10 of the Housing (Miscellaneous Provisions) Act 1992 as amended by Section 32 of the Housing (Traveller Accommodation) Act 1998 and Section 21 of the Housing (Miscellaneous Provisions) Act 2002, if a temporary dwelling is in a public place without permission the owner may receive a notice giving them 24 hours to move it, otherwise the local authority may seize it and either move it or impound it.

There are three sub-sections within Section 10, so the notice will say one of three things must be done:

- move the dwelling to a halting site within five miles;
- move the dwelling to any halting site within the area within 24 hours;

- move the temporary dwelling to at least a distance of one mile from the specified Traveller accommodation. Unless you move it to somewhere where you can camp legally you have not done what was required by the notice and you can still be prosecuted.

As well as having your home taken you may get a summons to appear in court and you may be convicted of the offence. The penalty is a maximum fine of €1,270 and/or a term of imprisonment of up to one month can be imposed. (Due to the risk of imprisonment you may be entitled to have a solicitor paid for by criminal legal aid under the Criminal Legal Aid system.)

The same penalties apply to a person who obstructs or impedes a local authority in exercising their functions as outlined above, or a person who assists another person to obstruct or impede the local authority.

Talk to your solicitor to see if a notice issued to you can be challenged. If you have been on the housing list for the area for many years there may be a case relating to the failure of the local authority to fulfil its duties.

# 13: Eviction of Unaccommodated Travellers

## 13.4 What is trespass?

The Criminal Justice (Public Order) Act 1994 as amended by Housing (Miscellaneous Provisions) Act 2002 makes trespass onto public or private land a criminal offence and allows for confiscation and impounding of caravans by the Gardaí.

You cannot without permission go onto, occupy, or bring an object (like a temporary dwelling or animals) onto any land, where this is likely to: damage land, affect an amenity on the land, prevent people making use of the land, make the land unsafe or interfere with the land (section 19C of the Criminal Justice (Public Order) Act 1994 as amended by Housing (Miscellaneous Provisions) Act 2002).

Where a Garda believes that you are committing this offence/crime he may direct you to leave the land taking any object with you, and must inform you of the offence and the possible **penalties** if you do not follow his direction. Only if you refuse or fail to follow a Garda's direction can he remove it. If a Garda makes this direction to you, you should take a note of the Garda's name, station and badge number.

If you do not provide a correct name and address or do not follow a direction, this is an offence/crime. (Section 19D Criminal Justice (Public Order) Act 1994 as amended by Housing (Miscellaneous Provisions) Act 2002) If you interfere with the work of the Garda here or help anyone else to make such interference this is

also an offence/crime. You can be arrested (without a warrant) if you do any of these things and the Gardaí may remove the object brought onto the land and store it. The object may be recovered, and there is a fee for storage. If the item is not claimed within one month it may be disposed of and some payment given to you. On summary you will be liable to a maximum fine of €3,000 and/or a term of imprisonment of not more than one month. (Due to the risk of imprisonment you may be entitled to criminal legal aid under the Criminal Legal Aid system.)

## 13.5 What can happen if the temporary dwelling is on a public road?

Under Section 69 the Roads Act 1993, anyone who puts or keeps a temporary dwelling on a national road, busway, motorway, or protected road is guilty of an offence/crime.

An authorised person, (authorised by a road authority or a Garda), may remove the temporary dwelling, and store it until it is claimed by the owner. They will serve a notice on the person they believe to be the owner or display it at the local Garda station. If not claimed it can be disposed of within six weeks of seizure and four weeks of the notice having been issued.

On a **summary conviction** for this offence, you can get a fine of €1,270 and/or a term of imprisonment of not more than six months. (Due to the risk of imprisonment you may be entitled to criminal legal aid under the Criminal Legal Aid system.)

.....

## 13.6 What is an injunction?

An **injunction** is a court order saying that a person must do or stop doing something because it interferes with another person's rights. For example, a local authority may apply to the court to get an order saying that you must move your caravan as it is interfering with their property rights and it is a **nuisance**. If you fail to comply with the notice you may be held to be in contempt of court and imprisoned or fined.

Section 27 of the Planning Act 1976 is frequently used to seek **injunctions** preventing Travellers occupying caravans in particular areas.

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## 13.7 Legal Advice

If you receive a **summons** under any of these Acts you should seek legal advice immediately either from a private solicitor or your local Legal Aid Board.

If you receive an eviction notice you should seek advice from a solicitor or the Irish Traveller Movement Law Centre (01 6796577).

# 14: Homelessness

- 14.1 Who qualifies as homeless? .....
- 14.2 What fair procedures and human rights are required to be upheld? .....
- 14.3 Is there a right to housing? .....
- 14.4 What is the role of Housing Authorities? .....
- 14.5 Is there an 'Action Plan on Homelessness'?
- 14.6 What is the responsibility of the HSE? .....
- 14.7 How is accommodation provided? .....
- 14.8 What happens if you have difficulties with accommodation? .....
- 14.9 Useful contacts

## 14.1 Who qualifies as homeless?

Section 2 of the Housing Act 1988 sets out the conditions for deciding who qualifies as homeless. Under this Act, you will be regarded as homeless if:

there is no accommodation available which, in the opinion of the local authority, you could reasonably occupy, and  
in the opinion of the local authority, you are unable to provide accommodation from your own resources.

This definition covers both you and anyone else who normally lives with you or might reasonably be expected to live with you.

You will also be regarded as homeless if you live in a hospital, county home, night shelter or similar institution because you have no other accommodation and, again in the local authority's opinion, you are unable to provide accommodation from your own resources.

Your housing options can vary depending on whether the local authority regards you as homeless or not. If you are deemed not to be homeless and are refused accommodation for this or any other reason, you should seek legal advice immediately as there may be grounds to challenge this decision.

## 14.2 What fair procedures and human rights are required to be upheld?

Local authorities have a duty to act in a "rational and reasonable manner" in carrying out their functions.<sup>11</sup> Since 2003, they are also required, as organs of the

State, to carry out their functions in accordance with the European Convention on Human Rights (see chapter 16 European Convention on Human Rights).

For these reasons, in deciding whether or not a person is homeless and, if so, what accommodation and support must be provided, local authorities must apply fair procedures and respect human rights. For instance, a local authority should hear what you have to say before it makes its decision and it should give you the reasons for that decision. In some circumstances, it may also be obliged to provide an independent hearing if you are unhappy with its decision.

