



An Bille fán nGníomhaireacht um Fhorbairt Talún, 2021
Land Development Agency Bill 2021

Meabhrán Mínteach
Explanatory Memorandum



**AN BILLE FÁN nGNÍOMHAIREACHT UM FHORBAIRT
TALÚN, 2021
LAND DEVELOPMENT AGENCY BILL 2021**

EXPLANATORY MEMORANDUM

Introduction

The purpose of the Bill is to give legislative underpinning to the Land Development Agency (LDA), previously established under Establishment Order, S.I. 352 of 2018, as amended by S.I. 603 of 2018.

The Bill comprises 78 Sections, arranged in 10 Parts and 2 Schedules.

The Agency will be established as a Designated Activity Company (DAC) under the Companies Act 2014 to develop and regenerate relevant public land for the delivery of housing. The Minister for Housing, Local Government and Heritage and Minister for Public Expenditure and Reform shall be shareholders. The Agency will be able to form DAC subsidiaries for the purposes of carrying out its functions.

The Agency will be able to borrow money for the purposes of undertaking its functions and the National Treasury Management Agency (Amendment) Act 2014 will be amended to provide for the capitalisation of the Agency through an investment from the Ireland Strategic Investment Fund (ISIF).

The existing LDA entity, established under statutory instrument, will be dissolved and its functions, assets, liabilities and staff shall be transferred to the newly established Agency.

The Agency will provide services to local authorities in order to assist them in the performance of their functions relating to development of sites for housing and urban development in population centres over 30,000 and will also be a designated development agency under the Planning and Development Act 2000.

The Agency will establish a Register of Relevant Public Land to identify land in urban population centres over 10,000 that can be made available for housing and the Agency will be able to acquire relevant public land at market value, by means of being offered first refusal on a proposed sale by the land owning public body. The Agency will also periodically report to Government in relation to public land in the Register, which could be suitable for housing or urban development and the Government may decide that certain land be transferred to the Agency for such purposes.

There will be a requirement that a proportion of any housing provided on relevant public land and former relevant public land be made available for affordable housing by the Agency or any other party which acquires such land.

Provisions of the Bill

PART 1

PRELIMINARY AND GENERAL

Short title and commencement

Section 1 contains the standard provisions about short title and commencement.

Purposes of Act

Section 2 outlines the purposes of the Bill.

Interpretation

Section 3 is a standard provision to set out interpretations for terms used in the Bill.

Relevant public body and relevant public land

Section 4 provides for the definition of “relevant public land” and a “relevant public body” for the purposes of the Bill.

Orders and regulations

Section 5 enables the making of orders and regulations by the Minister.

Expenses of Minister

Section 6 is a standard provision enabling expenses of the Minister in the administration of the Bill to be paid out of moneys provided by the Oireachtas.

Directions of Minister

Section 7 provides for the making of directions by the Minister to the Agency in the performance of its functions.

Review of achievement of purposes of Act

Section 8 provides that the Minister may review the extent to which the Agency has made progress towards achieving its overall purposes based on a report furnished to the Minister by the Agency.

Giving of notices

Section 9 provides for the giving of notices under this Bill.

Revocation

Section 10 provides for the revocation of the Orders of 2018, under which the existing LDA entity is established.

PART 2

LAND DEVELOPMENT AGENCY

Formation of Land Development Agency

Section 11 provides for the formation of a Designated Activity Company (DAC) limited by shares under the Companies Acts, to name it the “Land Development Agency” and for the Agency to be independent in carrying out its functions.

Constitution of Agency

Section 12 provides that the constitution of the Agency when formed will be consistent with the provisions of the Companies Act and this Bill. It also provides that no alterations to those documents will be valid without the prior approval of the Minister and the Minister for Public Expenditure and Reform.

Functions of Agency

Section 13 sets out the functions of the Agency. The main function of the Agency is to develop and manage relevant public land and, where applicable, other lands for the provision of housing for the public good.

Services to local authorities

Section 14 outlines how the Agency can provide services to local authorities, located in the area of a town the population of which is equal to or greater than 30,000, in relation to land owned by the local authority to assist the local authority in the performance of its functions. This section details the process involved for a local authority to request the services of the Agency, how the Agency determines if it can provide these services, and, where applicable, a Ministerial direction can be made. The Minister will determine the terms under which such Agency services are provided to local authorities.

