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HOUSING (MISCELLANEOUS PROVISIONS) ACT, 1997

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HOUSING (MISCELLANEOUS PROVISIONS) ACT, 1997

AN ACT TO AMEND AND EXTEND THE HOUSING ACTS, 1966 TO 1992, AND THE SOCIAL WELFARE ACTS, TO MAKE PROVISION IN RELATION TO INTIMIDATION OF CERTAIN PERSONS AND TO PROVIDE FOR CERTAIN OTHER MATTERS IN RELATION TO HOUSING.

[7th May, 1997]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—(1) In this Act, unless the context otherwise requires— Interpretation.

“anti-social behaviour” includes either or both of the following, namely—

- (a) the manufacture, production, preparation, importation, exportation, sale, supply, possession for the purposes of sale or supply, or distribution of a controlled drug (within the meaning of the Misuse of Drugs Acts, 1977 and 1984),
- (b) any behaviour which causes or is likely to cause any significant or persistent danger, injury, damage, loss or fear to any person living, working or otherwise lawfully in or in the vicinity of a house provided by a housing authority under the *Housing Acts, 1966 to 1997*, or a housing estate in which the house is situate and, without prejudice to the foregoing, includes violence, threats, intimidation, coercion, harassment or serious obstruction of any person;

“estate management” includes—

- (a) the securing or promotion of the interests of any tenants, lessees, owners or occupiers, whether individually or generally, in the enjoyment of any house, building or land provided by a housing authority under the *Housing Acts, 1966 to 1997*,
- (b) the avoidance, prevention or abatement of anti-social behaviour in any housing estate in which is situate a house provided by a housing authority under the *Housing Acts, 1966 to 1997*;

“excluding order” has the meaning assigned to it by *section 3*;

“health board” means a health board within the meaning of the Health Act, 1970;

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S.1 “house” has the meaning assigned to it by the Housing (Miscellaneous Provisions) Act, 1992;

“housing authority” has the meaning assigned to it by section 1 of the Housing (Miscellaneous Provisions) Act, 1992;

“respondent” has the meaning assigned to it by *section 3*;

“tenant” means any person to whom a housing authority have let a house under the *Housing Acts, 1966 to 1997*.

(2) In this Act, a reference to a section is to a section of this Act and a reference to a subsection, paragraph or subparagraph is to the subsection, paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that a reference to some other enactment or provision, as may be appropriate, is intended.

(3) A reference in this Act to an enactment shall be construed as a reference to that enactment as amended, adapted or extended by or under any subsequent enactment (including this Act).

Summonses. **2.—**(1) Notwithstanding anything contained in any enactment or the District Court Rules—

(a) a summons in connection with proceedings under section 62 of the Housing Act, 1966, or this Act may be served by ordinary prepaid post or in any one of the other ways referred to in section 3(1) of the Housing Act, 1966;

(b) a summons in connection with proceedings in the District Court under section 62 of the Housing Act, 1966, or this Act may, in lieu of being signed and issued by a judge of the District Court, be signed and issued under the general superintendence of an appropriate District Court clerk as a matter of administrative procedure.

(2) In this section “appropriate District Court clerk”, in relation to a summons, means a District Court clerk assigned to any District Court area in the District Court district in which a justice of the District Court has jurisdiction in relation to the proceedings to which the summons relates.

Excluding orders. **3.—**(1) A tenant may, in respect of a house let to the tenant by a housing authority, apply to the District Court for an order (to be known and referred to in this Act as an “excluding order”) against a person including a joint tenant (to be known and referred to in this Act as “the respondent”) whom the tenant making the application believes to be engaging in anti-social behaviour.

(2) A housing authority may, in respect of a house provided by the authority under the *Housing Acts, 1966 to 1997*, apply to the District Court for an excluding order against a respondent whom the authority believe to be engaging in anti-social behaviour where the authority—

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(a) having consulted the tenant and the health board in whose functional area the house is situate, believe that a tenant may be deterred or prevented by violence, threat or fear from pursuing an application for an excluding order, and

(b) consider that, in the interest of good estate management, it is appropriate, in all the circumstances, to apply for the excluding order.

