



Circular: Housing 33 of 2015

31 August 2015

Urban Regeneration and Housing Act 2015 – amendments to the operation of Part V of the Planning and Development Act 2000

Dear Chief Executive,

This Circular is intended to notify you of the commencement of sections 31-33 and sections 35 and 36 of Urban Regeneration and Housing Act 2015 with effect from 1 September 2015. These sections make necessary amendments to Part V of the Planning and Development Act 2000 regarding social and affordable housing provision obligations.

You will be notified separately upon the commencement of section 34 which provides for the use of Rental Accommodation Availability Agreements as an option to fulfil Part V obligations.

Section 37 of the Act of 2015 also comes into operation on 1 September; this enactment amends section 31 of the Housing (Miscellaneous Provisions) Act 2009 to confirm that the section will apply to dwellings that are the subject of financial support under the new Housing Assistance Payment (HAP) scheme.

Overall, the purpose of the Urban Regeneration and Housing Act 2015 is to address housing supply-related issues with a view to facilitating increased activity in the housing construction sector and supporting the delivery of the Government's Construction 2020 – A Strategy for a Renewed Construction Sector and Social Housing Strategy 2020. The specific amendments relating to the operation of Part V have been made following detailed consultation and aim to:

- enhance the economic viability of developments;
- maximise the opportunity for the delivery of social housing units;
- secure the principle of integrated mixed tenure developments; and
- address weaknesses in aspects of the existing legislation identified in a number of court judgements.

The amendments to Part V take effect from the date of commencement: 1 September 2015. Therefore, planning applications received on that date, or thereafter, must be determined under the new Part V arrangements.

Local authorities should fully utilise the pre-planning application process under section 247 of the Planning and Development Act 2000 to ensure that prospective planning permission applicants are made aware of the local authority's requirements in relation to compliance

with Part V, and that new housing developments are inclusive of housing types with appropriate acquisition costs that will maximize on-site social housing delivery and value for money, as well as supporting sustainable communities. Pre-planning consultations have increased importance given that section 33(1)(a) of the Act of 2015 requires a Part V agreement to be reached between the developer and the local authority prior to the lodgement of the commencement notice.

Revised Part V obligations and options for delivery

Section 31 of the Act of 2015 amends section 94 of the 2000 Act by changing to 10% - from 20% - the percentage of land that must be provided for social and affordable housing in a housing development. With regard to the provision of affordable housing, it is considered that meeting the current acute need for social housing should be the priority for local authorities in the first instance. You will be aware that all previous affordable housing schemes have been stood down since 2011, and as such, local authorities should now seek agreement to fulfil Part V obligations in the form of the direct transfer of completed social housing units, where possible. Where capital funding is available, local authorities should aim to enter Part V agreements for the acquisition of social housing units by the local authority or an approved housing body. Where capital funding is not available, long-term leasing arrangements continue to offer a flexible mechanism for local authorities in the context of fulfilment of Part V obligations. When entering into such leasing arrangements, local authorities should ensure that a minimum lease period of ten years is agreed. Overall, local authorities should aim to balance the provision of Part V units in their area, cognisant of the need to ensure the delivery of as many permanent units for social housing as possible within the financial resources available.

Housing Strategies

As a consequence of the amendments contained in section 31 of the Act of 2015, it will be necessary for local authorities to review and revise, where necessary, their Housing Strategies by varying their development plans, to take account of the reduced requirements. In the interim period, authorities will operate within their current housing strategies. However, the change from 20% to 10% should be applied with effect from 1 September 2015 when considering a planning application and entering into a Part V agreement. In relation to seeking the provision of social housing, this limit may be further constrained by what is specified in the existing housing strategy. It should be noted that section 31 of the Act of 2015 amends section 94 of the 2000 Act and authorities should be cognisant of these amendments. When existing housing strategies have been reviewed, and revised, where necessary, consideration will be given to commencing Chapter 2 of Part 2 of the Housing (Miscellaneous Provisions) Act 2009 relating to Housing Services Plans, in accordance with the commitment in the Social Housing Strategy 2020. Local authorities will be notified separately in this regard.