Board of Agency

Section 15 provides for the Agency to have a board of between five and ten directors including a chairperson, each of whom is appointed by the Minister. The Board will require a quorum of three Directors to act. Directors can be appointed up to a maximum of two terms, each term not exceeding 5 years in length.

Chief Executive of Agency

Section 16 provides for the appointment of a CEO of the Agency by the Board and with the consent of the Minister. The CEO's appointment shall be subject to terms and conditions as determined by the Board with the prior approval of the Minister and the consent of the Minister for Public Expenditure and Reform. This section provides that the CEO shall at all times be a member of the Board but may not be Chairperson.

Accountability to Public Accounts Committee

Section 17 provides that the Agency CEO will give evidence to the Committee of Public Accounts on the matters specified in this section whenever required. This section provides that if the CEO is unavailable, he or she shall nominate a member of the Board or a senior officer of the Agency to appear on his or her behalf.

Accountability to other Oireachtas committees

Section 18 provides that the Agency CEO will give evidence to any other Oireachtas Committee on the general administration of the Agency when requested. This section provides that if the CEO is unavailable, he or she shall nominate a member of the Board or a senior officer of the Agency to appear on his or her behalf.

Appointed directors ceasing to hold office

Section 19 provides for the resignation of a Director of the Board. This section also provides for the removal of a Director of the Board, by the Minister, for specified reasons. It also provides for a Director to cease to hold office in specified circumstances.

Staff of Agency

Section 20 provides for the staffing of the Agency. This section provides that staff may be appointed under terms and conditions as determined by the Agency. This section also provides for the making of a superannuation scheme by the Agency with the approval of the Minister and the consent of the Minister for Public Expenditure and Reform.

Membership of either House of Oireachtas or European Parliament or local government

Section 21 sets out that the CEO or a board member will cease to be CEO or a member of the Board if he or she becomes a member of either House of the Oireachtas, the European Parliament or a local authority. Staff members who become members of these bodies shall stand seconded from the Agency for their term of office.

Disclosure of interests

Section 22 provides for the disclosure of interest by a board member, or a member of staff of the Agency or subsidiary DAC. This section provides that the Agency may alter the terms and conditions of a staff member's contract, or terminate the contract, where the staff member fails to disclose an interest to the Agency.

Disclosure of Confidential Information

Section 23 provides that the unauthorised disclosure of confidential information by a board member or a member of staff of the Agency or subsidiary DAC or an advisor or consultant will lead to appropriate action, up to and including the termination of a contract or the removal of a director from the Board, subject to the exemptions specified.

PART 3

FUNDING OF AGENCY

Share capital of Agency

Section 24 provides for shares of the Agency with a total nominal value of €1,000,000 to be allotted and issued to the Minister and shares of the Agency with a total nominal value of €99,000,000 to be allotted and issued to the Minister for Public Expenditure and Reform. Provision is also included for the Agency to allot and issue more shares to the Minister for Public Expenditure and Reform from time to time.

Shares in Agency

Section 25 provides for the holding of shares by the Minister and the Minister for Public Expenditure and Reform as well as arrangements for share redemption.

Payment of dividends

Section 26 provides that the Agency may pay dividends to the Minister and the Minister for Public Expenditure and Reform of the amount decided by the Board of the Agency in consultation with both Ministers.

Borrowing by Agency and subsidiary DAC

Section 27 provides that the Agency and any subsidiary DAC may borrow money subject to the consent of the Minister, in consultation with the Minister for Public Expenditure and Reform, and the consent of the Minister for Finance. This section limits the amount that the Agency can be liable to repay at any given time to €1,250,000,000.

Grants to Agency

Section 28 provides for the payment of grants to the Agency from funding provided by the Oireachtas as the Minister, with the consent of the Minister for Public Expenditure and Reform, determines. These grants may be granted to enable the Agency to carry out specific functions as set out in this section.

Amendment of National Treasury Management Agency (Amendment) Act 2014

Section 29 allows the Minister for Finance, at the request of the Minister, to direct the NTMA to provide funds to the Agency from the Ireland Strategic Investment Fund (ISIF) on certain terms. The total value of these funds is not to exceed €1,250,000,000 at any one time.

