

Apartment Owners' Network

Representing the owners of apartments and houses in managed estates

BY EMAIL: Clamping.Regis@nationaltransport.ie
Draft Clamping Regulations
National Transport Authority
Dún Scéine
Iveagh Court
Harcourt Lane
Dublin 2
D02 WT20

25 July 2017

Dear Sirs,

Re: Vehicle Clamping Act 2015 - Proposed Regulations

On behalf of the Apartment Owners' Network I enclose our submission in relation to the above.

We should be obliged to have an acknowledgement in due course of safe receipt of this submission in time for your deadline of 1700hrs on Wednesday 26 July 2017.

Yours faithfully,

*[*Sent by email and accordingly bears no signature]*

David Rouse
Director

Encl.

Apartment Owners' Network

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Vehicle Clamping Act 2015

Proposed Regulations

Submission

to

National Transport Authority

25 July 2017

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Abbreviations/Acronyms Used

AON	Apartment Owners' Network CLG
DCC	Dublin City Council
MUD Act	Multi-Unit Developments Act 2011
ODCE	Office of the Director of Corporate Enforcement
OMC	Owners' Management Company
PSRA	Property Services Regulatory Authority

1.0 Introduction

1.1 Apartment Living - Background

The apartment sector is by far and away the fastest growing component of Ireland's housing stock¹.

It has been acknowledged that national economic competitiveness and social cohesion are dependent on the availability of an affordable supply of housing, including a well-maintained stock of apartments². Recent rent and property price increases indicate that supply in both the apartment rental and owner-occupier markets is not meeting demand.

Key to limiting urban sprawl and achieving increases in residential densities in urban areas are policies that promote high quality apartment living.

A sometimes contentious aspect of apartment living, in particular in a high density/urban context, has been the orderly regulation of parking practices.

The Network therefore in principle welcomes the new legislation and the draft Regulations.

We have some points of clarification and suggested amendments in relation to the draft Regulations. The details are set out in Section 2.

¹Census 2016 "Census 2016 Profile 1 - Housing In Ireland"

<http://www.cso.ie/en/releasesandpublications/ep/p-cp1hii/cp1hii/od/>

Apartments have grown in number by 85% between 2002 and 2016.

The number of occupied apartments rose by 11.4% from 183,282 to 204,145 over the period 2011-2016. The number of detached and semi-detached houses experienced increases of 2.2% and 3.4% respectively.

CSO Statistical Release, 23 June 2017- Planning Permissions

<http://www.cso.ie/en/releasesandpublications/er/pp/planningpermissionsquarter12017/> notes that Q1 2017 shows 61% increase in planning permissions granted for apartments versus Q1 2016. The equivalent increase for houses was 48%.

² Rebuilding Ireland – Action Plan for Housing and Homelessness

http://rebuildingireland.ie/Rebuilding%20Ireland_Action%20Plan.pdf

National Competitiveness Council publishes Ireland's Competitiveness Challenge 2016

<http://www.competitiveness.ie/Publications/2016/Competitiveness-Challenge-2016-Press-Release.pdf>

1.2 About the Submitter

The AON is a volunteer-led, independent, non-party political organisation. Membership of the Network is diverse. We represent the interests and views of owners, both owner-occupiers and investors, and OMCs, of dwellings in managed estates throughout Ireland.

As of the date of this submission, 470 multi-unit stakeholders approximately are engaged with the AON. Many more multi-unit estates engage with the Network on an ad hoc or informal basis.

The AON has working relationships with various national and local government agencies. These include the Law Reform Commission, the Department of Justice and Equality, the Department of Housing Planning Community & Local Government, the PSRA, the ODCE, the Housing Agency, Dublin City Council (“DCC”) and the other Dublin Local Authorities.

We work with other organisations in the sector including the Society of Chartered Surveyors Ireland (Residential Committee). We have working links with the Owners Corporation Network in Australia.

The Network played a central role in securing the formulation and enactment of the Multi-Unit Developments Act 2011 (“the MUD Act”). We contributed to the preparation of the Property Services (Regulation) Act 2011, and related secondary legislation.

The AON meets in open forum approximately once a month at DCC Civic Offices, Wood Quay, Dublin 8. Meetings and activities are currently facilitated by funding from DCC, and by the work of its volunteer members.

The Network incorporated as a Company Limited by Guarantee (No. 592683) on 10 November 2016, and is establishing formal structures as a representative organisation.

Further information about the Network’s activities is available at-
www.apartmentownersnetwork.org.

1.3 Context to submission

1.3.1 Apartment numbers nationally

Census 2016 recorded that there are over 204,000 occupied apartments in Ireland³. 500,000 people approximately live in homes in multi-unit developments⁴.

There has in the last 10-15 years been a rapid growth in the number of apartment/multi-unit development homes as a component of the national housing stock. Apartments, which have increased in number by 85% since 2002, accounted for 12% of all household types in 2016, compared with 11% in 2011.

³ Census of Population 2016 - Profile 1 Housing in Ireland <http://www.cso.ie/en/releasesandpublications/ep/p-cp1hii/cp1hii/od/>

⁴ Presentation to AON by P Mooney, Benchmark Property, 14 January 2016

According to Census 2016⁵, since 2011 there has been an increase of 15% in the number of apartment dwellings in the State. In the same period the total number of homes in the country grew by 3%. This means that the apartment sector represents by far the fastest growing component of the national housing stock.

