



STATUTORY INSTRUMENTS.

S.I. No. 21 of 2023

AFFORDABLE HOUSING (NO. 2) REGULATIONS 2023

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I, DARRAGH O'BRIEN, Minister for Housing, Local Government and Heritage, in exercise of the powers conferred on me by sections 3, 9, 11, 12 and 23 of the Affordable Housing Act 2021 (No. 25 of 2021), hereby make the following regulations:

Citation

1. These Regulations may be cited as the Affordable Housing (No.2) Regulations 2023.

Definitions

2. In these Regulations—

“Act of 2021” means the Affordable Housing Act 2021 (No. 25 of 2021);

“first-time buyer” means a person who has not previously purchased, or built, a dwelling in the State for his or her occupation;

“scheme of priority” means a scheme of priority made by a housing authority under section 11 of the Act of 2021;

“website” means an internet website (including part of such a website) –

- (a) to which access is readily available by members of the public, and
- (b) where anything published is readily available for inspection by members of the public.

Notification pursuant to section 9 of Act of 2021

3. A notification to the public by a housing authority of its intention to make affordable dwellings available for sale pursuant to section 9 of the Act of 2021 shall -

- (a) be published –
 - (i) in at least one newspaper circulating in the administrative area of, and
 - (ii) on a website maintained by, the housing authority concerned, and may also be published in such other manner as the housing authority considers appropriate;
- (b) state the location, number and type of dwellings to be sold;
- (c) state that, subject to exceptions, the dwellings shall generally only be available to first-time buyers;

Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 3rd February, 2023.

- (d) state that the dwellings will be sold at a price that is lower than market value, such price to be determined in accordance with the income of the purchaser, and that the housing authority will take a percentage equity share in the dwelling equal to the difference between the market value of the dwelling and the price paid by the purchaser, expressed as a percentage of the market value of the dwelling;
- (e) state that housing authority's equity may be subsequently be redeemed by the purchaser by making payments to the housing authority;
- (f) state that dwellings will be made available to eligible applicants in accordance with the housing authority's scheme of priority and inform the public of where the scheme of priority may be obtained;
- (g) state the minimum prices to be paid by eligible purchasers for dwellings and the typical gross income limits for eligibility for each type of dwelling;
- (h) state the period (including the dates such period commences and ends), which shall not be less than 3 weeks, during which applications to purchase a dwelling may be made, the commencement of which period shall be not less than 2 weeks after the date of publication, in accordance with paragraph (a), of the notification by the housing authority;
- (i) state the percentage of the dwellings for which, according to the housing authority's scheme of priority, the date and time of application will be one of the criteria on which eligible applications will be prioritised in accordance with that scheme;
- (j) state where the application form and further details may be obtained;
- (k) state any documentation required to accompany the application form or where details in relation to the required documentation may be obtained.

Applications for affordable dwelling purchase arrangements

4. (1) Applications pursuant to a notification published under Regulation 3 made on the application form supplied by the housing authority and accompanied by any documentation required by the housing authority to be submitted with the application, shall, subject to section 9(5) of the Act of 2021, be accepted by the housing authority, subject to being received within the time period referred to in Regulation 3(h).

(2) A housing authority shall, upon consideration of –

- (a) the completed application form, and
- (b) any necessary documentation to be submitted in addition to the application form,

referred to in paragraph (1), make a decision as to whether or not the applicant concerned would be eligible for an affordable dwelling purchase arrangement having regard to section 10 of the Act of 2021 and the Affordable Housing Regulations 2023.

(3) For the purposes of considering –

- (a) whether an applicant would be eligible for an affordable dwelling purchase arrangement, and
- (b) the priority to be given to an application under the housing authority's scheme of priority and Regulation 5,

a housing authority may, in addition to the documentation referred to in paragraph (2), seek further information or clarification from an applicant in relation to the application made.

(4) Subject to paragraph (5), where the number of eligible applicants exceeds the number of affordable dwellings available, the housing authority shall prioritise eligible applicants in accordance with its scheme of priority and Regulation 5.

(5) Where a housing authority decides that the information contained in the completed application forms received, pursuant to a notification published under Regulation 3, discloses that the applicants concerned would be eligible for an affordable dwelling purchase arrangement, the housing authority may prioritise the applicants in accordance with –

- (a) its scheme of priority and Regulation 5, and
- (b) the information supplied on the form concerned,

prior to assessing or seeking evidence of the matters referred to in the application form.

(6) A housing authority shall, before entering into an affordable dwelling purchase arrangement, request that an applicant it has prioritised under paragraph (5) provide to it such information and documentation, or further information and documentation, as the housing authority may reasonably require to enable it to confirm the veracity of the information contained in the application form.