Amendment of Housing Finance Agency Act 1981

Section 30 allows for the provision of financing to the Agency by the Housing Finance Agency with the approval of both the Minister and the Minister for Public Expenditure and Reform.

Agency's capital commitments

Section 31 provides that the Agency, or any subsidiary DAC, shall not enter into any capital commitment which exceeds a certain amount, without the prior consent of the Minister and the approval of the Minister for Public Expenditure and Reform. An amount may be specified by the Minister with the approval of the Minister for Public Expenditure and Reform.

PART 4

AGENCY TO ESTABLISH SUBSIDIARY DACS

Establishment of subsidiary DAC

Section 32 enables the Agency to establish one or more subsidiary DACs for the purposes of carrying out any one or more of its functions. The formation and winding up of a subsidiary DAC will require the consent of the Minister and the Minister for Public Expenditure and Reform.

Provision of staff and services by Agency to subsidiary DAC

Section 33 provides for the Agency to supply services, including administration, business and support services and staff to a subsidiary DAC. Costs incurred for the provision of such services or staff shall be payable by the subsidiary DAC to the Agency.

PART 5

DISSOLUTION OF BODY ESTABLISHED BY ORDER OF 2018

Dissolution of body established by Order of 2018

Section 34 provides for the dissolution of the body established by the Land Development Agency (Establishment) Order 2018 on a day as appointed by the Minister through Ministerial Order. This shall be the dissolution day.

Transfer of functions to Agency

Section 35 provides that all functions vested in the dissolved body will transfer to the Agency on the dissolution day.

Transfer of members of staff to Agency

Section 36 provides for the transfer of staff from the dissolved body to the Agency.

Transfer of land and other property

Section 37 provides for the transfer of all land and property that was vested in the dissolved body to the Agency on the dissolution day.

Transfer of rights and liabilities, and continuation of leases, licences and permissions granted by dissolved body

Section 38 provides for the transfer of rights and certain liabilities from the dissolved body to the Agency.

Preservation of contracts made by dissolved body

Section 39 provides that all contracts, agreements and arrangements entered into by the dissolved body shall continue and shall be construed as referring to the Agency.

Records of dissolved body

Section 40 provides that all records held by the dissolved body shall be the property of the Agency on the dissolution day.

Liability for loss occurring before dissolution day

Section 41 provides that any legal proceedings taken against the dissolved body, including claims in respect of loss or injury alleged, shall be continued after the dissolution day with the substitution in the claim or proceedings of the Agency for the dissolved body.

Final accounts and final report of dissolved body

Section 42 provides for the preparation of a final report and the final audited accounts of the dissolved body to be submitted to the Minister. A copy of both the final report and the audited accounts shall be laid before the Oireachtas.

Provisions consequent upon transfer of functions, assets and liabilities to Agency

Section 43 includes various miscellaneous provisions and provides that anything commenced but not completed by the dissolved body in the performance of its functions shall be carried on or completed by the Agency on or after the dissolution day.

First chief executive on dissolution day

Section 44 provides for the appointment of the first Chief Executive of the Agency as designated by the Minister on or before the dissolution day.

PART 6

FINANCIAL STATEMENTS AND PUBLIC ACCOUNTABILITY

Accounts of Agency and subsidiary DACs

Section 45 provides that the Agency and any subsidiary DACs shall prepare statutory financial statements in accordance with the Companies Act in such a form as may be approved by the Minister and the Minister for Public Expenditure and Reform. The Agency and any subsidiary DACs must submit its accounts to the Comptroller and Auditor General for audit within four months after the end of the financial year to which they relate. The audited accounts will be presented to the Minister and laid before the Houses of the Oireachtas.

Appointment of statutory auditor or firm

Section 46 provides that the Agency, or any subsidiary DAC, after prior consultation with the Minister may appoint a statutory auditor or statutory audit firm to be the statutory auditor of the Agency or subsidiary DAC.