Transitional arrangements

Provision has been made in the Act of 2015 to the effect that where a commencement notice has **not** been lodged in respect of a particular development, the new Part V arrangements can, with the consent of the local authority and the developer, be retrospectively applied to existing planning permissions. When engaging in such renegotiations, local authorities

should aim to have Part V obligations discharged, if possible, in ways that maximise the potential for the delivery of social housing units.

Detailed Part V guidance is being updated to take account of legislative amendments and to reflect best practice in the negotiation and agreement of Part V Agreements. The revised guidance will be communicated to local authorities as soon as possible. Please refer to the Appendices to this Circular for detail regarding implementation issues and the legislative changes.

If you have any queries regarding the operation of Part V, you should contact Pat Fitzpatrick in the Housing Agency at 01 656 4100 or Pat.Fitzpatrick@housing.ie.

A copy of this Circular is available on the Sharepoint system (<http://circulars.lgcsb.ie/doecirculars>) under the category "Housing" and on the Housing manual at www.housingmanual.ie

Yours sincerely,



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Principal Officer
Housing Division

cc. Directors of Housing, Planning and Finance

Appendix 1

Part V Planning and Development Act 2000, as amended by the Urban Regeneration and Housing Act 2015

Implementation Issues

Disapplication of section 96 (social and affordable housing provision)

Local authorities are advised that under section 36 of the Act of 2015, the social and affordable housing obligations, contained in section 96 of the Act of 2000, are now disapplied in respect of developments consisting of 9 or fewer houses. Up to now, the obligations were disapplied in the case of developments consisting 4 or fewer houses.

Housing Strategies

Local authorities will need to review and revise, as necessary, their Housing Strategies by varying their development plans, to ensure that they conform with the amended section 94(2) of the Planning & Development Acts and reflect national policy.

In preparing/reviewing a housing strategy, local authorities should:

- have regard to the most recent social housing needs assessment;
- consult with approved housing bodies in its functional area;
- have regard to relevant housing policies of the Government or any Minister;
- change to 10%, from 20%, the percentage of land zoned for residential use, or for a mixture of residential and other uses, that must be provided for social and affordable housing; and
- note that the current focus of Part V agreements should, if possible, be placed entirely on social housing output at this time.

When existing housing strategies have been reviewed, and revised, where necessary, consideration will be given to commencing Chapter 2 of Part 2 of the Housing (Miscellaneous Provisions) Act 2009 relating to Housing Services Plans, in accordance with the commitment in the Social Housing Strategy 2020. Local authorities will be notified separately in due course in this regard.

Changes to the options for compliance with section 96 of the Act of 2000

The primary objective of the amendments to the options, contained in section 96 of the Act of 2000, for the delivery of units within a Part V agreement is to maximise the transfer of completed social housing units. Consistent with the partnership approach to the delivery of social housing that underpins the Social Housing Strategy, where local authorities are not in a position to deliver Part V housing units, they should seek to engage with Approved Housing Bodies to identify a partner to deliver units.

Part V delivery options (post Act of 2015)

- the transfer of ownership of land, subject to the planning permission application, to a local authority for the provision of social housing remains the default option as is currently the case. The land option must be acceptable to the local authority as well as the developer;
- the building and transfer of ownership to the local authority, or persons nominated, of completed social housing units on the land, subject to the planning permission application;
- the transfer of ownership to the local authority, or persons nominated, of completed social housing units on other land, not subject to the planning permission. There is no longer a requirement for the developer to build housing units on other land to fulfil his/her Part V obligations. The developer might have a stock of suitable houses or he/she can simply acquire housing units for such purposes. This allows social housing units to be delivered in a more timely fashion in another location, in the event that the development that is the subject of the planning permission does not meet the social housing or mixed tenure needs of the local authority;
- the Part V obligation can now be fulfilled by developers through long term leasing of properties; and
- a combination of the Part V options above is also allowed.

Please note that section 34 of the Urban Regeneration and Housing Act 2015 has not yet commenced and that the Part V obligation cannot be fulfilled by developers through rental accommodation availability agreements at this time. Chapter 4 of Part 2 of the Housing (Miscellaneous Provisions) Act 2009, which provides a legislative underpinning for rental accommodation availability agreements, must be commenced before section 34 of the 2015 Act can be brought into operation. A separate notification will issue to local authorities in due course with regard to commencing Chapter 4.

