SOCIAL AND AFFORDABLE HOUSING BILL 2016

Introduction

The purpose of this Bill is to amend various pieces of legislation in order to make improvements to the current serious shortage in supply of housing for sale or for rent at affordable prices, and to ensure a stable and functioning housing market.

Article 43 of the Constitution deals with Private Property and states that:

> "1. 1° The State acknowledges that man, in virtue of his rational being, has the natural right, antecedent to positive law, to the private ownership of external goods.
>
> 2° The State accordingly guarantees to pass no law attempting to abolish the right of private ownership or the general right to transfer, bequeath, and inherit property.
>
> 2. 1° The State recognises, however, that the exercise of the rights mentioned in the foregoing provisions of this Article *ought, in civil society, to be regulated by the principles of social justice*.
>
> 2° The State, accordingly, may as occasion requires *delimit by law the exercise of the said rights with a view to reconciling their exercise with the exigencies of the common good*."

Section 2 of this Bill adopts the language of the Constitution. It provides that, in passing this Act, the Oireachtas seeks to regulate the exercise of private property rights by the principles of social justice and to delimit the exercise of those rights with a view to reconciling their exercise with the exigencies of the common good.

The section further provides that all those who are concerned with the administration of this Act or who are performing functions under it must have regard to these stated purposes.

CPOs and compensation

Part 2 of the Bill deals with the rules for assessing compensation paid on the compulsory acquisition of land for housing purposes.

It is not the purpose of this Part to create a new power of compulsory acquisition of land: local authorities and various other public bodies already have such a power, including for the provision of housing and of serviced land for housing. The purpose here is solely to change the compensation rules that apply where land is being acquired for housing purposes.

Reform in this area has always been held up by fears that the Constitution guarantees the owner of land being compulsorily acquired that he or she will be compensated by being paid the full market value for the land. When there is a housing shortage and a boom in prices, local authorities cannot afford to pay full market value.

The All-Party Oireachtas Committee on the Constitution considered this issue in detail back in 2004. The Committee agreed that, having regard to modern case-law, it is very likely that the major recommendation of the 1973 Kenny Report (the Report of the Committee on the Price of Building Land) – that land required for development by local authorities both could and should be compulsory acquired at existing use value plus 25% – would not be found to be unconstitutional. The 2004 report spells out in detail the reasons for arriving at this conclusion. It has not been seriously challenged.

This recommendation, dating from the Kenny Report of over 40 years ago, is adopted and given statutory effect in this Bill, with some modifications.

The Bill first defines certain terms:

- the "current use value" of land, means the amount it would fetch on the open market on the assumption that no development was permissible – i.e., the current use value of land used for farming is its price based on the assumption that the land would not be rezoned for any purpose other than agricultural;

- "development land" means land which has an open market value that exceeds its current use value – in other words, it is priced on the assumption that it can be rezoned for a more profitable use;

- "distressed land" essentially means land that is not willingly put on the market by its owner; it is defined as covering land purchased from NAMA or from a person exercising powers of sale by virtue of a mortgage, charge or lien in respect of the land, or acquired as a result of purchasing a mortgage, charge or lien in respect of the land; so-called 'vulture' funds specialise in acquiring distressed land and other distressed assets;

- the "open market value" of land means the amount it would be expected to realise if sold in the open market by a willing seller.

The Bill then replaces the existing Rule 2 of the compensation rules, which is set out in section 2 of the Acquisition of Land (Assessment of Compensation) Act 1919.

The new rule will apply in every case where compensation is payable by a public body in respect of land compulsorily acquired for housing purposes.

Under the new Rule 2, in the case of development land, the value of the land shall be limited to 125% of its current use value.

The Bill provides that, in the case of 'distressed' land, its value for compensation purposes shall in all cases be limited to the amount determined by adding together the cost of acquiring the land, plus the costs of any improvements, plus an amount representing a return on investment in the land.

This return on investment is to be calculated on the basis that the costs of acquisition and improvements had been invested in securities yielding an annual rate of return 2% higher

than government stock, but reduced by the amount of any return on investment in the land that has actually accrued.

If the land is development land and is also distressed, then that provision shall be applied which results in the lesser amount of compensation being payable by the public body.

Amendments to Residential Tenancies Act 2004

At present, residential tenants can find themselves dealing with a receiver when banks or other financial institutions seek to repossess a mortgaged property that is being rented.

A tenant will have contractual and statutory rights, including minimum termination notice periods, when dealing with a landlord. However, the extent, if any, to which a receiver steps into the shoes of the landlord and is bound by the tenancy agreement is uncertain. Tenants' rights in relation to adequate notice, upkeep of the property, deposit return and adherence to the terms of the tenancy may be ignored in practice.

This Part of the Bill amends section 5 of the 2004 Act to provide a new definition of "landlord" to include –

- any person for the time being entitled to receive the rent (other than as an agent);
- where legal proceedings have commenced, any mortgagee; and
- any receiver.

