

KILRUSH TOWN COUNCIL



Tenancy Management Policy

Including Combating Anti-Social Behaviour

**ADOPTED
SEPTEMBER 2005**

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1. Introduction & Policy Statement

Kilrush Town Council wishes to have a proactive policy on tenancy management and this is set out herein.

We recognise that a majority of our tenants live in medium to large groups of Council housing. While the great majority of our tenants and residents of Council housing are aware of their obligations, a small number of people are involved in behaviour that causes their neighbours difficulty. Kilrush Town Council is committed to providing a comprehensive service to our tenants in order that they are able to enjoy living in their dwellings and communities free from difficulties, nuisances and anti-social behaviour.

We recognise that anti-social behaviour can have an adverse effect on the quality of life. Kilrush Town Council wishes to promote the peaceful occupation and enjoyment of our dwellings and to have procedures in place to positively intervene when such peaceful occupation and enjoyment is threatened.

This policy aims to prevent anti-social behaviour in the first place and in any event to respond quickly to complaints. This policy sets out the proactive action and the response procedures that will be adopted.

Kilrush Town Council is aware of the need for confidentiality in the giving and investigating of complaints received. This policy recognises the need to protect the identity of complainants, while allowing respondents to have due process and every opportunity to respond, in a fair process that respects respondents' rights also.

While anti-social behaviour has a strict legal definition in the relevant housing legislation, Kilrush Town Council recognises that breaches of tenancy agreements often have a negative effect on neighbours. This policy covers a range of possible complaint types, from nuisance category to very serious cases that would satisfy the legal definition of anti-social behaviour. Because the policy covers the range of difficulties that may present in our housing, appropriate intervention is enabled, no matter the severity of the behaviour.

A review of this policy will be carried out one year from its first adoption.

2. Mission Statement

"To achieve good tenancy management practice and to provide a professional, fair, and objective service in investigating and following up on complaints of anti-social behaviour".

3. Tenancy Management Objectives

The objectives for tenancy management are:

- To encourage residents' associations to be established;
- To support the work of residents' associations, once established;
- To take measures to prevent anti-social behaviour from arising;
- To record every complaint of neighbour nuisance and/or anti-social behaviour;
- To respond to all complaints of nuisance/anti-social behaviour within 5 working days;
- To initiate an investigation into all complaints within 15 working days.

4. Strategies

Kilrush Town Council will endeavour to achieve these objectives by adopting the following strategies:

- **To work to establish and support residents' associations**

Kilrush Town Council would like to have a residents' association in all its larger estates.

The target for the 1st year of this plan is to establish a residents' association in John Paul Estate and Island View.

- **To establish and publicise procedures for making complaints and having them investigated.**

A clear complaints/reporting procedure will be put in place in order to enable problems to be addressed.

- **To build up closer relations with the Garda Siochana and other agencies and to share information in dealing with anti-social behaviour and in addressing the possible causes of anti-social behaviour.**

Addressing certain categories of neighbour nuisance/anti-social behaviour will benefit from multi-agency input and Kilrush Town Council aims to maximise the goodwill and resource network of the Kilrush Social Inclusion Multi-Agency Group, wherever possible.

- **To Encourage Greater Pre-Tenancy Information Provision**

Kilrush Town Council will require attendance on a pre-tenancy information session for new tenants within 6 months of their occupancy. The course will explain the functions, services and policies of the Council and useful inputs from other agencies will be invited also. The information session will explain in detail the Tenancy Agreement and the consequences of breaching the terms of the agreement. The obligations of tenants (e.g. payment of weekly rent, maintenance of dwellings, behaviour, etc.) as well as their rights with regard to service/response from the Council will be explained.

- **To Improve Information Provision to Existing Tenants**

Kilrush Town Council will produce a tenants' handbook for distribution to tenant households and will disseminate other policy and information, via residents' associations, the town hall, the resource house and other community mechanisms.

- **To issue maintenance letters for non-upkeep of property**

Kilrush Town Council will introduce periodic inspections of tenanted property to ensure tenants are properly maintaining their homes. Breaches of the tenancy agreement in relation to non-upkeep of property will be dealt with via the issue of warning letters. Tenants have an obligation under the tenancy agreement to upkeep their property and back and front gardens. Kilrush Town Council acknowledges that some upkeep issues are not tenant responsibility, but where non-upkeep is a tenant responsibility, failure to do so in spite of warnings, will not be tolerated and relevant legislation will be used.