Part V options removed under the Act of 2015:

- the option of transferring ownership to the local authority, or persons nominated, of fully or partially serviced sites on land, subject to the planning permission application, is now gone;
- the option of transferring ownership to the local authority of land within its functional area, **other than** the land subject to the planning permission application, is now gone;
- the option of transferring ownership to the local authority, or persons nominated, of fully or partially serviced sites on land, **other than** the land subject to the planning permission application is now gone; and
- the option of providing a cash payment in lieu of social housing is now gone.

Part V process

Pre-planning consultation and conclusion of Part V agreements:

Section 33(1)(a) of the Act of 2015 requires a Part V agreement to be reached between the developer and the local authority **prior to** the lodgement of the commencement notice.

This new requirement is complemented by changes in the Planning and Development (Amendment) (No. 3) Regulations 2015 that requires a detailed Part V proposal to be included in an application for planning permission for relevant housing developments, in order for the application to be valid.

This measure will have the effect of front-loading negotiations in relation to Part V arrangements – optimising the pre-planning consultation phase, and ultimately ensuring that all parties are clear on their Part V obligations, primarily to deliver social housing units, before development works commence.

Court judgements and practical difficulties:

Section 33 of the Act of 2015 also provides greater clarity to the meaning of certain terms which has led to litigation in the past. Taking account of court judgements and practical difficulties reported in the operation of Part V, greater clarity on the meaning of terms like “attributable costs/appropriate share of cost of common development works” and “net monetary value” is provided. These amendments are intended to improve the Part V negotiation process for all parties.

Calculations and ensuring value for money

In entering into Part V agreements, local authorities should have regard to section 96(3)(c) of the Act of 2000, as amended. This requires local authorities to consider, amongst other things:

- the effective and efficient achievement of the objectives of the local authority’s own housing strategy; and
- the best use of resources to ensure an adequate supply of housing and the financial implications of the agreement.

In essence, local authorities should consider value for money in the making of any agreements and:

- adhere to sections 96(3)(d) and 96(6), as amended, and note that the value of the land is now calculated by reference to its existing use on the date on which the planning permission is granted, rather than on the date the land was transferred as was previously the case; and

- adhere to the Department's expenditure ceilings (Circular 24/2015 refers) and acquisition cost guidelines; and
- adhere to the Department's Unit Cost Ceilings (Circular 28/2015 refers) .

Retrospective application of new Part V arrangements

The new Part V arrangements can be retrospectively applied under section 33(2) and (3) (and section 34(2) and (3), when commenced), **with the consent of the local authority and the developer**, to existing planning permissions where a commencement notice has **not** been lodged. In such a case and with the consent of the developer and the local authority, Part V agreements reached on foot of the existing Part V provisions **may be re-negotiated** in line with the requirements of the new Part V provisions under the Act of 2015.

Planning and Development (Amendment)(No. 3) Regulations 2015

Planning and Development (Amendment)(No. 3) Regulations under the Act of 2000 make necessary amendments on foot of the Act of 2015 with regard to applications for planning permission under section 33 of the Act of 2000 and for certificates under section 97 of the Act of 2000 (which state that section 96 shall not apply in respect of a particular development consisting of 9 or fewer houses) and will be displayed on the Department website, [www.viron.ie](http://www.environ.ie), as soon as possible.

Detailed Part V guidance for local authorities

Detailed Part V guidance is being updated to take account of legislative amendments under the Act of 2015 and to reflect best practice in the negotiation and agreement of Part V Agreements. The revised guidance will also be communicated to local authorities as soon as possible.

Appendix 2

Explanatory Notes

Urban Regeneration and Housing Act 2015

Part 5 – Amendment of the Part V of Planning and Development Act 2000 (Act of 2000)

Housing Supply (section 31 to 36)

Section 31 Amendment of section 94 of Act of 2000 – housing strategies

Section 31 of the 2015 Act amends section 94 of the Act of 2000 by requiring a planning authority, in preparing its housing strategy, to consult with approved housing bodies in its functional area and to have regard to relevant housing policies of the Government or any Minister.

It also changes to 10%, from 20%, the percentage of land zoned for residential use, or for a mixture of residential and other uses, that must be provided for social and affordable housing.

These changes reflect the vision set out in the Social Housing Strategy 2020 – Support, Supply and Reform, including with regard to the contribution Approved Housing Bodies (AHBs) can make to the delivery of social housing.

