



To: Directors of Housing in each local authority
Directors of Planning in each local authority

CC: Chief Executives
Senior Planners
An Bord Pleanála
Office of the Planning Regulator
Directors of Regional Assemblies

Circular Letter: ‘Housing 09/2023’ and Planning ‘PL 01/2023’

10 March 2023

Re: Amendments to Planning Legislation relating to local authority Housing Developments - Planning and Development, and Foreshore (Amendment) Act 2022

Please find enclosed copies of:

- (i) the Planning and Development and Foreshore (Amendment) Act 2022 (Commencement) (No. 2) Order 2023 [S.I. 107/2023], and
- (ii) the supporting Planning and Development (Section 179A) Regulations 2023 [S.I. 101/2023],

as signed by Mr. Darragh O’Brien, T.D., Minister for Housing, Local Government and Heritage in relation to the temporary exemption for local authorities from the ‘Part 8’ approval process to construct housing developments on local authority and designated State owned lands zoned to include residential use, and subject to compliance with the requirements of the recently inserted section 179A of the Planning and Development Act 2000, as amended, and its supporting regulations. Both the Commencement Order and the Regulations **take effect from 08 March 2023.**



Under Housing for All, a key focus is to increase the delivery of social and affordable housing. In the period 2022-2030, Housing for All will deliver over 90,000 new social homes and 54,000 affordable homes for purchase or rent. Significant progress has been made in increasing the numbers of new build social homes being delivered by local authorities and Approved Housing Bodies, while also increasing implementing new schemes to provide affordable homes for purchase and the new tenure of cost rental. Housing for All is underpinned by over €4bn in capital investment each year to support to delivery of public housing and other housing programmes.

Over the past 12 months, we have witnessed increasing pressures on the housing system with significant increases in homelessness and pressure on emergency accommodation arising from the arrival of a large number of Ukrainians seeking protection following the Russian invasion. The Government is committed to accelerating the delivery of social and affordable housing to support the many households seeking a home to buy or rent at an affordable price. In this regard a number of measures being taken to accelerate the delivery. This includes amendments to the planning legislation governing local authority developments to support accelerated delivery of public housing projects. These amendments are for a temporary period, applying to developments which commence construction before the end of 2024 and which meet the criteria set out in the Act.

Amendments to the Planning and Development Act

The Planning and Development and Foreshore (Amendment) Act 2022 (No. 47 of 2022) (PDF(A) Act) was enacted in December 2022. The PDF(A) Act makes a number of amendments to the provisions in sections 4 and 179 of the Planning and Development Act 2000, as amended (the Act) and inserts a new section 179A providing an exemption for local authorities from the ‘Part 8’ local authority “own development” approval process and specifies exempted development status for the provision of specified forms of housing developments on designated State lands. These newly commenced provisions provide for the following:



1. Amendment of section 4 of the Act to provide that housing developments being constructed by local authorities under section 179A of the Act are classed as exempted development.
2. Amendment of section 179 of the Act to ensure that the local authority “own development” approval process under section 179 of the Act is not applied to housing developments constructed under section 179A of the Act.
3. The insertion of a new section 179A into the Act requiring a Chief Executive to inform the elected members of a local authority of proposed housing developments which it is intended to progress under the exemption as well as to give public notice and enable public inspection of the proposals in a prescribed manner. This new provision, which is a temporary time-limited measure to help expedite the provision of housing by local authorities in the context of the need to accelerate the delivery of housing supply, will be mandatory for local authorities in strictly defined circumstances where the following criteria are satisfied:
 - the land is owned by the local authority or another specified State Body;
 - the land is zoned for residential development;
 - the proposed development does not materially contravene the development plan or local area plan for the area;
 - the proposed development is in accordance with the relevant local authority’s housing strategy;
 - the land is serviced or will be serviced with the necessary supporting infrastructure or facilities within the timeframe of the development;
 - the proposed development is not required to undergo environmental impact assessment (EIA) under the EIA Directive or appropriate assessment (AA) under the Habitats Directive; and



- the development works in question are commenced by no later than 31 December 2024.