- **To target breaches of the Control of Dogs Act by tenants**

Some tenants and residents of Council housing estates keep dogs and fail to abide by the law on controlling dogs. This is a significant problem that downgrades the amenity environment through dog fouling and creates a public health and safety risk.

- **To enforce the legislation in the most serious of cases of reported anti-social behaviour, where possible.**

With a complaints system in place, serious cases can be identified. If necessary, the Council will enforce the legislation and institute legal proceedings.

5. Preventative Policy Measures

5.1 Running every applicant for housing with Kilrush Town Council through record check with An Garda Siochana and obtaining reference from previous local authority landlord, where applicable

Kilrush Town Council will continue to refer all applicants for housing to the Garda Siochana, under Section 15 of the Housing (Miscellaneous Provisions) Act, 1997.

Kilrush Town Council will seek a reference in respect of all applicants for housing who were previously in local authority accommodation either in Ireland or abroad.

5.2. Refusal to Let/Deferral of Letting on the Grounds of Anti-Social Behaviour.

Kilrush Town Council will refuse to make a letting or defer a letting to any housing applicant where it considers the applicant has been involved in anti-social behaviour. This refusal/deferral will not be indefinite and every case will be treated on an individual basis. The applicant will be fully informed of the reasons for the refusal/deferral and if the Council is satisfied that the applicant has desisted from anti-social behaviour, the decision will be reconsidered. A housing applicant whose application has been deferred will have the right to have the decision to defer his/her application reviewed every twelve months.

5.3 Refusal to Sell a Dwelling on the Grounds of Anti-Social Behaviour

Kilrush Town Council will refuse to sell a dwelling to a tenant if it considers the tenant is or has been involved in anti-social behaviour. This decision may be reconsidered if the Council is satisfied that the tenant has desisted from such behaviour. The tenant will be fully informed of the reasons for the refusal. The Council will also refuse consent to the sale/purchase of a dwelling if it considers that the intended purchaser is or has been engaged in anti-social behaviour. A tenant applying to purchase, a tenant purchaser applying for consent to sell a dwelling and an applicant for consent to purchase a dwelling whose application has been refused will have the right to have the decision to refuse his/her application reviewed every twelve months.

5.4 Refusal/Deferral of a Letting on the Grounds of Failing to Provide Information

Kilrush Town Council will refuse to make a letting or defer a letting to any housing applicant who fails to provide information requested by the Council relating to persons residing with or intended to reside with the applicant and which the Council considers necessary for the full consideration of the application. The applicant will be fully informed of the reasons for the refusal/deferral and this decision will be reviewed when the Council is satisfied that all relevant information has been disclosed.

5.5 Refusal/Deferral of Letting on the Grounds of Good Estate Management.

Kilrush Town Council will refuse to make a letting or defer a letting to any housing applicant where it considers there is good reason for doing so on the grounds of good estate management. Each case will be treated on an individual basis and the applicant will be fully informed of the Council's decision. The decision may be reconsidered depending on the circumstances of the applicant or the estate. A housing applicant whose application has

been deferred will have the right to have the decision to defer his/her application reviewed every twelve months.

5.6 Refusal to Sell a Dwelling on the Grounds of Good Estate Management

Kilrush Town Council will refuse to sell a dwelling to a tenant where it considers there is good reason for doing so on the grounds of good estate management and will also refuse consent to the sale/purchase of a dwelling on the same grounds. The tenant/tenant purchaser and the intended purchaser will be fully informed of the Council's decision. A tenant applying to purchase, a tenant purchaser applying for consent to sell a dwelling and an applicant for consent to purchase a dwelling whose application has been refused will have the right to have the decision to refuse his/her application reviewed every twelve months

5.7. Tenancy Agreements Updated

Kilrush Town Council has updated the tenancy agreements being used, so that tenant responsibilities are more clearly described and delineated. Each tenancy agreement now also has a complete section about anti-social behaviour that sets out the kinds of behaviour that will not be tolerated from tenant households.

