



STATUTORY INSTRUMENTS.

S.I. No. 425 of 2021

AFFORDABLE HOUSING ACT 2021 (COST RENTAL DESIGNATION)
REGULATIONS 2021

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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, 29 and 30 of the Affordable Housing Act 2021 (No. 25 of 2021), hereby make the following regulations:

Citation and Commencement

1. These Regulations may be cited as the Affordable Housing Act 2021 (Cost Rental Designation) Regulations 2021.
2. These Regulations come into operation on 19 August 2021.

Interpretation

3. In these Regulations, "Act of 2021" means the Affordable Housing Act 2021 (No. 25 of 2021).

Application for Cost Rental Designation

4. An application to the Minister for the cost rental designation of a dwelling shall contain the information listed in Schedule 1 to these Regulations, which is prescribed for the purposes of section 29(2) of the Act of 2021.
5. A single application may be made for the cost rental designation of multiple dwellings.

Declarations

6. (1) An applicant shall make a declaration, in the form set out in Part 1 of Schedule 2 to these Regulations, that the applicant will comply and will take all reasonable steps to procure that the applicant's successors in title will comply with the obligations of an owner of a cost rental dwelling under Part 3 of the Act of 2021, and any statutory extension, modification, amendment or re-enactment of that Act for the time being in force and any statutory instrument, regulation or order made or issued under that Act, if the dwelling is so designated.

(2) The form set out in Part 1 of Schedule 2 is prescribed for the purposes of section 29(3)(h) of the Act of 2021.

(3) An applicant shall make a declaration, in the form set out in Part 2 of Schedule 2 to these Regulations, that all factual statements contained in the application are true and correct to the best of the applicant's knowledge, information and belief, and that the applicant has taken all reasonable measures

to confirm that the information provided in the application is true and correct as of the date of signing the application.

(4) The form set out in Part 2 of Schedule 2 is prescribed for the purposes of section 29(3)(g) of the Act of 2021.

Documentation

7. An application shall be accompanied by documentary evidence to establish—

- (a) the applicant's title to the dwelling concerned, which in the case of a lease must be for a remaining term of years equal to or exceeding the proposed minimum cost rental period referred to in paragraph 5 of Schedule 1 to these Regulations,
- (b) any incumbrances on the dwelling concerned,
- (c) the written consent of the holder of any estate or interest in the dwelling or any incumbrancer within the meaning of section 29(3)(c) of the Act of 2021,
- (d) the estimated market rent referred to in paragraph 15 of Schedule 1 to these Regulations,
- (e) the capital costs referred to in paragraph 16 of Schedule 1 to these Regulations,
- (f) the funding arrangements for meeting the capital costs referred to in paragraph 16 of Schedule 1 to these Regulations, and
- (g) the arrangements for the payment of any costs referred to in paragraph 17 of Schedule 1 to these Regulations, including the details of any debt financing arrangements.

8. The ownership referred to in Regulation 7(a) may be evidenced by—

- (a) a certified copy of any folio in which the dwelling concerned or any part thereof is registered in the Land Registry, noting the applicant as the owner, or
- (b) if registration of the applicant's ownership is pending or the title to the property is unregistered, a certified copy of a fully executed deed of transfer or conveyance or lease of the dwelling concerned.

9. The consent referred to in Regulation 7(c) may be evidenced by a document in the form set out in Schedule 4 to these Regulations and signed by the holder of an estate or interest or the incumbrancer.

10. The estimated market rent referred to in Regulation 7(d) may be evidenced by a statement provided by a person licenced to provide the property service of the letting of land within the meaning of the Property Services (Regulation) Act 2011.

11. The arrangements referred to in Regulations 7(f) and 7(g) may be evidenced by correspondence or contractual documents.

Cash-flow statement

12. An application shall include a cash-flow statement showing for each year of the proposed cost calculation period—

- (a) estimated rental income, taking into account reasonable projections of void periods and bad debts, and the provisions of section 33 of the Act of 2021 for the setting over time of rents above the initial maximum rent, and
- (b) estimated expenditure to meet the costs referred to paragraphs 16 to 22 in Schedule 1 to these Regulations, taking into account projected cost inflation over the course of the proposed cost calculation period.

Electronic submission

13. An application may be made by electronic means and transmitted to such an electronic address as the Minister shall designate for the receipt of such applications.

Additional and Supplementary Information and the Revision of Applications

14. (1) Where the Minister determines that he or she requires additional or supplementary information in order to determine an application, the applicant shall supply the information upon request.

(2) In the case of an applicant supplying the Minister with additional or supplementary information referred to in paragraph (1), the applicant shall make a revised declaration, in the form set out in Part 2 of Schedule 2 to these Regulations, that all factual statements contained in the application are true and correct to the best of the applicant's knowledge, information and belief, and that the applicant has taken all reasonable measures to confirm that the information provided in this application is true and correct as of the date of signing the application.

15. Where the indicative designation date proposed in an application passes before a cost rental designation for the dwelling concerned is made under the seal of the Minister, the indicative designation date may be revised by the mutual written consent of the Minister and the applicant.

