



Number 43 of 2004

HOUSING (MISCELLANEOUS PROVISIONS) ACT 2004

ARRANGEMENT OF SECTIONS

Section

1. Amendment of section 9 of Housing (Miscellaneous Provisions) Act 2002.
 2. Amendment of section 99 of Planning and Development Act 2000.
 3. Short title and collective citation.
-

[No. 43.] *Housing (Miscellaneous Provisions) Act 2004.* [2004.]

ACTS REFERRED TO

Building Societies Act 1989	1989, No. 17
Central Bank Act 1971	1971, No. 24
Conveyancing Acts 1881 to 1911	
Family Home Protection Act 1976	1976, No. 27
Housing Acts 1966 to 2002	
Housing (Miscellaneous Provisions) Act 2002	2002, No. 9
Planning and Development Act 2000	2000, No. 30
Planning and Development Acts 2000 to 2002	
Registration of Title Act 1964	1964, No. 16



Number 43 of 2004

HOUSING (MISCELLANEOUS PROVISIONS) ACT 2004

AN ACT TO MAKE PROVISION IN RELATION TO THE REPAYMENT OF CERTAIN AMOUNTS THAT MAY BECOME PAYABLE TO HOUSING AUTHORITIES OR PLANNING AUTHORITIES ON THE SUBSEQUENT SALE OF CERTAIN HOUSES OR LANDS THAT HAVE BEEN PROVIDED OR MADE AVAILABLE BY THEM AND, FOR THAT PURPOSE, TO AMEND SECTION 9 OF THE HOUSING (MISCELLANEOUS PROVISIONS) ACT 2002 AND SECTION 99 OF THE PLANNING AND DEVELOPMENT ACT 2000. [21st December, 2004]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—Section 9 of the Housing (Miscellaneous Provisions) Act 2002 is amended by inserting the following subsection after subsection (3):

Amendment of section 9 of Housing (Miscellaneous Provisions) Act 2002.

“(3A) (a) As soon as practicable after an affordable house is sold in accordance with this Part, the housing authority shall make an order charging the house with an amount that shall be expressed in the order in the following terms.

(b) Those terms are that the amount charged is an amount equal to the amount (if any) that may subsequently become payable under subsection (3)(a) in respect of the affordable house.

(c) An order under paragraph (a) shall be deemed to be a mortgage made by deed within the meaning of the Conveyancing Acts 1881 to 1911 and to have been executed, at the time of the sale of the affordable house in accordance with this Part, in favour of the housing authority for a charge of the amount referred to in paragraph (b).

(d) Accordingly, the housing authority shall, as on and from the making of such an order in respect of a house—

(i) be deemed to be a mortgagee of the house for the purposes of the Conveyancing Acts 1881 to 1911, and

(ii) have in relation to the charge referred to in paragraph (c) all the powers conferred by those Acts on mortgagees under mortgages made by deed.

[No. 43.] *Housing (Miscellaneous Provisions) Act 2004.* [2004.]

S.1

- (e) Where a housing authority makes an order under paragraph (a) it shall, as soon as practicable thereafter, cause the order to be registered in the Registry of Deeds or the Land Registry, as appropriate, and it shall be a sufficient description of the amount in respect of which the charge to which the order relates is being registered to state that amount to be the amount referred to in section 9(3A)(b) of the Housing (Miscellaneous Provisions) Act 2002.
- (f) An order under paragraph (a) affecting a house which is registered land within the meaning of the Registration of Title Act 1964 shall be registrable as a burden affecting such land whether the person named in such order as the owner of the land is or is not registered under the said Act as the owner of such land.
- (g) A charge created by virtue of an order under paragraph (a) shall not be regarded as a prior mortgage for the purposes of section 22(4) of the Building Societies Act 1989.
- (h) A housing authority may, subject to paragraph (i), enter into an agreement with a holder of a licence under the Central Bank Act 1971, a building society or other financial institution that a charge proposed to be created by it by an order under paragraph (a) shall have a priority, as against a mortgage or charge proposed to be created in favour of that holder, society or institution, that is different from the priority the charge would otherwise have if this paragraph had not been enacted.
- (i) A housing authority may only enter into such an agreement if it considers that the agreement will enable the person to whom it is proposing to sell the affordable house concerned in accordance with this Part to obtain an advance of moneys from the holder, society or institution referred to in paragraph (h) for the purposes of purchasing that house from the authority.
- (j) Any amount that becomes payable to a housing authority under subsection (3)(a) may, without prejudice to any other power in that behalf, be recovered by the authority from the person concerned as a simple contract debt in any court of competent jurisdiction.
- (k) For the avoidance of doubt, neither an order under paragraph (a) nor a charge that arises under it shall be regarded as a conveyance for the purposes of section 3 of the Family Home Protection Act 1976.”.