(3) Where the court, on application to it, is of the opinion that there are reasonable grounds for believing that the respondent is or has been engaged in anti-social behaviour it may by order—

(a) direct the respondent, if residing at the house in respect of which the application was made, to leave that house, and

(b) whether the respondent is or is not residing at the house, prohibit the respondent for the period during which the order is in force from entering or being in the vicinity of that house or any other specified house or being in or in the vicinity of any specified housing estate.

(4) An excluding order may, if the court thinks fit, prohibit the respondent from causing or attempting to cause any intimidation, coercion, harassment or obstruction of, threat to, or interference with the tenant or other occupant of any house concerned.

(5) Where an excluding order has been made, the tenant or the housing authority, as appropriate, or the respondent, may apply to have it varied, and the court upon hearing the application shall make such order as it considers appropriate in the circumstances.

(6) An excluding order, whether made by the District Court or by the Circuit Court on appeal from the District Court, shall, subject to *subsection (7)* and *section 9*, expire three years after the date of its making or on the expiration of such shorter period as the court may provide for in the order.

(7) On or before the expiration of an excluding order to which *subsection (6)* relates, a further excluding order may be made by the District Court or by the Circuit Court on appeal from the District Court for a period of three years, or such shorter period as the court may provide for in the order, with effect from the date of expiration of the first-mentioned order.

4.—(1) If, on the making of an application for an excluding order or between the making of the application and its determination, the court is of the opinion that there are reasonable grounds for believing that there is an immediate risk of significant harm to the tenant or other occupant of the house if the order is not made immediately, the court may by order (to be known and referred to in this Act as an “interim excluding order”)—

Interim excluding orders.

(a) direct the respondent, if residing at the house in respect of which the application was made, to leave that house, and

(b) whether the respondent is or is not residing at the house, prohibit the respondent from entering or being in the vicinity of that house or any other specified house or being in or in the vicinity of any specified housing estate until further order of the court or until such other time as the court shall specify.

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S.4 (2) *Subsections (4) and (5) of section 3 shall apply to an interim excluding order as they apply to an excluding order.*

(3) Where the court in exceptional cases considers it necessary or expedient in the interests of justice, an interim excluding order may be made *ex parte* or notwithstanding the fact that the originating document or other notice of the application required to be duly served on the respondent to the application for an excluding order has not been so served.

(4) An interim excluding order shall cease to have effect on the determination by the court of the application for an excluding order.

Offences. 5.—(1) A respondent who contravenes an excluding order or an interim excluding order shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,500 or, at the discretion of the court, to imprisonment for a term not exceeding 12 months, or to both.

(2) *Subsection (1)* is without prejudice to the law as to contempt of court or any other liability, whether civil or criminal, that may be incurred by the respondent concerned.

Taking effect of orders. 6.—(1) An excluding order or interim excluding order shall take effect on notification of its making being given to the respondent.

(2) Oral communication to the respondent by or on behalf of the tenant or the housing authority, as appropriate, of the fact that an excluding order or interim excluding order has been made, together with production of a copy of the order, shall, without prejudice to the sufficiency of any other form of notification, be taken to be sufficient notification to the respondent of the making of the order.

(3) If the respondent is present at a sitting of the court at which the excluding order or interim excluding order is made, that respondent shall be taken for the purposes of *subsection (1)* to have been notified of its making.

(4) An order varying an excluding order or interim excluding order shall take effect on notification of its making being given to the person who was the other party in the proceedings for the making of the excluding order and for this purpose *subsections (2) and (3)* shall apply with the necessary modifications.

Copies of orders to be given to certain persons. 7.—(1) The court, on making, varying or discharging an excluding order or an interim excluding order, shall cause a copy of the order in question to be given or sent as soon as practicable to—

- (a) the applicant concerned,
- (b) the respondent,
- (c) the housing authority and health board in whose functional area the house in respect of which the application for the order was made is situate, and
- (d) the member of the Garda Síochána in charge of the Garda Síochána station for the area in which the house in relation to which the application for the order was made is situate.

