

General Scheme of the Land Development Agency 2020



Comparison with 2019
General Scheme &
Analysis of 2020 Scheme

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Fine Gael's LDA

The LDA was announced in September 2018 by the then Taoiseach Leo Varadkar. Its functions included:

- ◆ Strategic management of public lands
- ◆ Delivery of 150,000 new homes over 20 years
- ◆ Provision of 10% social and 30% affordable homes

The agency was established on an interim basis pending the passing of legislation putting it on a statutory footing.

Fine Gael's LDA General Scheme

The General Scheme of the LDA Bill was published in July 2019. Its key provisions included:

- ◆ LDA as an off-balance sheet Designated Activities Company
- ◆ Funded via €1.25bn capitalisation from NTMA and private equity finance
- ◆ Commercial activities not subject to Freedom of Information Acts
- ◆ LDA officials not prescribed as Designated Public Officials under the Regulation of Lobbying Act
- ◆ Limited Land Management functions with weak Compulsory Purchase Powers

The scheme made no reference to social or affordable housing. It was also silent on the need for the agency to address the challenge of climate change.

Oireachtas Housing Committee Pre-Legislative Scrutiny

Following five detailed Pre-Legislative Scrutiny meetings hearing from a wide range of sectors, the Oireachtas Housing Committee submitted a critical report to the Minister. The report, published in December 2019, contained 47 specific recommendations for changes in the General Scheme. These included:

- ◆ Prioritising social and affordable housing
- ◆ Using public land exclusively for public housing
- ◆ Robust compulsory purchase order powers
- ◆ Application of the Freedom of Information Acts
- ◆ Application of the Regulation of Lobbying Act

The full report and table of recommendations can be read here: https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_housing_planning_and_local_government/reports/2019/2019-12-18_report-of-the-joint-committee-on-scrutiny-of-the-general-scheme-of-the-land-development-agency-bill-2019_en.pdf

Fianna Fáil's General Scheme

The new Minister for Housing, Local Government and Heritage Darragh O'Brien published a revised General Scheme of the LDA Bill on 22nd October 2020. The Scheme will be sent to the Oireachtas Housing Committee for Scrutiny.

Below is a detailed Head by Head comparison of the 2019 and 2020 schemes. The new scheme is significantly longer, running to 61 Heads compared to 39 Heads in the initial scheme.

The legal structure of the LDA has been changed significantly. The Scheme has multiple references to affordable housing. It also includes references to climate resistant, low carbon homes. However detailed examination shows that many of the key problems identified by the Oireachtas Housing Committee in 2019 remain. These include:

- ◆ Limited Land Management functions and weak compulsory purchase order powers
- ◆ No mention of social housing
- ◆ Weak definition of Affordable Housing that doesn't guarantee genuine affordability
- ◆ Reliance of equity finance and joint ventures for housing development will push up cost of so-called affordable homes to unaffordable levels
- ◆ Use of public land to deliver unaffordable op-market housing
- ◆ Commercial activities of LDA subsidiaries not covered by Freedom of Information Acts
- ◆ LDA officials not prescribed as Designated Public Officials under the Regulation of Lobbying Act

The new Scheme also includes several new provisions which are also controversial. These include:

- ◆ Granting the LDA Development Agency status allowing it to prepare Strategic Development Zone plans
- ◆ Lack of clarity over valuation method to be used by LDA and other public bodies when acquiring lands
- ◆ Granting the Minister, the power to set the per centage of public lands to be used for affordable housing by way of regulations

Sinn Féin's view

Sinn Féin remains of the view that Government should create an active Land Management Agency with strong compulsory purchase order powers and a significant budget for acquisition of public and private lands.

We do not accept the need for a new state agency for public housing delivery. Rather we remain convinced that resourcing Local Authorities to drive ambitious regional public housing programmes to meet social and affordable need would be more democratic, efficient and cost effective.

Our key concerns with the new General Scheme include:

- ◆ The absence of meaningful land management functions
- ◆ The use of public land for unaffordable open market housing
- ◆ The proposed financing mechanism for the so called 'affordable' homes and its impact on genuine affordability
- ◆ The use of Joint Ventures with private developers to deliver mixed tenure sites (the O'Devaney Gardens model)
- ◆ The lack of transparency and accountability in the commercial activities of LDA subsidiaries
- ◆ The proposed planning role of the LDA particularly if it is used to by-pass Local Authorities and deal directly with An Board Pleanála

Sinn Féin will use the Pre-Legislative Scrutiny sessions of the Oireachtas Housing Committee to tease these and other issues out. We will also table detailed amendments to the Bill, if and when it reaches Committee stage.

