AN BILLE RIALTAIS ÁITIÚIL (MUIRIR) 2009
LOCAL GOVERNMENT (CHARGES) BILL 2009

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As initiated

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AN BILLE RIALTAIS ÁITIÚIL (MUIRIR) 2009
LOCAL GOVERNMENT (CHARGES) BILL 2009

BILL

entitled

AN ACT TO IMPOSE ON THE OWNERS OF CERTAIN RESIDENTIAL PROPERTIES LIABILITY FOR THE PAYMENT OF AN ANNUAL CHARGE IN RESPECT OF EACH SUCH PROPERTY CONCERNED TO THE LOCAL AUTHORITY IN WHOSE AREA THE RESIDENTIAL PROPERTY IS SITUATED, AND TO PROVIDE FOR RELATED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Interpretation.

1.—In this Act—

"Act of 1992" means the Housing (Miscellaneous Provisions) Act 1992;

"Act of 1997" means the Taxes Consolidation Act 1997;

"Act of 2001" means the Local Government Act 2001;

"building"—

(*a*) includes—

(i) part of a building,

(ii) a structure or erection of any kind and of any materials, or any part of that structure or erection, and

(iii) a mobile home that is kept in one place and that is—

(I) attached, whether temporarily or not, to land, or

(II) placed on a foundation or otherwise supported on land,

and

(*b*) for the avoidance of doubt, does not include a vehicle;

"charge" has the meaning assigned to it by *section 3(1)* and *(2)*;

"city council" has the meaning assigned to it by the Act of 2001;

"county council" has the meaning assigned to it by the Act of 2001;

"dwelling" includes a building used, or suitable for use, by an individual as a separate dwelling, whether or not he or she shares or would be entitled to share with any other individual any accommodation, amenity or facility in the building or, as the case may be, the premises of which the building forms part;

"housing authority" has the same meaning as it has in the Act of 1992;

"liability date" has the meaning assigned to it by *section 3(1)* and *(2)*;

"local authority" means a county council or a city council;

"Minister" means the Minister for the Environment, Heritage and Local Government;

"owner" means, in relation to a residential property, a person (other than a mortgagee not in possession) who, whether in that person's own right or as trustee or agent for any other person, is entitled to receive the rent of the property or, where the property is not let, would be so entitled if it were so let;

"prescribed" means prescribed by regulations made by the Minister;

"relevant local authority" means—

(*a*) in relation to a residential property situated in a city, that city council, or

(*b*) in all other cases, the county council for the county in which a residential property is situated.

Meaning of residential property.

2.—(1) In this Act, "residential property" means a building situated in the State used, or suitable for use, as a dwelling, including any house, maisonette, flat or apartment (including a bedsit) but does not include—

(*a*) an approved building within the meaning of section 482 of the Act of 1997,

(*b*) a building that forms part of the trading stock of a business—

(i) from which, since its construction, no income has been derived, and

(ii) which has not, at any time since its construction, been used as a dwelling,

(*c*) a building let by a Minister of the Government, a housing authority or the Health Service Executive established by the Health Act 2004,

(*d*) a building occupied under a shared ownership lease within the meaning of section 2 of the Act of 1992,

(*e*) a building let by a body standing approved for the purposes of section 6 of the Act of 1992,

(*f*) a building that is leased to, or that is the subject of an agreement with, a housing authority, in connection with the performance by the authority of its functions under section 56 of the Housing Act 1966,

(*g*) a building that is leased to, or is the subject of an agreement with, the Health Service Executive, to be used by the Health Service Executive in the performance of its functions under the Health Act 2004, or

(*h*) a building to which Schedule 3 of the Valuation Act 2001 applies.

(2) For the purposes of this Act, a bedroom, forming part of a residential property, that is let under a letting arrangement whereby the individual occupying that bedroom is entitled to share with any other individual any other accommodation, amenity or facility in the property is not a residential property, but the building of which it is a part is.

Charge on certain residential property.

3.—(1) A person who, on such date (in this Act referred to as the "liability date") falling in the year 2009 as is prescribed, is the owner of a residential property shall be liable to pay the sum of €200 (in this Act referred to as a "charge") to the relevant local authority.

(2) A person who, on 31 March (in this Act also referred to as the "liability date") of each year subsequent to the year 2009, is the owner of a residential property shall be liable to pay the sum (in this Act also referred to as a "charge") specified in *subsection (3)* to the relevant local authority.