6.0 Complaints Procedure

6.1 Recording the Complaint:

Kilrush Town Council will instigate, because of this policy, a confidential system to record and follow-up on complaints of anti-social behaviour as defined by the Housing (Miscellaneous Provisions) Act, 1997 or complaints outside those definitions which constitute breaches of tenancy agreements or breaches of other statutes (eg litter control or dog control, or non-upkeep of property). Senior staff are assigned to investigate these complaints. Complaints are accepted in confidence. Complaints can be lodged by telephone or in writing either to the town hall or to the resource house in Beech Park or other designated office and all such complaints are recorded, in confidence, in a standardised system. In cases where legal action is anticipated, complainants will be asked to provide a statement of the complaint.

The person making the complaint will be known as the complainant.

The person complained about will be known as the respondent.

Anonymous Complaints

Anonymous complaints will be treated with caution and while they will be recorded, they will not be investigated by Kilrush Town Council, unless a pattern is seen to be occurring and there is corroboration of the same complaint from multiple other complainants or from other agencies.

Confidential Complaint System

The complaints system is confidential and every effort is made to protect the identity of the complainants. The Council assumes that a complainant requires the complaint to be dealt with in conditions of confidentiality unless the complainant specifically states (in writing) otherwise. Access to the complaints log is restricted and the written complaint records are secured when not in use.

If the nature of the complaint is likely to compromise the identity of the complainant, an investigation will not proceed, unless the latter gives specific written authorisation to do so.

Complainants who report serious anti-social behaviour in the first instance to the Gardaí will be encouraged by the Gardaí to also report it to Kilrush Town Council. Kilrush Town Council will refer serious complaints cases to the Gardaí and will work with the Gardaí, where necessary, in follow-up investigation.

Freedom of Information Act and Confidentiality

Information given to the Council by persons complaining of anti-social behaviour can be protected by Section 23 (a) and section 26 of the Freedom of Information Act 1997.

Evidence via Officials or Gardaí in serious cases involving legal proceedings

There is provision in law for a member of the Garda Síochána or an officer of a local authority to give evidence regarding anti-social behaviour to the district court on behalf of a complainant, where there are grounds for the complainant being prevented from doing so themselves owing to concerns about violence, intimidation, threat or fear.

6.2 How the complaints system works

Each complaint will be recorded on a standard complaint log form (see appendix A) which identifies on it that the information is given by the complainant strictly in confidence. This will enable protection of the complaint record under the Freedom of Information Acts.

Complaints will be screened for whether they are within the definition of anti-social behaviour as defined in law or whether they are outside the legal definition but are breaches of tenancy agreement. Complaints will be categorised as priority 1 or 2 in accordance with the table below. All complaints will be recorded in the same way.

Examples of complaints and their classification are as follows;

Category	Classification	Priority
Drugs	A	1
Violence	B	1
Damage to property - intimidation	C	1
Alcohol	D	1
Threats and Intimidation	E	1
Damage to property - non-intimidation	F	2
Rubbish/Maintenance	G	2
Dogs	H	2
Noise	I	2
Boundary/Parking Dispute	J	2
Other	K	

If the complaint is capable of being investigated, an investigation will be initiated within 15 working days. The complainant will be given the reference number of the complaint to ensure he/she is kept informed of progress.

6.3 Investigating the Complaint

Senior staff are assigned to investigate complaints. Complaints will be investigated in a fair, impartial and objective manner.

The complaint will be discussed with the complainant first of all. One aspect of the initial discussion would be to see whether it could be solved directly between the parties without the intervention of Kilrush Town Council. This discussion would be in order to avoid escalating issues and creating resentments unnecessarily.

Where Kilrush Town Council feels that intervention/investigation is necessary, the respondent will be contacted by letter and the complaint will be discussed. Typical template letter to be sent to respondents is contained at Appendix B (i). Kilrush Town Council will refer serious complaints to the Gardaí and will work with Gardaí, where necessary, in follow up investigation.

The respondent may be interviewed at his/her dwelling or at the Council offices with not less than two staff present, or in some cases at the Council offices with not less than two staff present. All allegations will be presented to the respondent and the complaint log will be updated with any comments made by the respondent and with the content of the discussion generally with the respondent. Any responses will be fully investigated and taken into account, as appropriate.

Depending on the type of complaint, and notwithstanding the policy outlined at section 7 for serious cases of anti-social behaviour within the scope of the 1997 Act, the respondent may admit the behaviour and commit to prevent/stop further occurrences. In this event, a written commitment will be obtained and recorded to file.