What the local authority is required to do may vary from case to case. In order to ensure that fair procedures and human rights are observed, it is always wise to seek legal advice if you are refused housing or other support for homeless people.

<sup>11</sup> County Meath VEC v. Joyce [1994] 2 ILRM 210

.....  
**14.3 Is there a right to housing?**

If you qualify as homeless, the question arises as to whether you have a right to housing or shelter. Although a right to housing is recognized in some international human rights instruments<sup>12</sup>, there is, as yet, no explicit right to housing in Irish law.

However, there is a possibility that a right to housing or shelter may be regarded as one of the undefined rights protected by the **Constitution**

under Article 40.3. Further development of this possibility will depend on the outcome of future litigation.

The situation is different for children and young people under 18. A right to adequate shelter is one of the rights of children under Article 42.5.

In addition, under Section 5 of the Child Care Act 1991, the HSE has a legal obligation “to take such steps as are reasonable” to provide suitable accommodation for children who are homeless and who are not taken into care (see chapter 9 on Families, Children and Housing Law).

<sup>12</sup> Article 25(1) of the Universal Declaration of Human Rights and Article 11(1) of the International Covenant on Economic, Social and Cultural Rights

.....  
**14.4 What is the role of Housing Authorities?**

In the absence of an explicit right to housing, the Housing Act 1988 and Housing Act 2009 place particular responsibility on local authorities to provide for the accommodation needs of homeless persons.

The important legislation governing this area is Section 20 Housing Act 2009 and the Social Housing Assessment **Regulations** 2011 (SI 84/2011) which have been in force since 1st April 2011.

A person’s need for accommodation, including homeless persons, is established through their inclusion in the assessment of housing needs required to be carried out by the

# 14: Homelessness

local authority under s.20 of the Housing Act 2009. This is discussed further in chapter 3 Applying for Local Authority Housing.

To be eligible for inclusion in the assessment, you must be over 18, in need of accommodation and be unable to provide it from your own resources. Eligibility need and the financial assessment are set out in chapter 3.

To apply for **social housing support**, you must apply to your local authority to be placed on the 'Housing List' or 'Homeless List' (priority Housing List) by filling out the assessment form available online or at the local authority offices (See Chapter 3 Applying for Local Housing on how to apply for **social housing support**). If your household is deemed ineligible for support, you should take legal advice.

## 14.5 Is there an 'Action Plan on Homelessness'?

Section 37 of the 2009 Act also requires local authorities to adopt an action plan to combat homelessness. The plan should take account of a summary of social housing assessments, cost and resource issues and government policies generally. It will be prepared with the input of statutory bodies such as the HSE. Voluntary bodies working with homeless people are also to be consulted. The plan will be made publicly available and will be reviewed periodically.

## 14.6 What is the responsibility of the HSE?

Under Section 54 of the Health Act 1953, it was the duty of the appropriate health authority to provide "such institutional assistance as appears...necessary or proper in each particular case" to persons who were unable to provide shelter or maintenance for themselves. In keeping with the times, such assistance was institutional and consisted of being maintained in a county home or similar institution.

The fact that this provision remains in force implies that the HSE may continue to have an obligation to house people "unable to provide shelter for [themselves]" if, for some reason, the local authorities fail to do so. As Community Welfare Services used to be provided through the HSE this was often how accommodation was provided until such time as the local authorities can assess the situation. Community Welfare Services continue to provide this service through the Department of Social Protection.

## 14.7 How is accommodation provided?

In practice, local authorities work with the health authorities to discharge their responsibility to provide accommodation for homeless persons. Accommodation provided is usually in the form of emergency accommodation in hostels or B&Bs in the first instance. A housing assessment is carried out and assistance may then be provided in moving on to other

forms of accommodation which could include (i) temporary or long-term supported accommodation; (ii) local authority housing; or (iii) private rented accommodation.

If you are homeless and wish to access accommodation in Dublin, you should present at the Local Authority Assessment and Placement Service (Dublin City Council), 160 Capel Street, Dublin 1/ Tel 1800 707 707 (Women and Families 10am - 12 noon / Men 2pm - 4pm). The Placement section will offer you emergency accommodation for a night or two or, if possible, refer you to the local authority in the area you became homeless. Emergency accommodation usually consists of hostels but families may be placed in B&B accommodation.

You can also contact the 24 Hour Homeless Helpline on 1800 707 707.

After you have been placed in emergency accommodation, you will then be referred to the allocations section who will process your assessment for **social housing support**. If you became homeless in Wexford, you will be referred back to Wexford local authority to make an assessment for housing with them. Alternatively, you can apply to a local authority with which you have a local connection. You should seek legal advice if you are having difficulties with this.

### 14.7.1 Example:

If you properly belong within Dublin City Council's area, you will make an assessment to be placed on their homeless list. This homeless list is simply a priority

housing list and the assessment process and form is the same as that for the housing list. See list of organisations that may be able to help with your assessment, provided at the end of this section.

Once you have been accepted onto the homeless list, you will be offered a long term placement in emergency accommodation. rented accommodation, you will be moved from the homeless to the housing list. There is no need to reapply.

The Homeless Persons Unit (HSE) on Castle Street (Women and Children) and in Oisín House (Single Men) processes assessments for Supplementary Welfare Allowance only and does not deal with housing (Ph 1800 724 724).

### 14.8 What happens if you have difficulties with accommodation?

It is sometimes the case that people experience difficulties either in accessing accommodation or with the quality of the accommodation that is provided. People are also frequently obliged to comply with house rules or conditions which can be quite strict. If you are concerned about such difficulties, it is recommended that you take legal advice to see if there may be a legal remedy available to you.

In particular, if you are barred from a hostel, B&B or other establishment because of any alleged breach of house rules, you should seek legal advice immediately to ensure that fair procedures have been followed in the making of the decision.

# 14: Homelessness

## 14.9 Useful contacts

You may also find it helpful to contact your local Citizens Information Centre.