(3) The sum referred to in *subsection (2)* shall be—

(*a*) €200, or

(*b*) where a sum stands prescribed under *subsection (5)* for the purposes of *subsection (2)*, that sum.

(4) The owner of a residential property on a liability date shall pay the charge for which that person is liable under this section to the relevant local authority before the expiration of such period as is prescribed.

(5) The Minister may from time to time review the amount of the charge in *subsection (2)* and, having regard to any change in the consumer price index since the amount of the charge was last specified or prescribed under this section, prescribe a revised amount as the Minister considers appropriate, and that amount shall have effect for and from the next liability date until further varied.

(6) For the purposes of *subsection (5)*, "change in the consumer price index" means the difference between—

(*a*) the All Items Consumer Price Index number last published by the Central Statistics Office before the date when the amount of the charge in *subsection (2)* was last specified or prescribed under this section, and

(*b*) the said number last published before the date of the review under *subsection (5)*,

expressed as a percentage of the first mentioned number.

(7) In the case of a charge relating to a liability date due in respect of a residential property that is co-owned by 2 or more persons—

(*a*) each person who is a co-owner shall be jointly and severally liable to pay the said charge, and

(*b*) payment of the charge by any one or more of the co-owners shall discharge the liability of each co-owner to pay that charge to the local authority concerned.

Exemptions from charge.

4.—(1) A person who, on a liability date, is the owner of a residential property shall not, in respect of that residential property, be liable to pay the charge relating to that liability date if the residential property is, on that date—

(*a*) in the case of an owner who is an individual—

(i) occupied by that individual as his or her sole or main residence, or

(ii) partly occupied by that individual as his or her sole or main residence, and as regards the portion of the property not so occupied he or she is entitled to and claims relief under section 216A (inserted by section 32 of the Finance Act 2001) of the Act of 1997 in respect of relevant sums not exceeding his or her limit for the year of assessment concerned,

or

(*b*) comprised in a discretionary trust (within the meaning of section 2 of the Capital Acquisitions Tax Consolidation Act 2003) or the owner of which is a body corporate beneficially entitled in possession, being a trust or body corporate which is approved as an eligible charity in accordance with Part 3 of Schedule 26A of the Act of 1997.

(2) If, on a liability date—

(*a*) an individual is the owner of a residential property (in this subsection referred to as the "first property") and occupies it as his or her sole or main residence,

(*b*) that individual is also the owner of another residential property (in this subsection referred to as the "second property"),

(*c*) that individual became the owner of the second property within the period of 1 year immediately before the liability date, and

(*d*) not later than 6 months after the liability date, the second property becomes his or her sole or main residence and the individual ceases to be the owner of the first property,

then he or she shall not, in respect of either the first property or the second property, be liable to pay the charge relating to the liability date and the relevant local authority shall refund any charge and any associated late payment fee paid by that individual for either the first or the second property in relation to that liability date.

(3) For the purposes of *subsection (2)*, an individual becomes the owner of residential property when he or she becomes entitled to possession of it.

(4) (*a*) An individual who, on a liability date, is the owner of a residential property shall not, in respect of that residential property, be liable to pay the charge relating to it for that liability date if—

(i) he or she is or was, as the case may be, a party to a marriage,

(ii) the residential property concerned is, on that date, the sole or main residence of the other party to that marriage, and

(iii) a decree of divorce or a decree of judicial separation was granted in respect of that marriage on or before that date.

(*b*) In this subsection—

"decree of divorce" means—

(i) a decree under section 5 of the Family Law (Divorce) Act 1996, or

(ii) a decree or order (howsoever described) of like effect to the decree referred to in *subparagraph (i)* granted under the law of a place other than the State and recognised under the law of the State;

"decree of judicial separation" means—

(i) a decree under section 3 of the Judicial Separation and Family Law Reform Act 1989, or

(ii) a decree or order (howsoever described) of like effect to the decree referred to in *subparagraph (i)* granted under the law of a place other than the State and recognised under the law of the State.

Declaration of liability and payment of charge.

5.—(1) A person who, on a liability date, is liable to pay a charge to a relevant local authority shall make and provide to the relevant local authority concerned a declaration to that effect in such form as may be prescribed by the Minister.