Reporting arrangements

Section 47 provides that the Agency shall prepare and submit a report on the performance by it and any subsidiary DAC of its functions to the Minister no later than the 30 June of each year. The report will be laid before the Houses of the Oireachtas. The Minister may, at any time, request a report from the Agency on the performance of its or its subsidiary DAC functions.

PART 7

REGISTER AND ACQUISITION OF RELEVANT PUBLIC LAND BY AGENCY

Register of Relevant Public Land

Section 48 provides that the Agency will establish a register of all relevant public lands (lands owned by relevant public bodies in areas with a population greater than 10,000). The Property Registration Authority, Valuation Office and Ordnance Survey Ireland and relevant public bodies are obliged to provide information to the Agency to maintain the Register. It also provides that the Register shall be publicly available on the Agency's website.

Obligations of relevant public body

Section 49 provides that relevant public bodies must co-operate with the Agency in relation to its functions relating to the relevant public land of the body. It details the information that the Agency can request from a relevant public body and also provides that the Agency may, with the agreement of a relevant public body, enter onto any relevant public land to carry out surveys or inspect the site.

Report of Agency to Government relating to certain land

Section 50 provides that the Agency shall submit reports to the Government every 2 years on relevant public lands and land owned by the Agency. The report shall include information on such lands assessed by the Agency to be fit for the purposes of the Act. The first report will be submitted within 1 year of the commencement of this Section.

Proposal to dispose of relevant public land

Section 51 provides that a relevant public body shall not dispose of land unless the body has offered the land for sale to the Agency in the first instance. The Agency shall assess whether the land is fit for use for the purposes of the Bill and can decide to acquire or refuse to acquire the land.

Direction to acquire land

Section 52 provides that the Government having considered a report under Section 50 can direct that land of a Schedule 1 public body shall be acquired by the Agency.

Provision for determination of value of relevant public land

Section 53 provides that where relevant public land is being acquired by the Agency, the relevant public body shall receive the market value for the land, taking into account the requirement in relation to the development of houses on relevant public land in Part 9. It also provides that the Minister can prescribe how the market value of the land shall be determined where there is no agreement between the Agency and the relevant public body.

Vesting of certain relevant public land in Agency

Section 54 provides that where a decision has been made to transfer relevant public land to the Agency, the Minister may by vesting order transfer the land to the Agency.

Disposal of land by Agency

Section 55 provides that the Agency may with Ministerial consent dispose of land where it is no longer required by it for the performance of its functions.

Provision relating to local authority land under this Part

Section 56 provides that Section 211(2) of the Planning and Development Act 2000 and Section 183 of the Local Government Act 2001 shall not apply to the disposal of land owned by a local authority to the Agency.

General provision relating to operation of this Part

Section 57 are miscellaneous provisions for the purposes of Part 7 including in relation to the State Property Act 1954.

PART 8

COMPULSORY PURCHASE

Definitions

Section 58 provides the definitions that will apply to this Part.

Agency's power to acquire land compulsorily

Section 59 provides that the Agency may acquire land compulsorily where the land is required to provide access to relevant public land or land owned by the Agency or to facilitate the provision of infrastructure required by housing on relevant public land or land owned by the Agency. It may only acquire such land compulsorily if it has first made a reasonable attempt to acquire the land by agreement.

Application to Court for acquisition order

Section 60 provides that the Agency shall apply to the Court for an order where it proposes to acquire land compulsorily.

Notice of intention to apply to Court for order

Section 61 provides that the Agency will publish a notice of an application in a daily newspaper in the form (if any) prescribed by the Minister. It also provides that the Agency will, so far as is reasonably practicable, serve a copy of the initial notice on every person who appears to have an interest in the land concerned. This is intended to allow the holder of an interest the opportunity to object to the proposed acquisition.

Maps, plans and books of reference to be deposited

Section 62 provides that the Agency will cause maps, plans and books of reference to be deposited for inspection at such place or places as the Agency considers suitable.

Consideration by Court of objections

Section 63 provides that a person claiming an estate or interest in land may lodge an objection with the Court within 21 days after publication of the initial notice. The Court will consider any objection to the application of the Agency.

Acquisition order

Section 64 provides for the circumstances in which the Court will make an order authorising the Agency to compulsorily acquire land.

