



Rialtas na hÉireann
Government of Ireland

Incremental Tenant Purchase Scheme 2016

Existing Local Authority Houses

December 2023

Guidance for Housing Authorities

This guidance does not purport to be a legal interpretation of the Housing (Miscellaneous Provisions) Act 2014 and associated Regulations.

Table of Contents

Chapter 1 – General guidance relating to scheme for tenant purchase of local authority houses.....	2
Chapter 2 - Tenant purchase of local authority houses under Part 3 of the Housing (Miscellaneous Provisions) Act 2014.....	19
Chapter 3 – Explanatory notes on Part 3 (sections 21 to 34) of the Housing (Miscellaneous Provisions) Act 2014.....	25
Chapter 4 – Explanatory Notes Housing (Sale of Local Authority Houses) Regulations 2015 as amended by the Housing (Sale of Local Authority Houses) (Amendment) Regulations 2023.....	41
Chapter 5 – Ministerial reckonable income directions issued under section 24 of the Housing (Miscellaneous Provisions) Act 2014	50

Chapter 1 – General guidance relating to scheme for tenant purchase of local authority houses¹

1. Introduction - Main Elements of Scheme

The Housing (Miscellaneous Provisions) Act 2014 Act provides for an incremental tenant purchase scheme for existing local authority houses. This scheme was modelled along similar lines to the incremental tenant purchase schemes for certain newly-built or acquired local authority houses, and for existing local authority apartments under Parts 3 and 4 of the Housing (Miscellaneous Provisions) Act 2009.

The Tenant (Incremental) Purchase Scheme (the scheme) under Part 3 of the 2014 Act came into operation on 1 January 2016. Under the scheme, the tenant of a local authority house pays the authority a discounted price related to his or her income in order to purchase the fee simple in the house and, on completion of the sale, the authority places an incremental purchase charge on the house of the proportion of its value equal to the discount. This charge withers away to nothing in equal annual proportions over the charged period, provided that the tenant purchaser complies during that period with the terms and conditions of the sale, notably use of the house as the household's normal residence. If the tenant purchaser breaches a condition of the sale during the charged period, the authority may suspend the reduction on the charge for the year concerned, in which case the purchaser must, on expiry of the charged period, make a payment to the authority to clear the outstanding charge on the property. Provision is made for the tenant purchaser to pay off one or more annual releases of the incremental purchase charge during the charged period, if he or she so wishes.

¹ Unless otherwise stated, a reference in this note to a Part, section or Regulation is a reference to a Part or section of the Housing (Miscellaneous Provisions) Act 2014 (No. 21 of 2014) or a Regulation of the Housing (Sale of Local Authority Houses) Regulations 2015 (S.I. No. 484 of 2015), or S.I. No. 619 of 2023, respectively.

If the tenant purchaser wishes to resell the house during the charged period, the housing authority has first option on buying it back at its current market value, less the value of the outstanding incremental purchase charge.

Where the authority does not buy back the house, the tenant purchaser must, on sale of the house on the market, pay to the authority the value of the outstanding incremental purchase charge on the property, with the amount of the payment being reduced, where necessary, to avoid a net loss for the purchaser on the resale of the property.

2. Changes to the Scheme - 29 January 2024

The following updated guidance incorporates the recent changes on foot of the Housing (Sale of Local Authority Houses) (Amendment) Regulations 2023 and recent Reckonable Income Directions under section 24 of the Housing (Miscellaneous Provisions) Act 2014.

These changes come into effect on 29 January 2024. They include –

- **Minimum income requirements:** The minimum income required for an applicant to be eligible to apply under the scheme is now €11,000 per annum.
- **Time receiving social housing supports:** The period of time tenants will be required to be in receipt of social housing support to be considered eligible under the scheme remains at 10 years. However, in the case of joint tenancies only one tenant is now required to have been in receipt of social housing supports for 10 years.
- **Primary Sources of Income:** In addition to the State Pension (Contributory and Non-Contributory) being considered as a primary source of income, the Widow's, Widower's, Surviving Civil Partner's (Contributory

and Non-Contributory Pension), Blind Pension, Invalidity Pension and Disability Allowance are now also considered primary sources of income.

•**Secondary Sources of Income:** The following payments have been removed from the income disregard list and are now be considered as secondary sources of income:

- Working Family Payment,
- Age 80 (Pension) increase, and
- Rural Social Scheme.

•**Income disregards:** The following payments are now included in the list of income disregards:

- Constant Attendance Allowance,
- Household Benefits Package (including Electricity and Gas Allowance),
- Telephone Allowance,
- Increase for living on a Specified Island,
- Payments under Medical Care Scheme,
- Disablement Benefit,
- Training Support Grant,
- Back to School Clothing and Footwear Allowance,
- Humanitarian Assistance Scheme,
- Funeral Grant,
- Community Service Programme,
- Work Placement Experience Programme,
- Payments in respect of education or training courses,
- Mobility Allowance, and
- Income earned by children.

Applications received by housing authorities on **29 January 2024**, or thereafter, should be assessed against these new requirements.

3. Notifications of tenants, etc.

Local authorities are therefore requested to make information regarding the changes to the Scheme available on their website and via any other channel deemed appropriate.

Local authorities are also requested to inform tenants who applied to purchase their house under the current regulations underpinning the Scheme of the introduction of changes to the Scheme. In particular, in cases where tenants had previously applied for the Scheme and were deemed ineligible under the revoked regulations, local authorities should now write to these tenants and advise them of the changes to the Scheme to allow them the opportunity to re-apply under the new regulations.

Each housing authority is reminded to notify tenants of houses excluded, for the time being, from sale under Regulation 4(g) of the Housing (Sale of Local Authority Houses) Regulations 2015, that is to say, on account of the authority's proposals for remedial works or area regeneration, and that they will be notified in due course when the exclusion no longer applies to the houses concerned.

The attention of tenants should be drawn to section 25(3) of the Housing (Miscellaneous Provisions) Act 2014 (the 2014 Act), which provides that, subject to any other enactment, the sale of a house under that Part of the Act shall not imply any warranty as to the state of repair or condition of the house or its fitness for human habitation.

It should also be made clear that the maintenance and repair of a house sold are the responsibility of the purchaser. In order to avoid any later misunderstanding, the authority should receive the tenant's signature to accept these points in writing, either as part of the application form or otherwise.

As the scheme is a national scheme with the terms and conditions set down in Part 3 of the 2014 Act, and prescribed by the Minister in Regulations, there is no requirement under the legislation for the elected council members to make a

tenant purchase scheme to give effect to the scheme. Similarly, there is no requirement for the elected members to consent to individual house sales under the scheme [see section 25(4)].

4. Correspondence with tenants re proposed house purchase

Housing authorities should specify in all correspondence with individual tenants about the scheme that the correspondence is “WITHOUT PREJUDICE AND SUBJECT TO ANY TRANSFER ORDER”. This will make it clear that nothing in the correspondence is binding on the authority unless and until the authority makes a transfer order for the house in favour of the tenant following receipt of the purchase money.

5. Tenant eligibility to purchase

For reference purposes, the following requirements apply to tenant eligibility to purchase a house under Part 3 of the 2014 Act:

- The person must be the tenant of the house to be sold by the housing authority [section 25(1)] and the house must not be excluded from sale under the scheme under section 22 or Regulation 4 of the 2015 Regulations;
- The tenant must have been in receipt of social housing supports for a minimum period of 10 years. In the case of applications from joint tenants, one of the tenants must be in receipt of social housing supports for a minimum period of 10 years, before qualifying to participate in the scheme.
- The tenant must have a minimum reckonable annual income of €11,000 and this may include income derived from the State Pension (Contributory and Non-Contributory), Widow’s/Widower’s/Surviving Civil Partner’s (Contributory and Non-Contributory) Pension, Blind Pension, Invalidity

Pension and Disability Allowance. All other social welfare payments are to be regarded as secondary sources of income under the scheme.

