



Comhshaol, Oidhreacht agus Rialtas Áitiúil  
**Environment, Heritage and Local Government**



Circular SHIP 2009/07

25 November 2009

To: Directors of Service (Housing)  
Town Clerks

**Re: Legislative changes relating to anti-social behaviour**

A Chara,

I am directed by the Minister for the Environment, Heritage and Local Government to refer to circular letter SHIP 2009/02 dated 14 August 2009 about the passing of the Housing (Miscellaneous Provisions) Act 2009. This Act contains important provisions relating to the powers of housing authorities to combat anti-social behaviour in their housing stock.

The most significant anti-social behaviour provisions in the 2009 Act will come into operation on 1 December 2009, as provided for in the Housing (Miscellaneous Provisions) Act 2009 (Commencement) Order, 2009 (S.I. No. 449 of 2009), a copy of which was enclosed with circular letter SHIP 2009/06. These provisions are as follows:

- section 35 of the Act, which requires the elected members of each housing authority to draw up and adopt an anti-social behaviour strategy within one year of the commencement of the section, that is to say, **by 30 November 2010**. The strategy must set out measures to promote good estate management and co-operation with other bodies, such as the Gardaí, that have a role to play in combatting anti-social behaviour;
- Items 1(a) and 5 of Part 5 of Schedule 2, amending the Housing (Miscellaneous Provisions) Act 1997, to extend the definition of "anti-social behaviour" to cover graffiti and damage to property, and to apply existing anti-social behaviour provisions, including the power to exchange information about housing applicants or beneficiaries engaged in anti-social behaviour, to a broader range of social accommodation, including accommodation provided through rental arrangements.

A more detailed guidance note of these provisions is attached which also includes, for the information of housing authorities, a summary of the additional ASB provisions contained in the 2009 Act which have not yet been commenced.



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A consolidated text of the Housing (Miscellaneous Provisions) Act 1997, incorporating amendments made by the Housing (Traveller Accommodation) Act 1998, the Residential Tenancies Act 2004 and the 2009 Act, will be issued to housing authorities for information when all the amendments to the 1997 Act are in operation.

Enquiries and requests for further information in relation to this circular should be addressed to the following staff members:

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Mr. Gabriel O'Duffy, 01 888 2612 ([gabriel\\_o'duffy@environ.ie](mailto:gabriel_o'duffy@environ.ie)).

Mise, le meas,

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Eddie Lewis  
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Social Housing (Modernisation, Integration & Regulation) Section



## Local Authority Guidance Note

### Anti-Social Behaviour Provisions of Housing (Miscellaneous Provisions) Act 2009

November 2009

#### **1. Anti-social behaviour strategies**

Many housing authorities already have in place a statement or policy on combating and preventing anti-social behaviour in the accommodation or estates provided by them. Section 35 of the 2009 Act formalises this practice by requiring each housing authority, by reserved function, to adopt an "anti-social behaviour strategy" for the prevention and reduction of anti-social behaviour in its housing stock. The intention behind this formalisation of practice is to provide a common framework for action that will facilitate co-operation between relevant bodies, putting in place clear and transparent procedures for the making of complaints and initiatives for the prevention and reduction of anti-social behaviour.

All housing authorities will have to draw up and adopt an anti-social behaviour strategy **by 30 November 2010 (i.e. within one year of commencement of the section, as per section 35(1))**. The strategy will apply to those parts of its administrative area where the authority has: -

- (a) dwellings let under the Housing Acts 1966 to 2009;
- (b) dwellings that are the subject of Chapter 4 tenancy agreements [RAS]<sup>1</sup>;
- (c) dwellings in which relevant purchasers live; and
- (d) sites for travellers (site in this context is defined in the Housing (Miscellaneous Provisions) Act 1997, as amended).

A relevant purchaser is defined in the 1997 Housing Act (as amended) as a person to whom a housing authority has sold a house under the Housing Acts 1966 to 2009, and/or his or her successor in title, whether by sale or any other means. Therefore the ASB Strategy must also cover –

- (a) tenant purchasers under section 90 of the Housing Act 1966, and their successors,

and, when the relevant provisions of the 2009 Act are commenced,

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<sup>1</sup> While chapter 4 (which formalises already existing arrangements for RAS) has not yet been commenced, housing authorities should future proof their anti-social behaviour strategies by including provisions relating to chapter 4 tenancy agreements.



- (b) incremental purchasers under Part 3<sup>2</sup> and apartment tenant purchasers under Part 4, and their successors.