Paragraph (a) replaces subsection (2) of section 94 with a new subsection (2) which provides for what the local authority should consider when preparing its housing strategy.

The new subsection (2)

- retains the requirement under paragraph (a) for a planning authority to have regard to the most recent summary of social housing assessments prepared under section 21(a) of the Housing (Miscellaneous Provisions) Act 2009 that relate to the area of the development plan;
- introduces a new requirement under paragraph (b) for a planning authority to consult with approved housing bodies in its functional area; and
- introduces a new requirement under paragraph (c) for a planning authority to have regard to relevant policies or objectives for the time being of the Government or any Minister of the Government that relate to housing and, in particular, social integration in the provision of housing services. Such policies might relate to housing services for older people, people with disabilities, members of the Traveller community, etc.

Paragraph (b) amends:

- section 94(4)(c) by changing to 10%, from 20%, the maximum percentage of the land zoned for residential use, or for a mixture of residential and other uses, required to be reserved for social and affordable housing provision; and

- section 94(4)(d) by now making a consequential reference to the 10% requirement specified in new section 94(4)(c).

Section 32 Amendment of section 95(1)(a) of Act of 2000 – housing strategies and development plans

Section 32 amends section 95 of the Act of 2000 by introducing a new requirement in subsection (1)(a), for a planning authority, in conjunction with the inclusion of a housing strategy in its development plan, to have regard to the overall strategy for the proper planning and sustainable development of the area of the development plan when ensuring sufficient and suitable land is zoned for residential use, or for a mixture of residential and other uses.

This provision aims to enhance the proper planning and sustainable development of housing across local authorities.

The new s.95(1)(a) reads as follows:

95.—(1) (a) *In conjunction with the inclusion of the housing strategy in its development plan, a planning authority shall, **having regard to the overall strategy for the proper planning and sustainable development of the area of the development plan referred to in section 10**, ensure that sufficient and suitable land is zoned for residential use, or for a mixture of residential and other uses, to meet the requirements of the housing strategy and to ensure that a scarcity of such land does not occur at any time during the period of the development plan.*

Section 33 Amendment of section 96 of Act of 2000 – provision of social and affordable housing, etc

The objective of the amendments to the options, contained in section 96 of the Act of 2000, for the delivery of units within a Part V agreement is to maximise the transfer of ownership of completed social housing units to planning authorities or to persons nominated by the authority in accordance with Part V. The transfer of land remains the default option as is currently the case. In practice, the land option should be acceptable both to the planning authority and the developer. However, the option of providing cash payment in lieu of social housing is being removed, as is the option of providing sites or land elsewhere.

Provision is made for the transfer of completed units on other land, not subject to the planning permission. This allows social housing units to be delivered in another location, in the event that the development that is the subject of the planning permission does not meet the social housing or mixed tenure needs of the local authority. Provision is also made for the Part V obligation to be fulfilled by developers through long term leasing (*section 33*) of properties and rental accommodation availability agreements (*section 34, **to be commenced at a later date***). These latter Part V options reflect amendments to section 96 of the Act of 2000 that were provided in section 38 of the Planning and Development (Amendment) Act 2010, but which were not commenced and are now repealed.

A number of technical amendments are made to certain provisions to take account of court judgments and practical difficulties reported in the operation of Part V. These include references to 'net monetary value' and 'attributable costs/appropriate share of cost of common development works'.

The new Part V arrangements can be retrospectively applied to existing planning permissions where works have not commenced (*sections 33(2) [and 34(2) to be commenced at a later date]*). With the consent of the developer and the local authority, Part V agreements reached on foot of the existing Part V provisions may be renegotiated in line with the amendments contained in the Bill.

Section 33

Paragraph 1(a) amends section 96(2) of the Act of 2000.

This explicitly provides that the Part V agreement has to be made with the planning authority before the developer lodges a commencement notice within the meaning of Part II of the Building Control Regulations 1997. In certain instances in the past, Part V agreements were not finalised between parties before construction commenced. This led to confusion and lack of clarity on the part of both developers and planning authorities about the social housing dividend required. This amendment will ensure that there is clarity about the social housing dividend early in the planning / construction process.