- A housing authority shall not sell a house to a tenant where, in the three years prior to applying to purchase, he or she or a household member was in arrears of rent, rent contributions, charges, fees or any other monies owed to a housing authority or an approved body for an accumulated period of more than 12 weeks in respect of a dwelling or site provided as social housing support. This disqualification does not apply where the tenant or household member enters into rescheduling arrangements with the authority or body concerned for paying off these debts and complies with the terms of these arrangements or where the authority or body is satisfied that failure to substantially comply with the terms was due to circumstances outside the control of the tenant or household member concerned [sections 23(1)(a) and 23(2)];
- The tenant must not have previously purchased a dwelling from a housing authority under section 90 of the Housing Act 1966 or Parts 3 or 4 of the Housing (Miscellaneous Provisions) Act 2009 [section 23(1)(b)];
- A housing authority may refuse to sell a dwelling to a tenant where he or she or a household member is or was engaged in anti-social behaviour or on the grounds of good estate management [section 14(2) of the Housing (Miscellaneous Provisions) Act 1997].

6. Purchase application and information relating to anti-social behaviour

There is no prescribed application form for purchase under the scheme but Regulation 7 of the 2015 Regulations sets down information that a tenant must supply to a housing authority at the time of applying to purchase.

Regulation 7(c) requires applicants to supply to housing authorities the following information in relation to anti-social behaviour by any household member:

- convictions of any household member for public order offences in the 5 years prior to the date of application under the Criminal Justice (Public Order) Act 1994,
- excluding orders made under sections 3, 3A or 4 of the Housing (Miscellaneous Provisions) Act 1997 against any household member engaged in anti-social behaviour; and
- court orders in respect of anti-social behaviour made against household members under section 115 of the Criminal Justice Act 2006 or section 257D of the Children Act 2001.

This information is required to enable the housing authority, in appropriate cases, to consider the exercise of its powers under section 14(2) of the Housing (Miscellaneous Provisions) Act 1997 to refuse to sell a dwelling under Part 3 of the 2014 Act to a tenant where the authority considers that the tenant or any member of the tenant's household 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. In this regard, authorities should refer to guidance in relation to older records of anti-social behaviour set out in Circular SHIP 2010/15 (dated 25 June 2010) concerning the exercise of their statutory power to refuse to allocate or sell houses in certain circumstances. Housing authorities should also note that a conviction for a public order offence is not necessarily proof of anti-social behaviour as defined in the 1997 Act: this is a matter for determination by the authority in each instance in the light of all relevant circumstances.

Housing authorities are obliged, as data controllers, to meet the security requirements set down in the General Data Protection Regulations (GDPR) and Data Protection Act 2018 when processing personal data gathered in relation to tenant purchase applicants and members of their household. These

requirements are particularly important in relation to the sensitive personal data that a tenant purchase applicant is required to supply to a housing authority during the course of an application.

7. Financing of purchase money

A tenant may fund the purchase money for a house from one, or a combination, of his or her own resources or a mortgage provided by a financial institution or a local authority house purchase loan.

8. Tenant purchase and tax

Under section 106B(3) of the Stamp Duty Consolidation Act 1999 (as inserted by section 131 of the Finance Act 2008 and amended by section 64 of the Finance Act 2011), a tenant is liable to pay stamp duty of €100.00 in respect of the purchase of his or her dwelling from a housing authority.

Under section 610 of the Taxes Consolidation Act 1997, and Part 1 of Schedule 15 to that Act (as amended by section 5(6) of, and Part 5 of Schedule 2 to, the Local Government Reform Act 2014), local authorities are exempt from capital gains tax (CGT) on any gains accruing to them. Thus, housing authorities are not liable for CGT on receipts from the sale of tenant-purchased houses.

9. Market value and its variants

The determination of market value or one of its variants of a local authority house is a crucial element of the scheme for the tenant purchase of existing local authority houses, in terms of calculating—

- the purchase price of the house for discount purposes,
- the price to be paid by a housing authority to buy back a tenant-purchased house during the charged period, and
- the value of the incremental purchase charge on the house at any particular time.

“Market value” is defined in section 21 of the 2014 Act as the price for which the house might reasonably be expected to be sold on the open market, in its current state of repair and not subject to the conditions specified in section 25(2) or to a charging order. Except in the case where a housing authority buys back a house from the tenant purchaser during the charged period based on the full market value of the house (section 29(2)), market value may be adjusted to take account of particular circumstances.

Section 21 defines **“net market value”** to mean the market value of a house reduced by an allowance equal to the amount of the market value attributable to material improvements.

“Adjusted market value” is defined to mean, in a case where the site on which a house was built was provided to the authority by the purchaser for a nominal sum, the market value of the house excluding an amount equal to the excess (if any) of the market value of the site over such sum.

Section 21 defines **“net adjusted market value”** to mean the adjusted market value of a house reduced by an allowance equal to the amount of the market value attributable to material improvements.

Finally, **“relevant market value”** is defined to mean the market value, the net market value, the adjusted market value or the net adjusted market value, as the case may be.

Section 21 defines **“material improvements”** to mean improvements made to a house, with the prior written consent of the housing authority concerned, by one or both, as appropriate, of the tenant prior to purchase under this Part and the purchaser, whether such improvements were for the purposes of extending, enlarging, repairing or converting the house, but does not include (a) decoration, or (b) any improvements otherwise carried out on the land, including the construction of a house. However, it should be noted that it is not a condition of the prescribed transfer order under the scheme that the prior written consent of

the authority is required to any material improvements made by the tenant purchaser to the house during the charged period. **Housing authorities should apply the prior consent requirement in a way that facilitates as much as possible the carrying out of material improvements to houses by tenant purchasers.**

10. Determination of purchase price

Regulation 10 of the 2015 Regulations provides that the purchase price of a house sold to its tenant under Part 3 of the 2014 Act will be calculated as **the greater of:**

- (a) the relevant market value of the house, or
- (b) half the estimated cost to the housing authority of replacing the house with a house built to modern standards on the same site for the same class of household (including the cost of site acquisition, legal and other professional fees).

The purpose of paragraph (b) is to provide a floor for the selling price of a local authority house that will generate a minimum financial contribution to the cost of replacing the house in the council's housing stock. The market value of a house may be very low in some circumstances or in certain locations and may not reflect, to any meaningful extent, the cost to the council of reversing the loss of the house from its stock. Factoring the estimated replacement cost of a house into its selling price should not result in very high prices for tenant purchasers, given that, in relevant cases, the discount of 40%, 50% or 60% is given off **half** of the estimated replacement cost.

While it is a matter for the housing authority, in the first instance, to decide how the purchase price of a house will be determined for discount purposes, the following approach is suggested:

A housing authority should calculate the relevant market value of the house. This valuation should be carried out by suitably qualified valuers

either employed or engaged by housing authorities. As a guide, such valuers should have the same qualifications and expertise as valuers that are entered on the authority's panel of independent valuers for the purposes of the scheme. This is advisable to ensure that an authority's valuations are accepted by private institutions for loan purposes and to avoid the delays associated with applicants disputing an authority's valuation. There is a clear obligation on an authority to ensure that a proper valuation is obtained, reflecting the real market value of the house.

The authority should compare the relevant market value of the house to the amount calculated as **half** of the most recent all-in unit cost notified to the authority by the Department for providing a rural or non-rural house² as the case may be, of a class that would accommodate a household in the same class as that for which the house being purchased was designed.

This all-in cost is an analogue of the estimated replacement cost of the house for tenant purchase purposes and should be adjusted for significant cost factors applying in the case of the house or site in question: Regulation 10(b) makes it clear that each element of the replacement cost is based on **estimated** costs.

If the relevant market value is greater than half the appropriate unit cost, the authority should use the relevant market value of the house for its purchase price and the tenant should be notified of this value and the steps that can be taken if he or she disputes the authority's determination of that value.

If half the appropriate all-in cost of providing a house in the class concerned is greater than the relevant market value, the housing authority should use half of the all-in cost for the purchase price, in which case the

² See Housing Circular 27/2021 Unit Cost Ceilings for new Build Social Housing Schemes – Q2 2021

tenant should be notified of the purchase price and how it was estimated and the steps that can be taken if he or she disputes the authority's determination of the purchase price.

In either case, where the tenant disputes the purchase price as calculated by the housing authority and the purchase price determined by an independent suitably-qualified person turns out to be lower than the purchase price calculated by the authority by the **alternative method**, the authority should use the purchase price calculated by the latter method and notify the tenant accordingly, and the steps that can be taken if he or she disputes the authority's revised purchase price.

When notifying a tenant purchase applicant of the purchase price of the house concerned, the tenant should be advised that the purchase price will stand for such period, not exceeding 12 months, as the authority sees fit, following which, if the applicant wishes to proceed with the purchase, the authority will review the purchase price.

