



Comhshaol, Pobal agus Rialtas Áitiúil
Environment, Community and Local Government



Application of Part V of Planning and Development Act 2000, after 1 September 2015, to developments granted permission prior to 1 September 2015.

Guidelines issued by the Minister for the Environment, Community and Local Government under section 28 of the Planning and Development Act 2000.

May 2016

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1. Urban Regeneration and Housing Act 2015

Significant changes were made to Part V of the Planning and Development Act 2000 by sections 31 to 33 and sections 35 to 36 of the Urban Regeneration and Housing Act 2015 (the 2015 Act). The Department's Circular Letter Housing 33 of 2015, dated 31 August 2015, refers. (The revised Part V is contained in the Law Reform Commission's revised Planning and Development Act 2000 at

http://www.lawreform.ie/fileupload/RevisedActs/WithAnnotations/HTML/EN_ACT_2000_0030.HTM).

The amendments made in the 2015 Act included:

- the removal of the options for developers to fulfil Part V obligations by
 - making a financial contribution;
 - making available land outside the development site;
 - making available serviced sites on the development;
- the introduction of a new option of leasing units by the developer, and,
- a reduction, to no more than 10%, of land required to be reserved for social and affordable housing.

The provision of land on the development site remains the default option for the developer, the other options being, subject to the agreement of the planning authority, the transfer of units on site or off site, the leasing of units on site or off-site, of a combination of options.

These Guidelines concern some transitional issues relating to the 2015 amendments. They are issued by the Minister for the Environment, Community and Local Government to planning authorities and An Bord Pleanála (the Board) pursuant to section 28 of the Planning and Development Act 2000, as amended.

2. Application of new provisions to Part V agreements made prior to 1 September 2015

Section 33(2) of the Urban Regeneration and Housing Act 2015 provides:

“(2) Where, on the date of the coming into operation of subsection (1), a permission has been granted subject to a condition referred to in section 96(2) of the Act of 2000 but a commencement notice within the meaning of Part II of the Building Control Regulations 1997 has not been lodged, any existing agreement under section 96 of the Act of 2000 may be amended prior to the lodgment of such commencement notice with the consent of all parties to such agreement provided that the agreement so amended complies with the provisions of Section 96 on the date on which the agreement is amended.

That is, the Act made specific provision that in cases where a Part V agreement had been made before 1 September 2015, under the previous Part V, that agreement could be re-negotiated under the new amended Part V, with the agreement of both parties, and provided that a commencement notice had not been lodged.

Where the Part V agreement in respect of a development was already made at 1 September 2015, and the commencement notice in respect of the development had been lodged at that date, there is no provision for the re-negotiation of the agreement in such a way that it would not comply with Part V as constituted at the date the agreement was originally made. The provisions applicable to a Part V agreement are those in force at the date the agreement was made.

However, In the scenario where a Part V agreement in respect of a particular development was made prior to 1 September 2015, but at that date a commencement notice had been lodged only in respect of part of the development, the agreement may be re-negotiated in respect of the part of the development in respect of which a commencement notice had not yet been lodged at 1 September 2015. This would effectively mean making a new Part V agreement, compliant with the amended Part V, in respect of the part of the development not included in the commencement notice which had been lodged prior to 1 September 2015.

3. Permission granted at 1 September 2015 but Part V agreement not made at that date

In respect of cases where permission for a development had been granted before 1 September 2015 but the Part V agreement was not yet made on or before that date all Part V agreements made after 1 September 2015 must be made under and in compliance with the provisions of Part V as amended with effect from 1 September 2015. The basic underlying legal principle being that a Part V agreement, whenever entered into, will be subject to the law of the land that is in force on whatever date the agreement is made and not to the law that existed on some other date such as the date the permission was granted. Given that the Oireachtas explicitly provided that certain Part V agreements already made on 1 September 2015 could be amended (where commencement notice was not yet lodged) it would not have intended that agreements not yet made on 1 September 2015 would be subject to the old Part V provisions.

4. Amendment of Part V agreements made since 1 September 2015

Where Part V agreements have been made since 1 September 2015 under the old unamended provisions which should have been made under the new provisions, such agreements should be amended to bring them into compliance with the new amended provisions, where this is the request of the developer/recipient of planning permission. It is not envisaged that there is any legal difficulty with amending a Part V agreement, to comply with the legislation, with the agreement of both parties to the agreement. (The principle of amendment of a Part V agreement with the consent of the parties is recognised and adopted by section 33(2) of the 2015 Act).