

Explanatory Document

This document is an overview of new powers available to Local Authorities to deal with Anti-social behaviour and breaches of the tenancy agreement in accordance with the Housing (Miscellaneous provisions) Act 2014. It is not a legal document.

What powers are available?

Local Authorities can now apply to the District Court for a Possession Order where a tenant or member of the household breaches the tenancy agreement. The procedure of issuing a notice to quit under the Housing Act 1966 – 2014 is now repealed. The Local Authority can issue tenancy warnings as outlined below before making a possession application, however in serious cases of anti-social behaviour where the quality of life of other tenants are affected a possession application can be made directly to the District Court in accordance with S12 of the Act. A notice of intention must be given to the tenant prior to the application.

The 2014 Act strengthens existing powers Local Authorities have in relation to Excluding Orders. A Local Authority can now apply for an Excluding Order against any occupant of a local authority dwelling including a joint tenant who is or has been engaging in anti-social behaviour and it is in the interests of good estate management. Certain conditions and age limits apply e.g. a person over 12 and under 18 cannot be excluded from their home.

What is Anti-social Behaviour?

Section 1 of Housing (Miscellaneous Provisions) Act 1997 Act as amended defines Anti-social behaviour as either or both of the following:

- (a) *the manufacture, production, preparation, importation, exportation, sale, supply, possession for the purposes of sale or supply, or distribution of a controlled drug (within the meaning of the Misuse of Drugs Acts, 1977 and 1984),*
- (b) *any behaviour which causes or is likely to cause any significant or persistent danger, injury, damage, alarm, loss or fear to any person living, working or otherwise lawfully in or in the vicinity of a house provided by a housing authority under the Housing Acts 1966 to 2002 or Part V of the Planning and Development Act 2000, or a housing estate in which the house is situate and without prejudice to the foregoing includes*
 - (i) *violence, threats, intimidation, coercion, harassment or serious obstruction of any person*
 - (ii) *Behaviour which causes any significant or persistent impairment of a persons use or enjoyment of his or her home, or*
 - (iii) *damage to or defacement by writing or other marks of any property , including a person's home.*

What is a tenancy warning regarding anti-social behaviour?

A tenancy warning is a statutory warning in writing issued to a tenant(s) where the Housing Authority has formed the opinion that the tenant(s) or household member has breached a specified term of the tenancy agreement that prohibits anti-social behaviour, nuisance, or conduct likely to cause annoyance or disturbance to neighbours, or the tenant(s) from knowingly permitting a person to enter a dwelling against whom an excluding order or interim excluding order is in force with regard to that dwelling. To be issued with a tenancy warning is a serious matter with serious tenancy and legal implications which could lead to repossession proceedings.

A tenancy warning is designed to prevent and prohibit anti-social behaviour however in serious cases housing authorities can bypass this process and proceed directly to the Courts to recover possession of a dwelling involved in anti-social behaviour.

Why is there a new procedure?

This new procedure is in accordance with the Housing (Miscellaneous Provisions) Act 2014 to allow the tenant (s) fair procedures and the right to appeal findings by the housing authority and challenge any matter of fact with a Review Officer. It also affords the tenant(s) the right to present a defence in Court proceedings.

Who issues a tenancy warning regarding anti-social behaviour?

A Housing Authority has the powers to issue a tenancy warning in accordance with Part 2 Section 7 of the Housing (Miscellaneous Provisions) Act 2014. In this case, the Housing Authority is Dun Laoghaire Rathdown County Council, your landlord, and the tenancy warning is authorised by a Senior Official from the Housing Department.

What must a tenancy warning contain regarding anti-social behaviour?

There are strict guidelines on tenancy warnings, how they are issued and their content in accordance with Part 2 Section 7 of the Housing (Miscellaneous Provisions) Act 2014.

A tenancy warning shall be in writing and set out the specified term of the tenancy agreement that has been breached and if relevant shall include,

The nature of the breach including the name of the person responsible, and the occasion of the breach i.e. the date and time as far as practicable, and, if relevant the effect of the breach on the quality of life of other residents. The warning must also include if applicable a requirement for the tenant to remedy the behaviour by ensuring the household member involved ceases the behaviour, or does not repeat it or similar behaviour.

The consequences of a tenancy warning must be highlighted such as:

If the behaviour continues within 12 months of the tenancy warning being issued, then the housing authority may apply to the District Court to recover possession or where applicable apply for an Excluding Order.