Where the purchase price falls substantially on review, the other method of determining the purchase price should also be reviewed again because the purchase price determined under that method may then be greater than the revised purchase price determined under the method originally notified to the applicant.

Part 3 of the 2014 Act makes no specific provision for an independent determination of the purchase price of a house in the case where a tenant disputes the housing authority's calculation of the price. In cases where the authority values the purchase price of the house as its relevant market value (i.e. on the basis that this is greater than half the estimated replacement cost of the house) and this valuation is disputed by the tenant purchaser, the housing authority should apply the procedure set down elsewhere in Part 3 of the 2014 Act [e.g. section 27(5)] for dealing with disputed local authority valuations, viz. allow the tenant purchaser to nominate, and pay for, a valuer on a panel of

valuers drawn up by the authority to determine the relevant market value of the house and whose ruling is binding on both parties.

In cases where the authority values the purchase price of the house on the basis of **half its estimated replacement cost** (i.e. because, in the authority's opinion, this is greater than the relevant market value of the house) and this valuation is disputed by the tenant purchaser, it would not be appropriate to refer this valuation to an individual valuer with the qualifications prescribed in Regulation 16 and the tenant purchase applicant should be advised that the replacement cost of the house may be estimated by a person nominated, and paid for, by the applicant who has the appropriate professional qualifications for the purpose and is acceptable to the council.

The estimated replacement cost is an issue only in determining the purchase price of a house being sold to its tenant: it is not relevant to any other house valuations required under Part 3 of the 2014 Act.

In the case where a housing authority identifies a trend whereby valuers on its valuers panel are continually setting relevant market values for houses that are significantly lower than those set by the authority, the authority should review all aspects of the operation of the valuation system, including its own approach to valuations, with a view to addressing any factors that tend to support overvaluations by the council or under-valuations by panel valuers. Similarly, where a valuer on its list of valuers has an established record of setting the relevant market value of houses at significantly lower levels than those set by the authority, the council should consider removing that valuer from its list of valuers.

11. Valuation of houses for resale to housing authority (HA) and determining value of incremental purchase charge

Part 3 of the 2014 Act provides for determining the market value or the relevant market value of the house during or at the end of the charged period, as follows:

Situation	Legislation	Appropriate Value
Value of suspended incremental releases on expiry of the charged period	Section 27(2)(b) and (5)	Relevant market value
Payment of one or more incremental releases during the charged period	Section 28(1) and (4)	Relevant market value
Resale of house to HA during the charged period	Section 29(2) and (7)	Market value
Resale of house in the market during the charged period	Section 29(4) and (7)	Relevant market value

As with the determination of the purchase price of a house for discount purposes, a housing authority may arrange to carry out market valuations of tenant-purchased houses for the purposes listed in the Table either through their own professional valuation staff or by engaging private sector valuers for the purpose. There is a clear obligation on an authority to ensure that a proper valuation is obtained, reflecting the real market value of the house.

Part 3 of the 2014 Act provides that where a tenant purchase applicant disputes a housing authority's market valuation of a house in the circumstances listed in the Table, the market value or relevant market value, as appropriate, shall be determined by an independent valuer nominated by the purchaser from a panel of valuers drawn up by the authority and with the qualifications set down in Regulation 16, with the purchaser meeting the cost of the valuation. This is the same arrangement that is already in place in relation to the incremental purchase schemes under Parts 3 (certain newly-built or newly-acquired local authority houses) and 4 (local authority apartments) of the Housing

(Miscellaneous Provisions) Act 2009. If an authority has not yet established a panel of valuers for the purposes of the existing schemes, the panel should be established before the first local authority purchase price valuations under Part 3 of the 2014 Act are notified to tenant purchase applicants.

12. Purchase price and subsequent market valuations

As regards **both** the purchase price for a the purpose of selling a house and subsequent market valuations in the incremental purchase process, where a housing authority identifies a trend whereby valuers on its valuers panel are continually setting relevant market values for houses that are significantly lower than those set by the authority, the authority should review all aspects of the operation of the valuation system, including its own approach to valuations, with a view to changing any factors that are tending to support over-valuations by the council or undervaluations by panel valuers. Similarly, where a valuer on its valuers panel has an established record of setting the relevant market value of houses at values that are significantly lower than those set by the authority, the council should consider removing that valuer from its valuers panel.

In order to promote a consistent approach to valuations across different local authority areas and ensure that properties are not being undervalued for the purposes of sale, the Department's Audit Service may conduct spot checks from time to time on the determination of **both** the purchase price and relevant market value of houses in individual local authority areas under the scheme.

13. Application of excluding order provisions to tenant-purchased houses under Part 3 of 2014 Act

Under sections 1 and 3 of the Housing (Miscellaneous Provisions) Act 1997, as amended, the excluding order provisions of that Act apply to tenant-purchased local authority dwellings. Section 19 of the Housing (Miscellaneous Provisions) Act 2014 made amendments to the 1997 Act, including provisions relating to tenant purchased dwellings. Section 19 of the 2014 Act came into operation on

13 April 2015 and explanatory notes on its provisions were attached to Housing Circular 17/2015 (dated 13 April 2015).

Section 19(1)(d) of the 2014 Act substituted a new definition of “relevant purchaser” in section 1 of the 1997 Act, which has the effect of extending the excluding order provisions of the 1997 Act to tenant purchasers under Part 3 of the 2014 Act. Under the new definition, it remains the case that the excluding order powers of the 1997 Act apply to a successor to the original purchaser by inheritance (i.e. for no valuable consideration) but not to a person who buys the tenant-purchased house for valuable consideration.

Section 19(2) of the 2014 Act inserts a new section 1A into the 1997 Act that sets limits on the period during which the excluding order provisions of the 1997 Act will apply to local authority dwellings sold to relevant purchasers, with the length of the applicable period varying according to the manner in which tenant purchase of the dwelling was effected. Under subparagraph (1)(c) of section 19(2), the excluding order provisions of the 1997 Act cease to apply to tenant purchaser under Part 3 of the 2014 Act on expiry of the charged period for the house in question.

14. Application of scheme to certain new houses

Section 22(3)(b) of the 2014 Act provides that Part 3 does not apply to a house that may be sold to a tenant under the 2010 incremental tenant purchase scheme for newly-built or newly-acquired houses in the 5 years after the date of allocation of the house.

Thus, a housing authority may sell a new house to its tenant under Part 3 of the 2014 Act where that house has not been reserved for incremental purchase under Part 3 of the 2009 Act, in accordance with Regulation 4(a) of the Housing (Incremental Purchase) Regulations 2010 (S.I. No. 252 of 2010). It should be noted that the method of determining the purchase price of the house for discount purposes is different under the two schemes.

15. Sale of maisonettes / duplex units

The scheme is aimed at existing local authority houses and provides for their sale by conveyance of the fee simple interest in the property. Maisonettes and duplex units which are provided in blocks that require arrangements for regular upkeep and maintenance of common structures, works and services are excluded from sale under the scheme. Maisonettes and duplex units in this category that are located in blocks of 5 units or more may be sold to tenants - in the same way as apartments - in accordance with the provisions of Part 4 of the Housing (Miscellaneous Provisions) Act 2009. Maisonettes in blocks of 4 or less (most duplex accommodation would appear to fall into this category) may not be sold under tenant purchase at present on account of their level of interdependence with each other, except where individual maisonettes or duplex units have the same degree of independence from adjoining accommodation as semi-detached or terraced houses and can be sold in fee simple without conditions additional to the prescribed sale conditions. It is a matter for the housing authority to determine on a case-by-case basis which set of circumstances applies to a particular maisonette or duplex unit. It should be noted in this context that Regulation 4(a) of the 2015 Regulations excludes from sale a house that “has been specifically designed for occupation by one or more than one elderly person”.

Chapter 2 - Tenant purchase of local authority houses under Part 3 of the Housing (Miscellaneous Provisions) Act 2014

Guidance on the operation of the incremental purchase (IP) charge

1. Introduction

This guidance is supplemental to explanatory notes on sections 26 to 29 of the Housing (Miscellaneous Provisions) Act 2014, which set out the detailed operation of the incremental purchase charge under Part 3 of the 2014 Act.

2. Purpose

The purpose of the incremental purchase charge is two-fold:

- encourages tenant purchasers to continue to live in their houses for a reasonable period after purchase;
- enables housing authorities to share in any profit on the resale of houses by tenant purchasers in the initial years after purchase, thus generating funds for the provisions of new housing or the upgrading of existing housing.