Notice to treat

Section 65 provides that where an acquisition order has been made, the Agency may serve a notice on every owner, lessee and occupier of the land (except tenants for a month or shorter period) stating that the Agency is willing to treat for the purchase of interests in the land. It also provides for related matters.

Agency's power to take possession

Section 66 provides for the Agency's power to take possession of land, subject to certain conditions.

Determination of compensation

Section 67 provides that the amount of compensation to be paid by the Agency for land will in default of agreement be fixed under and in accordance with the Acquisition of Land (Assessment of Compensation) Act 1919. It also provides for related matters.

Court may make compulsory transfer order

Section 68 provides the circumstances under which the Court may make a compulsory transfer order vesting land in the Agency. It also makes provision for related matters.

Agency to inform Revenue Commissioners if certain liabilities exist

Section 69 provides that where the Agency becomes aware before the making of a compulsory transfer order that a person from whom an estate or interest in land to be transferred is subject to a liability for estate duty, succession duty or inheritance tax, the Agency will notify the Revenue Commissioners of the Court's intention to make the order.

Form and effect of compulsory transfer order

Section 70 provides for the form of a compulsory transfer order. It also provides that the effect of the compulsory transfer order is to vest the specified land in the Agency on a date specified in the order.

Effect of compulsory acquisition without compulsory transfer order

Section 71 provides that upon the completion of a compulsory acquisition otherwise than by compulsory transfer order, all rights or easements in or relating to the land will (except so far as otherwise agreed) vest in the Agency without any conveyance or transfer. A person who suffers loss by the vesting of such a right or property is entitled to be paid compensation by the Agency determined in accordance with the Acquisition of Land (Assessment of Compensation) Act 1919.

PART 9

REQUIREMENT IN RELATION TO DEVELOPMENT OF DWELLINGS ON RELEVANT PUBLIC LAND AND FORMER RELEVANT PUBLIC LAND

Interpretation – Part 9

Section 72 provides for the definitions that will apply to this Part.

Requirement in relation to development of dwellings on relevant public land and former relevant public land

Section 73 provides that the provisions of this Part shall apply to an application for permission for a development of 10 or more dwellings on land that is relevant public land on the day this section comes into operation. The Government may, by order, exempt certain relevant public land from the provisions of this Part where the land is owned by a body that is required to act in a commercial manner, is referred to in Schedule 3 to the Grangegorman Development Agency Act 2005 and owned by the Technological University Dublin, or is owned by a local authority that wishes to dispose of land for the purposes of the performance of its public functions. As a condition of a grant of permission, the applicant must enter into an agreement with the planning authority to provide 50% of the housing for cost rental dwellings or dwellings for sale at a price in accordance with Section 76. It also provides for related matters.

Referrals to Board

Section 74 provides where there is a dispute in relation to an agreement under Section 73 it can be referred to An Bord Pleanála for determination.

Minister may set percentage

Section 75 provides that the Minister may set a percentage of housing higher or lower than that set out in *Section 73* and may also set different percentages for different geographical or administrative areas.

Price under agreement

Section 76 provides that dwellings provided under *Section 73* shall be below the prevailing market price or market rent. Prevailing market price is the median purchase price in the relevant administrative or geographical area based on the Residential Property Price Index published by the CSO and the prevailing market rent is the standardised median rent for the relevant administrative or geographical area according to the Rent Index published by the Residential Tenancies Board. It further provides that the Minister may prescribe the price or a method for calculating the price and may prescribe different prices for different geographical or administrative areas.

PART 10

MISCELLANEOUS

Amendment of Act of 2000

Section 77 provides that the Planning and Development Act 2000 is amended to provide the Agency with certain powers to act as a development agency under the Act.

Application of Freedom of Information Act 2014 to Agency

Section 78 provides that the Freedom of Information Act 2014 will apply to the Agency on establishment day and will include records held by the dissolved body.

Schedules

Schedule 1 Public Bodies

Schedule 1 contains all relevant public bodies which are deemed to be Schedule 1 public bodies.

Schedule 2 Public bodies

Schedule 2 contains all relevant public bodies which are deemed to be Schedule 2 public bodies.

*An Roinn Tithíochta, Rialtais Áitiúil agus Oidhreachta,
Feabhra, 2021.*