Paragraph 1(b)(i) amends section 96(3)(b) of the Act of 2000 by deleting sub-paragraphs (ii) and (iii), which removes the existing option for the developer to provide fully or partially serviced sites on the land subject to the planning permission application and the option of transferring other land within the functional area of the local authority.

Paragraph 1(b)(ii) amends section 96(3)(b) of the Act of 2000 by replacing the existing subparagraph (iv).

A new option is provided for the developer to transfer housing units on any other land within the functional area of the local authority to the authority itself, or to another nominated party, such as an Approved Housing Body. The existing provision requires that the developer must build such housing units for transfer. This is no longer a requirement and the developer may now simply acquire such housing units for transfer. This should speed up the transfer of housing units to fulfil the pressing social housing need.

Paragraph 1(b)(iii) amends section 96(3)(b) of the Act of 2000 by inserting a new subparagraph (iva).

A new option is provided for the developer to agree with the planning authority, to lease out units for social housing either on or off-site. This provision is modelled on section 38 of the Planning and Development (Amendment) Act 2010 which did not commence.

Paragraph 1(b)(iv) amends section 96(3)(b) of the Act of 2000 by deleting sub-paragraphs (v) and (vi), which removes the existing option for the developer to provide fully or partially serviced sites on land other than that subject to the planning permission application – i.e. offsite - and the cash option. The focus is now firmly on the provision of units.

Paragraph 1(b)(v) amends section 96(3)(b) of the Act of 2000 by replacing the existing subparagraph (viii). This is a consequential amendment required to reflect the new numbering sequence within section 96(3)(b). Flexibility is maintained for the planning authority to incorporate a combination of 2 or more of the up-to-date options in any Part V agreement.

Paragraph 1(b)(vi) amends section 96(3)(b) of the Act of 2000 by providing for a consequential, technical change required to take account of the foregoing amendments to

section 96(3)(b) and provides clarity as to how the net monetary value of the property, or the rent reduction in the context of a leased property, is to be calculated. Guidance and examples of such calculations will issue as soon as possible.

Paragraph 1(c) amends section 96(3)(d) of the Act of 2000 by substituting a new subsection 96(3)(d).

This is a consequential, technical, amendment required to bring clarity on the costs to be considered as a basis for calculating the price of housing units to be transferred under Part V. The amendment takes account of relevant court judgments and practical difficulties reported in the operation of Part V.

Paragraph 1(d) amends section 96(3)(e) of the Act of 2000 by removing the option to provide sites.

Paragraph 1(e) amends section 96(3)(f) by deleting the reference to 'sites'. This is a consequential, technical amendment. A further consequential amendment is made to reflect the new provision regarding leasing.

Paragraph 1(f) amends section 96(6)(b) by now using the value of the land calculated by reference to its existing use on the date on which the planning permission is granted, as opposed to the date of transfer of the ownership of the land of the authority, to calculate the amount to be paid to the developer. This amendment is intended to speed up the completion of Part V agreements and will also minimise local authorities' exposure to rising land prices. This should speed up the provision of social housing.

Paragraph 1(g) amends section 96(7)(a) by:

- (i) inserting a new subparagraph (ia) -

Subparagraph (ia) is a technical provision requiring the Part V agreement to include details of the number of units and the rents payable for leased units; and

- (ii) making a consequential, technical amendment to remove the existing sub-paragraph (ii), as it relates to the 'site' option which has been removed.

Paragraph 1(h) amends section 96(8) by now allowing the planning authority, as well as the developer and/or interested parties, access to An Bord Pleanála in the event of a dispute over a Part V agreement;

Paragraph 1(i) amends section 96(9) by removing references to 'or sites'. This is a consequential, technical amendment required as the 'site' option has now been removed as a Part V option.

Paragraph 2 provides for the retrospective application of the new Part V arrangements to existing planning permissions where a commencement notice has not been lodged. With the consent of the developer and the local authority, Part V agreements reached on foot of the existing Part V provisions may be renegotiated in line with the amendments contained in the Act of 2015. This aims to encourage house construction activity and speed up delivery of social housing and social integration.

Paragraph 3 provides that where the new Part V arrangements are retrospectively applied, in accordance with paragraph (2), to existing planning permissions, the revised Part V Agreement must adhere to the new Part V provisions under the Act of 2015.