(7) Where a housing authority, upon examination of the information and documentation provided to it, decides, in accordance with section 10 of the Act of 2021 and the Affordable Housing Regulations 2023, that the applicant concerned is eligible for an affordable dwelling purchase arrangement, it shall, as soon as practicable, inform the applicant that –

- (a) they are being offered, or
- (b) they are not being offered,

an affordable dwelling in accordance with the scheme of priority.

(8) Where a housing authority, upon examination of information and documentation provided to it decides, in accordance with section 10 of the Act of 2021 and the Affordable Housing Regulations 2023, that the applicant concerned is not eligible for an affordable dwelling purchase arrangement, it

shall so inform the applicant in writing as soon as practicable, setting out its reasons.

Scheme of priority

5. (1) In relation to 70 per cent of the dwellings the subject of applications accepted under Regulation 4, a scheme of priority shall provide the following:

- (a) where the number of eligible applicants exceeds the number of dwellings for which applications have been accepted, a housing authority shall give priority to eligible applicants on the following basis:
 - (i) for dwellings with 4 bedrooms: priority to be given to households of 3 persons or more;
 - (ii) for dwellings with 3 bedrooms: priority to be given to households of not less than 2 persons;
- (b) where, having applied the criterion in subparagraph (a), the number of eligible applicants still exceeds the number of dwellings for which applications have been accepted, a housing authority shall give priority to the eligible applicants in the order in which their applications were received.

(2) In relation to 30 per cent of the dwellings the subject of applications accepted under Regulation 4, a scheme of priority shall provide the following:

- (a) where the number of eligible applicants exceeds the number of dwellings for which applications have been accepted, a housing authority shall give priority to eligible applicants on the following basis:
 - (i) for dwellings with 4 bedrooms: priority to be given to households of 3 persons or more;
 - (ii) for dwellings with 3 bedrooms: priority to be given to households of not less than 2 persons;
- (b) where, having applied the criterion in subparagraph (a), the number of eligible applicants still exceeds the number of dwellings for which applications have been accepted, a housing authority shall give priority to the eligible applicants in accordance with criteria selected by the housing authority for the purposes of this paragraph and included in its scheme of priority.

(3) The criteria specified in paragraph (2)(b) may be the same as the criteria set out paragraph (1)(b), so that a housing authority may, if it chooses to do so, provide in its scheme of priority that 100 per cent of the dwellings the subject of applications accepted under Regulation 4 shall be allocated in accordance with the terms set out in paragraph (1).

(4) The criteria selected by the housing authority, referred to in paragraph (2)(b), may include priority being given to eligible applicants based on any person making the application being, or having been, resident in the

administrative area of the housing authority or being, or having been, so resident for a particular length of time.

Affordable dwelling purchase arrangements under section 12 of Act of 2021

6. (1) The minimum price to be paid by an eligible applicant for a dwelling under an affordable dwelling purchase arrangement shall be determined by the following formula:

$$(A/9) \times 10$$

where A is the –

- (a) gross income of the applicant multiplied by 4, or
- (b) where paragraph (3) of Regulation 2 of the Affordable Housing Regulations 2023 applies, maximum amount which the applicant can borrow as a mortgage from a bank or financial institution, as confirmed by evidence in accordance with that Regulation.

(2) Where the minimum price for which a housing authority may sell an affordable dwelling is greater than the minimum price calculated in accordance with paragraph (1), the eligible applicant shall pay the sum that is the greater.

(3) An eligible applicant who has savings or money additional to that required for a deposit may, at their sole discretion, pay a higher price for the affordable dwelling than that prescribed in paragraph (1).

(4) The affordable dwelling contribution under section 12(2) of the Act of 2021 shall be not less than 5 per cent and not greater than 40 per cent of the market value of the dwelling concerned.

(5) The minimum period, set out in an affordable dwelling purchase arrangement, between the date of the affordable dwelling purchase arrangement and the long stop date, referred to in section 12(7)(f) of the Act of 2021, shall be 40 years.

(6) In addition to the matters set out in section 12(7) of the Act of 2021, an affordable dwelling purchase arrangement shall contain the following covenants binding on the homeowner:

- (a) to keep the property in good and substantial repair and condition;
- (b) to ensure that any structural works or additions carried out on the property comply with any relevant statutory requirements, including planning and building regulations;
- (c) not to allow any third party to acquire any interest, right or entitlement in the property adverse to, or which might become adverse to, the interest of the housing authority therein and to take all necessary steps to prevent any third party advancing a

claim of adverse possession or exercise any rights capable of giving rise to rights through prescription of long user;