The principal objectives that must be included in an anti-social behaviour strategy are set out in subsection (2) and are as follows:

- (a) the prevention and reduction of anti-social behaviour;
- (b) the co-ordination of services within the housing authority that are directed at dealing with, preventing or reducing anti-social behaviour;
- (c) the promotion of co-operation with other persons/bodies, including the Garda Síochána, in the performance of their respective functions in relation to preventing/reducing anti-social behaviour, in order to avoid or reduce duplication of effort between the housing authority and the other person/body in performing their functions; and
- (d) the promotion of good estate management (as defined by section 1 of the 1997 Act).

Housing authorities are also required (in subsection (3)) to detail in the strategy the way in which its principal objectives are to be attained, including, by way of example-

- (a) procedures for making an anti-social behaviour complaint to a housing authority;
- (b) initiatives for preventing and reducing anti-social behaviour; and
- (c) education and research in relation to anti-social behaviour, its prevention and reduction.

Subsection (5) sets out a number of requirements which authorities will have to have regard to when drawing up their strategies. In particular housing authorities will have to consult with the following persons and bodies during the preparation or amendment of their strategy: -

- (a) the joint policing committee for the area;
- (b) an Garda Síochána;
- (c) the HSE; and

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<sup>2</sup> A relevant purchaser does not, however, include an incremental purchaser who has bought a house from an approved body. Approved bodies are and, on commencement of Part 3, will continue to be responsible for combating and preventing ASB in their own stock.



- (d) any other person that the authority considers appropriate.

Joint policing committees have now been established by all 114 local authorities under section 36 of the Garda Síochána Act 2005, with the key role of advising the local authority and the Gardaí on how they might best perform their functions, especially in relation to preventing crime, disorder and anti-social behaviour in their areas.

Housing authorities will be required to review and amend their strategies, or to draw up and adopt a new strategy, **at least six months before the expiration of its housing services plan** (as part of the process of drafting a housing services plan, housing authorities must have regard to their ASB strategy). Housing services plans are provided for in Chapter 2 of the 2009 Act, which will be commenced in due course, and will cover the period of the local authority development plan (6 years). Therefore, housing authorities will be required to review their anti-social behaviour strategies at least every 5 to 6 years. An authority may revisit its strategy at any time when and as it sees fit.

Finally, subsection (7) provides that the adoption of, and amendment of, an anti-social behaviour strategy shall not confer any right in law, which a person would not otherwise have, to require a housing authority to exercise any power under the 1997 Act or the 2009 Act or to seek damages for a housing authority's failure to exercise any such power.

In drawing up their anti-social behaviour strategies, housing authorities should have regard to good practice guidelines issued to housing authorities in 2003 in relation to preventing and combating anti-social behaviour. These guidelines were produced by the Centre for Housing Research, in conjunction with this Department and the City and County Managers Association, and are available for download on the Centre's website [www.chr.ie](http://www.chr.ie).

## **2. Amendments to the Housing (Miscellaneous Provisions) Act 1997**

There are two amendments being made to the Housing (MP) Act 1997 on foot of this commencement:

- a) an amendment is being made to the definition of anti-social behaviour in section 1 of that Act; and
- b) an amendment is being made to the powers given to local authorities by section 15 of that Act.

Anti-social behaviour (ASB) is defined in section 1 of the 1997 Act (as amended by section 197(a)(i) of the Residential Tenancies Act 2004) and can be broken down into two distinct parts. The first part, which is not affected by the 2009 Act, is that ASB is defined as:



*"(a) the manufacture, production, preparation, importation, exportation, sale, supply, possession for the purposes of sale or supply, or distribution of a controlled drug (within the meaning of the Misuse of Drugs Acts 1977 and 1984)".*

The second part of the definition has been expanded by Item 1(a) of Part 5 of Schedule 2 to the 2009 Act to read as follows (additional text is shown in **bold**):

*"(b) any behaviour which causes or is likely to cause any significant or persistent danger, injury, damage, **alarm**, loss or fear to any person living, working or otherwise lawfully in or in the vicinity of a house provided by a housing authority under the Housing Acts 1966 to 2002 or Part V of the Planning and Development Act 2000, or a housing estate in which the house is situate or a site and, without prejudice to the foregoing, includes*

- (i) violence, threats, intimidation, coercion, harassment or serious obstruction of any person,*
- (ii) **behaviour which causes any significant or persistent impairment of a person's use or enjoyment of his or her home, or***
- (iii) **damage to or defacement by writing or other marks of any property, including a person's home.**"*

This amendment to the definition of anti-social behaviour has been made to align housing legislation with the Criminal Justice Act 2006, relating to anti-social behaviour by adults, and with the Children Act 2001 (as amended), relating to anti-social behaviour by children.