3. Reduction in charged share

The table below illustrates the effect of the reduction of the charged share at various times during the charged period, including the monetary amounts that would be associated with the respective shares should the house be sold at that point (assuming a constant market value of €200,000 for the house and an initial discount to the purchaser of 60%).

Year	LA Charged Share	Related Monetary Value	Purchaser's Share	Related Monetary Value
0	60%	€120,000	40%	€80,000
3	60%	€120,000	40%	€80,000
5	50%	€100,000	50%	€100,000
10	40%	€80,000	60%	€120,000
15	30%	€60,000	70%	€140,000
20	20%	€40,000	80%	€160,000
25	10%	€20,000	90%	€180,000
30	0%	€0	100%	€200,000

4. Suspension of incremental release

A major feature of the incremental purchase charge is that the value of the charge reduces annually to nothing over a set period, provided the tenant purchaser complies with the terms of the sale and the charging order. The authority may suspend an annual incremental release on the charge for any year in which there is a breach of a sale or charging order condition, in which case the tenant purchaser is liable, at the end of the charged period, to pay to the authority the amount of the outstanding incremental purchase charge on the house. In a case where there is a breach of a sale or charging order condition, the annual incremental charge is suspended for one year. Where an authority suspends an incremental release, it is important that the tenant is notified without delay and given an opportunity to respond to the council in the matter. Given the consequences of suspension, it would not be appropriate to postpone notice of suspension until the end of the charged period, which could be a number of years after the suspension.

5. Examples of operation of incremental purchase charge

Example 1 - Tenant purchases house and retains it for charged period

Purchase price at date of sale:	€200,000
Incremental purchase discount:	50% [based on tenant income]
Purchase money paid:	€100,000
Incremental purchase charge on house	50% of value of house
Charged period	25 years [based on IP discount]

Incremental purchase charge is reduced by 2% of house value each year, with the charge reduced to zero after 25 years.

Example 2 - Tenant purchases house and retains it for charged period, 1 year's incremental release suspended

Tenant purchase of house		
Purchase price:	€200,000	
Incremental purchase discount:	60%	[based on tenant income]
Purchase money paid:	€80,000	
Incremental purchase charge on house:	60% of value of house	[based on IP discount]
Charge period	30 years	

Incremental release of 2% of house value is suspended in year 6 for breach of sale condition. At the end of 30-year charged period, outstanding IP charge is 2% of house value.

Calculation of outstanding IP charge payable to housing authority (HA) at end of charged period

Market value of house at end of charged	€300,000	
Less market value of site	-€30,000	[Site sold by purchaser to HA for nominal value for construction of house]
Net market value of house for IP purposes:	€270,000	
Payment due to HA to clear 2% IP charge:	€5,400	[€270,000 x 2%]

Example 3 - Tenant purchased house is sold in the market after 10 years

Tenant purchase of house		
Purchase price:	€200,000	
Incremental purchase discount:	50%	[based on tenant income]
Purchase money paid:	€100,000	[based on IP discount]
Incremental purchase charge on house:	50% of value of house	
Charged period	25 years	
Resale of house in the market		
Market value of house on resale:	€150,000	
Outstanding incremental purchase charge		
(30%)		[50% - (10 x 2%)]
Formula payment due to HA to clear IP charge:	-€45,000	[€150,000 x 30%]
Less selling costs (estate agent and solicitor)	-€10,000	
Net proceeds from resale:	€95,000	[< original purchase money, so IP charge reduced to break even]
Actual payment to HA to clear IP charge:	€40,000	[Reduced IP payment to avoid loss on resale of house]

Example 4 - Tenant purchased house is sold in the market after 10 years following purchaser improvements

Tenant purchase of house		
Purchase price:	€200,000	
Incremental purchase discount:	40%	[based on tenant income]
Purchase money paid:	€120,000	
Incremental purchase charge on house:	40% of value of house	[based on IP discount]
Charged period	20 years	
Resale of house in the market		
Market value of house on resale:	€250,000	
Less market value of purchaser	-€25,000	
Net market value of house for IP purposes:	€225,000	
Outstanding incremental purchase charge (20%)		[40% - (10 x 2%)]
Formula payment due to HA to clear IP charge:	-€45,000	[€225,000 x 20%]
Less selling costs (estate agent and solicitor):	-€10,000	
Net proceeds from resale for IP purposes:	€170,000	[= or > original purchase money so no change required in IP Charge]
Actual payment to HA to clear IP charge:	€45,000	Actual payment = Formula payment

Example 5: Tenant purchased house is sold in the market after 4 years

Tenant purchase of house		
Purchase price:	€200,000	
Incremental purchase discount:	40%	[based on tenant income]
Purchase money paid:	€120,000	
Incremental purchase charge on house:	40% of value of house	[based on IP discount]
Charged period	20 years	
Resale of house in the market after 4 years		
Outstanding incremental purchase charge [40%]: resold		[40%-0%: house is within first 5 years]
Formula payment due to HA to clear IP charge:	- €88,000	[€220,000 x 40%]
Less selling costs (estate agent and solicitor):	- €10,000	
Net proceeds from resale for IP purposes:	€120,000	[= or > original purchase money so no change required in IP Charge]
Actual payment to HA to clear IP charge:	€88,000	Actual payment = Formula payment
Formula payment due to HA to clear IP charge:	€88,000	[€220,000 x 40%]

Chapter 3 – Explanatory notes on Part 3 (sections 21 to 34) of the Housing (Miscellaneous Provisions) Act 2014

This guidance does not purport to be a legal interpretation of the Housing (Miscellaneous Provisions) Act 2014 and associated Regulations.

Explanatory notes

Section 21 – Interpretation

This section contains the definition of terms referred to in Part 3 of the 2014 Act, which are largely self-explanatory. “Purchaser” is defined to include successors to the tenant purchaser by inheritance but **not** subsequent purchasers of the house. See separate guidance notes on the definitions of “market value” and its variants and “material improvements”.

Section 22 – Extent of application of Part 3 to certain houses

Subsection (1) sets down the general principle that Part 3 tenant purchase applies to houses provided by housing authorities under the Housing Acts 1966 to 2014 or Part V of the Planning and Development Act 2000, other than affordable housing or classes of dwellings excluded from sale under section 30 Regulations.

Subsection (2) provides that a housing authority may sell under Part 3 an affordable house that is no longer required for that purpose and which has been allocated as social housing to a household under a section 22 [2009 Act] allocation scheme.

Subsection (3)(a) provides that Part 3 does not apply to housing authority dwellings located in buildings that contain more than one dwelling or other property and where regular management and upkeep is required of common areas, etc., by a person other than the owners of such dwellings.

Subsection (3)(b) provides that Part 3 does not apply to a house that may be sold to a tenant under the 2010 incremental tenant purchase scheme for newly-built or newly-acquired houses in the 5 years from the date of allocation of the house. Note section 43(1)(a) of the 2009 Act (as amended), which provides that a household is eligible to purchase a house under Part 3 of the 2009 Act if the household applies to purchase that house within five years of allocation.

Section 23 – Disqualification from purchase

This section sets out two sets of circumstances in which a tenant is disqualified from selling a house under Part 3.

Subsection 1(a) and subsection (2) provide for a disqualification related to rent arrears. A housing authority shall not sell a house to a tenant where, in the three years prior to applying to purchase, he or she or a household member was in arrears of rent, rent contributions, charges, fees or any other monies owed to a housing authority or an approved body for an accumulated period of more than 12 weeks in respect of a dwelling or site provided as social housing support. This disqualification does not apply where the tenant or household member enters into rescheduling arrangements with the authority or body concerned for paying off these debts and complies with the terms of these arrangements or the authority or body is satisfied that failure to substantially comply with the terms was due to circumstances outside the control of the tenant or household member concerned.

Subsection (1)(b) prohibits the sale of a house under Part 3 to a tenant who previously purchased a dwelling from a housing authority under this scheme, section 90 of the Housing Act 1966 or Part 3 or 4 of the Housing (Miscellaneous Provisions) Act 2009.

Section 24 – Calculation of tenant's income

This section provides for the manner in which a housing authority shall determine a tenant's income, which is used to determine whether he or she has

the minimum income required to purchase the house and the level of purchase price discount to be given to the tenant.

Subsection (1) sets out the definitions for the purposes of the section, notably definitions of “spouse”, “civil partner” and “cohabitant”, each of whom is defined as living with the other member of the couple.