We have a once in a lifetime opportunity to redirect our housing system to meet the needs of all those unable to access appropriate, secure and affordable homes. The General Scheme of the LDA does not achieve this and runs the risk of further embedding development models that will exacerbate access to genuinely affordable homes for working people.

Comparison of 2019 and 2020 General Schemes

Head No.	Comparison with 2019 Scheme	Comment
1	Same as 2019 H1	
2	Some amendments to 2019 H2	Reference to 'affordable housing' & inclusion of 'long term social return' in definition of 'commercial basis'
3	Same as 2019 H3	
4	Same as 2019 H4	
5	2019 H5 established LDA as a Designated Activities Company	2020 H5 established LDA as 'body corporate with perpetual succession' & states that 'except where otherwise provided by this Bill... the LDA is independent in the performance of its functions'
6	2019 H5 provides for the LDA constitution to be determined by the Minister for Housing & Public Expenditure and Reform	2020 H5 enables the Minister to 'issue directions of a general policy nature' to the LDA
7	2019 H8 dealt with the Objects of the LDA which is now in 2020 H7	There are some significant changes to this Head including; 'to drive strategic land assembly', 'provide services to local authorities in relation to the planning and development of land', 'a focus on enhancing the stock of climate resistant, low carbon and affordable housing', 'to support the delivery of affordable housing', 'encouragement of innovation in housing design, master planning and construction methods.'
8	This is a completely new Head not contained in the 2019 General Scheme	Affordable housing is defined as rental or purchase properties 'below the prevailing market price or rent in the local authority area'
9	2019 H9 deals with the Public Functions of the LDA	Though the wording of this section has changed it is broadly similar in scope to the 2019 H9 with a more explicit reference to working with Local Authorities and delivering affordable homes.
10	This is a completely new Head not contained in the 2019 General Scheme	This Head sets out 5 'Economic Functions of the LDA' including developing housing on public and other lands, pursue joint ventures with third parties, create investment vehicles, enter into commercial arrangements for development on lands in private ownership, create investment vehicles to deliver and management of cost and affordable rental housing

11	This is a completely new Head not contained in the 2019 General Scheme	This Head gives the LDA the power to draft and submit a planning scheme to a planning authority under Section 165 of the Planning and Development Act for sites designated as Strategic Development Zones.
12	This is a completely new Head not contained in the 2019 General Scheme	This Head outlines services that the LDA can provide to Local Authorities including a range of services involved in the development of large-scale residential developments.
13	This is a completely new Head not contained in the 2019 General Scheme	This head details the Functions of the Board
14	This replaces 2019 H10 on the composition of the LDA board	This Head provides for a more detail bord formation and includes a new reference to 'persons who in the opinion of the Minister have satisfactory competence or qualifications' on housing finance, governance and construction delivery.
15	This is a completely new Head not contained in the 2019 General Scheme	This Head empowers the Minister to appoint and set the pay of the Chairperson of the LDA
16	This is a completely new Head not contained in the 2019 General Scheme	This Head empowers the Minister to set the pay and expenses of members of the Board
17	This is a completely new Head not contained in the 2019 General Scheme	This Head sets out the grounds for removal of a member of the Board
18	This is a completely new Head not contained in the 2019 General Scheme	This Head requires the Board to set up Committees for audit, credit, finance, a risk-management and an advisory committee
19	This is a completely new Head not contained in the 2019 General Scheme	This Head sets out requirements for members of the Board to disclose interest and the impact of such disclosures on their participation in certain matters before the Board
20	This is a completely new Head not contained in the 2019 General Scheme	This Head sets out procedures for Board meetings
21	This is a completely new Head not contained in the 2019 General Scheme	This Head empowers the LDA to provide itself with a seal
22	This replaces 2019 H11	This Head outlines procedures for appointment and pay of LDA staff