(2) A declaration referred to in *subsection (1)* shall—

(*a*) contain such information as the Minister may prescribe,

(*b*) be provided to the local authority before the expiration of the period referred to in *section 3(4)*, and

(*c*) be accompanied by payment of the charge payable in respect of the residential property concerned effected in accordance with *subsection (3)*.

(3) Payment of the charge in respect of a residential property shall be effected by such means as may be prescribed.

(4) A person who contravenes this section shall be guilty of an offence.

Late payment fee.

6.—(1) A person liable to pay a charge in respect of a residential property who, after one month immediately following the expiration of the period prescribed for the purpose of *section 3(4)*, has not complied with that subsection shall, in addition to his or her liability to pay the charge, be liable for and pay to the local authority concerned a further sum of €20 (in this Act referred to as a "late payment fee") in respect of each month or part of a month falling after the expiration of the said one month.

(2) Payment of a late payment fee shall be effected by the same means as are prescribed in relation to the payment of a charge.

Unpaid amount to be a charge on property.

7.—(1) Any charge or late payment fee due and unpaid by an owner of residential property shall, subject to *subsection (2)*, be and remain a charge on the property to which it relates.

(2) The said property shall not, as against a bona fide purchaser for full consideration in money or money's worth or a mortgagee, remain charged with or liable to the payment of such unpaid charge or late payment fee after the expiration of 12 years from the date upon which the amount concerned fell due.

Receipts and certificates.

8.—(1) When a charge, and any associated late payment fee, in respect of a residential property for a specified liability date has been paid, the relevant local authority shall give a receipt for the payment, and on application to it in writing by or on behalf of an owner of the property, the relevant local authority shall give a certificate to the owner, in such form as it thinks fit, of the amount of the charge paid by such owner in respect of the property concerned for that liability date.

(2) As against a bona fide purchaser or mortgagee of such property for full consideration in money or money's worth without notice, or a person deriving title from or under such a purchaser or mortgagee, such a certificate shall discharge the property concerned from liability for any charge or late payment fee due by the owner of that property for that liability date.

Collection, care and management of charge.

9.—(1) All charges and late payment fees imposed and payable to a local authority pursuant to this Act are placed under the care and management of the local authority concerned.

(2) It is a function of each local authority to collect charges and late payment fees due to it under this Act and to deal with matters associated with such collection.

(3) A local authority may recover from an owner of a residential property, as a simple contract debt in any court of competent jurisdiction, any amount due and owing to the authority which is either a charge in respect of that property for a liability date or an associated late payment fee, or both.

10.—(1) A local authority may delegate such one or more of its functions, other than the power to prosecute, relating to the collection of charges or late payment fees as it considers appropriate to a relevant board.

Delegation of functions of local authority relating to collection of charges, etc.

5 (2) A local authority shall, where the Minister so directs in writing, delegate to a relevant board such one or more of its functions, other than the power to prosecute, relating to the collection of charges or late payment fees as is specified in the direction.

(3) Where a delegation is made under this section—

10 (*a*) the relevant board shall perform the function concerned in accordance with any limitations specified in the delegation as to the area, period in which, or extent to which it is to perform that function, and

(*b*) a provision of or under this Act or any other enactment 15 (whether passed before or after the passing of this Act) that vests functions in the local authority or regulates the manner in which any function is to be performed shall, if and in so far as it is applicable to the delegated function, have effect, for the purposes of the performance of that 20 function by the relevant board, with the substitution of the relevant board for the local authority.

(4) A local authority may revoke a delegation under this section only if it has first obtained the consent of the Minister.

(5) A local authority shall, where the Minister so directs in writing, revoke a delegation under this section.

(6) The powers conferred on a local authority by this section shall be executive functions for the purposes of the Act of 2001.

(7) In this section "relevant board" means, as the context may require—

30 (*a*) the Local Government Computer Services Board established by the Local Government Computer Services Board (Establishment) Order 1975 (S.I. No. 212 of 1975), and

(*b*) the Local Government Management Services Board estab- 35 lished by the Local Government Management Services Board (Establishment) Order 1996 (S.I. No. 410 of 1996),

or either of them.

11.—(1) Notwithstanding any enactment or rule of law—

Data sharing and exchange.