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(2) The validity of any order made under this Act shall not be affected by non-compliance with *subsection (1)*. S.7

8.—(1) An appeal from an excluding order shall, if the court that made the order or the court to which the appeal is brought so determines (but not otherwise), stay the operation of the order on such terms (if any) as may be imposed by the court making the determination. Effect of appeal from order.

(2) An appeal from an interim excluding order shall not stay the operation of the order.

9.—(1) Where an excluding order or interim excluding order has been made, the tenant or the housing authority, as appropriate, or the respondent may apply to the court that made the order to have that order discharged and thereupon the court shall discharge that order if it is of the opinion that the circumstances no longer require that the order should continue in force. Discharge of orders.

(2) For the purposes of this section and *section 3 (5)*, an order made by a court on appeal from another court shall be treated as if it had been made by that other court.

10.—(1) The jurisdiction of the court in respect of proceedings under *section 3, 4 or 9* may be exercised, as regards the District Court, by the judge of the District Court for the time being assigned to the District Court district where the house in relation to which that application was made is situate. Exercise of jurisdiction by court.

(2) Where a judge of the District Court to whom *subsection (1)* relates is not immediately available, the jurisdiction of the District Court under that subsection may be exercised by any judge of the District Court.

11.—Proceedings under *section 3, 4 or 9* may be heard otherwise than in public. Hearing of certain proceedings.

12.—(1) Where a member of the Garda Síochána has reasonable cause for believing that, in respect of an order under this Act, an offence is being or has been committed under *section 5*, the member may, on complaint being made to him or her by the tenant or the housing authority, arrest the respondent concerned without warrant. Arrest without warrant.

(2) For the purpose of arresting a respondent under *subsection (1)*, a member of the Garda Síochána may enter (if need be by use of reasonable force) and search any place (including a dwelling) where the respondent is or where the member, with reasonable cause, suspects the respondent to be.

(3) This section shall not prejudice any power of arrest conferred by law apart from this section.

13.—(1) *Sections 3 to 12* shall apply in relation to a house provided by an approved body in the same manner as those sections apply in relation to a house provided by a housing authority under the *Housing Acts, 1966 to 1997*, and, for this purpose, references to “housing authority” in the said sections and in the definitions of “anti-social behaviour”, “estate management” and “tenant” in Application to approved housing bodies.

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S.13 *section 1(1)* shall be construed as including a reference to an approved body.

(2) In this section “approved body” means a body approved of for the purposes of section 6 of the Housing (Miscellaneous Provisions) Act, 1992.

Letting and sale of local authority housing.

14.—(1) Notwithstanding anything contained in the Housing Acts, 1966 to 1992, or in a scheme made under section 11 of the Housing Act, 1988, a housing authority may refuse to make or defer the making of a letting of a dwelling to a person where—

- (a) the authority considers that the person is or has been engaged in anti-social behaviour or that a letting to that person would not be in the interest of good estate management, or
- (b) the person fails to provide information, including information relating to persons residing or to reside with that person, which is requested by the housing authority and which the authority considers necessary in connection with an application for the letting.

(2) Notwithstanding anything contained in section 90 of the Housing Act, 1966 (inserted by section 26 of the Housing (Miscellaneous Provisions) Act, 1992), or a purchase scheme under the said section 90, a housing authority may refuse to sell a dwelling to a tenant where the authority considers that the tenant is or has been engaged in anti-social behaviour or that a sale to that tenant would not be in the interest of good estate management.

(3) Section 90 (12) of the Housing Act, 1966 (inserted by section 26 of the Housing (Miscellaneous Provisions) Act, 1992), is hereby amended by the substitution of the following paragraph for paragraph (a)—

“(a) the housing authority may, without prejudice to any other power in that behalf, refuse to consent to a sale of a dwelling if they are of the opinion that—

- (i) the intended purchaser is not a person in need of housing, or
- (ii) the intended purchaser is or has been engaged in anti-social behaviour or that the intended sale of the dwelling would not be in the interest of good estate management, or
- (iii) the intended sale would, if completed, leave the seller or any person who might reasonably be expected to reside with that person without adequate housing;”.

Provision of information.

