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

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**EXPLANATORY AND FINANCIAL MEMORANDUM**

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*General*

The Local Government (Charges) Bill 2009 introduces a €200 charge for non principal private residences. The liability for the charge arises mainly in respect of rental, holiday and vacant properties, and the revenue stream will flow to county and city councils. Liability will arise for owners of the properties concerned at a point in time, being one day in each calendar year to be known as the “liability date”. Failure to pay the charge within the relevant period will incur a late payment fee calculated at the rate of €20 for each month or part of a month that the charge remains unpaid.

Provision is made for ancillary provisions such as: delegation of functions by local authorities to the Local Government Computer Services Board or the Local Government Management Services Board; data sharing; and offences and penalties.

*Sections 1 and 2* set out interpretations for the purposes of the Bill. The definitions of “building”, “dwelling” and “residential property” are particularly important. “Building” is defined in the context of structures while “dwelling” deals with the purpose for which a building is used. “Residential property” defines the property actually liable for the charge, and can be thought of as the sum of the previous two definitions but with certain buildings excluded.

The definition of “building” extends to all buildings or parts of buildings.

A “dwelling” is defined as a building used, or suitable for use as, a separate dwelling whether or not certain facilities are shared.

The definition of “residential property” in *section (2)* is set in the context of “buildings” used as “dwellings”; taken together with *section 3(1) and (2)* and *section 4*, it applies the liability for the charge, and largely defines its scope. Certain buildings are excluded from the definition of residential property and these include buildings used as dwellings and which are

- of particular heritage value (section 282 of the Taxes Consolidation Act 1997 refers);
- newly constructed but unsold and unused as dwellings;
- let by certain public authorities;
- the subject of a shared ownership arrangement with a housing authority;

- owned by voluntary housing bodies;
- the subject of a contractual arrangement with a housing authority (under the rental accommodation scheme) or the Health Service Executive, or leased to a housing authority; and
- liable for commercial rates (although it is considered that few such buildings that are also dwellings exist).

It should also be noted that, by virtue of *section 2(2)*, a “residential property” which is let to a number of persons on the basis of a letting arrangement involving exclusive use of a bedroom for each person and joint use of common areas shall be liable for one charge only.

The other definition that is fundamental to the liability for the charge is that of “owner”. The central thrust of the definition is that the owner is the person to whom rent on the building concerned is payable, or would be payable if it were to be rented.

The other definitions in section 1 are relatively straightforward.

*Section 3* establishes the existence of the charge and provides that an owner of residential property on a liability date shall be liable for the charge, and shall pay it to the local authority (city or county council) in whose area the property is situated. This section also provides that the amount of the charge shall be €200, and that the Minister may increase the charge in line with inflation and prescribe the liability date in respect of 2009 (31 March will apply in subsequent years). *Section 3* also provides in *subsection (7)* that co-owners of property shall be jointly and severally liable for the charge, and that payment of the charge by any one co-owner shall discharge the liability of all the co-owners.

*Section 4* provides for certain exemptions defined in the context of ownership (as opposed to buildings — see definition of “residential property” in *section 2*). Owners of principal private residences are exempt from the charge as are owners who occupy their property as their principal private residence but let rooms within it, provided that they qualify for relief under the relevant provisions of the Finance Acts. Residential properties owned by charities are also exempt.

*Subsection (2)* provides for a refund of the charge in circumstances where a person within the year previous to the relevant liability date had acquired a second property with the objective of it becoming his or her principal private residence and subsequently disposes of the original property within six months of the liability date. Essentially, this provision is directed at someone who is moving house and owns two residential properties for a relatively limited period.

*Subsection (3)* provides that where a decree of divorce or a decree of judicial separation has been granted in respect of a marriage, a residential property owned by a spouse, but which is occupied as his or her only or main residence by the other spouse, is exempt.

*Section 5* requires owners of residential property to declare their liability for the charge and to pay it to the appropriate local authority. The Minister is empowered to make regulations prescribing certain ancillary matters such as the time by which (after the liability date) payment falls due, and how the declaration and payment shall be made. Non compliance with the provisions of this section is an offence.

*Section 6* establishes a “late payment fee” for late payment of a charge, calculated at €20 per month for each month after the charge falls due. A grace period of one month is allowed after the date on which payment falls due before the late payment fee takes effect.

*Section 7* provides that an unpaid charge or an unpaid late payment fee will be a charge against the property in respect of which the liability arises and that, in the event of the sale of the property, it will remain a charge against the property for a period of 12 years.

*Section 8* provides that a receipt will be given following payment of a charge, and that a certificate will be provided to an owner, on request, to the effect that a charge has been paid in respect of a liability date.

*Section 9* provides that charges and late payment fees payable to a local authority are placed under its “care and management” and that the collection of charges due and ancillary matters are functions of the relevant local authorities. Charges and late payment fees owing to a local authority may be recovered from persons concerned as a simple contract debt.

*Section 10* enables local authorities to delegate, with the exception of their power to prosecute, some or all of their functions under the Act to either or both the Local Government Computer Services Board and the Local Government Management Services Board. It is likely that certain functions of local authorities in relation to the collection of the charge can most efficiently be carried out by one agency as opposed to each local authority working on its own; an example is the design and operation of a web-site to facilitate payment of the charge. The Minister can direct local authorities to delegate functions. Both Boards must perform the functions delegated to them in accordance with the terms under which the delegation was made. Local authorities may revoke delegations with the consent of the Minister. The powers in this section are executive functions.

*Section 11* deals with data sharing and exchange and provides that local authorities may request information from the Private Residential Tenancies Board (PRTB), the Electricity Supply Board (ESB) and the Revenue Commissioners to assist them in carrying out their functions under the Act. The purpose of this provision is to enable local authorities to have access to data to assist them in identifying properties that may be liable for the charge. In this regard, the PRTB maintain a register of tenancies of private rental property, and the Revenue Commissioners hold data *inter alia* relating to property transactions. The ESB hold data in relation to the amount of electricity used by domestic users, and some of this data may be useful in identifying properties which may be holiday homes or vacant and, therefore, liable for the charge.

*Section 12* is a standard provision in relation to offences and penalties.

*Section 13* is a standard provision dealing with expenses of the Minister.

*Section 14* is a standard provision dealing with secondary legislation and directions.

*Section 15* provides for payments to certain town councils. The Bill provides that the charge shall be collected by city and county councils, and this provision obliges these local authorities to make

a payment to certain town councils (in effect those that are rating authorities) within their administrative area. The payment will be based on the number of properties located within the town in question from which a charge was collected with an adjustment made for the costs of collection.

*Section 16* is a standard provision in relation to citation and commencement.

*Financial Implications of the Bill*

The Bill has no direct financial implications for the Exchequer as the revenue from the €200 charge will be collected and retained by local authorities (county and city councils).

In Budget 2009, the charge was projected to yield €40 million annually. In common with many new taxation measures, the actual amount of the yield will only be known in light of experience of collection of the charge.

Data is available in the Private Residential Properties Board in relation to some 200,000 tenancies entered into in respect of private residential properties, and this should facilitate collection of the charge on these properties. Power is taken in the Bill to allow local authorities to access this data.

Steps have been taken to minimise the costs arising with implementation of the change both for those liable to pay it and for the local authorities implementing it. Payment will be accepted through a web-site and in local authorities.

*An Roinn Comhshaol, Oidhreacht agus Rialtais Áitiúil,  
Meitheamh, 2009.*