Name	Address	Telephone	Website
<b>Crosscare</b>	1 Cathedral St., Dublin 1	(01) 8726775	<a href="http://www.crosscare.ie">www.crosscare.ie</a>
<b>De Paul Ireland</b>	18 Nicholas St., Dublin 8	(01) 4537111	<a href="http://www.depaulireland.org">www.depaulireland.org</a>
<b>Focus Ireland</b>	Coffee Shop, Eustace St, Dublin 2	(01) 6712555	<a href="http://www.focusireland.ie">www.focusireland.ie</a>
	9 - 12 High Street Christchurch, Dublin 8	(01) 8815900	
	1 Garden Row Kilkenny	(056) 779 4565	
	Catherine Place Limerick	(061) 405 300	
	St. John's Park, Grange Cohan, Waterford	(051) 879807	
<b>Homeless Persons' Unit</b>		1800 724 724	
For single men Open 10 am – 12 noon, Mon–Fri	Oisin House, 212-213 Pearse St., Dublin 2	(01) 6708964	
For women and families: [Open 10 am – 12 noon, Mon-Fri]	41 Castle St., Dublin 2	(01) 4767000	
<b>Local Authority Assessment and Placement Service</b>	160 Capel Street, Dublin 1 [Women and Families 10am - 12 noon Men 2pm - 4pm]	1800 707 707	
<b>Simon Community</b>	Dublin Cork Dundalk Galway Midlands Mid West North West South East	(01) 6715551 (021) 4321051 (042) 9328764 (091) 589415 (0906) 444641 (061) 608980 (071) 9851680 (051) 874838	<a href="http://www.dubsimon.ie">www.dubsimon.ie</a> <a href="http://www.corksimon.ie">www.corksimon.ie</a> <a href="http://www.dundalksimon.ie">www.dundalksimon.ie</a> <a href="http://www.galwaysimon.ie">www.galwaysimon.ie</a> <a href="http://www.simon.ie">www.simon.ie</a> <a href="http://www.midwestsimon.ie">www.midwestsimon.ie</a> <a href="http://www.simon.ie">www.simon.ie</a> <a href="http://www.southeastsimon.ie">www.southeastsimon.ie</a>

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**15.1 Housing rights and equality of access**

**15.1.1 Introduction**

Equality issues can often arise in relation to provision of many types of services, including housing. When providing accommodation to prospective tenants and in administering Schemes of Letting Priorities, local authorities must adhere to the Equal Status Acts 2000-2004 (the Acts). Accordingly, local authorities must not discriminate against persons on any one or more of “nine grounds” when providing accommodation. Discrimination may be ongoing or it may take place over an extended period of time.

The nine grounds are:

- **Gender:** A man, a woman or a transgender person.
- **Civil Status:** Single, married, separated, divorced, widowed, in a civil partnership within the meaning of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 or being a former civil partner in a civil partnership that has ended by death or been dissolved.
- **Family Status:** Pregnant, a parent of a person under 18 years of age, a resident primary carer or parent of a person with a disability.
- **Sexual Orientation:** Gay, lesbian, bisexual or heterosexual.
- **Religion:** Different religious belief, background, outlook or none.
- **Age:** This only applies to persons over 18.
- **Disability:** This is broadly defined and including people with physical,

.....  
15.1 Housing rights and equality of access

.....  
15.2 What is direct and indirect discrimination?

.....  
15.3 What is victimisation?

.....  
15.4 Does the local authority have any specific duty in relation to persons with a disability?

.....  
15.5 How do you make a complaint?

.....  
15.6 Does the local authority have any defence?

.....  
15.7 Are there any exceptions which could allow discrimination?

# 15: Equality Issues

# 15: Equality Issues

intellectual, learning, cognitive or emotional disabilities and a range of medical conditions.

- Race: A particular race, skin colour, nationality or ethnic origin.

- Membership of the Traveller Community: People who are commonly called Travellers, who are identified both by Travellers and others as people with a shared history, culture and traditions, identified historically as a **nomadic** way of life on the island of Ireland.<sup>13</sup>

<sup>13</sup> Information Booklet on the Equal Status Acts 2000 – 2004, Equality Authority - <http://www.equality.ie/index.asp?locID=106&docID=226>

## 15.2 What is direct and indirect discrimination?

The Acts outlaw direct and indirect discrimination of persons by service providers, including local authorities, in relation to one or more of the nine grounds. Direct discrimination is where there is less favourable treatment of a person on any (or several) of the nine grounds in comparison to someone else.<sup>14</sup>

So, for example, if you feel that you are being discriminated against on the basis of your disability, you must demonstrate that a person without a disability would not have been discriminated against in the same way.

Under the Acts, persons can be considered to have been directly discriminated against by reason of a person being treated in a less favourable way than another person is, has been or would be treated in a comparable situation on any of the nine grounds which:

- Exists;
- Existed;
- May exist in the future; or
- Is assumed to apply to the person concerned.<sup>15</sup>

Indirect discrimination happens where there is less favourable treatment by impact or effect. It occurs where you are, for example, refused a service not explicitly on account of a discriminatory reason but because of a provision, practice or requirement imposed on you by a service provider which you find hard to satisfy. If the provision, practice or requirement puts people who belong to one of the grounds covered by the Acts at a particular disadvantage, then the service provider will have indirectly discriminated against them, unless the provision is objectively justified by a legitimate aim and the means of achieving that aim are proportionate and necessary.<sup>16</sup> This might arise where you have a physical disability and you were unable to get a service because of a lack of wheelchair access. The service provider may not have set out to discriminate against you, but the effect of the way they have provided the service has had the effect of indirectly discriminating against you.

<sup>14</sup> Walsh, Guide to the Equal Status Acts 2000-2008 (Forthcoming, Dublin 2010) 35

<sup>15</sup> Information Booklet on the Equal Status Acts 2000 – 2004, Equality Authority - <http://www.equality.ie/index.asp?locID=106&docID=226>

<sup>16</sup> Information Booklet on the Equal

Status Acts 2000 – 2004, Equality Authority - <http://www.equality.ie/index.asp?locID=106&docID=226>

### 15.3 What is victimisation?

Victimisation is where a service provider (including a local authority) treats you differently because you have previously brought an anti-discrimination case against them or you have previously indicated an intention to bring such a case. Section 3 of the Acts says that the service provider is not allowed to treat you differently because you enforced your equality rights against them.

