**Explanatory Note in relation to the Housing (Miscellaneous Provisions) Act 2014**

For information purposes only and should not be considered to be a definite explanation of the [2014 Housing (Miscellaneous Provisions) Act](http://www.irishstatutebook.ie/eli/2014/act/21/enacted/en/pdf)

Part 2 of the [Housing (Miscellaneous Provisions) Act 2014](http://www.irishstatutebook.ie/eli/2014/act/21/enacted/en/pdf) commenced on the 14th April 2015 bringing into effect Sections 6-20 including repealing [Section 62](http://www.irishstatutebook.ie/eli/1966/act/21/section/62/enacted/en/html) of the 1966 Housing Act. Section 62 was used to issue Notices to Quit in respect of anti-social behaviour and rent arrears in order to terminate tenancies.

Under previous legislation (Section 62 of the 1966 Act) in the event of a breach of a tenancy agreement for any reason the procedure was to issue Notice to Quit to the tenant. This had the effect of terminating their tenancy 28 days later and if they did not surrender the house we went to court for an order granting us possession. The Notice to Quit did not require the Council to be specific in respect of the breaches.

Sections 7, 8, 9, 10, 11 and 12 of the 2014 Housing Act specify the relevant Notices and procedures the Local Authority is required to follow in respect of breaches of Tenancy Agreements, including anti-social behaviour, rent arrears, condition of property, subletting etc.

Under Sections 7, 8 and 9 of the 2014 Housing Act the Council is now required to issue Tenancy Warnings which must outline the specific nature of the breach of tenancy.

The Tenant has the right to seek review of the Tenancy Warning, under Section 10 (can request an Oral Review). This review must be conducted by a Local Authority Officer of a higher grade than then the Officer who authorised the service of the Notice. There are time limits for this review.

The Tenancy Warning stays in effect for 12 months during which if the breaches outlined in the Tenancy Warning continue or is repeated the Council can apply to the Courts for a Possession Order for the dwelling under Section 12 of the 2014 Act or where appropriate make an application to the Court for an Exclusion Order under Section 3 of the 1997 Act.

If the Council does intend to go to court a further Notice under Section 12 informing the tenants of the Council’s intention to apply for a Possession Order must be served on the tenant at least 10 working days prior to the Court date. (Court Summons)

The Council’s Law Agent has recommended the engagement of Legal Counsel to draft documents and represent the Council in the initial cases taken under this new legislation to ensure proper implementation of the Act. There are currently three cases with Counsel:

* Tenancy Warning served under Section 7 – review requested
* Possession Application to Court under Section 13 – illegal occupier
* Possession Application to Court under Section 17 – death of tenant

A number of dwellings have been taking back into stock following termination of tenancy under Section 15 of the Act. (abandoned houses)

**Tenancy Warnings come into effect two working days after the expiration of the Review Period.**

[**Section 7**](http://www.irishstatutebook.ie/eli/2014/act/21/section/7/enacted/en/htmlf) **Tenancy Warning relating to anti-social behaviour, etc**.

* anti-social behaviour
* nuisance/annoyance behaviour

Section 7 requires the Council to specify in the Tenancy Warning:

1. Clause of Tenancy Agreement breached
2. Who breached the Clause, (tenant, member of tenant’s household, visitor to tenant’s household)
3. Date and time of breach
4. Details of breach, (specifics of the anti-social behaviour, nuisance and/or annoyance)
5. What actions the tenant is required to take to ensure that the breach does not continue.
6. Tenants right to apply for a Review under Section 10
7. Indicate that if the breach continues or is repeated within 12 months the Council may apply for a Possession Order without issuing a further Tenancy Warning.

In serving a Tenancy Warning under Section 8 the Council must have due regard to protecting the identity of persons informing the Council of the breach of the tenancy.

[**Section 8**](http://www.irishstatutebook.ie/eli/2014/act/21/section/8/enacted/en/html) **Tenancy Warning relating to rent arrears:**

* Issued to tenants who are in breach of their rent related obligations

Section 8 requires the Council to specify in the Tenancy Warning:

1. Tenant’s rent related obligation that has been breached
2. Amount of arrears
3. Period for which arrears apply
4. Outline any previous rent breaches within the preceding 5 years.
5. What the tenant is required to do in order to address the arrears, (immediate payment or arrangement to pay arrears on weekly basis)
6. Indicate that if arrears are not paid or arrangement not entered into within 2 months of the date of the Notice the Council will apply for a Possession Order under Section 12 of the 2014 Act.
7. Indicate that if the agreed arrangement is not adhered to the Council can apply for a Possession Order under Section 12 without issuing another Tenancy Warning.
8. Tenants’ right to apply for Review under Section 10.
9. If the Council is aware or suspects that the tenant has debts in addition to the rent arrears, the Council must set out information on where the household may obtain debt advice and assistance.