(*a*) a relevant person shall, upon a request from a local auth- 40 ority, provide the local authority with such information in the possession or control of the relevant person or its subsidiary as the local authority may reasonably require for the purpose of enabling the local authority to perform its functions under this Act, and

45 (*b*) a local authority shall, at such intervals as the Revenue Commissioners may specify, provide the Revenue Commissioners with such information obtained by the local authority pursuant to this Act, including tax reference

numbers, as the Revenue Commissioners may reasonably require for the purpose of enabling them to perform their functions under a specified enactment.

(2) In this section—

"Act of 1972" means the Value-Added Tax Act 1972; 5

"relevant person" means, as the context may require—

(*a*) the Private Residential Tenancies Board established under section 150 of the Residential Tenancies Act 2004,

(*b*) the Electricity Supply Board established in accordance with the Electricity (Supply) Act 1927, and 10

(*c*) the Revenue Commissioners,

or any of them;

"specified enactment" means—

(*a*) the Tax Acts,

(*b*) the Capital Gains Tax Acts, 15

(*c*) the Act of 1972,

(*d*) the Stamp Duties Consolidation Act 1999, and

(*e*) the Capital Acquisitions Tax Consolidation Act 2003,

or any of them;

"tax reference number" means— 20

(*a*) in relation to an individual, that individual's personal public service number (within the meaning of section 262 of the Social Welfare Consolidation Act 2005), or

(*b*) in relation to a body corporate—

(i) the reference number stated on any return of income form or notice of assessment issued to that person by an officer of the Revenue Commissioners, or 25

(ii) the registration number of the body corporate for the purposes of the Act of 1972.

Offences and penalties.

12.—(1) A person guilty of an offence under *section 5* shall be liable on summary conviction to a fine not exceeding €2,000. 30

(2) A person who is convicted of an offence under *section 5* shall, on each day on which the contravention of which that offence consists is continued by the person after having been so convicted, be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €100. 35

(3) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act 1851, summary proceedings for an offence under this Act may be instituted not later than 2 years from the date on which evidence

sufficient to justify the institution of proceedings for the offence concerned comes to the knowledge of the relevant local authority for the residential property to which the offence relates, but in no case shall such proceedings be commenced later than 6 years from the date on which the offence concerned was committed.

(4) Where an offence under this Act is committed by a body corporate and is proved to have been so committed with the consent or connivance of or to be attributable to any neglect on the part of any person, being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in such capacity, that person shall, as well as the body corporate, be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(5) Summary proceedings for an offence under this Act may be brought and prosecuted by the relevant local authority for the residential property to which the offence relates.

(6) Where a person is convicted of an offence under this Act, the court shall order the person to pay to the local authority concerned the costs and expenses, measured by the court, incurred by the local authority in relation to the investigation, detection and prosecution of the offence, unless the court is satisfied that there are special and substantial reasons for not so doing.

Expenses of Minister.

13.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

Regulations, orders and directions.

14.—(1) The Minister may by regulations provide for any matter referred to in this Act as prescribed or to be prescribed.

(2) Without prejudice to any other provision of this Act, regulations or an order under this Act may contain such incidental, consequential and supplementary provisions as appear to the Minister to be necessary or expedient for the purposes of the regulations or order.

(3) A regulation, order or direction under this Act may—

(*a*) apply in respect of all local authorities or such local authorities or classes of local authority as are specified in the regulations, order or direction, and

(*b*) contain different provisions in relation to different local authorities or classes of local authority.

(4) Every order (other than an order under *section 16(2)*) and regulation made by the Minister under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order or regulation is passed by either such House within the next 21 days on which that House sits after the order or regulation is laid before it, the order or regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Payment to town councils.

15.—(1) A county council shall, each year, make a payment to each town council within the county, and such payment shall be calculated having regard to—

(*a*) the income from the charge and any associated late payment fees collected in respect of residential properties in the administrative area of the town council concerned, and

(*b*) the costs incurred by the said county council in connection with the collecting of the said income. 5

(2) In this section—

"administrative area", in relation to a town council, means the area which continues to stand established under section 10 of the Act of 2001 for the purposes of local government in respect of that town council; 10

"town council" means a body having charge of a local government area referred to in section 10(3) of, and set out in Part 1 of Schedule 6 to, the Act of 2001.

Short title and commencement.

16.—(1) This Act may be cited as the Local Government (Charges) Act 2009. 15

(2) This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision, and different days may be so appointed for different purposes and different provisions. 20