#### Discrimination Case Example: Traveller Ground

In the case of *A Complainant v A Local Authority*<sup>17</sup> a member of the traveller community claimed that he had been harassed, discriminated against and victimised in the manner in which his assessment for local authority housing was handled by an officer of the local authority. The Complainant alleged that the Traveller Liaisons Officer (TLO) called him a “rogue”. The Complainant also contended that the TLO unreasonably refused to sign particular forms and claimed that there were unnecessary difficulties in being required to deal only with the TLO. It was found that the person had been harassed and discriminated against on the basis of membership of the traveller community in the manner in which his assessment for housing was handled by the local authority. The local authority was ordered to pay €6,350 and to implement training and policies for local authorities.

<sup>17</sup> Decision of the Equality Tribunal, 30th January 2009 (DEC –S2009 – 009)

### 15.4 Does the local authority have any specific duty in relation to persons with a disability?

A local authority has an obligation to do all that is reasonable to accommodate the needs of persons with disabilities.<sup>18</sup> This involves providing special treatment or facilities in circumstances where, without such facilities, it would be impossible or unduly difficult to avail of the accommodation. However, local authorities are not obliged to provide special facilities or treatment when this would cost more than what is called a “nominal cost”. What amounts to a nominal cost will depend on the circumstances.

#### Disability Case Example:

##### Reasonable Accommodation

In the case of *A Complainant v A Local Authority*<sup>19</sup> a local authority failed to provide for an extension to the property of the Complainant on the basis that the requirements associated with the intellectual disability suffered by her son (autism) were different from the requirements associated with a physical disability. The local authority in this case refused to carry out an amendment to the property as it was not deemed to be “feasible”. This was found to be direct discrimination and a failure to provide reasonable accommodation. The Complainant was awarded €6,350 by the Equality Tribunal for the distress and hardship caused by the discrimination. The Equality Officer also ordered the local

# 15: Equality Issues

authority to draw up a formal written policy in relation to the allocation of accommodation to persons with disabilities. Further, the local authority was ordered to make the necessary amendments to the property of the Complainant with immediate effect.

<sup>18</sup> Section 4 (1)

<sup>19</sup> Decision of the Equality Tribunal, 1st May 2007 (DEC – S2007 – 049)

## 15.5 How do you make a complaint?

A complaint can be made to the Equality Tribunal or the District Court, depending on what ground a person wishes to make a complaint under the Acts. Most complaints are ordinarily handled by the Equality Tribunal. This is the usual procedure:

- A complaint must be made to the local authority within two months.
- There is a six month time limit on making a claim from the time of the alleged discrimination. This can be extended in exceptional circumstances.
- The tenant must notify the local authority that they intend to make a claim of discrimination. This must be done by filling out a form ODEI 5 which is available from the website of the Equality Tribunal at <http://www.equalitytribunal.ie>. You can also get the form by writing to the Equality Tribunal at 3 Clonmel St, Dublin 2.
- If the local authority does not reply to the complaint or does not provide a satisfactory reply, the complaint must be referred to the Equality Tribunal within six months of the alleged discrimination. This is done by filling out form ODEI 2 which

is available on the website of the Equality Tribunal or by writing to the Equality Tribunal directly.

## 15.6 Does the local authority have any defence?

A service provider, including a local authority, may use the defence that they refused to provide a service or appropriate service to you because it was believed, on the basis of reliable knowledge available, that you posed a substantial risk of criminal or disorderly conduct or behaviour or damage to property at or in the area of the place in which the property is sought or accommodation or land is located.<sup>20</sup> The defence of nominal cost is also available to local authorities in cases relating to reasonable accommodation which is discussed at paragraph 15.4.

<sup>20</sup> Section 15 (1)

.....

## 15.7 Are there any exceptions which could allow discrimination?

Local authorities may also be capable of relying on exceptions under the Acts which can defeat a discrimination complaint by a tenant or prospective tenant. The most significant exception under the Acts is a blanket exemption allowing discrimination where this is required by orders, legislation or agreements, such as court orders, European Community Regulations and international agreements entered into by the State.<sup>21</sup>

There are also specific exceptions in relation to some of the nine grounds under the Acts which may be relevant to provision of local authority housing. For example, a local authority is entitled to discriminate either in favour of, or against, minors (i.e. persons less than 18 years of age).<sup>22</sup> There also exists what have been called “multiple ground exceptions” which may allow local authorities to discriminate against persons across several of the nine grounds when providing accommodation in certain circumstances.<sup>23</sup> There are also more general exceptions across all of the grounds allowing discrimination in particular circumstances. The most relevant issues in this category for local authority tenants is that local authorities can discriminate where they are providing services with the main purpose of promoting the special interests of persons in a particular category<sup>24</sup> or when providing services which can reasonably be regarded as

suitable only to the needs of certain persons.<sup>25</sup>

<sup>21</sup> Section 14 (1)

<sup>22</sup> Section 3 (3) (a)

<sup>23</sup>Section 6 (5)

<sup>24</sup> Section 5 (2) (h)

<sup>25</sup> S. 5 (2) (l)

# 16: The European Convention on Human Rights

16.1 What is the European Convention on Human Rights?

16.2 What is the European Convention on Human Rights Act 2003?

16.3 How does the ECHR affect your housing situation?

## 16.1 What is the European Convention on Human Rights?

The European Convention on Human Rights is governed by the Council of Europe and entered into force in 1950. It was ratified by Ireland in 1953. It is an international human rights treaty protecting a number of rights including:

- right to respect for privacy, family and home (Article 8)
- right to a hearing (Article 6)
- freedom from discrimination (Article 14) and
- freedom from inhuman and degrading treatment (Article 3)

### 16.1.1 European Court of Human Rights

There is a special international court for the ECHR, called the European Court of Human Rights (ECtHR) which is based in Strasbourg in France. The ECtHR is sometimes referred to as "Strasbourg". Except in very limited circumstances, you can only bring a case to the ECtHR after your case has been unsuccessful in the Supreme Court in Ireland.

## 16.2 What is the European Convention on Human Rights Act 2003?

The ECHR became part of Irish law in 2003 when the European Convention on Human Rights Act 2003 came into effect. Section 3 requires that 'organs of state' (including local authorities) must perform their duties in a manner compatible with the Convention. Section 5 of the Act grants to the courts the power

to make a declaration that a law is incompatible with the ECHR. However, this does not necessarily mean the law will be changed. There may be an entitlement to **damages**.

**16.2.1 Irish courts**

Where a local authority has not followed the Convention in the provision of your housing rights, you may be able to take a case against the local authority in the Circuit Court or High Court to rectify the situation. The person can rely on the European Convention cases (below) when making their case.