[**Section 9**](http://www.irishstatutebook.ie/eli/2014/act/21/section/9/enacted/en/html) **Tenancy Warning relating to other tenancy breach.**

* Issued to tenants in breach of their Tenancy Agreement other than breaches that Section 8 or 9 refer to such as sub-letting of property, condition of property.

Section 9 requires the Council to specify in the Tenancy Warning:

1. Basis for Tenancy Warning
2. Name of person causing breach
3. Specify what action is required by the tenant and/or members of their household to comply with Tenancy Warning
4. Indicate that if the breach continues or is repeated within 12 months the Council may apply for a Possession Order without issuing a further Tenancy Warning.

[**Section 10**](http://www.irishstatutebook.ie/eli/2014/act/21/section/10/enacted/en/html) **Review of Tenancy Warning**

* Where a tenant does not accept that a breach has occurred in the terms set out in Tenancy Warning served under Sections 7, 8 and 9 they may request a review of the Tenancy Warning within 10 working days of the date the Notice comes into effect.

The request must

1. Be in writing
2. Be received by the Council within 10 working days from the date the Tenancy Warning. *(NOTE: Tenancy Warning does not come into effect until 2 working days following the expiration of the period to request a review).*
3. Outline the grounds upon which the tenant disputes the basis for the tenancy warning and must be accompanied by any relevant documentary evidence.
4. State whether the tenant wishes to request an oral hearing.

Review

* Period for review may be extended or a further 10 working days by order of Chief Executive of the Council
* If a valid Review request is accepted is must be reviewed by an Officer who was not involved in the decision to issue the Tenancy Warning and who is of higher grade to the Officer who authorised the serving on the Tenancy Warning.
* The period for review is 30 working days, but this may be extended by agreement.
* The Reviewer must have due regard to protecting the identity of persons informing the Council of the breach of the tenancy

The Reviewer may

1. Confirm the tenancy warning in its original terms,
2. Vary the tenancy warning in specified terms, or
3. Annul the tenancy warning

State reasons for doing so, a copy of the Reviewer’s decision and reasons must be sent to the tenant.

[**Section 11**](http://www.irishstatutebook.ie/eli/2014/act/21/section/11/enacted/en/html) **Day that tenancy warning comes into effect**

* Tenancy Warning comes into effect 2 working days after the expiration of the period within which a request to review warning could be received.
* If a Tenancy Warning is reviewed and if either if it is confirmed or varied it comes into effect 2 working days after the decision of the Reviewer has been issued to the Tenant.
* If the request for review is withdrawn the Tenancy Warning comes into effect 2 working days after notification of withdrawal.

[**Section 12**](http://www.irishstatutebook.ie/eli/2014/act/21/section/12/enacted/en/html) **Proceedings for possession of local authority dwelling**

* Where continued or repeated breaches of Tenancy occur following the serving of Tenancy Warning under Sections 7, 8 or 9, the Council may apply to the District Court for a Possession Order under Section 12.

The Council must serve Notice on the Tenant at least 10 working days prior to date of Court Proceeds of it intention of apply for Possession Order. The Notice must contain:

1. The information to be included in the application
2. The date the application will be made to the Courts

When determining whether or not to grant a Possession Order the Court

* May decide as an alternative to determining the Possession Order to treat the application as an application for an Exclusion Order against specific members of the tenants’ household.

[**Section 13**](http://www.irishstatutebook.ie/eli/2014/act/21/section/13/enacted/en/html) **Proceedings for possession against person in occupation of local authority dwelling** – (Illegal occupier/sublet)

1. Notice required to be served on occupier
2. Application to District Court for Possession Order

[**Sections 14**](http://www.irishstatutebook.ie/eli/2014/act/21/section/14/enacted/en/html)  **&** [**15**](http://www.irishstatutebook.ie/eli/2014/act/21/section/15/enacted/en/html) **Abandoned local authority dwelling**

1. Where rent has not been paid for 4 week period or more
2. The dwelling has not been occupied by the tenant or members of their household for a period of six weeks or more
3. The Council is of the opinion that the household does not intend to occupy the dwelling as its normal place of residence.

Procedure

1. Notice to be served on each tenant
2. If no written notification is received from the tenants within four weeks notifying the Council of their intention to their intention to occupy the dwelling as their normal place of residence then the Council will terminate the tenancy by way of Chief Executive Order and Notice of Termination served.
3. The contents of the property must be returned to the tenant if they require it and therefore we must retain it for a period. It can then be sold if possible to pay arrears and or other costs.