If officials have reasonable grounds for believing that the respondent is involved in anti-social behaviour or has breached his/her tenancy agreement, the matter will be dealt with in any or all of the following ways, depending on the type of complaint:

- Mediation/intervention to prevent further breaches;

- First warning letter;

- Second warning letter

- Making enquiries to other statutory agencies in accordance with section 15 of the Housing (Miscellaneous Provisions) Act, 1997.

- Referral of complaint to Gardaí;

- Application to district court for exclusion order;

- Terminate tenancy by service of notice to quit.

Following giving the respondent an opportunity to respond to the complaint, the complainant will be updated with the progress and or outcome of the investigation. The progress and or outcome of the investigation will be recorded onto the complaint log.

If the investigating officials have reasonable grounds for believing that the complaint is unfounded, then no further action will be taken. The complainant will be informed of this and the complaint log will be updated with this outcome also.

Involvement of Other Agencies

Kilrush Town Council will not apply to district court for an exclusion order or terminate a tenancy by service of notice to quit for reasons of anti-social behaviour without consulting the Health Board and the tenant (as prescribed in the law) or without involving the Gardaí.

6.4 Ongoing complaints

For persistent cases where the behaviour is repeating frequently, continuation sheets of the complaints log will be given to the complainant to record details and to assist with possible legal action.

If further complaints are received against a respondent, appropriate referrals to other agencies may be made.

6.5 Referrals

In serious, high priority cases of complaints involving drugs, violence or threats or intimidation, alcohol abuse, or damage to property used to intimidate or threaten, or where the complaint is persistent & ongoing, the Council will involve the Gardaí before taking action. The action to be taken may include:

Await results of investigation;

Apply for Excluding Order;

Terminate Tenancy by Service of Notice to Quit.

If a decision is made that an excluding order should be sought where a member of a tenant household is involved in anti-social behaviour as defined in law, the tenant in whose household the offending individual resides will be advised to apply to the District court for such an order.

If the tenant will not apply for an excluding order, Kilrush Town Council may apply for such an order. (See Appendix D for template application to the court for such an order).

7. Policy in implementing the legislation in serious cases

7.1 Drug Dealing

Kilrush Town Council will not tolerate the manufacture, production, preparation, importation, exportation, sale, supply, or possession for the purpose of sale or supply, or distribution of a controlled drug in any of its dwellings and, following consultation with Gardaí, will consider seeking an excluding order or if necessary, eviction proceedings against the entire household.

7.2 Excluding Orders

Kilrush Town Council will seek excluding orders against persons engaged in anti-social behaviour in order to avoid, if possible, the eviction of an entire household. Where an excluding order has been obtained, Kilrush Town Council will monitor the excluding order in conjunction with the Garda Síochána. The excluding order will be reviewed on a 6-month basis, involving consultation with the Garda Síochána. Except in exceptional circumstances, all applications for excluding orders will be for three years and will be in respect of the dwelling and the estate in which the dwelling from which the anti-social behaviour is emanating is situated.

7.3 Evidence via Officials

Where possible and applicable in serious cases being brought to court, Kilrush Town Council will use the potential available for officials to give evidence to the court on behalf of the complainant. It is noted that in every case, a formal complaint in writing must be given in the first instance by the complainant to the local authority in order for officials to bring the matters to court.

7.4 Threats / Intimidation of Council Employees

Kilrush Town Council will not tolerate any assaults, threats, intimidation, obstruction, harassment or interference with its employees who are involved in the implementation of this policy in accordance with the provisions of the Housing Acts and will institute legal proceedings against any person engaged in such activity.

APPENDIX A

COMPLAINT RECORD LOG

APPENDIX B i, ii and iii

SAMPLE LETTERS TO RESPONDENT

APPENDIX B (i) LETTER OF REQUEST TO INTERVIEW

Date

To:

RE: Complaint about (Insert category of complaint/breach of tenancy agreement)

Dear

A complaint has been received by Kilrush Town Council relating to your household.

I am writing to request you to make contact with Kilrush Town Council in order to arrange a meeting at a mutually convenient time to have a full discussion about the complaint and in order to give you an opportunity to respond to the complaint.

I would remind you of the conditions of your tenancy agreement and in particular to condition number _____, which states:

“.....”.

Please give this your urgent attention.

Yours sincerely,

SSO/Town Clerk

Note:

Kilrush Town Council has adopted a policy on tenancy management. This includes the action to be taken for breaches of tenancy agreement and for anti-social behaviour. There are severe consequences for households, which are found to be engaged in such behaviour.