**16.3 How does the ECHR affect your housing situation?**

The ECHR does not give a right to housing. The ECHR has been used to protect people’s rights in relation to their housing situation in a number of ways. The following are examples of courts dealing with housing issue cases where the ECHR has been applied. It is important to bear in mind that court decisions are often very fact-specific: while these cases will give you a general guide to the effects of the ECHR, they may not necessarily apply in your own case. You should always get legal advice before seeking to raise an ECHR point in your own specific case.

**16.3.1. Interference with your home by the local authority:**

Article 8(2) states that any interference by a local authority of your right to respect for your home may only be justified if the interference is:

- In accordance with the law;

- Necessary in a democratic society;
- Proportionate to the aim sought to be achieved.

**16.3.2 Failure of the local authority to act:**

The ECHR is also part of UK law. The UK Courts have found that in certain circumstances, local authorities have a positive obligation to provide accommodation to certain families. For example, in R (Bernard) v Enfield LBC<sup>26</sup> a severely disabled woman had been found to need special accommodation. The local authority, Enfield LBC, was under a duty to provide this under the relevant disability legislation in the UK. She had to wait 20 months. The High Court awarded her **damages** on the grounds that there was a positive obligation under her right to respect for privacy, family and home to provide her with the special accommodation.

<sup>26</sup> [2002] EWHC 2282 (Admin).

**16.3.3 Harmful fumes/noise near your local authority home:**

If there are harmful emissions or high levels of noise near your home, the local authority may be violating your right to respect for home life under article 8. For example, in the case of Giacomelli v Italy<sup>27</sup> the ECtHR found that the noise and emissions from a treatment plant 30 meters from the person’s home was in violation of their right to respect for privacy, family and home.

<sup>27</sup> (2007) 45 EHRR 38

## 16.3.4 Eviction from local authority housing:

In Donegan v Dublin City Council<sup>28</sup> the Supreme Court found that the s.62 eviction procedure (see Chapter 12: Eviction) was in breach of the **applicant's** right to respect for privacy, family and home.

The Supreme Court decision found: 149. Apart from such interview process, Mr. Donegan has had no opportunity of having his argument as to his son's condition aired or determined before an independent body.... Given the enormous significance which this interference, by way of eviction, would have on his right to have due respect shown for his home, it follows, that the existing process by which such eviction may be sought, constitutes an inadequate safeguard in that respect and therefore, his Article 8 rights have not been respected. The Supreme Court found that the applicant's rights under Article 8, (the right to respect for his private and family life) had not been respected and also found that Section 62 of the Housing Act 1966 was incompatible with the European Convention on Human Rights.

In Pullen v Dublin City Council<sup>29</sup> the High Court found that the **applicant's** right to a hearing and right to respect for privacy, family and home had been breached by the local authority as it had not acted in a way that complied with the European Convention. The local authority had tried to evict the family on the grounds of anti-social behaviour but had not given them a proper chance to be heard and to answer the allegations against them. This

case is also being appealed to the Supreme Court.

<sup>28</sup> [2012] IESC 18

<sup>29</sup> [2008] IEHC 379.

## 16.3.5 Right to local authority housing and disability:

The ECtHR has found that local authorities are required to provide housing which suits the needs of persons with disabilities. For example, in Marzari v Italy<sup>30</sup> the Court found that a local authority was under a positive duty to provide assistance to a profoundly physically disabled person who was provided with an apartment that did not suit his needs. While this positive obligation was endorsed in the case, the ECtHR went on to find that there had been no violation of Mr Marzari's right to respect for privacy, family and home. The Court found that there was a proportionate interference with these rights. The Court noted that he had not paid his rent, had been very uncooperative and the local authority had waited a long time before evicting him.

<sup>30</sup> (1999) 28 EHRR CD 175.

## 16.3.6 Provision of alternative accommodation:

In Stanková v Slovakia<sup>31</sup>, the **applicant** had been evicted from her apartment by the local authority without being provided with any alternative accommodation. The ECtHR found that this was not in compliance with the Convention and interfered with the **applicant's** right to respect for privacy, family and home.

<sup>31</sup> Stankova v Slovakia (Assessment no. 7205/02, Judgment 9 October 2007)

### **16.3.7 Council dealing with complaints:**

In *Moldovan & Others v Romania*<sup>32</sup> the applicants were Roma Travellers who had been subject to unsatisfactory living conditions and a racist attack, which the police had attempted to cover up. The ECtHR found that the racially discriminatory manner in which the complaints were dealt with by the local authority had constituted a breach of their Article 3 rights which requires local authorities must perform their duties in a manner compatible with the Convention.

<sup>32</sup> (2007) 44 EHRR 16.

### **16.3.8 Right to a fair hearing:**

Article 6 of the ECHR provides the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal. This right contains the following requirements:

- hearing both sides within a reasonable time;
- ensuring both sides are equally represented;
- providing a reasoned decision in public;
- ensuring an independent and non-biased tribunal established by law hears the case.

In the case of *Langborger v Sweden*<sup>33</sup> the ECtHR dealt with the requirement that a tribunal be independent and not biased. The rent tribunal in this case was found not to be impartial as it had

representatives from the landlord's group and the National Tenants Union (Sweden) and both of these groups were affected by the issue.

<sup>33</sup> (1989) 12 EHRR 416. The right to have an unbiased tribunal is also protected by the Irish Constitution.

### **16.3.9 Prohibition of discrimination:**

Article 14 and Protocol 12 of the ECHR deal with the prohibition of discrimination.

In *Larkos v Cyprus*<sup>34</sup>, the ECtHR considered the case of a man who had rented his home from the Cypriot government. The law in Cyprus gave strong protections to private tenants, but this law did not apply to him, because he rented from the state. The ECtHR found that there was not a good reason for this and decided that different treatment in relation to state and private tenancies was discrimination and therefore a breach of Article 14.

<sup>34</sup> (2000) 30 EHRR 597

### **16.4 How can you use the ECHR in your housing complaint?**

If the matter goes to court your solicitor and barrister may use the ECHR in the papers and in front of the Judge.

If the matter does not go to court you can write to your local authority reminding them of their duties under the ECHR. You should specify that the duty arises under Irish law because of section 3 of the European Convention on Human Rights Act 2003 and then refer to the relevant Article using the cases above.