Section 15 of the 1997 Act gives housing authorities the power, for the purposes of carrying out their housing functions, to exchange information about particular persons, whom the authority considers may be engaged in anti-social behaviour, between themselves and with specified bodies (e.g. the Gardaí, the HSE and approved housing bodies). This provision currently applies to local authority tenants, prospective local authority tenants and applicants for local authority housing. Item 5 of Part 5 of Schedule 2 extends the scope of this power to cover:

- occupants of, or applicants for, sites for travellers;
- tenants of, or applicants for, accommodation provided by approved bodies; and
- applicants for, or beneficiaries of, housing support under existing affordable housing schemes.

In addition to the above, once the relevant Parts of the 2009 Act have been commenced, the provisions of section 15 will also apply to:



- tenants of, or applicants for, accommodation under a rental accommodation availability agreement [RAS];
- applicants for, or beneficiaries of, housing support under the incremental purchase scheme;
- applicants for, or beneficiaries of, housing support under the tenant purchase of apartments scheme; and
- applicants for, or beneficiaries of, housing support under the new affordable dwelling purchase arrangements.

### **3. Other ASB-related provisions**

There are a number of other ASB related provisions of the 2009 Act that remain to be commenced. These ASB provisions are integral to other sections of the Act and will therefore be commenced when those particular sections are commenced. For your information a summary of these additional ASB provisions and the sections with which they will be commenced is given below. More detailed guidance will issue on these provisions in due course.

<b>ASB related provision</b>	<b>Associated Section</b>	<b>Effect of ASB provision</b>
Schedule 3(l)	Section 29 – tenancy agreements	Tenancy agreements drawn up by housing authorities will have to include terms and conditions relating to ASB carried out by tenants or member of their households as well as provisions relating to the prohibition of and consequences of allowing persons against whom there is an excluding order in force, in relation to a dwelling, to enter that dwelling.
Schedule 2, Part 5 – Items 1(b) and 2	Chapter 4 – rental accommodation arrangements	These two provisions amend sections 1 & 3 of the Housing (MP) Act 1997 such that on the commencement of these amendments and of chapter 4, the provisions of the 1997 Act (including the excluding order provisions) will apply to tenants of dwellings subject to chapter 4 tenancy agreements. <sup>3</sup>

<sup>3</sup> Please note, however, that existing RAS tenancies will not be covered by the legislation until such time as the tenancy agreement is renewed as per the Residential Tenancies Act 2004. At that time, the tenancy agreement will be renewed as a chapter 4 tenancy agreement.



<b>ASB related provision</b>	<b>Associated Section</b>	<b>Effect of ASB provision</b>
Schedule 2, Part 5 – Items 4(a) and (b)	Section 22 – Allocation Schemes	<p>This provision will, when commenced, expand the housing authority's existing power under section 14 of the 1997 Act, to defer the allocation or sale of a dwelling to a person that is or has been engaged in anti-social behaviour, to cover (once the particular Parts or Chapters are commenced) –</p> <ul style="list-style-type: none"><li>- RAS allocations (Chapter 4);</li><li>- IPS sales (Part 3);</li><li>- TPA sales (Part 4); and</li><li>- ADPA sales (Part 5).</li></ul> <p>This provision also covers instances where a member of the tenant's/applicant's household is or has been engaged in ASB.</p>
Schedule 2, Part 5 – Item 3	Section 30 – delegated functions	<p>The power given to housing authorities under section 9 of the 1992 Housing Act is being repealed and replaced by section 30 of the 2009 Act. This minor amendment to section 4A(b) of the 1997 Act (inserted by the Residential Tenancies Act 2004) means that the provisions of that section will apply to section 30 of the 2009 Act, once section 30 has been duly commenced.</p>
Section 15(1)(g)	Chapter 2 – Housing Services Plans	<p>This will provide that when drawing up or amending their housing services plan, housing authorities must have regard to their anti-social behaviour strategy.</p>
Sections 48(3)(b) & 70	Part 3 (Incremental Purchase) & Part 4 (Tenant Purchase of Apartments)	<p>These respective provisions will give authorities an additional level of control over the resale of properties by incremental or tenant purchasers during the charge period. It means that a housing authority will be able to prevent such a resale where the prospective purchaser is or has been engaged in anti-social behaviour or where the sale would not be in the interests of good estate management.</p>