Subsection (2) provides that the reckonable income of all tenants, and of the spouse, civil partner or cohabitant of a tenant, shall be taken into account in calculating the annual income of a tenant who has applied to purchase a house under Part 3.

Subsection (3) empowers the Minister to issue written directions to housing authorities on the determination of reckonable income for the purposes of the tenant purchase scheme.

Subsection (4) provides that the Ministerial directions may specify —

- the sources and classes of household income that a housing authority is required to include as reckonable income and those sources and classes of income that shall be disregarded,
- any deductions to be made from gross income, e.g., income tax, Universal Social Charge and PRSI, and
- the information that a tenant must provide to the housing authority to enable reckonable income to be calculated and verified.

A housing authority is required, under **subsection (5)**, to comply with directions issued under this section.

Subsection (6) provides for the publication by the Minister of directions under this section in the manner (or manners) which he or she considers appropriate.

Subsection (7) provides that a housing authority must make a copy of Ministerial directions issued under this section available without charge for public inspection during normal working hours, on the internet, at the main office of the authority and any other offices considered appropriate by the authority.

Section 25 – Sale of house to tenant

This section sets out the means by which a housing authority sells a house to a tenant under Part 3 and the conditions attaching to such a sale.

Subsection (1) provides, on receipt by a housing authority of the purchase money from the tenant, for the sale of a house to him or her on the vesting date in its existing state of repair and condition by way of a transfer order prescribed by the Minister under section 30, subject to specified conditions that apply for the duration of the charged period and the terms and conditions set down in a charging order placed by the authority on the house under section 26.

Subsection (2) sets down the terms and condition of the sale of a dwelling that will apply for the duration for the charged period, including conditions relating to occupation of the house as the normal place of residence of the purchaser or a household member, proposed changes to the status of the house during the charged period (including resale, letting, mortgaging, etc.) that require the prior consent of the housing authority, prohibitions relating to nuisance, anti-social behaviour, etc., and maintenance and insurance of the house.

Subsection (3) provides that, subject to the provisions of other legislation, the sale of a house under Part 3 will not imply any liability by the housing authority as to its state of repair or condition or its fitness for human habitation.

Subsection (4) provides that the sale of a house under Part 3 is not subject to section 211(2) of the Planning & Development Act 2000 or section 183 of the Local Government Act 2001: these provisions relate to the requirements to

obtain the consent of the Minister and local authority members to disposal of land.

Section 26 – Charging order

Subsections (1) to (3) require a housing authority, on the sale of a house under Part 3, to make a charging order in the form prescribed in the 2015 Regulations under section 30, placing a percentage incremental purchase charge on a house sold under the scheme. The charging order creates a charged share in the house in favour of the authority equivalent to the percentage discount granted to the purchaser off the purchase price. The charge applies for the charged period specified in the charging order, the duration of which is determined in accordance with section 30 Regulations. The charge will be reduced annually on the anniversary of the vesting date in equal proportions (“incremental releases”) of 2% of the total equity in the house. These annual releases will have the effect of reducing the charge to nil on the expiry of the period. The reduction in the charge for the first five years after the vesting date will be cumulative and will not be applied until that period has expired. As per section 27(1), the authority may suspend the annual reduction in charge where the tenant purchaser breaches a condition of purchase³. Any incremental release suspended by the authority for such a breach during the five-year period will not be applied at the end of the period, and the authority will notify the tenant purchaser of the fact and the reason for it.

Subsection (4) requires the housing authority, when requested by the purchaser, to provide a written statement in the form prescribed in Regulations under section 30, detailing specified information in relation to the authority’s charge on the house.

Subsections (5) to (8) are technical provisions relating to the status, registration, etc., of the incremental purchase charge. Among other things, they

³ Section 27 (1) Except where otherwise provided for by section 26 (3) (b) in respect of the period of 5 years from the vesting date, a housing authority may suspend an incremental release provided for under section 26 in respect of any year ending on the anniversary of the vesting date, where the purchaser fails to comply with any of the terms and conditions of the transfer order or the charging order.

provide that a charging order is deemed to be a legal mortgage under Part 10 of the Land and Conveyancing Law Reform Act 2009 and must be registered by the housing authority as a burden on the title in the Registry of Deeds or Land Registry as soon as possible after the sale.

Under **subsection (9)**, a housing authority may enter into an agreement with a lending institution to the effect that the authority's charge will have a different (i.e. lower) priority relative to the institution's mortgage charge, than it otherwise would have.

Subsection (10) provides that an authority may enter into a subsection (9) agreement only if this will enable a purchaser to –

- obtain a mortgage from the lending institution in order to purchase the house; or
- refinance an existing advance of moneys from the lending institution; or
- obtain a further advance of money from the lending institution for any purpose.

The prescribed form of transfer order under the scheme (Schedule 1 to the Housing (Sale of Local Authority Houses) Regulations 2015 (S.I. No. 484 of 2015)) provides that the authority agrees that its charge will have a lower priority relative to the mortgage charge of a building society or other financial institution, where such agreement enables the tenant purchaser to meet one of the conditions set down in section 26(10).

Subsection (11) provides that moneys due to a housing authority under section 27 or 29 may be recovered as a simple contract debt through the courts, without affecting any other powers that the authority may have to recover it.

Subsection (12) provides that a charging order shall not be regarded as a conveyance for the purposes of the Family Home Protection Act 1976 ([Family Home Protection Act, 1976 \(irishstatutebook.ie\)](#)) or section 28 of the Civil

Partnership and Certain Rights and Obligations of Cohabitants Act 2010 ([Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, Section 28 \(irishstatutebook.ie\)](#)).

Subsection (13) provides that a housing authority will discharge the incremental purchase charge on a property when the charge is fully paid off or expires or when the house is resold, whichever occurs first, and that an authority will meet the costs of executing and registering a deed of discharge but will not be liable otherwise for expenses of the purchaser incurred under sections 26 to 29.

Section 27 – Suspension of incremental release

Subsection (1) empowers a housing authority to suspend an annual incremental release of the authority's charge on the dwelling where the purchaser breaches any term or condition of the transfer or charging order during the charged period (including the initial 5-year period referred to in section 26(3)(b)).

Under **subsections (2) and (3)**, the authority will notify the purchaser of the suspension of an incremental release and the reason(s) for it and, at the end of the charged period, will issue a written statement to the purchaser in the form prescribed in Regulations under section 30, indicating the amount of the outstanding incremental purchase charge, based on the authority's current relevant market valuation of the house. The tenant purchaser then has 2 months to repay this amount to the authority.

Under **subsection (4)**, where the purchaser fails to pay the amount due within the 2-month period, the authority may recover the debt as a simple contract debt through the courts, without affecting any other powers that the authority may have to recover it.

Subsection (5) provides that, where the tenant purchaser disputes the relevant market value of the house determined by the authority for the purpose of calculating the amount of the outstanding charge, the relevant market value shall

be determined by an independent valuer nominated by the purchaser from a panel of valuers drawn up by the authority, with the purchaser meeting the cost of the valuation (see section 26(13)(b)).

Under section 26(13), where the incremental purchaser charge has reduced to nil on expiry of the charged period and the tenant purchaser requests the housing authority to do so, the authority will exercise a deed of discharge in respect of the charging order at no cost to the purchaser.

Section 28 – Payment during charged period in respect of charged share or incremental release

This section sets out the circumstances in which a purchaser may pay off one or more incremental releases during the charged period, if he or she so wishes.

Under **subsections (1) to (3)**, a tenant purchaser may, on the fifth or any subsequent anniversary of the vesting date during the charged period and with the consent of the housing authority, pay to the authority the full outstanding incremental purchase charge in the house (including a suspended incremental release) or the value of one or more incremental releases (other than a suspended incremental release), based on the authority's current relevant market valuation of the house. A tenant purchaser may pay the full amount of an incremental release only. Where part only of the outstanding charged share is paid to the authority, the charged period will be reduced by the number of years equating to the number of incremental releases represented by the payment. Under section 26(13), where the purchaser pays off the full outstanding incremental purchase charge in the house and requests the authority to do so, will exercise a deed of discharge in respect of the charging order at no expense to the purchaser.

Subsection (4) provides that, where the tenant purchaser disputes the relevant market value of the house determined by the authority for the purpose of calculating the value of the outstanding incremental purchase charge, the relevant market value shall be determined by an independent valuer nominated

by the purchaser from a panel of valuers drawn up by the authority, with the purchaser meeting the cost of the valuation (see section 26(13)(b)).