The Cost Rental Designation Document

16. Where following receipt of an application the Minister determines to complete the cost rental designation of a dwelling, he or she shall provide the owner of the dwelling concerned with a cost rental designation document in the

form set out in Schedule 3 to these Regulations, which is prescribed for the purposes of section 30(1) of the Act of 2021.

17. (1) Where an owner is satisfied to proceed with the cost rental designation of a dwelling on the basis of the details set out in Part A of the cost rental designation document concerned, he or she shall signify his or her consent by completing Part B of the document and returning it to the Minister within seven days of receipt of the document, which manner of execution and period are prescribed for the purposes of section 30(2) of the Act of 2021.

(2) Where an owner is not satisfied to proceed with the cost rental designation of a dwelling on the basis of the details set out in Part A of the cost rental designation document concerned, he or she may request that the Minister amend certain details in the document.

18. Where the Minister determines to make changes to a cost rental designation document prior to the completion of the designation by the application of the Minister's seal, including in response to a request made in accordance with Regulation 17(2), the Minister shall provide the owner of the dwelling concerned with a revised cost rental designation document, which may be executed by the owner in the manner and period referred to in Regulation 17(1).

19. In the case of an application for the cost rental designation of multiple dwellings referred to in Regulation 5, the designation of multiple dwellings may be completed by the execution and sealing of a single cost rental designation document.

SCHEDULE 1

Regulation 4

Applicant details

1. The name and address, including Eircode, of the owner of the dwelling.
2. In the case of an application made for and on behalf of a corporate body, the name, telephone number and e-mail address of a person with whom the Minister may correspond concerning the application.

Designation details

3. An indicative designation date, on which it is proposed that a cost rental designation of the dwelling be made under the seal of the Minister.
4. A proposed cost calculation period within the meaning of section 29(3)(d) of the Act of 2021, which shall be no less than forty years beginning on the indicative designation date.
5. A proposed minimum cost rental period within the meaning of section 29(3)(e) of the Act of 2021, which shall be no less than the duration of the proposed cost calculation period and beginning on the indicative designation date.

Dwelling Details

6. The full address of the dwelling, including the Eircode.
7. The Local Authority Area in which the dwelling is located.
8. The date from which the dwelling will be available and suitable for letting to tenants under cost rental tenancies within the meaning of Part 3 of the Act of 2021, if different to the indicative designation date.
9. The type of the dwelling, selected from the following options: apartment; bungalow; duplex; detached; semi-detached; and terraced.
10. The number of bedrooms in the dwelling.

11. The gross internal floor area of the dwelling, measured in square metres.
12. The BER of the dwelling within the meaning of the European Union (Energy Performance of Buildings) Regulations 2012 (S.I. No. 243 of 2012).

Rent

13. The proposed initial maximum rent for the dwelling within the meaning of section 29(3)(d) of the Act of 2021.
14. The estimated rental income if the dwelling were to be let to tenants under cost rental tenancies within the meaning of Part 3 of the Act of 2021 from the indicative designation date and over the proposed cost calculation period, taking into account reasonable projections of void periods and bad debts, and the provisions of section 33 of the Act of 2021 for the setting over time of rents above the initial maximum rent.

15. The estimated market rent for the dwelling if it were not designated as a cost rental dwelling, defined as the rent which a willing tenant not already in occupation would give and a willing landlord would take for the dwelling on the date on the date that the application is made to the Minister, in each case on the basis of vacant possession being given and having regard to the other terms of the tenancy and the letting values of dwellings of a similar size, type and character to the dwelling and situated in a comparable area to that in which it is situated.

Costs

16. The capital costs incurred in acquiring, developing and otherwise making available the dwelling for designation as a cost rental dwelling by the Minister on the indicative designation date.
17. Any costs to be incurred over the proposed cost calculation period in financing expenditure to meet the capital costs referred to in paragraph 16, including fees and interest payments incurred through debt financing.

18. The estimated costs of necessary and appropriate responsive maintenance of the dwelling over the proposed cost calculation period, defined as repairs and maintenance undertaken in response to requests from the tenant of the dwelling, observations by the landlord or his or her agents, and observations by third parties.

19. The estimated costs of necessary and appropriate cyclical maintenance of the dwelling over the proposed cost calculation period, defined as servicing, testing, and maintenance which is carried out routinely according to a programmed cycle.

20. The estimated costs of necessary and appropriate planned maintenance of the dwelling over the proposed cost calculation period, defined as work on particular elements of the dwelling which is programmed in advance, may be pre-emptive in nature, and typically involves replacing elements at or near the end of their serviceable life.

21. The estimated necessary and appropriate management costs associated with the dwelling over the proposed cost calculation period, including the costs of letting the dwelling to tenants under cost rental tenancies within the meaning of Part 3 of the Act of 2021.

22. The generation over the proposed cost calculation period of a prudent contingency surplus of rental income in excess of projected costs, including as may be required by lenders as a condition of debt financing.