15.—(1) In this section, “specified person” means any of the following, that is to say:

- (a) the Criminal Assets Bureau;
- (b) a member of the Garda Síochána;
- (c) the Minister for Social Welfare;

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(d) a health board; or

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(e) a body approved of for the purposes of section 6 of the *Housing (Miscellaneous Provisions) Act, 1992*, (to be known and referred to in this section as “an approved body”).

(2) A housing authority may, for the purposes of any of their functions under the *Housing Acts, 1966 to 1997*, request from another housing authority or a specified person, information in relation to any person seeking a house from the authority or residing or proposing to reside at a house provided by the authority or whom the authority considers may be or may have been engaged in anti-social behaviour and, notwithstanding anything contained in any enactment, such other housing authority or specified person may provide the information to the housing authority requesting it.

(3) A health board may, for the purposes of its functions under Chapter 11 of Part III of the *Social Welfare (Consolidation) Act, 1993*, request from a housing authority information in relation to any claimant for a payment to supplement the claimant’s income in respect of rent or mortgage interest or in relation to any person residing or proposing to reside with the claimant and, notwithstanding anything contained in any enactment, the housing authority may provide the information to the health board.

(4) An approved body may request from a housing authority information in relation to any person seeking accommodation from the body or residing or proposing to reside at accommodation provided by the body, and, notwithstanding anything contained in any enactment, the housing authority may provide the information to that body.

16.—The *Social Welfare (Consolidation) Act, 1993*, is hereby amended by the insertion of the following section after section 179: Supplementary welfare allowance.

“179A.—(1) This section applies to a person who—

(a) has been required to deliver up possession of a dwelling provided by a housing authority or a body approved of for the purposes of section 6 of the *Housing (Miscellaneous Provisions) Act, 1992* and the reasons for such requirement include anti-social behaviour or the interests of good estate management, or

(b) is a person to whom a letting has been refused or deferred under *section 14* of the *Housing (Miscellaneous Provisions) Act, 1997*, or

(c) is a respondent to an excluding order or an interim excluding order made under *section 3* or *4* of the *Housing (Miscellaneous Provisions) Act, 1997*, or

(d) is a person who has been directed to leave a house under *section 20* of the *Housing (Miscellaneous Provisions) Act, 1997*.

(2) A health board may determine that, notwithstanding anything contained in any enactment, a person to whom this section applies shall not be entitled to a payment to supplement the person’s income in respect of rent or mortgage interest, or may terminate or suspend the payment.

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(3) Where a person to whom this section applies resides with another person who is in receipt of, or would but for this section be entitled to a supplement in respect of rent or mortgage interest, the health board may, notwithstanding anything contained in any enactment, determine that the amount of the supplement payable shall be reduced by such amount as, in the opinion of the board, is reasonably attributable to the first mentioned person.

(4) In making a determination under *subsection (2) or (3)*, the board shall have regard to any information provided by a housing authority or a specified person referred to in *section 15* of the *Housing (Miscellaneous Provisions) Act, 1997*, in relation to a person to whom this section applies.

(5) For the purposes of this section—

‘mortgage interest’ means such proportion of any amount payable by a person to a mortgage lender as is for the time being attributable to interest under an agreement entered into by the person with the mortgage lender for the purpose of defraying money employed to purchase, repair or improve that person’s dwelling or to pay off another loan used for such purpose;

‘mortgage lender’ has the meaning assigned to it by *section 2 (1)* of the *Consumer Credit Act, 1995*;

‘rent’ includes any periodic payment in the nature of rent made in return for a special possession of a dwelling or for the use, occupation or enjoyment of a dwelling.”.

Deductions in respect of housing authority rents.

17.—The *Social Welfare (Consolidation) Act, 1993*, is hereby amended by the insertion of the following section after *section 240*:

“240A.—The Minister may, after consultation with the Minister for the Environment, make regulations to provide that where rent due to a housing authority by a beneficiary is unpaid for a specified period or where the amount of rent unpaid exceeds a specified amount, an amount of the beneficiary’s benefit may, notwithstanding any provision of this Act, on application by the housing authority to the Minister, be withheld without the beneficiary’s consent and paid separately by the Minister to the housing authority, provided that the amount so withheld in any week shall not exceed the amount of the weekly rent payable by the beneficiary.”.