There is then an amendment to section 18 of the 2004 Act:

- to prohibit a landlord from setting rent otherwise than in accordance with the Act as amended
- to empower the Minister to prescribe areas in the State where the initial rent must be calculated having regard to a new index of 'reference' rents for comparable properties in the area published by the PRTB
- to require the PRTB to publish the index of reference rents, compiled from aggregated details derived from its register of private residential tenancies, by reference to which the rent payable in respect of a tenancy in a prescribed area would be determined, and
- to require the Board to review and update the index for a prescribed area every 12 months, to publish the index in electronic form and to make it available for inspection on its website.

The Bill goes on to insert a new section 22A into the 2004 Act, dealing with the rate of increase in rent. The new section states that a landlord may not increase the annual rent by more than the change in the consumer price index (if any) since the rent was last set.

However, where a landlord has carried out improvement works that increase the letting value of the dwelling (other than works carried out to ensure compliance with housing standards),

the annual rent may in addition be increased by not more than 10% of the total cost of those improvement works up to €50,000, and 7.5% of the cost of any improvements over €50,000.

A further amendment prohibits contracting out from the terms of this legislation.

Section 78 of the 2004 Act, which lists matters of dispute between landlord and tenant that may be referred to the PRTB for determination. The Bill adds to that list:

- the determination of the lawful rent;
- the determination of the applicable reference rent;
- a complaint that the rent is greater than the amount of the lawful rent;
- a complaint that the landlord has increased the rent by more than the change in the consumer price index;
- a claim that a landlord is entitled to an increase in the amount of rent due to improvement works;
- a complaint that an increase in the amount of annual rent attributable to improvement works is greater than 10% of the total of cost of those works.

Section 34 of the Act of 2004 sets out the lawful grounds for terminating a tenancy by a landlord. This Bill deletes paragraph 3 of that section, which permits a landlord to determine a tenancy simply on the grounds that he or she intends to sell the property within 3 months. This ground is often relied upon by receivers when they are appointed to mortgaged property that has been rented.

In many countries it is the law that the sale of a rented property may not be relied upon as grounds for terminating the tenancy agreement. In other words, there is no entitlement to vacant possession simply for the purposes of sale.

The National Economic Social Council has recommended that Ireland adopt the same approach, with a view to increasing secure occupancy: “Removing sale as a reason for ending a lease would significantly improve secure occupancy and the Council recommends that this be adopted for Ireland. One view is that this could reduce the price that those selling rental properties could achieve, compared to the price with vacant procession. On the other hand, the more the Irish rental system is driven by long-term yield, rather than changing asset prices, the higher the value purchasers will put on properties with an existing, secure rental stream.”

Amendments to National Asset Management Agency Act 2009

While NAMA has many powers that are relevant to housing supply, the agency is bound by its current statutory objects and purposes. This Part provides for the Government to appoint a day as the ‘transition day’, on which NAMA shall become known as the National Housing Development and Finance Agency.

On the transition day, the Housing Finance Agency and the Housing and Sustainable Communities Agency (more usually known as the Housing Agency) will be dissolved and their functions will be transferred to NAMA.

The Part amends the statutory purposes of NAMA, so as to ensure that NAMA's focus becomes one of addressing the serious shortage in supply of residential accommodation for sale or for rent at affordable prices and the compelling need to ensure a stable and functioning market in such accommodation.

The Part enables the Government to make regulations to facilitate the smooth transition to the performance of these new functions.

Tax Amendments

There are two amendments to tax legislation. First, the Bill amends section 97 of the Taxes Consolidation Act 1997 by deleting subsections (2A) to (2K). That section sets out the computational rules and allowable deductions for landlords, in calculating their tax liability.

As originally passed in 1997, the section allowed for the deduction of interest on borrowed money employed in the purchase, improvement or repair of the premises.

Over the years, this allowance was at first abolished, then partially re-introduced and then wholly re-introduced but only in respect of certain classes of tenant.

A functioning rental market needs landlords who are prepared to invest on the same terms as would apply to any other business.

This includes the basic principle that interest on money borrowed for the purposes of a business is an expense of the business and may be deducted from the calculation of profits.

This amendment restores the status quo, by deleting much of subsections (2A) to (2K), that have been added incrementally over the years.

However, the amendment provides that a landlord who lets to a tenant whose rent is being paid by a housing authority or who is in receipt of rent supplement from the Department of Social Protection may make a deduction at 150% of the normally allowable amount, for a period up to 2020.

Second, section 13 amends the Value-Added Tax Consolidation Act 2010. The VAT Directive (2006/112/EC) provides for a standard rate and for reduced rates, which may be applied only in respect of those goods or services that are listed in Annex III to the Directive. However, separate provisions in the Directive have enabled the State to maintain a 13.5% rate for housing – but not to reduce it further.

Under Article 98 and Annex III of the Directive, a further reduction, to the 9% rate, can be made in respect of the "provision, construction, renovation and alteration of housing, as part of a social policy". The amendment makes this change.

Vacant site levy

Part 6 contains a single section, section 14. This section amends the Urban Regeneration and Housing Act 2015. That Act introduced a vacant site levy which is due to come into operation in 2018. The amendment brings the levy forward to 2017, payable in arrear from 2018.

The 2015 Act provides for whole or partial exemption from the levy, where the site is mortgaged. Section 14 provides that these exemptions or reductions do not apply to a site that is owned in the course of a business that consists of dealing in or developing land.