Amendment of section 99 of Planning and Development Act 2000.

2.—Section 99 of the Planning and Development Act 2000 is amended by inserting the following subsection after subsection (3):

“(3A) (a) As soon as practicable after a house or land is sold in accordance with subsection (1), the planning

[2004.] *Housing (Miscellaneous Provisions) Act 2004.* [No. 43.]

authority shall make an order charging the house or land with an amount that shall be expressed in the order in the following terms. S.2

- (b) Those terms are that the amount charged is an amount equal to the amount (if any) that may subsequently become payable under subsection (3)(a) in respect of the house or land.
- (c) An order under paragraph (a) shall be deemed to be a mortgage made by deed within the meaning of the Conveyancing Acts 1881 to 1911 and to have been executed, at the time of the sale of the house or land in accordance with subsection (1), in favour of the planning authority for a charge of the amount referred to in paragraph (b).
- (d) Accordingly, the planning authority shall, as on and from the making of such an order in respect of a house or land—
 - (i) be deemed to be a mortgagee of the house or land for the purposes of the Conveyancing Acts 1881 to 1911, and
 - (ii) have in relation to the charge referred to in paragraph (c) all the powers conferred by those Acts on mortgagees under mortgages made by deed.
- (e) Where a planning authority makes an order under paragraph (a) it shall, as soon as practicable thereafter, cause the order to be registered in the Registry of Deeds or the Land Registry, as appropriate, and it shall be a sufficient description of the amount in respect of which the charge to which the order relates is being registered to state that amount to be the amount referred to in section 99(3A)(b) of the Planning and Development Act 2000.
- (f) An order under paragraph (a) affecting a house or land which is registered land within the meaning of the Registration of Title Act 1964 shall be registrable as a burden affecting such land whether the person named in such order as the owner of the land is or is not registered under the said Act as the owner of such land.
- (g) A charge created by virtue of an order under paragraph (a) shall not be regarded as a prior mortgage for the purposes of section 22(4) of the Building Societies Act 1989.
- (h) A planning authority may, subject to paragraph (i), enter into an agreement with a holder of a licence under the Central Bank Act 1971, a building society or other financial institution that a charge proposed to be created by it by an order under paragraph (a) shall have a priority, as against a mortgage or charge proposed to be

[No. 43.] *Housing (Miscellaneous Provisions) Act 2004.* [2004.]

S.2

created in favour of that holder, society or institution, that is different from the priority the charge would otherwise have if this paragraph had not been enacted.

- (i) A planning authority may only enter into such an agreement if it considers that the agreement will enable the person to whom the house or land concerned is proposed to be sold in accordance with subsection (1) to obtain an advance of moneys from the holder, society or institution referred to in paragraph (h) for the purposes of purchasing the house or land.
- (j) Any amount that becomes payable to a planning authority under subsection (3)(a) may, without prejudice to any other power in that behalf, be recovered by the authority from the person concerned as a simple contract debt in any court of competent jurisdiction.
- (k) For the avoidance of doubt, neither an order under paragraph (a) nor a charge that arises under it shall be regarded as a conveyance for the purposes of section 3 of the Family Home Protection Act 1976.”.

Short title and collective citation.

3.—(1) This Act may be cited as the Housing (Miscellaneous Provisions) Act 2004.

(2) The Housing Acts 1966 to 2002 and this Act, other than *section 2*, may be cited together as the Housing Acts 1966 to 2004.

(3) The Planning and Development Acts 2000 to 2002 and *section 2* of this Act may be cited together as the Planning and Development Acts 2000 to 2004.