- (d) to permit the housing authority concerned to inspect the property for the purposes of the following:
 - (i) confirming compliance with the terms and conditions of the relevant affordable dwelling purchase arrangement;
 - (ii) determining the market value of the property in accordance with section 14 of the Act of 2021;

or both, provided that the housing authority has given reasonable notice of such inspection;

- (e) to, at their own cost, insure and keep insured in their name (or in the case of the property forming part of a managed development to procure that the management company at the cost of the homeowner insures and keeps insured) the property against loss or damage by fire, lightning, explosion, storm, flood, burst pipes, subsidence, riots, or civil commotion, malicious damage and accidental damage, impact and such other risks (if any) as the homeowner (or where relevant the management company at the homeowner's or the management company's own discretion) may from time to time consider prudent or desirable including public liability or any other liabilities that are resulting from the homeowner ownership of the property including covering the housing authority concerned in such policy, coverage to include a waiver of subrogation clause for the benefit of the housing authority. This policy must be effected either with the concerned housing authority's interest noted thereon or in the joint names of the housing authority and the homeowner as the housing authority may decide in its absolute discretion;
- (f) if the property is damaged or destroyed and the insurance money under any policy of insurance is fully or partly irrecoverable by reason solely of the act or default of the homeowner then and in every such case the homeowner shall indemnify and keep indemnified the housing authority concerned in respect of all losses, costs, damages or expenses howsoever arising suffered by it as a result of any such act or default by the homeowner;
- (g) in the event of the property or any part thereof being destroyed or damaged by fire or by any other cause to lay out all monies received in respect of insurance proceeds as soon as practicable in or upon rebuilding, repairing or reinstating the property in a good and substantial manner having obtained all necessary statutory approvals consents and licenses including planning consents. In the event of the homeowner, having used their best endeavours to do so, being unable to reinstate the property within a period of 2 years from the date of such damage or destruction the full insurance proceeds shall be divided between the homeowner and the housing authority in their respective shares;

- (h) to observe and perform all covenants relating to the property and comply with the provisions of all legislation for the time being affecting the property;
- (i) to discharge all payments owing to the lender pursuant to the mortgage concerned;
- (j) to be responsible for all taxes (including stamp duty on the full market value of the property and Value-Added Tax), local property taxes, assessments, charges, impositions and outgoings affecting the property and at all times during the term of the affordable dwelling purchase arrangement to observe and comply in all respects with the provisions and requirements of any and every enactment of the Oireachtas for the time being in force and any orders or regulations made thereunder for the time being in force and as are or shall be properly directed or necessary to be done or executed upon or in respect of the property or any part thereof and at all times during the said term to comply with all the recommendations or requirements of the appropriate authority whether notified or directed to the homeowner in relation to fire precautions pursuant to the relevant regulations in force;
- (k) not to allow any easement or right belonging to or used with the property to be obstructed or lost and not to allow any encroachment to be made or easements to be acquired on under or over the property and to give notice to the housing authority concerned immediately of any encroachment which might have that effect and to make such objection or take such proceedings as are necessary to prevent such encroachment;
- (l) not to store or keep upon the property or any part thereof any substance of an explosive or of an inflammable or dangerous nature such as might increase the risk of fire or explosion;
- (m) upon receipt of any notice, order, requisition, direction or any correspondence from a competent authority relating to the property to forthwith deliver same or a copy of same to the housing authority concerned and to take all necessary steps to deal with such notice, order, requisition, direction or correspondence.

(7) Notwithstanding paragraph (6), an affordable dwelling purchase arrangement may additionally contain a condition that any applicant sell or otherwise dispose of any estate or interest that any person making the application has or is beneficially entitled to in a dwelling referred to in section 10(6) of the Act of 2021.

Redemption payments under section 16 of Act of 2021

7. The minimum amount of a redemption payment under section 16 of the Act of 2021 shall be €10,000, other than in a case where a payment of less than €10,000 is required to redeem the housing authority's equity in full.

Revocation

8. The Affordable Housing (No. 2) Regulations 2022 (S.I. No. 184 of 2022) are revoked.

Saver

9. Notwithstanding the revocation under Regulation 8 of the Affordable Housing (No. 2) Regulations 2022 (S.I. No. 184 of 2022), those Regulations continue to apply to—

- (a) a notification to the public published prior to the making of these Regulations by a housing authority of its intention to make affordable dwellings available for sale,
- (b) an application made to a housing authority prior to the making of these Regulations to purchase a dwelling under an affordable dwelling purchase agreement, or
- (c) an affordable dwelling purchase agreement entered into prior to the making of these Regulations,

in accordance with the revoked Regulations before the making of these Regulations.



GIVEN under my Official Seal,
27 January, 2023.

DARRAGH O'BRIEN,
Minister for Housing, Local Government and Heritage.

BAILE ÁTHA CLIATH
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