APPENDIX B (ii) - FIRST WARNING LETTER

Date

To:

Re: Breach of Tenancy

Dear

I hereby bring to your attention that you are in breach of Clause ____ of the Tenancy Agreement signed by you on _____ set out as follows:-

Clause _____

You are therefore warned that if you fail to adhere to the terms of the Tenancy Agreement, the Council will have no option but to issue proceedings for the recovery of possession of _____. You should also be aware that if the Council evict you for breach of Tenancy Agreement you will not subsequently be housed by the Council.

Yours sincerely,

SSO

APPENDIX B (iii) - SECOND WARNING LETTER

Date

To:

Re: Breach of Tenancy.

Dear

I refer to the Council's letter to you dated _____ (copy attached) in which you were advised that you were in breach of Clause of the Tenancy Agreement signed by you on _____ as set out as follows:

Clause _____

It is noted that you are still in contravention of the above clause. Accordingly, you are hereby notified that if the situation in relation to the clause is not rectified within the next 7 days, Notice to Quit will be issued without further warning. You should be warned that if the Council evict you for breaches of the terms of the Tenancy Agreement you will not be subsequently re-housed by the Council. In addition, you may not be entitled to benefits such as Social Welfare Allowances, if applicable.

Yours sincerely,

SSO

Enclosure (1)

APPENDIX C

LEGISLATION

Legislation

The main legislation available to Kilrush Town Council in dealing with anti-social behaviour is outlined briefly hereunder.

This appendix does not purport to give a legal interpretation or comprehensive synopsis of the sections of the relevant laws. Neither is it an exhaustive summary of the legal provisions that may be used by Kilrush Town Council in addressing the issue of tenancy and estate management. This appendix merely outlines certain powers that are available to be used, for information, and to provide context to the policy at parts 1 to 7 of this document.

1 Housing Act 1966 (as amended) - Section 62,

This legislation enables Kilrush Town Council to make an application to the district court for a warrant for possession of a dwelling formerly let under the Housing Act 1966 where there is no longer any tenancy in the dwelling. The procedure involves the service of a Notice to Quit, which determines the tenancy and contains the minimum statutory period of 28 days notice to the tenant. This is followed by a Demand for Possession, which notifies the tenant that in the event of refusal of possession the aforementioned application will be made to the district court.

The Council is not required under this legislation to provide evidence of the behaviour that has led to the decision of the Council to determine the tenancy. The Council only has to provide proof that it has followed the statutory procedures in seeking the Warrant.

“Section 62. (1) In case,

- (a) there is no tenancy in-
 - (i) a dwelling provided by a housing authority under this Act
 - (ii) any building or part of a building of which the authority are the owner and which is required by them for the purposes of this Act, or
 - (iii) a dwelling of which the National Building Agency Limited is the owner,

whether by reason of the termination of the tenancy or otherwise, and

- (b) there is an occupier of the dwelling or building or any part thereof who neglects or refuses to deliver up possession of the dwelling or building or part thereof on a demand being made therefore by the authority or Agency, as the case may be, and
- (c) there is a statement in the demand of the intention of the authority or Agency to make application under this subsection in the event of the requirements of the demand not being complied with,

the authority or Agency may (without prejudice to any other method of recovering possession) apply to the justice of the district court having jurisdiction in the district court district in which the dwelling or building is situate for the issue of a warrant under this section.

(2) Where-

- (a) the rent of any dwelling let by a housing authority under this Act or by the National Building Agency Limited either on a monthly tenancy or on a tenancy for a less period than a month, is in arrears for a period of not less than one month, and
- (b) the dwelling is, in the opinion of the authority or the Agency, as the case may be, abandoned by the person to whom it was let, and
- (c) the dwelling is not actually occupied by any person,

the authority or the Agency may give to the person to whom the dwelling was so let notice, being of not less duration than which would be required to terminate the tenancy by notice to quit, of their intention to resume possession of the dwelling and in case notice is duly given under this subsection and if, but only if, at the expiration of the notice the said rent in arrears is unpaid, the authority or Agency may resume possession of the dwelling and thereupon the tenancy therein shall by virtue of this subsection terminate.

(3) Upon the hearing of an application duly made under subsection (1) of this section, the justice of the District court hearing the application shall, in case he is satisfied that the demand mentioned in the said subsection (1) has been duly made, issue the warrant.