The Planning and Development and Foreshore (Amendment) Act 2022 (Commencement) (No. 2) Order 2023 [S.I. 107/2023] has been signed, providing for the commencement of Section 179A of the Planning and Development and Foreshore (Amendment) Act 2022 with effect from 08 March 2023.

Planning and Development (Section 179A) Regulations

To supplement the provisions in new section 179A of the Act, the Planning and Development (Section 179A) Regulations 2023 [S.I. 101/2023] were signed by the Minister on 08 March 2023. These regulations set out the steps local authorities must take in order to comply with the new section 179A.

The new regulations which amend the Planning and Development Regulations 2001, as amended (2001 Regulations), set out the following:

- New article 39A requires local authorities to submit quarterly reports on the use of the exemption and enables the Minister to request information on the number of potential sites available for use under the exemption within the functional area of a local authority.
- New article 81A:
 - requires the Chief Executive to formally notify the elected members of the proposed housing development prior to issuing a site notice and newspaper notice, which must be issued at least eight weeks prior to the commencement of works. (It is further recommended in this regard that the Chief Executive should informally signal in advance, the proposed development to the relevant local elected



members prior to the formal notification of the placing of the site notice and the public advertisement.) This eight week notification period is consistent with the eight week timeframe in section 50 of the Act within which a judicial review challenge against a planning decision must be initiated post the making of the decision;

- sets out the information and details that must be included in the site notice and newspaper notice and where a site notice must be located;
 - requires local authorities to screen proposed developments for EIA and AA and that only where a proposed development is screened out from requiring the undertaking a full EIA or AA, the proposed development may proceed under the new exemption. If EIA/AA is screened in and is required to be undertaken in respect of the proposed development, the standard Part 8 process for the approval of local authority “own development” proposals under section 179 of the Act of 2000 must be used instead.
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- New article 82A requires the local authority to notify the relevant prescribed bodies of proposed developments with the list of prescribed bodies being the same list as that used under the Part 8 approval process.

 - New article 83A requires that the documents, plans and particulars of the proposed housing development must be entered in the planning register and made available for public inspection. Local authorities are further required to make the documents relating to the proposed housing development available for inspection on their website and in the offices of the local authority.



- New article 85A provides transitional arrangements regarding ongoing ‘Part 8’ processes for housing developments. Where a local authority has published a notice for a housing development under article 81(1) of the 2001 Regulations and section 179 of the Act prior to the commencement of section 179A of the Act, it shall continue to apply the process under section 179 of the Act to that proposed development.

It is important to note that the key role of elected members in setting the overarching framework for the development of their local area through the adoption of the development plan, associated zoning objectives and the adoption of the local housing strategy is not impacted by these temporary arrangements. The elected members will also retain their "Part 8" approval powers for all other forms of local authority own development proposals i.e. roads, bridges, waste facilities, swimming pools, fire stations, libraries, any other development works with a cost exceeding €126,000 etc. Any local authority housing proposals that are not commenced by 31 December 2024 will require "Part 8" approval by the elected members in the normal manner.

A guidance note on the implementation of the new arrangements by local authorities has been prepared in a “Questions and Answers” format and is attached herewith. Any queries in relation to this Circular letter should be emailed to the Housing Division of the Department at housingdeliveryCo-ordination@housing.gov.ie or to the Planning Division of the Department at planning@housing.gov.ie.

David Kelly
Principal
Housing Delivery

Terry Sheridan
Principal
Planning Policy and Legislation



Attachment for information:

- Planning and Development and Foreshore (Amendment) Act 2022 (Commencement) (No. 2) Order 2023 [S.I. 107/2023]
- Planning and Development (Section 179A) Regulations 2023 [S.I. 101/2023]
- Guidance for local authorities on the use of section 179A provisions