[**Section 16**](http://www.irishstatutebook.ie/eli/2014/act/21/section/16/enacted/en/html) **Application to court in respect of tenancy terminated under** [**Section 15**](http://www.irishstatutebook.ie/eli/2014/act/21/section/15/enacted/en/html)

* Where a tenancy has been terminated under Section 15 a tenant may apply to the District Court within six months from date of termination to have the termination rescinded.

If the Courts find in favour of the tenant they may direct the Council to reinstate the tenancy or where the house has been relet allocate adequate suitable housing that is located as near as practicable to the dwelling to which the termination applies.

[**Section 17**](http://www.irishstatutebook.ie/eli/2014/act/21/section/17/enacted/en/html) **Death of tenant and recovery of possession in certain cases.**

Where a tenancy has ended due to the death of the tenant and the dwelling is occupied by:

1. A member of the tenant’s household who is not entitled to become a tenant of the dwelling as a consequence of that death, or
2. By a person purporting to be a member of the tenant’s household

The Council may apply to the District Court for a Possession Order.

Procedure

1. Notice required to be served on occupier
2. Application to District Court for Possession Order.

**Additional notes in relation to Part 2**

**Warning notices**

* Can be fitted into any stage of existing procedures
* Council can apply for possession order without issuing tenancy warning but court can take that into account in deciding on order
* Warning relates to breach of tenancy agreement and different provisions apply to warnings relating to ASB, rent and other breaches
* Provision re Council protecting identity of persons giving information

**If breach continues following warning:**

* Application for possession order
* In case of ASB: For 3 years after warning comes into force, HA may take warning into account in considering whether to refuse to allocate/sell etc. a dwelling
* In case of rent: Household loses entitlement to social housing support, cannot purchase the dwelling

**Reviews**

* Review by official not involved in the decision to issue warning and senior in rank to the officer who decided to issue warning (can be in any LA)
* Household generally has 2 weeks to request review, which must be done in 4 weeks or, in case of oral hearing, etc., 6 weeks
* Reviewer may accept Garda or LA official statement of ASB as evidence of ASB in cases of intimidation

**Types of Possession hearings**

* **Section 12**: Breaches of tenancy agreement (ASB, rent, etc.). Possession terminates the tenancy
* **Section 13**: Squatters. Includes offence of squatting (subsection (14). See section 20 of 1997 Act re Garda power to direct squatters engaged in ASB to leave dwelling and, if necessary to arrest him/her.
* **Section 15**: Abandoned dwellings. Notice procedure only, which terminates tenancy. Aggrieved former tenant may seek court redress (section 16).
* **Section 17**: Tenant deceased and succession refused to household member.

**Common features of possession proceedings**

* Ten days notice to tenant of date of court hearing except in case of serious ASB.
* Court application may set out grounds for possession by information on oath.
* If tenant does not attend court and HA makes prima facie case for possession, Court may grant the order.
* Court may adjourn proceedings with or without conditions and decide to hold all or part of hearing in private.
* Criteria for making possession order includes ECHR-related requirement that order is proportionate to grounds for possession.
* District Court decision is appealable to Circuit Court and point of law may be referred to High Court.
* Updated offence of intimidation (section 19(11))

**Specific features**

* **ASB tenancy breach proceedings:**
	+ In case of serious ASB, notice of application to tenant at latest on date of court hearing
	+ Court may, on giving notice, decide to treat proceedings as excluding order application
	+ Court may, where there is intimidation, accept Garda or LA official statement of ASB as evidence of ASB.
* **Tenancy breach proceedings** Court specifies when period of right to possession commences and its duration between 2 and 9 months.
* **Tenancy breach and squatters proceedings:** Provision re HA protecting identity of persons giving information
* **Abandoned dwellings:**
	+ - Aggrieved former tenant may seek court redress
		- Return of property found in abandoned dwellings to tenant and other persons

**Abandoned Houses**

* **Paragraph 5 of Article 40 (Personal Rights) of Constitution states:**

“The dwelling of every citizen is inviolable and shall not be forcibly entered save in accordance with law.”

* Council right of entry in abandoned dwelling where there are rent arrears of at least one month AND risk of non-minor damage OR action is needed to prevent unauthorised access.

Council must have tenant’s consent OR District Court warrant OR, where damage is occurring or imminent, written authorisation by CEO or his/her nominee,

* Protection for Council against liability for damages following securing of dwelling.