(4) The provisions of sections 86, 87, and 88 of the Act of 1860 (subject, in the case of the said section 86, to the substitution of "one month" for "to be therein named, and not less than seven or more than fourteen clear days from the date of such warrant" and the substitution of "eight in the morning and eight in the afternoon" for "nine in the morning and four in the afternoon")* shall apply in respect of the issue of a warrant under this section subject to the modification that where as respects an application under subsection (1) the name of the occupier of a dwelling or building or part thereof cannot by reasonable enquiry be ascertained, a summons under the said section 86 may be addressed to "the occupier" without naming him, and the warrant when so issued shall have the same effect as a warrant under the said section 86.

(5) In any proceedings for the recovery of possession of a dwelling or building or part thereof mentioned in subsection (1) of this section, a document purporting to be the relevant tenancy agreement produced by the body by whom the proceedings are brought shall be prima facie evidence of the agreement and it shall not be necessary to prove any signature on the document and in case there is no tenancy in the premises to which the proceedings relate by reason of the termination of a tenancy by notice to quit and the person to whom such notice was given is the person against whom the proceedings are brought, the following additional provisions shall apply:

- (a) any demand or requirement contained in such notice that the person deliver up possession of the said premises to the authority or the Agency, shall be sufficient demand for the purposes of paragraph (b) of the said subsection (1); and,
- (b) any statement in the said notice of the intention of the authority or the Agency to make application under subsection (1) of this section in respect of the

premises shall be a sufficient statement for the purposes of paragraph (c) of the said subsection (1).

(6) Nothing in the Landlord and Tenants Acts, 1935 and 1958, or the Rent Restrictions Act, 1960, shall be deemed to affect the provisions of this Act relating to the obtaining of possession of a dwelling or building or part thereof mentioned in subsection (1) of this section.

(7) If in a case in which there is no tenancy in a dwelling provided by a housing authority under this Act, a person makes entry into the dwelling, or uses it for human habitation, without the consent of the housing authority, such person shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €1,270**, or, at the discretion of the court, to a term of imprisonment not exceeding one month or to both such fine and imprisonment, provided that this subsection shall not apply to a person who, at the time when the tenancy last created in the dwelling was terminated or otherwise ceased to exist, was ordinarily resident in the dwelling or to a person making an entry into the dwelling for the purposes of normal social relations with such persons or to a person making an entry into the dwelling (but not using it for human habitation) in the course of his ordinary business, profession, vocation or trade.

* Amended by s.13, Housing Act, 1970

** Inserted by s.13, Housing Act, 1970, amended by s.33, Housing (Miscellaneous Provisions) Act, 1992

Under section 62, as above, the Council only has to provide proof that it has followed the statutory procedures in seeking the Warrant. However, under Section 21 of the Housing (Miscellaneous Provisions) Act 1997 evidence of anti-social behaviour can be accepted by the district court from Gardaí or Council officials, where other possible witnesses are not in a position to give evidence due to intimidation. This can also apply to proceedings under the Housing Act, 1966.

In any Section 62 proceedings involving anti-social behaviour, Kilrush Town Council will endeavour to present evidence of anti-social behaviour before the court.

Note: Section 62 of the Housing Act 1966 has already been found to be constitutional by the Supreme Court.

2. Housing (Miscellaneous Provisions) Act 1997

Anti-Social Behaviour Definition

Section 1 of this Act 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, 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 a housing estate in which the house is situate and

without prejudice to the foregoing includes violence, threats, intimidation, coercion, harassment or serious obstruction of any person.

Possession of illegal drugs solely for personal use does not come within this definition, nor does vandalism or damage to property unless the damage is used to intimidate or threaten. Serious violence and intimidation is frequently associated with drug dealing and must for the purposes of this Act involve significant or persistent danger, injury, damage etc. to persons. The definition does not include noise and nuisance or other activities which would not normally be associated with the serious problems towards which the Act is targeted. However these lesser activities could represent breaches of the Tenancy Agreement and if this is the case legal proceedings under section 62 of the Housing Act 1966 could be considered.

Cases of Domestic Violence do not come within the scope of this Act. The Domestic Violence Act 2001 is the appropriate legislation for such cases.