Section 29 - Control on the resale of a house

Under **subsections (1) to (3)**, a tenant purchaser must notify the housing authority if he or she wishes to resell the house during the charged period and, if the authority wishes to buy back the house, it may refuse consent to the sale of the house to another person. If the purchaser sells the house to the authority, the purchase price is its current market value, less the outstanding incremental purchase charge on the house.

Under **subsection (3)**, a housing authority may refuse to consent to the resale of a house that is subject to an incremental purchase charge to any person where the authority believes that –

- the proposed sale price is less than the market value,
- the prospective purchaser is or was engaged in anti-social behaviour or the sale is not in the interest of good estate management (as defined in section 1 of the Housing (Miscellaneous Provisions) Act 1997), or
- the sale would leave the vendor or anyone who might reasonably be expected to reside with him or her without adequate housing.

Under **subsections (4) and (5)**, where a tenant purchaser resells the house in the market during the charged period, he or she must pay to the authority a proportion of the current relevant market value equal to the outstanding incremental purchase charge on the house, subject to the amount of the payment being reduced to the extent necessary to avoid the net proceeds of the sale (disregarding solicitor and estate agent's costs and fees) being less than the amount the tenant purchaser originally paid to buy the house.

Subsection (6) provides that, where a tenant purchaser sells a house after the expiry of the charged period and owes money to the housing authority in respect of an incremental release suspended during the charged period, the authority may recover the amount owed as a simple contract debt through the courts, in accordance with section 26(11). The subsection also provides that material improvements made after the expiry of charged period will not be taken into account. Furthermore, the amount owed to the authority under the subsection is based on the relevant market value of the house at the end of the charged period.

Subsections (7) and (8) provide that, in the case of dispute over the authority's market valuation or relevant market valuation of a house under section 29, the appropriate market value of the house will be determined by an independent valuer nominated by the purchaser from a panel of valuers drawn up by the authority, with the purchaser meeting the cost of the valuation.

Section 30 – Regulations (Part 3)

This section empowers the Minister to regulate different aspects of tenant purchase under Part 3.

Under **paragraph (a)**, the Minister may exclude a class or classes of houses from sale under Part 3, in addition to those excluded under section 22(3).

Paragraph (b) empowers the Minister to set the minimum period for which a tenant must be in receipt of social housing support in order to be eligible to apply to purchase a house, which minimum period shall not be less than 1 year and may differ depending on the form of such support involved.

Under **paragraph (c)**, the Minister may prescribe the classes of tenants who may avail of the tenant purchase scheme.

Paragraph (d) empowers the Minister to set the minimum annual income a tenant must earn in order to qualify to purchase a house under Part 3.

Under **paragraph (e)**, the Minister may prescribe the method that a housing authority uses to determine the purchase price of the house, and such method may differentiate between classes of houses and take account of factors such as the age of the house and the estimated cost to the authority of replacing the house with a house built to modern standards on the same site for the same class of household (including the cost of site acquisition, legal and other professional fees).

Paragraph (f) empowers the Minister to prescribe the method of determining the discount to be granted to a tenant purchaser off the purchase price of the house, having regard to his or her annual income.

Paragraph (g) provides for the setting of the charged period for a house sold under the scheme, the duration of which may vary depending on the discount deducted from the purchase price, but must be at least 20 years duration from the vesting date.

Paragraph (h) provides for prescribing the format, terms and conditions of the transfer order and charging order.

Paragraph (i) empowers the Minister to prescribe the class or classes of persons who are qualified to determine the market value or relevant market value of a house in the case of a dispute over an authority's valuation.

Paragraph (j) provides for prescribing the statement to be provided to the purchaser detailing information on outstanding charges, suspension of incremental release and related matters, as stipulated under sections 26(4) and 27(2)(b).

Paragraph (k) empowers the Minister to prescribe any other matter that he or she considers appropriate or necessary relating to tenant purchase under Part 3.

Section 31 – Part 3 and amendment of Principal Act

This section amends section 90 of the Housing Act 1966 relating to the sale or lease of certain dwellings provided under that Act.

Paragraph (a) deletes provisions in section 90 concerning the sale of dwellings to tenants as follows:

Section 90(1)(a)(i): general power to sell a dwelling to a tenant under a purchase scheme,

Section 90(2) and (3): provisions relating to a purchase scheme,

Section 90(4A): provisions related to subsection (1)(a)(i), which is itself being deleted,

Section 90(6A): provisions relating to the sale of a dwelling under a purchase scheme.

Section 31(b) of the 2014 Act deletes paragraphs (a), (b) and (c) from section 90(7), relating to the making of regulations in relation to a purchase scheme, and amends section 90(7)(l) to reflect the deletion of section 90(1)(a)(i).

The net effect of the amendments is to maintain section 90 in operation as a power for a housing authority to sell a tenanted dwelling provided under the 1966 Act and owned by the authority to another housing authority or an approved housing body and to sell an untenanted dwelling owned by the authority to any person (including another housing authority).

Section 32 – Part 3 and amendment of the Act of 1992

This section deletes section 26(2) of the Housing (Miscellaneous Provisions) Act 1992, which is a spent saving provision that was included in amending legislation to section 90 of the 1996 Act set out in the 1992 Act.

Section 33 – Part 3 and amendment of Act of 1997

This section amends section 14(2) of the Housing (Miscellaneous Provisions) Act 1997 to extend to the sale of a house to a tenant under Part 3 the existing power of a housing authority, in the case of anti-social behaviour or on good estate management grounds, to refuse to sell a dwelling to a tenant or a household under various enactments. The terms “anti-social behaviour” and “estate management” are defined in section 1 of the 1997 Act, as amended.

Section 34 – Part 3 and amendment of Act of 2009

This section amends provisions of the Housing (Miscellaneous) Provisions Act 2009 to take account of the provisions in Part 3 of the 2014 Act.

Paragraph (a) amends section 10(a) of the 2009 Act to provide that the sale, or consent to the sale, of a dwelling to a person, other than a housing authority, under section 90(1)(b) of the Housing Act 1966 constitutes a form of housing support provided to households to meet their accommodation needs.

Paragraph (b) extends section 13 of the 2009 Act - which provides that monies accruing to housing authorities from sales of dwellings or payments by purchasers of dwellings or sites to clear outstanding local authority charges on them, etc., shall be placed in a separate account and may, with the Minister’s approval, be used for housing-related purposes -- to cover houses sold to tenants under Part 3 of the 2014 Act.

Paragraph (c) extends section 19(2) of the 2009 Act to provide that the sale of a house under Part 3 of the 2014 Act constitutes a form of social housing support in the same way as the sale of dwellings to tenants or household under other housing enactments.

Section 34 (d) of the 2014 Act substitutes a revised subsection (5) in section 20 of the 2009 Act relating to social housing assessments. Under the revised section 20(5):

- a household shall not be eligible for social housing support where, in the three years prior to an assessment being carried out, the household or a household member was in arrears of rent, rent contributions, charges, fees or any other monies owed to a housing authority or an approved body for an accumulated period of more than 12 weeks in respect of a dwelling or site provided as social housing support, but
- this disqualification does not apply where the household or household member enters into rescheduling arrangements with the authority concerned for paying off these debts and either complies with the terms of these arrangements or the authority or body is satisfied that failure to substantially comply with the terms was due to circumstances outside the control of the household or member concerned.⁴

Paragraph (e) expands section 28(4)(e) of the 2009 Act, relating to the management and control of local authority dwellings, to provide that a housing authority may sell a house to which section 28 applies to a tenant under Part 3 of the 2014 Act, in the same way that a housing authority may sell other dwellings to which section 28 applies to tenants and tenant households under other enactments.

Paragraph (f) amends section 32(6)(a) of the 2009 Act to extend to houses sold under Part 3 of the 2014 Act the Minister’s power to make regulations relating to the information to be supplied to housing authorities by applicants to purchase dwellings under various tenant and incremental purchase schemes.

Section 34(g) of the 2014 Act substitutes a revised paragraph (a) in the definition of “eligible household” in section 43(1) of the 2009 Act relating to the purchase of a newly-built or newly acquired housing authority house under Part

⁴ Section 34(d) of the Housing (Miscellaneous Provisions) Act 2014 was brought into operation on 15 September 2014 by the Housing (Miscellaneous Provisions) Act 2014 (Commencement of Certain Provisions) Order 2014 (S.I. No. 404 of 2014)

3 of the 2009 Act. The revised paragraph (a) provides that, in order to be eligible to apply to purchase under Part 3 of the 2009 Act, a household on the authority's housing list that is allocated a Part 3 house must apply to purchase that house within 5 years of allocation: note that it is not necessary for the tenant to actually purchase the house within the 5-year period.