23	This replaced 2019 H12	This Head sets out the rules for the appointment and removal of the CEO and is broadly the same as the 2019 Scheme with one addition which allows the Minister to remove the existing CEO during their first seven years
24	This is a completely new Head not contained in the 2019 General Scheme	This Head deals with disclosure of interests by LDA staff
25	This is a completely new Head not contained in the 2019 General Scheme	The Head provides for indemnity for Board members, staff and directors from being personally sued
26	This replaces 2019 H28 regarding NTMA funding	This Head has the same wording as 2019 H28 with some minor amendments to reflect the altered legal structure of the LDA and its subsidiaries
27	This is the same as 2019 H27	This Head has the same wording as 2019 H28 with some minor amendments to reflect the altered legal structure of the LDA and its subsidiaries
28	This is a completely new Head not contained in the 2019 General Scheme	This Head subjects the LDAs capital commitments to amounts set in advance by the Minister
29	This is a completely new Head not contained in the 2019 General Scheme	This Head requires the LDA to meet its costs from its operations & capitalisation
30	This is a completely new Head not contained in the 2019 General Scheme	This Head empowers the LDA to set up subsidiary Designated Activity Companies limited by shares following consultation with the Minister
31	This is a completely new Head not contained in the 2019 General Scheme	This Head requires such subsidiaries to operate according to the Public and Economic Functions of the LDA as set out in Heads 9 and 10
32	This is a completely new Head not contained in the 2019 General Scheme	This Head allows the LDA to provide support and staff to the subsidiaries and for the subsidiaries to pay for this
33 to 43 inclusive	These Heads are almost identical to 2019 Heads 13 to 23 dealing with legal transfer of various matters from the existing LDA to the new LDA	2020 H35 on transfer of staff has different wording to 2019 H15
44	This Head replaces 2019 H 25 dealing with financial statements & the role of the C&AG	While the wording of 2019 H25 and 2020 H44 are different the intention is the same namely to give the C&AG responsibility for auditing the LDAs accounts though providing for 4 months to submit these accounts rather than the 2 months stipulated in the 2029 Scheme

45	This is a completely new Head not contained in the 2019 General Scheme	While this Head is new it provides for the C&AG to audit the accounts of LDA subsidiaries similar to how 2019 H25 did so for LDA Group entities
46	This Head replaced 2019 H30 regarding the relationship between the LDA and the PAC	The only difference between the two schemes is that 2020 H46 designated the LDA Chief Executive as the person responsible for reporting to the PAC whereas the 2019 Scheme allowed the LDA to designate the individual This is a completely new Head not contained in the 2019 General Scheme
47	This is a completely new Head not contained in the 2019 General Scheme	This Head allows for the appointment of a statutory auditor where such an appointment is required following borrowings from a regulated market
48	This is a revised version of 2019 H31 on reporting requirements	This Head requires the LDA to submit an annual report to the Minister who will in turn sent it to the Oireachtas
49	This is the same as 2019 H32 setting out the Public Lands Database function of the LDA	In this Head the language changes from a 'Public Lands Register' to a 'Public Lands Database'
50	This is similar to 2019 H33 on accessing records and lands held by public bodies	This Head includes an additional category of information to be provided related to 'current operational use of relevant public land and potential for these uses to be accommodates in an alternative manner'
51	This is a completely new Head not contained in the 2019 General Scheme	This Head provides for the LDA to submit a report on public lands to the Minister within a year and to be updated ever two years from that
52	This is a completely new Head not contained in the 2019 General Scheme	This Head requires public bodies who intend to dispose of public land to first offer it to the LDA who in turn will request permission from the Minister to acquire the lands (The note to the head says this will relate to lands in area with a population of 10,000 or more)
53	This is a completely new Head not contained in the 2019 General Scheme	This Head sets out the process for transferring land from public bodies to the LDA including the valuation 'the value of the lands on the date' that the LDA requests the lands. There is also a specific provision for determining the value of OPW and Ministerial lands with regard to an affordable housing requirement set out in H52 and a mechanism for resolving a despite over any valuation between the LDA and the owner of the land

54	This is a completely new Head not contained in the 2019 General Scheme	This Head sets out the LDAs use of Compulsory Purchase Powers for 'ransom strips' required for existing LDA developments, to be acquired at existing 'use value' and only to be used for the provision of social and affordable housing and/or infrastructure. CPO powers will not be available to LDA subsidiaries.
55	This is a completely new Head not contained in the 2019 General Scheme	This Head sets out the procedure for lands to be vested to the LDA following approval of the Minister
56	This is an amended version of 2019 H36	This Head provides for periodic reviews of the LDA by the Minister the first after 3 years and every 7 years after that after which Directions can be issued as per Head 6
57	This is the same as 2019 H37 regarding non-disclosure of confidential information	This wording is the same in both Schemes
58	This is the same as 2019 H38 on unlawful interference	This wording is the same in both Schemes
59	This is a completely new Head not contained in the 2019 General Scheme	This Head allows the Minister by way of regulations to set a % of affordable housing to be delivered on any public lands being developed by the LDA. The Head also includes exemptions from this %
60	This Head replaces 2019 H39 on the application of the FOI Acts	This Head makes the LDA subject to the Freedom of Information Acts. This application does not apply to subsidiaries of the LDA.
61	This is a completely new Head not contained in the 2019 General Scheme	This Head allows the Housing Finance Agency to lend to the LDA

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