Estate Management Definition

Section 1 of the 1997 Act also defines estate management as

- (a) the securing or promotion of the interests of any tenants, lessees, owners or occupiers, whether individually or generally, in the enjoyment of any house, building, or land provided by a housing authority under the Housing Acts 1966 to 1997,
- (b) the avoidance, prevention or abatement of anti-social behaviour in any housing estate in which is situate a house provided by a housing authority under the Housing Acts 1966 to 1997;

Excluding Orders - Section 3 of the 1997 Act

This deals with the application to the court for Excluding Orders by a tenant or by a Local Authority. The legislation is designed to have a more targeted response to anti-social behaviour whereby the specific offenders are dealt with, thus avoiding the eviction of the entire household. In all cases every effort will be made by Kilrush Town Council to pursue the option of seeking an Excluding Order before considering the eviction of the entire household. If granted, an Excluding Order can prohibit the respondent from entering the relevant dwelling or the entire estate for a period up to three years. An Excluding Order can also prohibit a respondent from causing or attempting to cause any intimidation, coercion, harassment or obstruction of, threat to, or interference with the tenant or other occupant of the dwelling concerned.

Application for an Excluding Order by a Tenant

Under section 3, a Council tenant has the right to apply to the district court for an Excluding Order against a person, including a joint tenant who is engaged in anti-social behaviour. The tenant can only apply for an order relating to his/her dwelling. The procedure is as follows:

- (i) The applicant attends the district court and requests four copies of the application for the excluding order.
- (ii) The district court clerk will allocate a court date for the applicant usually four weeks from the initial request.

- (iii) The applicant must fill out the application and send one copy by registered post to the Council, one copy to the respondent, one copy is retained by the applicant and one copy is for the Court.
- (iv) The applicant then returns to the district court and lodges the application with registered records of postage.
- (v) Where the respondent has already left the dwelling, the applicant must serve the notice on the respondent.
- (vi) Experience has shown that district court judges will require an applicant to engage the services of a solicitor.
- (vii) There is a nominal fee (stamp duty) for such an application

Kilrush Town Council will advise and assist any of its tenants who wish to make application for an Excluding Order.

Application for an Excluding Order by a Local Authority

Kilrush Town Council has the power to seek an excluding order in the following circumstances:

- (i) The respondent is engaged in anti-social behaviour
- (ii) The tenant and Health Board are consulted
- (iii) The Council believes the tenant may be deterred from applying for an Exclusion Order by violence, threat or fear.
- (iv) It is in the interests of good estate management.

The express agreement of the tenant in such cases is not necessary.

Interim Excluding Orders - Section 4

The Court may make an Interim Excluding Order where there is immediate risk of significant harm to a tenant or other occupant pending determination of an application of an Exclusion Order.

This section also deals with *ex parte* hearings in exceptional cases.

5.10 Sections 5 to 12

These sections contain necessary supporting provisions for the operation of the excluding order procedure, including offences for contravening such orders, appeals and Court jurisdiction.

Section 5 (1)

A respondent who contravenes an excluding order or an interim excluding order shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €1,905 or, at the discretion of the Court to imprisonment for a term not exceeding 12 months, or to both.

Section 12 (1)

Where a member of the Garda Síochána has reasonable cause for believing that, in respect of an order under this Act, an offence is being or has been committed under section 5, the member may, on complaint being made to him or her by the tenant or the housing authority, arrest the respondent concerned without warrant.

Section 12 (2)

For the purpose of arresting a respondent under subsection (1) a member of the Garda Síochána may enter (if need be by use of reasonable force) and search any place (including a dwelling) where the respondent is or where the member, with reasonable cause, suspects the respondent to be.

Section 14 - Refusing or Deferring a Letting or a Tenant Purchase

This section empowers Kilrush Town Council to refuse or defer a letting of a dwelling, or to refuse an application from a tenant to purchase a dwelling, where the applicant is or has been involved in anti-social behaviour or where the letting or sale would not be in the interest of good estate management. The power to refuse lettings also extends to applicants who fail to provide necessary information to the housing authority. A housing authority may also refuse consent to the resale of a tenant purchase dwelling to a person involved in anti-social behaviour or on grounds of good estate management where the consent of the authority to the resale is required.

Section 15 - Seeking Information from Other Agencies

This section allows Kilrush Town Council to apply to other housing authorities or statutory agencies for information in relation to any person seeking a house from the authority or residing or proposing to reside at a house provided by the authority or whom the authority considers may be or may have been engaged in anti-social behaviour and, notwithstanding anything contained in any enactment, such other housing authority or statutory agency may provide the information.