Paragraph (h) brings into line with the corresponding disqualification from tenant purchase under Part 3 of the 2014 Act the rent arrears disqualification from purchasing a newly-built or newly acquired local authority house under Part 3 of the 2009 Act. The provision substitutes a revised subsection (2) in section 43 of the 2009 Act, under which –

- a housing authority shall not sell a house under Part 3 of the 2009 Act to a household transferring from other forms of social housing support where, in the 3 years prior to applying to purchase, the household or a household member was in arrears of rent, rent contributions, charges, fees or any other monies owed to a housing authority or an approved body for an accumulated period of more than 12 weeks in respect of a dwelling or site provided as social housing support, but this disqualification does not apply where the household or household member enters into rescheduling arrangements with the authority or body concerned for paying off these debts and complies with the terms of these arrangements or the authority or body is satisfied that failure to substantially comply with the terms was due to circumstances outside the control of the household or member concerned.

Paragraph (i) amends section 45(2) of the 2009 Act relating to the purchase of a newly-built or newly acquired housing authority house under Part 3 of the 2009 Act by deleting paragraph (d), which specifies as a sale condition a requirement that a house purchaser under that Part must seek the prior written consent of the housing authority to the carrying out of material improvements to the house.

Paragraphs (j) and (k) amend section 64(9) of the 2009 Act relating to the tenant purchase of a housing authority apartment. The effect of the amendments is to provide in sections 64(9)(a) and (9A) of the 2009 Act that –

- a housing authority shall not proceed with the sale of an apartment to a tenant under Part 4 of the 2009 Act where, in the three years prior to applying to purchase, the household or a household member was in arrears of rent, rent contributions, charges, fees or any other monies owed to a housing authority or an approved body for an accumulated period of more than 12 weeks in respect of a dwelling or site provided as social housing support, but this disqualification does not apply where the tenant or household member enters into rescheduling arrangements with the authority or body concerned for paying off these debts and complies with the terms of these arrangements or the authority or body is satisfied that failure to substantially comply with the terms was due to circumstances outside the control of the tenant or member concerned.

Chapter 4 – Explanatory Notes Housing (Sale of Local Authority Houses) Regulations 2015 as amended by the Housing (Sale of Local Authority Houses) (Amendment) Regulations 2023

Introduction

The Housing (Sale of Local Authority Houses) Regulations 2015, as amended by the Housing (Sale of Local Authority Houses) (Amendment) Regulations 2023, prescribe the detailed terms and conditions of the incremental purchase scheme for existing local authority houses under Part 3 of the Housing (Miscellaneous Provisions) Act 2014.

Regulation 2 provides that the 2015 Regulations came into operation on 1 January 2016. Regulation 3 sets down definitions for the purposes of the Regulations.

The Housing (Sale of Local Authority Houses) (Amendment) Regulations 2023 come into operation on 29 January 2024.

Regulation 4 – Classes of houses excluded from sale

This Regulation sets down the types of houses which are excluded from sale under Part 3. These exclusions are **in addition** to the specific exclusions set down in section 22 of the 2014 Act.

Regulation 4 excludes the following types of houses from sale under Part 3:

- Houses that have been specifically designed for occupation by an elderly person or persons;
- Houses that have been specifically provided to facilitate the transitioning of people with disabilities from institutions to community-based living. A house that has been adapted to accommodate a person with a disability who is a long-term resident of the house is not excluded from sale under the scheme;
- Houses that have been specifically designed in a group setting for occupation by members of the Traveller community;

- Caravans, mobile homes or structures capable of being moved, by whatever means. Note that, under this provision, demountable dwellings – which are designed to be capable of being dismantled and re-assembled elsewhere – are excluded from sale under the scheme;
- Houses transferred to planning authorities under section 96 of the Planning and Development Act 2000 for the purposes of providing social housing, provided that the houses are on the landholding to which the planning permission concerned relates.

Regulation **4(f) and (g)** provide that a housing authority shall not sell a house under Part 3 —

- (a)** where the authority considers that the sale would not be in the interest of good estate management;
- (b)** where the authority considers that the house should not be sold on account of its structural condition [Note, however, that section 25(3) of the 2014 Act provides that the sale of a house under Part 3 does not imply any warranty on the part of the authority in relation to the state of repair or conditions of the house or its fitness for human habitation];
- (c)** for the time being, where the authority has plans to carry out remedial works in the property concerned or to regenerate the area in which the house is located.

Regulation 5 – Minimum period in receipt of social housing support as amended by the Housing (Sale of Local Authority Houses) (Amendment) Regulations 2023

Regulation 5 provides that the housing authority tenant must be in receipt of housing support for a minimum period of 10 years, on the date of making the application, to qualify to participate in the scheme. The time spent in any form of social housing support, or any combination of such support, in the previous 10

years prior to applying to purchase is reckonable for this purpose. In the case of applications from joint tenants, only one of the tenants must have been in receipt of social housing supports for a minimum period of 10 years.

Regulation 6 – Minimum annual income to apply to purchase as amended by the Housing (Sale of Local Authority Houses) (Amendment) Regulations 2023

This Regulation provides that a tenant must have a minimum reckonable annual income of €11,000 per annum to qualify under the scheme. Primary reckonable income now includes the State Pension, Widow's, Widower's, Surviving Civil Partner's Pension (Contributory and Non-Contributory), Blind Pension, Invalidity Pension and Disability Allowance as a primary source of income. All other social welfare payments are to be regarded as secondary sources of income under the scheme. Housing authorities will determine reckonable income in accordance with section 24, which provides that the reckonable income of all joint tenants and any spouse, civil partner or cohabitant of a tenant resident in the house will be taken into account. The Minister has issued directions in relation to the manner in which each authority shall determine reckonable income for the purposes of Part 3.

Regulation 7 – Purchase application

Regulation 7 sets out the information which tenant purchase applicants are required to provide to the housing authority at the time of application. Applicants are required to:

- indicate the intended source of funding to pay the discounted purchase price of the house;
- provide all information sought by the housing authority for the purposes of determining reckonable tenant income eligibility under section 24 and the Ministerial directions issued thereunder.
- Provide the following information:

- Convictions of any household member for public order offences in the 5 years prior to the date of application under the Criminal Justice (Public Order) Act 1994. The offences under the 1994 Act specified in the Regulation are as follows:
 - Section 5: Disorderly conduct in a public place,
 - Section 6: Threatening, abusive or insulting behaviour in a public place,
 - Section 7: Distribution or display in a public place of material which is threatening, abusive, insulting or obscene,
 - Section 14: Riot,
 - Section 15: Violent disorder, and
 - Section 19 (as amended by section 185 of the Criminal Justice Act 2006): Assault or obstruction of a peace officer or emergency services personnel.

- Excluding orders made under sections 3, 3A or 4 of the Housing (Miscellaneous Provisions) Act 1997 against any household member engaged in anti-social behaviour; and

- Court orders in respect of anti-social behaviour made against household members under section 115 of the Criminal Justice Act 2006 or section 257D of the Children Act 2001;

See separate guidance on information sought in respect of convictions for public order offences and court orders in respect of anti-social behaviour. See Section 1, Part 5 of this guidance above.

Paragraph (d) of Regulation 7 provides that a tenant must provide any other information, including updated information, that the housing authority reasonably requires for the purposes of the purchase application or the exercise of the authority's functions under section 14 of the Act of 1997 (under subsection (2), a housing authority may, in the case of anti- social behaviour or on the grounds of good estate management, refuse to sell a house to a tenant under Part 3 of the

2014 Act) or section 23 of the Act of 2014 (which provides, in certain circumstances, for a rent arrears disqualification from purchasing under Part 3).

Regulation 8 – Provision of additional information

This Regulation provides that, within 4 weeks of being requested by the housing authority, a tenant applying to purchase under Part 3 must furnish any additional information, including documents and other particulars, that the authority may reasonably require for the purpose of verifying information provided by the tenant.

Regulation 9 – Notice about offences

Regulation 9 provides for inclusion in Part 3 purchase application forms of the statement set out in the Regulation relating to providing false or misleading information, etc., in connection with a purchase application.