Apartments are the main household type in the Dublin City local authority area. They account for 35% of all occupied homes in the capital.

Given these rapid changes, public policy should support the sustainability of apartments and multi-unit developments as a key component of the national housing stock.

1.3.2 Brief overview of apartment management

In order to inform the reader, and to provide context for the proposals in this submission, we present a brief explanation of how apartment and multi-unit developments are structured and managed.

OMC

An Owners' Management Company comprises a board of volunteer directors, typically civic-minded residents or owners in the estate. The directors are elected by the wider body of apartment/unit owners in the estate, i.e. the membership of the OMC.

In the vast majority of cases the directors are not paid. However, they are charged with the primary responsibility of managing the estate common areas and shared services, and of ensuring adherence to the principles of good estate management. Effective stewardship of the OMC is vital to ensuring the upkeep of the estate. It is essential to ensuring that the estate is a good community in which to live.

The MUD/OMC model of apartment management in Ireland means that property assets worth hundreds of millions of euro are under the stewardship of volunteer directors. Other than the usual CRO and ODCE filing requirements and enforcement measures, and the generality of Company Law, there is no specific regulation of OMCs.

The OMC agrees an annual budget for the year. It then issues an annual service charge to each unit owner. This management fee pays for the aforementioned services.

The management fee must by law⁶ include a contribution to a long-term building investment ("sinking") fund for non-recurring/capital expenditure (e.g. lift replacement). The amount of the sinking fund contribution is set by the members; it is open to them to agree there shall be no contribution⁷. It is submitted that this is a flaw in the legislation.

⁵ Census 2016, Chapter 9 "Housing"

www.cso.ie/en/media/csoie/releasespublications/documents/population/2017/Chapter_9_Housing.pdf

⁶Section 19(3) of the Multi-Unit Developments Act 2011 obliges the owner of each unit in a multi-unit development to make a payment to the sinking fund of the amount of contribution fixed in respect of the unit concerned in accordance with the section.

⁷Section 19(5) provides that the amount of the contribution to be paid as respects a unit by each unit owner to the sinking fund shall be €200, "...or such other amount as may be agreed by a meeting of the members...".

A management agent is appointed by the OMC to attend to the day-to-day operational running of the estate. This includes common area maintenance and upkeep, block insurance, domestic waste disposal, landscaping, etc.

Mutuality/community ethos

An OMC is *de jure* a company, a body corporate. In reality, *de facto*, it is a committee of volunteer directors made up of home owners, usually the residents. It is a mutual organisation. An OMC is often referred to as “the residents’ committee”.

An OMC is established in law as company limited by guarantee. By definition it has no shareholders, only guarantors usually for an amount up to a nominal sum, €10. The OMC is not-for-profit, and does not pay a dividend.

Any excess of income over expenditure is either allocated to the building investment/sinking fund, or else it is carried forward towards the cost of provision of estate services for the following year.

1.3.3 Service charge recovery challenges

Service charge debt recovery and OMC illiquidity are widely accepted as the most significant and immediate financial challenges confronting OMCs and their volunteer directors⁸.

Many OMCs are faced with current fee recovery rates of less than 70%. Aged debtors can run to five or more years. Accumulated debtors can represent in excess of 100% of the OMC annual budget.

Sinking fund provision is in many cases tied up in debtors. As a consequence many OMCs are forced to give priority to the costs of basic estate services only: insurance, refuse collection and common area lighting.

Public policy has therefore already acknowledged the desirability that OMCs should recover service charges in full.

Properly funded OMCs that can-

- meet their annual expenses (particularly non-discretionary costs such as insurance and waste collection), and
- appropriately enhance the estate over time,

ensure the maintenance and improvement of apartments as a growing component of the national housing stock.

Sound financial management reduces the risk of developments looking to the State or local government for support in the future for funding; this is in contrast to regrettable difficulties experienced in recent high profile cases.

⁸See Adele McKeown SCSl Presentation: *OMC Service Charge Collection* on our website-
<https://apartmentownersnetwork.org/2017/06/19/adele-mckeown-scsi-presentation-omc-service-charge-collection/>

As noted, the problem of service charge arrears is widespread in the OMC sector. Poor recovery restricts the provision of vital services, negatively impacting the overall quality and supply of owner occupier and rental property to the market.

Part of good estate management for an OMC, facilitating recovery of services charges, is the ability effectively to regulate parking in common areas within its control.

2.0 Details of Submission

1. Regulations 5(a) & 3(a)

The term “detection” as employed in Regulation 5(a) is not defined. We suggested clarification is required, by way of a precise definition in Regulation 3(a).

2. Regulation 5(e)

We suggest an amendment to this regulation such that a vehicle may be relocated where it is obstructing an access route for emergency services.

Clarification is required as to whether a member of An Garda Síochána must attend to opine where a vehicle is deemed to be causing an obstruction.

3. Regulation 6(c)

We suggest that there is a typographical error by use of the word “change” (sic); the regulation should be amended to commence-

“Where the relevant charge applicable...”

4. Regulation 7

We submit that Regulation 7 be amended to make provision for increased charges in the case of incidences of repeated wrongful parking by the same vehicle at non-statutory clamping places.

We submit provision should be made for a routine review of the charging structure every five years.

3.0 Conclusion

The Network wishes to thank the NTA for the opportunity to make this submission.

We trust that the views expressed will be given due consideration in the Authority's deliberations in framing the Regulations.

We would be glad to expand on our proposals at a meeting or in another appropriate forum.