Intimidation etc.

18.—(1) A person who causes or attempts to cause any threat, intimidation or harassment, coerces, obstructs, impedes, or interferes with, an officer or employee of a housing authority or of a health board or a member of the family of such officer or employee or any person who provides or is to provide evidence in any proceedings under *section 62* of the *Housing Act, 1966*, or this Act, shall be guilty of an offence.

(2) A person guilty of an offence under *subsection (1)* shall be liable on summary conviction to a fine not exceeding £1,500 or, at the discretion of the court, to imprisonment for a term not exceeding 12 months, or to both.

(3) Proceedings for an offence under this section in the case of an officer or employee of a health board or a member of the family of such officer or employee may be brought and prosecuted by the health board.

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19.—Where there is no tenancy in a dwelling, any payment offered to or accepted by a housing authority or other person acting in the capacity of a landlord shall not be deemed to create or have created a tenancy in the dwelling.

Payments to a housing authority or other landlord.

20.—(1) Where—

Illegal occupiers of local authority housing.

(a) a house provided by a housing authority or any part thereof is occupied, whether continuously or otherwise, by a person (other than the tenant or a person who has failed to vacate a house on termination of a tenancy), and

(b) a member of the Garda Síochána has received notification from the housing authority that the authority believe that the person is or has been engaged in anti-social behaviour and that it is necessary in the interest of good estate management that the said person be required to leave the house,

a member of the Garda Síochána may direct the person to leave the house immediately in a peaceable and orderly manner and that person shall comply with the direction.

(2) A person who does not comply with a direction under *subsection (1)* shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,500 or, at the discretion of the court, to imprisonment for a term not exceeding 12 months, or to both.

(3) Where a person does not comply with a direction under *subsection (1)* a member of the Garda Síochána may arrest the person without warrant.

(4) For the purpose of arresting a person under *subsection (3)*, a member of the Garda Síochána may enter (if need be by use of reasonable force) and search any place (including a dwelling) where the person is or where the member, with reasonable cause, suspects that person to be.

(5) This section shall not prejudice any power of arrest conferred by law apart from this section.

21.—Where, in any proceedings under section 62 of the Housing Act, 1966, or *section 3, 4 or 9*, a member of the Garda Síochána or an officer of a housing authority or a health board states that he or she believes that a person is or has been engaged in anti-social behaviour, then, if the Court is satisfied that there are reasonable grounds for such belief and that another person would be deterred or prevented by violence, threat or fear from providing evidence in that regard, the statement shall be evidence of such anti-social behaviour.

Evidence.

22.—Section 11 (5) to (12) and (14) of the Housing (Miscellaneous Provisions) Act, 1992, shall apply and be deemed always to have applied, to a loan made by a housing authority in accordance with terms and conditions approved of for the purposes of section 5 (2) of the Housing Finance Agency Act, 1981, by the Minister for the Environment and the Minister for Finance.

Housing loans.

[No. 21.] *Housing (Miscellaneous Provisions) Act, 1997.* [1997.]

Amendment of section 3 of Housing Act, 1966.

23.—Section 3 (1) of the Housing Act, 1966, is hereby amended by the substitution of the following paragraph for paragraph (c):

“(c) by sending it by post in a prepaid registered letter addressed to him at the address at which he ordinarily resides or, in a case in which an address for service has been furnished, at that address or, where such registered letter is returned undelivered to the sender, by ordinary prepaid post;”.

Short title, collective citation, construction and commencement.

24.—(1) This Act may be cited as the Housing (Miscellaneous Provisions) Act, 1997.

(2) The Housing Acts, 1966 to 1992, and this Act, other than *subsection (3)* and *sections 16* and *17*, may be cited together as the Housing Acts, 1966 to 1997, and shall be construed together as one Act.

(3) The Social Welfare Acts and *sections 16* and *17* shall be construed together as one Act.

(4) This Act shall come into operation on such day or days as may be fixed by order of the Minister for the Environment under this section, either generally or with reference to any particular purpose or provision and different days may be so fixed for different purposes and different provisions.