# 17: Glossary of Legal Terms

**Adjournment:** To suspend court proceedings to another date.

**Appeal:** A challenge of a decision taken to a higher authority.

**Applicant:** The person who issues the papers to take the case to court; or the person who makes an assessment, for example, an assessment for social housing support.

**Arbitration:** Settling a dispute while using a referee.

**Arrears:** A sum of money which has not been paid on the date it is due. A tenant who is behind in rent payments is said to be in arrears. The amount of the arrears is the total amount of rent owing on the date in question.

**Assessable Income:** The household income counted when calculating the household rent; also the household income counted when assessing whether the household income meets the financial eligibility test when the household is applying for social housing support.

**Assign:** Assign means to transfer or give over something to another person.

**Breach of Contract:** Failing to carry out a duty under contract.

**Bye-law:** Usually refers to a law of local or limited assessment, passed under the authority of a higher law i.e. local authorities can pass bye-laws under national legislation.

**Charging order:** An order made by a local authority under Section 46, 74 or 86 of the Housing (Miscellaneous Provisions) Act 2009. The order creates a charge over a dwelling for a period of time and subject to terms outlined in the Act. A charge has the same legal effect as a mortgage

(see Mortgage). It allows the local authority to acquire an interest in the tenant purchaser's dwelling for the purpose of securing the money owed by the tenant purchaser to the local authority. Once the money is paid, the interest in the dwelling is transferred back to the tenant purchaser.

**Clawback:** Clawback is a mechanism which allows money or benefits given previously to be taken back if certain circumstances arise.

**Collaborative practice:** Where two or more professionals work towards the same common interest of solving a particular problem.

**Commenced:** Began or started. Legislation often needs an order from a Minister to commence it before it is law which can be enforced.

**Conciliation:** The act of bringing parties together to negotiate in the hopes of avoiding court proceedings.

**The Constitution:** A written document setting out the system of fundamental principles according to which the country is governed.

**Contract:** An agreement between two or more parties which is legally binding and enforceable. If the agreement is broken, the person affected may be entitled to legal remedies.

**Creditors:** A person/business who is owed money.

**Damages:** Damages is an award of money to be paid to a person as compensation for loss or injury. Demountable House: a home capable of being taken apart, for example a prefab.

**Dependent child:** Someone who is

18 years or under or who is under 22 but is attending a full time course of education.

**Differential rent scheme:** This is a basis for the calculation of local authority rent - your rent is based on your ability to pay. It is based on a percentage of your income and allows deductions in rent for each dependant. Your local authority may have a minimum and/or maximum rent depending on the size of your home. The minimum rent is usually based on the basic social welfare rate of payment.

**Discretion:** Is the right to make decisions with some flexibility given to the person making the decision.

**Duty of Care:** The obligation to exercise a standard of care towards others that an ordinarily reasonable person would use in order to protect them from unnecessary risk of harm.

**Dwelling house:** A house which is used as a person's place of residence. It is to be distinguished from a house used for other purposes such as to run a business or farm or to rent out to other people

**Eligibility:** Where a person meets certain prescribed conditions which entitle him/her to be considered for a particular benefit e.g. an affordable housing scheme.

**Facilitation:** An action which makes a task or process easier for the participants.

**Fee simple:** Full or absolute ownership of land without conditions or limitations. The owner of the fee simple may dispose of the land as he/she chooses i.e. may sell it, deed it by gift or pass it to another by inheritance.

**Finance:** A person who wants to buy

a house or apartment may not have the money for the purchase price. He/she will then have to arrange finance i.e. arrange to get the money for the purchase. This is usually done by way of a mortgage (see Mortgage) or other form of loan.

**Fixed rent:** A rent not based on household income, it may be increased as new rent schemes come into force. Tenants on fixed rents usually have the option of converting to a differential rent if they so wish. The assessment of fixed rent is rare in local authority housing.

**Hardship clause:** This gives local authorities discretion to reduce your rent if there are particular reasons to do this.

**Implied:** Certain conditions which are not written into contracts can form part of the contract even though they are not written into the contract. Implied can also mean a suggested meaning.

**Impound:** To seize and retain in the custody of the law (in the custody of the Gardaí).

**Injunction:** A court order requiring you to do something or stop doing something i.e. to stop trespassing on council land. It is designed to protect the breach or threatened breach of a legal right or entitlement and may be temporary (interim or interlocutory) or permanent (perpetual).

**Judicial Review:** Judicial Review is a special court procedure in which the High Court (and the Supreme Court on Appeal) provides remedies against the abuse of the executive power of the State and public bodies. It allows the High Court

# 17: Glossary of Legal Terms

and the Supreme Court supervise public authorities in the exercise of their powers. It is not an appeal mechanism but it concerns the fairness of the decision-making process.

**Manager's order:** The City or County manager of a local authority is required to make a written order which is signed and dated in order to carry out certain functions.

**Mediation:** A negotiation to resolve a dispute between parties overseen by an independent impartial party.

**Mortgage:** A legal transaction whereby the owner of land transfers an interest in the land to a lender which loans him/her money. The purpose of the transfer is to secure the repayment of the loan. Once the loan is repaid, the lender must transfer the interest in land back to the owner/borrower. This is known as the satisfaction or discharge of the mortgage.

**Nomadism:** Is a way of life involving moving from place to place. It is part of the tradition of the Travelling Community.

**Notice period:** A period of time which a landlord must wait between informing a tenant that he/she intends to do something and actually doing it e.g. bring the tenancy to an end, inspect the property, etc. Where the landlord proposes to terminate the tenancy, a formal notice (that is notice to quit, notice of termination) should be served. The formal notice explains what the landlord proposes to do in writing and when he/she plans to do it. Where the tenant proposes to bring the tenancy to an end, notice periods should also be given to the

landlord. The amount of notice to be given may vary according to the terms of the tenancy agreement or such minimum notice periods as are set out in legislation. In the case of a local authority tenancy, at least 28 days' notice must be given.

**Notice to Quit:** A notice in writing given by a landlord to a tenant informing the tenant that he/she must leave the property by a certain date (see Notice period). It must contain certain elements.

**Nuisance:** Nuisance occurs when a person does something which harms other people's rights.

**Ombudsman:** The Ombudsman investigates complaints from members of the public about the administrative actions of Government Departments, the Health Service Executive, local authorities and An Post. If the Ombudsman finds that a complaint is wholly or partially justified, she will report this to the public body concerned. She may recommend that it should review its action or change its decision.