Section 34 **Amendment of section 96 of Act 2000 – rental accommodation availability agreements**

Section 34 has not yet commenced. Chapter 4 (Rental Accommodation Availability Agreement) of Part 2 of the Housing (Miscellaneous Provisions) Act 2009 must be commenced before section 34 of the Act of 2015 can be brought into operation.

Section 35 **Repeal**

Section 35 repeals Section 38 of the Planning and Development Act of 2010. This section was never commenced and is now superseded by the new provisions included in the Act of 2015 with regard to long term leasing and rental accommodation availability agreements as Part V delivery options.

Section 36 **Amendment of section 97 of Act of 2000 – development to which section 96 shall not apply**

Section 36 provides that the exemption from the Part V provisions shall, henceforth, apply to developments of 9 units or less. Previously, the exemption from the provisions of Part V applied only to developments of 4 or less. This ensures that a minimum of one social housing unit (i.e. 10% of the total number of units) must be provided in any development comprising in excess of 9 housing units.

This amendment is, in part, due to the reduction in the requirement from up to 20% to up to 10% but also, to ensure that smaller less dense housing developments are not excessively burdened.

Part 6 – Amendment of Housing (Miscellaneous Provisions) Act 2009

Section 37 **Amendment of section 31 of Housing (Miscellaneous Provisions) Act 2009**

Section 37 substitutes a new subsection (1) for section 31(1) of the Housing (Miscellaneous Provisions) Act 2009, which relates to local authority rent schemes and charges. The amendment confirms that section 31 will apply to dwellings that are the subject of financial support under the new Housing Assistance Payment (HAP) scheme, as well as to dwellings owned by a housing authority and dwellings leased or contracted by a housing authority (including dwellings provided under rental accommodation arrangements). Local authorities will be notified in due course of the commencement of section 31 of the Act of 2009.

Appendix 3

Text of section 93(3)(d) and 96(6) of the Planning and Development Act 2000, as amended by the Act of 2015

Section 96(3)(d) –

“Where houses are to be transferred to the planning authority in accordance with an agreement under paragraph (b), the price of such houses shall be determined on the basis of—

(i) the site cost of the houses (calculated in accordance with subsection (6)), and

(ii) the costs, including normal construction and development costs and profit on those costs, calculated at open market rates that would have been incurred by the planning authority had it retained an independent builder to undertake the works, including the appropriate share of any common development works, as agreed between the authority and the developer.”

Section 96(6) –

“Where ownership of land is transferred to a planning authority pursuant to subsection (3), the planning authority shall, by way of compensation, pay to the owner of the land a sum equal to—

(a) (i) in the case of—

(I) land purchased by the applicant before 25 August 1999, or 10.J. No. L 199/54, 9.7.1993

(II) land purchased by the applicant pursuant to a legally enforceable agreement entered into before that date or in exercise of an option in writing to purchase the land granted or acquired before that date,

the price paid for the land, or the price agreed to be paid for the land pursuant to the agreement or option, together with such sum in respect of interest thereon (including, in circumstances where there is a mortgage on the land, interest paid in respect of the mortgage) as may be determined by the property arbitrator,

(ii) in the case of land the ownership of which was acquired by the applicant by way of a gift or inheritance taken (within the meaning of the Capital Acquisitions Tax Act, 1976) before 25 August 1999, a sum equal to the market value of the land on the valuation date (within the

meaning of that Act) estimated in accordance with section 15 of that Act,

(iii) in the case of—

(I) land purchased before 25 August 1999, or

(II) land purchased pursuant to a legally enforceable agreement to purchase the land entered into before that date, or in exercise of an option, in writing, to purchase the land granted or acquired before that date,

(where the applicant for permission is a mortgagee in possession of the land) the price paid for the land, or the price agreed to be paid for the land pursuant to the agreement or option, together with such sum in respect of interest thereon calculated from that date (including any interest accruing and not paid in respect of the mortgage) as may be determined by the property arbitrator,

or

(b) the value of the land calculated by reference to its existing use **on the date on which the permission referred to in subsection (2) is granted** on the basis that on that date it would have been, and would thereafter have continued to be, unlawful to carry out any development in relation to that land other than exempted development, whichever is the greater.”

Bold and underline added for emphasis in section 96(6)(b) directly above.