Regulation 10 – Purchase price

This Regulation provides for the method of calculating the purchase price of a house sold under Part 3. The purchase price will be calculated as **the greater of:**

- (a)** the relevant market value of the house. “Market value” is defined in section 21 as the price for which the house might reasonably be expected to be sold on the open market, in its prevailing state of repair and condition and not subject to the conditions specified in section 25(2) or to a charging order, or

- (b)** **half the estimated cost** to the housing authority of replacing the house with a house built to modern standards on the same site for the same class of household (including the cost of site acquisition, legal and other professional fees). Replacement cost will be relevant only where, due to localised factors, the market value of a house is very low.

See separate guidance on the valuation of houses for the purposes of Part 3 and the definition of “market value” and its variants. See Section 1, Parts 8-9 of this guidance above.

Regulations 11, 12 & 13 - Purchase money and charged period

These 3 Regulations set out how the purchase money (defined in section 21 to mean the monetary value of the purchase price of the house, reduced by the discount) for a house sold under Part 3 will be determined and the period for which a charging order will apply. The discount given to a tenant purchaser depends on his or her reckonable annual income.

The 3 discount bands and associated charged periods provided for in the Regulation are as follows:

Bands	Household Income Level	Discount Applicable	Charged Period
Band 1	€11,000 - €20,000	60%	30 years
Band 2	€20,001 - €29,999	50%	25 years
Band 3	€30,000+	40%	20 years

Regulation 14 – Payment of purchase money

This Regulation provides that the purchase money for a house sold under Part 3 will be paid to the housing authority, in full, in advance of the completion of the sale. Note that the tenant is **not** required to pay a deposit to the authority as part of the purchase process. Under paragraph (2), where a mortgage loan is being made available by the authority, the completion of the mortgage contract by the tenant purchaser will be deemed to constitute payment by the purchaser of the amount concerned.

Regulation 15 – Combined transfer and charging order

Regulation 15 provides that the transfer order and the charging order for the sale of a house under Part 3 of the 2014 Act shall be in the combined form set out in

Schedule 1 to the Regulations and that the housing authority must give a copy of the combined order to the tenant purchaser.

Regulation 16 – Qualification of valuers

This Regulation sets out the required qualification of valuers for the purposes of determining the market value or relevant market value, as appropriate, of a house under Part 3 of the 2014 Act. The valuer must:

- (a) be recorded in the Property Services Register as having a licence in force to provide property services relating to the purchase or sale of land, and
- (b) have knowledge of and experience in the valuation of houses and land in the area concerned.

Regulation 17 – Charging order statements

Regulation 17 provides that charging order statements under sections 26(4) and 27(2)(b) of the 2014 Act shall be in the form set out in Schedule 2 to the Regulations.

Regulation 18 – Amendment of Housing (Local Authority Loans) Regulation 2012

Regulation 18 amends the Housing (Local Authority Loans) Regulations 2012 (S.I. No. 408 of 2012) to provide that housing authorities may give loans to tenant purchasers for the purchase of houses under Part 3 of the 2014 Act.

Schedule 1: Form of Combined Transfer and Charging Order

This order transfers the fee simple interest in the house to the purchaser on the vesting date, subject to a charge that the housing authority places on the dwelling under the order equivalent to the discount given to the tenant purchaser off the purchase price and subject to terms and conditions set out in the order. The order also sets down the amount of the purchase money for the house and excludes any warranty on the part of the authority as to the condition of the house or its fitness for human habitation.

Article 4 sets down the conditions of the transfer element of the order. These include the transfer order conditions set down in section 25(2) of the 2014 Act relating to occupation of the house as the normal place of residence of the purchaser or a household member, proposed changes to the status of the house during the charged period (including resale, letting, mortgaging, etc.) that require the prior consent of the housing authority, prohibitions relating to nuisance, anti-social behaviour, etc., and maintenance and insurance of the house. No conditions are prescribed in Article 4 under section 25(2)(g).

Article 5(1) provides for an incremental purchase charge on the house in favour of the housing authority in the terms set down in section 26(1) and (2) of the 2014 Act, equivalent to the discount given to the purchaser off the purchase price and sets down the duration of the charge. Paragraph (2) provides that, pursuant to section 26(9), the authority agrees that its authority's charge will have a lower priority relative to the mortgage charge of a building society or other financial institution, where such agreement enables the tenant purchaser to –

- obtain a mortgage from the lender to purchase the house; or
- refinance an existing advance of funds from the lender; or
- obtain a further advance of money from the lender for any purpose.

Article 5 also sets down the arrangements for annual incremental releases on the charge, suspension of an annual release for breach of a condition of the order and the consequences, and the circumstances in which a purchaser may pay off one or more incremental releases during the charged period.

Section 12 of the Interpretation Act 2005 (No. 23) provides that a deviation from a form prescribed in or under an enactment that does not materially affect the substance of the form or is not misleading in content or effect does not invalidate the form used.

The Regulations do not prescribe any form of transfer order conveying a leasehold interest in a house to the tenant, whether by way of shared ownership or otherwise.

Schedule 2: Form of Charging Order Statements

This Schedule prescribes the form of the charging order statement to be issued by housing authorities to tenant purchasers under sections 26(4) [where requested by the tenant purchaser at any time during the charged period] and 27(2)(b) [the statement issued on the expiry of the charged period where an annual incremental release was suspended during that period] of the 2014 Act.

Chapter 5 – Ministerial reckonable income directions issued under section 24 of the Housing (Miscellaneous Provisions) Act 2014

Explanatory Notes

Introduction

The Ministerial directions relate to the determination by housing authorities of reckonable tenant income for the purposes of tenant purchase of existing local authority houses under Part 3 of the Housing (Miscellaneous Provisions) Act 2014. The Minister signed new directions dated 11 December 2023, with these to take effect from 29 January 2024.

Deductions from gross income

Section 1 of the directions provides that no deductions shall be made from gross income for the purposes of determining reckonable income. Thus, reckonable income should be calculated as gross income, i.e. before deduction of income tax, Universal Social Charge, pension contributions, pension-related reductions or PRSI, etc.

Reckonable income

The directions sets down the sources and classes of income to be included in reckonable income for the purposes of Part 3 of the 2014 Act. Under that paragraph, income from social welfare payments is reckonable income, provided it constitutes a secondary source of income for the household. Thus, a social welfare payment payable to a tenant or joint tenant or a spouse, civil partner, or cohabitant of a tenant or joint tenant is reckonable income only where the tenant or one joint tenant is in receipt of employment income.

Primary reckonable income now includes the State Pension, Widow's, Widower's, Surviving Civil Partner's Pension (Contributory and Non-Contributory), Blind Pension, Invalidity Pension and Disability Allowance as a primary source of income. All other social welfare payments, with the exception of those specifically

disregarded, are to be regarded as a secondary source of income under the scheme.

Secondary income now includes the Rural Social Scheme, Working Family Payment and the Age 80 (Pension) Increase.

Income disregards

The directions set down the sources of income that will be disregarded for the purposes of calculating reckonable income.

- Income that is once-off, temporary or short-term in nature and outside the regular pattern of a person's annual income, and where the income fluctuates from week to week, reckonable income will be determined on the basis of a person's average earnings over a typical work period.

The below income will be disregarded for the purposes of determining eligibility for the scheme:

- Specified payments made under the Social Welfare Acts.
- Community employment schemes.
- Payments from a Government Department or State Agency in respect of an education or training course.
- Payments made by the Health Service Executive in respect of Foster Care Allowance, Blind Welfare Allowance or Mobility Allowance.
- Payments made by the Department of Education or under schemes funded by that Department in respect of grant schemes, including Youthreach training allowance.
- Payments received as a training allowance while undergoing a course of rehabilitation training by an organisation approved by the Minister for Health.
- Specified miscellaneous payments and income earned by children.

Information in respect of reckonable income

The directions set down the documentary evidence that must be supplied by a tenant to a housing authority to verify reckonable income.

Reference note accompanying directions

For information purposes, this note references the enactments in and under Part 3 of the 2014 Act detailing –

- the members of the tenant's household whose income is reckonable, viz. all tenants and the spouse or civil partner of the tenant **living with the tenant** or any cohabitant of the tenant (who is, by definition, **living with him or her**) and
- the tenant's obligation to provide information concerning income to the housing authority.

gov.ie/housing