Also the tenant(s) shall be informed that the issue of a tenancy warning will be taken into account for a period of 3 years when considering whether to refuse a tenant(s) right to purchase a council dwelling under the various tenant purchase and right to buy schemes, and

When considering whether to refuse or defer an allocation of a dwelling to the tenant(s) or household members involved in the anti-social behaviour.

The relevant purchaser(s) shall be informed that the issuance of tenancy warning will be taken into account for a period of 3 years when considering consent to sale under the various schemes.

A tenancy warning shall include a tenant(s) right to review in accordance with S10 of the Act as set out below.

A Housing Authority is obliged to protect the identity of complainants in these cases when setting out the basis of a tenancy warning whereby there is a likelihood of violence threat or fear.

Summary of the consequences of a tenancy warning.

If issued with a tenancy warning you will be deemed anti-social by the Housing Authority which will affect your right to transfer, or purchase the dwelling for a period of 3 years, notwithstanding a further breach within 12 months could lead to eviction or excluding order proceedings. It will also affect any person subject to the tenancy warning who is on the Council's Housing list and can include a person seeking permission to reside in any Council dwelling or Socially Supported Housing.

Can I appeal a tenancy warning?

Yes, as previously mentioned if a tenant does not accept that a breach of the tenancy agreement has occurred as outlined in the tenancy warning then the matter can be reviewed or appealed.

How do I appeal/ review a tenancy warning?

A tenant must request a review in writing to be received by the Housing Authority within 10 working days of the issue of the tenancy warning.

The review request must contain the grounds for disputing the tenancy warning including any supporting documentation and whether oral representations are to be made by the tenant or any member of the household.

Can the time limit be extended?

Only in extenuating circumstances and at the discretion of the Chief Executive or Delegated Officer and will not exceed 20 working days from the issuance of the tenancy warning.

What happens next?

If the review request satisfies the aforementioned criteria a senior housing authority official with no involvement in the decision to issue the tenancy warning will review the case.

How is the review conducted?

The Reviewer may make enquiries with any person including other statutory agencies including An Garda Síochána and will generally conclude the review and make a decision within 20 working days of his appointment. It is important to note that the Reviewing Officer can accept the opinion of a Garda or Housing Official that a person is involved in anti-social behaviour if there are reasonable grounds for such belief and that any other person would be deterred or prevented by violence threat or fear from providing evidence.

If oral representations are made or the Reviewer wishes to meet the tenant or household member then a decision will be made within 30 working days of the Reviewer's appointment.

The 30 day rule will also apply if the tenant or Reviewer proposes a variation to the tenancy warning for consultation and consideration purposes.

There is a provision where these timelines can be overruled by mutual agreement in writing between the Reviewer and tenant.

What are the likely outcomes of a review?

The reviewer can make the following decisions:

- (a) confirm the tenancy warning in its original terms.
- (b) vary the tenancy warning in specified terms,
- (c) annul the tenancy warning.

Am I entitled to a copy of the review?

Yes, the Housing Authority shall send a copy of the reviewer's decision, and the reasons for the decision in writing to the tenant.

Can I withdraw my review?

Yes, a review can be withdrawn if submitted in writing. However if appropriate the Reviewer can still proceed regardless and conduct the review and the tenant(s) will be notified in writing.

Explain the process and how repossession proceedings are instigated?

The Housing Authority will generally follow the procedures outlined below regarding tenant(s) or households involved in anti-social behaviour.

For minor and first time offences advice or a verbal warning will be given.

For other offences a tenancy notification will be issued putting the tenant on notice that if the behaviour continues a statutory tenancy warning will be issued.

For persistent or significant offences a statutory Tenancy Warning will be issued.

An Appeal or Review provision is available to challenge any disputed facts or the issue of a Tenancy Warning.

If the behaviour continues within 12 months of the issue of a Tenancy Warning a Possession Application will be made to the District Court seeking a Possession Order.

The Housing Authority can also if it deems necessary apply at any time for a Possession Application if there is a breach of the tenancy agreement which is having a significant or persistent detrimental effect on the quality of life of those in the locality of the dwelling and it is proportionate to do so.

The District Court will decide if a Possession Order is to be granted or in some cases may grant an Excluding Order instead.

The Housing Authority can also instigate repossession proceedings under any other enactment available to it such as the 1881 Conveyancing Act.

Are there other types of Tenancy Warnings?

Yes, Tenancy warnings also exist for Rent arrears and other breaches of the tenancy agreement with similar consequences.

For advice and clarification on any issue raised in this document please contact the Council's Anti-social Section on 012054700 ext. 4112 4183.