**Penalties:** A punishment imposed or incurred for a violation of law or rule.

**Possession:** In this context, possession means the right to physically occupy the property in question. Where a landlord has rented a property to a tenant, the tenant has possession i.e. the right to occupy the property. Where the landlord terminates the tenancy, the landlord may have to apply to the court for an order or warrant for possession i.e. for an order that he/she is now entitled to occupy the property and eject the tenant.

## Possession Proceedings /

**Proceedings for Possession:** Legal case to take the home or other property.

**Principal earner:** The person in the household with the highest income.

**Proceedings:** A particular step or series of steps in the enforcement, adjudication, or administration of rights, remedies, laws, or **regulations**. It could include an action, hearing, trial, or assessment before the court.

**Prohibition Order:** This is an order which basically bans or prohibits certain behaviour. In a Traveller context it is usually issued by a local authority to prevent someone putting up a temporary dwelling (i.e. a caravan) or keeping a temporary dwelling on land or water if it threatens public health.

**Qualifying conditions:** Conditions which the tenant needs to satisfy in order to qualify for a tenant purchase scheme.

**Redress:** **Redress** is a remedy or compensation for a wrong or grievance suffered.

**Regulated:** Governed by rules which have the force of law.

**Regulations:** Rules which have the force of law and which are brought into being by the competent authority. In Ireland, **regulations** are normally made by order of the relevant Minister and they govern the actions of a particular authority e.g. local authorities. The Authority must act in accordance with the **regulations** and the **regulations** themselves may be subject to **judicial review** (see **Judicial Review**).

**Rent Arrears Assessment:** If you owe money on your rent you may be asked for details of your income under what is called a Rent Arrears Assessment. If you fail to send this in you will be charged the maximum rent until such time as the information is submitted.

**Repossession:** To regain **possession** of, or to take back, for example, where money owed is not paid.

**Respondent:** The person who received the legal **proceedings** from the **Respondent**.

**Scheme of Letting Priorities:** This a document which is prepared by each local authority and then approved by the Minister for Environment, Community and Local Government. This document sets out the guidelines local authorities use when deciding on priority for households applying for **social housing support**.

**Social Housing:** Social Housing is accommodation provided by a local authority or an approved non-profit housing body for persons who are unable to provide accommodation from their own resources.

**Social Housing Support:** **Social housing support** describes the arrangements which a local authority can make to address your housing needs, which include the provision of **social housing** and the assistance of this provision by the local authorities.

**Spouse:** Husband or wife.

**Statutory declaration of service:** A formal written declaration that a court document (such as a summons) has been given to the relevant person.

**Subsidiary earner:** A person living in

# 17: Glossary of Legal Terms

a household who has an income but not the highest income of everyone in the household.

**Succession:** The order of entitlement of people to inherit where there is no will.

**Summons:** Usually a written notice telling a defendant (the person the case is against) to appear in court. It is important to show this to a solicitor.

**Summary conviction:** A conviction that takes place in the District Court in front of a judge only (no jury). The maximum punishment that can be handed to someone who is convicted summarily (found guilty of a summary offence/crime before the District Court) is 12-months imprisonment and/or a fine.

**Survivorship:** The right of a person to property on the death of another where that property is owned jointly.

**Tenant sustainment programme:** The goal of the **tenancy sustainment programme** is to assist tenants moving into independent accommodation. Tenants already in their homes can also access these services for support in their tenancy.

**Termination of tenancy:** A tenancy is ended when it is brought to an end either by the landlord or the tenant. This must be done in line with the terms of the tenancy agreement and with the provisions of any legislation which applies to the tenancy.

**Time limits:** There are **time limits** in which court **proceedings** must be issued otherwise you may lose your entitlement to seek a remedy e.g. **proceedings** for **breach of contract** must be issued within six years from the date of breach.

**Undertaking:** A promise to do

something, usually in writing, in return for something else. For example, if you give an **undertaking** to pay a certain amount off your rent **arrears** every month the local authority may agree in return not to evict you.

**Warranty:** Is a guarantee

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**Independent Law Centres**

Name	Address	Telephone	Website
<b>Ballymun Community Law Centre</b>	165 – 166 Blabutcher Lane Ballymun, Dublin 11	(01) 8625805	www.bclc.ie
<b>FLAC</b>	13 Lower Dorset St., Dublin 1	(01)8745690	www.flac.ie
<b>Irish Traveller Movement Law Centre</b>	4/5 Eustace St., Dublin 2	(01) 679 65 77	www.itmtrav.ie
<b>Mercy Law Resource Centre</b>	25 Cork St., Dublin 8	(01) 4537455	www.mercylaw.ie
<b>Northside Community Law Centre</b>	Northside Civic Centre, Law Cen- tre, Bunratty Road, Coolock, Dublin 17	(01) 8477804	www.nclc.ie

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**Homeless Services**

<b>Crosscare</b>	Clonliffe College, Clonliffe Rd, Dublin 3	3 (01) 8360011	www.crosscare.ie
<b>De Paul Ireland</b>	18 Nicholas St., Dublin 8	(01) 4537111	www.depaulireland. org
<b>Focus Ireland</b>	Coffee Shop, Eustace St, Dublin 2	(01) 6712555	www.focusireland.ie
	9 - 12 High Street Christchurch, Dublin 8	(01) 8815900	
	1 Garden Row Kilkenny	(056) 779 4565	
	Catherine Place Limerick	(061) 405 300	
	St. John's Park, Grange Cohan, Waterford	(051) 879807	