Section 16 -Amends Social Welfare Acts

This section amends the Social Welfare Acts to enable Health Authorities to refuse or withdraw rent or mortgage interest supplement for private housing under the supplementary welfare allowance scheme where persons, otherwise eligible, have been evicted, excluded, or removed from, or refused local authority housing.

Section 18 - Intimidation of Officials - Section

This section creates a specific offence of intimidation against local authority officials, any member of their family, or any person who provides evidence under section 62 of the Housing Act 1966 or this Act.

A person who causes or attempts to cause any threat, intimidation or harassment, coerces, obstructs, impedes or interferes with, an officer or employee of a housing authority or a member of the family of such officer or employee or any person who provides or is to provide evidence in any proceedings under section 62 of the Housing Act 1966 or this Act shall be guilty of an offence.

Penalty - €1,905 fine, 12 months imprisonment or both.

Section 21 - Officials Giving Evidence (where those directly effected are intimidated)

Where in any proceedings under section 62 of the Housing Act 1966 or sections 3, 4, or 9 of the 1997 Act a member of the Garda Síochána or an officer of a housing authority states that he or she believes that a person is or has been engaged in anti-social behaviour, if the Court is satisfied that there are reasonable grounds for such belief and that another person would be deterred or prevented by violence, threat, or fear from providing evidence in that regard, the statement shall be evidence of such anti-social behaviour.

3. Freedom of Information Act 1997 as amended and Confidentiality

Information given to the Council by persons complaining of anti-social behaviour **is protected by Section 23 (a) and section 26 of the Freedom of Information Act 1997.**

Section 23 provides, inter alia, that a request for information may be refused if access to the record could reasonably be expected to:-

(a) Prejudice or impair

- I. the prevention, detection or investigation of offences, the apprehension or prosecution of offenders, or the effectiveness of lawful methods, systems, plans or procedures employed for the purposes of the matters aforesaid.
- II. The enforcement of compliance with or administration of any law.
- III. lawful methods ,systems, plans or procedures for ensuring the safety of the public and the safety of persons and property

(b) reveal or lead to the revelation of the identity of a person who has given information to a public body in confidence in relation to the enforcement or administration of the civil law or any other source of such information given in confidence

Section 26 provides that a request for information shall be refused if:

- (a) the record concerned contains information given to the public body concerned in confidence and on the understanding that it would be treated by it as confidential (including such information as aforesaid that a person was required by law, or could have been required by the body pursuant to law, to give to the body) and, in the opinion of the head, its disclosure would be likely to prejudice the giving to the body of further similar information from the same person or other persons and it is of importance to the body that such further similar information as aforesaid should continue to be given to the body.

5. Residential Tenancies Act, 2004

Private Properties

Private property is beyond the scope of the housing Acts mentioned above and they cannot be used against owners of private property/shared ownership owners or the owner or tenant purchaser of a previously tenanted dwelling.

Complaints against owners of private property/shared ownership will not be investigated as this is beyond the remit of the relevant housing legislation.

However, regard will be had in the case of tenant purchased homes to the Residential Tenancies Act, 2004, which extended some powers of local authorities given under the Housing (Miscellaneous Provisions) Act 1997 to deal with anti-social behaviour of occupants of tenant-purchased homes.

APPENDIX D – APPLICATION FOR AN EXCLUDING ORDER

AN CHUIRT DUICHE (The District Court)

HOUSING (MISCELLANEOUS) PROVISIONS ACT, 1997, SECTION 3

APPLICATION FOR AN EXCLUDING ORDER

District Court Area of _____ District Number _____

Between: _____ Applicant

And: _____ Respondent

TAKE NOTICE that application will be made to the District Court to be held at _____ on the _____ by the Applicant who is

- a housing authority which has provided a house under the Housing Acts, 1966 to 1998
- a tenant of a house let to him/her by a housing authority,

(delete one or other, as appropriate)

for an excluding order against you, the respondent, pursuant to the provisions of Section 3 of the above mentioned Act, directing you to leave the house at _____ in the Court District aforesaid and/or prohibiting you from entering or being in the vicinity of the house or any other house to be specified in the Order of the Court or being in or in the vicinity of any housing estate specified in the Order of the Court.

Dated this _____ day of _____

District Court Clerk

Being the District Court Clerk assigned to the above mentioned Court Area and District, District Court Offices.

To the respondent: _____

Address of respondent: _____