SCHEDULE 2

Regulations 6 and 14

Part 1

For and on behalf of [insert name of owner], [delete as appropriate] I hereby declare that I / [insert name of owner] [delete as appropriate] will comply and will take all reasonable steps to procure that my / its [delete as appropriate] successors in title will comply with the obligations of an owner of a cost rental dwelling under Part 3 of the Affordable Housing Act 2021, and any statutory extension, modification, amendment or re-enactment of that Act for the time being in force and any statutory instrument, regulation, or order made or issued under that Act, if the dwelling is so designated.

Signature:

Name:

Position (*if applicable*):

Date:

Part 2

For and on behalf of [insert name of owner], [delete as appropriate] I hereby declare that all factual statements contained in the application are true and correct to the best of my / our [delete as appropriate] knowledge, information and belief, and that I have / [insert name of owner] has [delete as appropriate] taken all reasonable measures to confirm that the information provided in this application is true and correct as of the date of signing this application.

Signature:

Name:

Position (*if applicable*):

Date:

SCHEDULE 3

Regulation 16

Cost Rental Designation

(Section 30 of the Affordable Housing Act 2021)

PART A – Details of Designation

[In tabular form, the address (including Eircode), minimum cost rental period, cost calculation period, and initial maximum rent of each dwelling to be designated]

PART B – Assent of the Owner

For and on behalf of [**insert name of owner**], [*delete as appropriate*] I hereby declare my / our [*delete as appropriate*] assent to the designation of the dwelling or dwellings specified in Part A as a cost rental dwelling or dwellings in accordance with Part 3 of the Affordable Housing Act 2021 and the details specified in Part A, and to the registration of the designation or designations in the Land Registry as a burden on any folio in which the dwelling or dwellings or any part thereof is or are registered and, as the case may be, in the Registry of Deeds as an act of the owner affecting the dwelling or dwellings.

Signature:

Name:

Position (*if applicable*):

Date:

PART C – Seal of the Minister

The dwelling or dwellings specified in Part A shall stand designated as a cost rental dwelling or dwellings in accordance with Part 3 of the Affordable Housing Act 2021 and the details specified in Part A from the date on which this document is sealed by the Minister.

SCHEDULE 4

Regulation 9

Consent of an Incumbrancer on or the Holder of an Estate or Interest in the Dwelling(s)*(Section 29(3)(c) of the Affordable Housing Act 2021)*

Dwelling(s) proposed for designation:

[Insert address(es), including Eircode(s), of the dwelling(s) concerned]

As the holder of an estate or interest in or an incumbrance on the above specified dwelling or dwellings, I for and on behalf of [delete as appropriate] **[insert name of holder of estate/interest or incumbrancer]** hereby acknowledge receipt of a notice from **[insert name of applicant]** of his / her / its [delete as appropriate] intention to apply for the designation of the dwelling or dwellings as a cost rental dwelling or dwellings pursuant to Part 3 of the Affordable Housing Act 2021, and hereby confirm my / our [delete as appropriate] consent to the dwelling or dwellings being designated as a cost rental dwelling or dwellings by the Minister and to the registration of such designation or designations in the Land Registry as a burden on any folio in which the dwelling or dwellings or any part thereof is or are registered and, as the case may be, in the Registry of Deeds as an act of the owner affecting the dwelling or dwellings.

Notice of the cost rental designation or designations, if made by the Minister, may be delivered to us at: **[insert address of holder of estate/interest or incumbrancer]**.

Signature:

Name:

Position (*if applicable*):

Date:



GIVEN under my Official Seal,
18 August, 2021.

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

EXPLANATORY NOTE

(This is not part of the Statutory Instrument and does not purport to be a legal interpretation.)

These Regulations provide for the process whereby the owner of a dwelling can apply to the Minister for Housing, Local Government and Heritage to have the dwelling designated as a Cost Rental dwelling under Part 3 of the Affordable Housing Act 2021.

The applicant must propose an “initial maximum rent” for the dwelling, which is a starting rent based on a financial cash-flow model over a stated period of at least 40 years (the “cost calculation period”). The applicant must also propose a minimum length of time over which the designation will apply (the “minimum cost rental period”), which must be at least as long as the cost calculation period.

The assessment process serves to interrogate the proposed starting rent by verifying that the costs proposed are accurate and appropriate, and that the proposed rent is no higher than is required under the cash-flow model over the cost calculation period. The detail of the financial data and information that is required from the applicant is set out in the Regulations, with individual items specified in Schedule 1. An application cannot be formally submitted in advance of the applicant gaining title over the property.

In addition to the specific data that is required, a range of supporting material is required (Regulations 7 and 12). A number of declarations are also required, including from the applicant that the information provided is accurate (Part 2 of Schedule 2) and from the holder of any interest, estate, or incumbrance that they consent to the Cost Rental designation (Schedule 4).

The final step in the designation process is the completion of the Cost Rental Designation Document (Schedule 3), which specifies the terms on which a dwelling is to be designated. This document is submitted to the applicant for their formal written assent, before being returned for the application of the Minister’s seal, at which point the designation is complete.

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