# 18: Useful Contacts and Websites

# 18: Useful Contacts and Websites

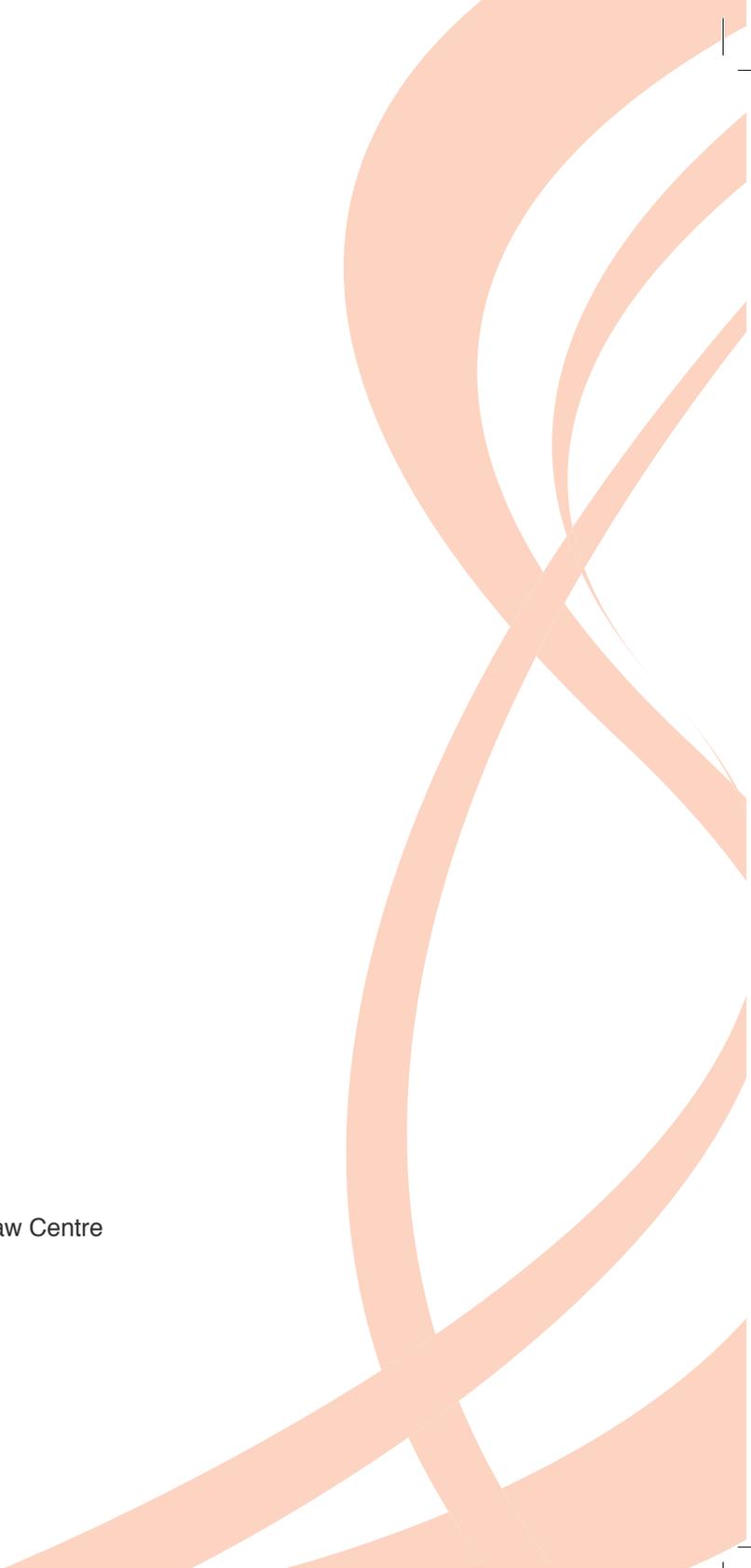
<b>Homeless Persons' Unit</b>		1800 724 724	
For single men Open 10 am – 12 noon, Mon–Fri	Oisín House, 212-213 Pearse St., Dublin 2	(01) 6708964	
For women and families: [Open 10 am – 12 noon, Mon-Fri]	41 Castle St., Dublin 2	(01) 4767000	
<b>Local Authority Assessment and Placement Service</b>	160 Capel Street, Dublin 1 [Women and Families 10am - 12 noon Men 2pm - 4pm]	1800 707 707	
<b>Simon Community</b>	Dublin Cork Dundalk Galway Midlands Mid West North West South East	(01) 6715551 (021) 4321051 (042) 9328764 (091) 589415 (0906) 444641 (061) 608980 (071) 9851680 (051) 874838	www.dubsimon.ie www.corksmon.ie www.dundalksimon.ie www.galwaysimon.ie www.simon.ie www.midwestsimon.ie www.simon.ie www.southeastsimon.ie

## Other Services

Name	Address	Telephone	Website
<b>Barnardos National Office</b>	Christchurch Square, Dublin 8	1850 222 300	www.barnardos.ie
<b>Community Action Network (CAN)</b>	24 Gardiner Place, Dublin 1	(01) 8788005	www.canaction.ie
<b>Citizen's Information</b>		0761 07 4000	www.citizensinformation.ie
<b>Office of the Data Protection</b>	Canal House, Station Road Commissioner Portarlinton, Co.Laois	1890 252 231	www.dataprotection.ie

Name	Address	Telephone	Website
Department of Environment, Community and Local Government		1890 202 021	<a href="http://www.environ.ie">www.environ.ie</a>
Equality Authority		1890 245 545	<a href="http://www.equality.ie">www.equality.ie</a>
Equality Tribunal		1890 344 424	<a href="http://www.equalitytribunal.ie">www.equalitytribunal.ie</a>
Injuries Board	P.O. Box 8 Clonakilty Co. Cork	1890 829 121	<a href="http://www.injuriesboard.ie">www.injuriesboard.ie</a>
Irish Council for Social Housing		01 661 8334	<a href="http://www.icsh.ie">www.icsh.ie</a>
Legal Aid Board		1890 615 200	<a href="http://www.legalaid-board.ie">www.legalaid-board.ie</a>
Money Advice and Budgeting Service (MABs)		0761 072 000	<a href="http://www.mabs.ie">www.mabs.ie</a>
Office of the Information Commissioner	18 Lower Leeson St., Dublin 2	1890 223 030	<a href="http://www.oic.ie">www.oic.ie</a>
Ombudsman	18 Lower Leeson St., Dublin 2	1890 223 030	<a href="http://www.ombudsman-gov.ie">www.ombudsman-gov.ie</a>
PILA	13 Lower Dorset St., Dublin 1	(01) 8728048	<a href="http://www.pila.ie">www.pila.ie</a>
Threshold		(01) 635 3651	<a href="http://www.threshold.ie">www.threshold.ie</a>

## 18: Useful Contacts and Websites



**Northside Community Law Centre**

Northside Civic Centre,  
Bunratty Road, Coolock,  
Dublin 17, Ireland

**Tel:** +353-1-8477804

**website:** [www.nclc.ie](http://www.nclc.ie)