SOCIAL AND AFFORDABLE HOUSING BILL 2016

EXPLANATORY MEMORANDUM

Purpose of Bill
As its long title states, the Bill seeks to amend various Acts with a view to improving the supply of social and affordable housing. The purposes for doing so are spelled out in section 2:

- to address the serious shortage in supply of residential accommodation for sale or for rent at affordable prices, and

- to address the compelling need to ensure a stable and functioning market in such accommodation.

This section also invokes Article 43 of the Constitution which deals with private property and provides 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.
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> 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 the Bill accordingly 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. It provides further that all those concerned with the administration of this Act or performing functions under it shall have regard to the purposes for which it was enacted.

Provisions of Bill
Part 1 deals with preliminary and general matters. Section 1 provides in standard form for the short title, for the collective citation of the various Parts with the enactments they seek to amend and with the coming into operation of the Bill.

The provisions of section 2 ("Purpose of Bill") have been outlined above.

Part 2 of the Bill deals with the rules for the assessment of compensation payable on the compulsory acquisition of land for housing. 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 whenever relevant to the performance of their statutory functions, including the provision of housing and serviced land for housing. The purpose here is solely to change the compensation rules where land is acquired for housing purposes.

The All-Party Oireachtas Committee on the Constitution considered this issue and agreed in its ninth report in 2004 that, having regard to modern case-law, it is very likely that the major recommendation of the Report of the Committee on the Price of Building Land in 1973 ('the Kenny Report') – that land required for development by local authorities should be compulsory acquired at existing use values plus 25% – would not be found to be unconstitutional.

This recommendation from over 40 years ago is adopted and given statutory effect in this Part, with some modifications.

Section 3 defines certain terms used in this Part and in the Schedule. In particular, it provides for the following terms:

- "current use value", in relation to land, means the amount which would be the open market value of the land if the open market value were calculated on the assumption that it was and would remain unlawful to carry out any development in relation to the land other than exempted development;

- "development land" means land the open market value of which exceeds its current use value;

- "distressed land" means land purchased by the claimant or a connected person from NAMA or from a person exercising powers of sale by virtue of a mortgage, charge or lien in respect of the land, or otherwise acquired as a result of purchasing a mortgage, charge or lien in respect of the land from NAMA or from a person having the benefit of such a mortgage, charge or lien;

- "open market value", in relation to land, means the amount which the land if sold in the open market by a willing seller might be expected to realise.

Rule 2 of the compensation rules set out in section 2 of the Acquisition of Land (Assessment of Compensation) Act 1919 (as amended), is replaced by a new rule, to apply in every case where compensation is payable by a public body in respect of land compulsorily acquired for housing purposes.

"Housing purposes" means the provision by of housing services under the Housing Acts, the provision of housing by approved housing bodies, and the provision of accommodation for third level students.

Under the new Rule 2, the value of land is generally the amount which the land if sold in the open market by a willing seller might be expected to realise. But in the case of development land, the value of the land shall be limited to 125% of its current use value.

In the case of distressed land, the value of the land for compensation purposes shall be limited to the amount determined by adding together the cost of acquiring the land, plus the cost of improvements plus an amount representing a return on investment in the land, again limited to a yield not exceeding 2% over government stocks.

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

Part 3 of the Bill deals with amendments to Residential Tenancies Act 2004. Sections 4 and 5 are standard interpretation sections.

Section 6 provides a new definition of "landlord" for the purposes of the 2004 Act. At present, tenants can find themselves dealing with a receiver when lenders seek to repossess a mortgaged property that is being rented. 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.

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

- the person for the time being entitled to receive (otherwise than as agent for another person) the rent paid in respect of a dwelling by the tenant;

- where legal proceedings have commenced, a mortgagee in respect of a dwelling;

- a receiver in respect of a dwelling.

Section 7 amends Part 3 of the 2004 Act, which deals with rent and rent reviews. It first amends section 18 of that Act:

- to substitute a prohibition on the setting of rent otherwise than in accordance with the Act, in place of the current prohibition on setting rent levels above market rent

- to empower the Minister to prescribe areas in the State where the initial rent will be calculated having regard to the index of 'reference' rents for comparable properties in the area published by the Board

- to require the Board to publish an index of reference rents, compiled from aggregated details derived from the register of private residential tenancies maintained by the Board, by reference to which landlords and tenants would determine the rent properly payable in respect of a tenancy in a prescribed area, and

- to require the Board to review and update the index of reference rents for a prescribed area every 12 months, publish the index in electronic form and make it available for inspection on a website maintained and controlled by the Board.

The second amendment to Part 3 is to insert a new section 22A, dealing with the rate of increase in rent. The new section would provide that a landlord may not increase the annual

rent payable under the tenancy of a dwelling 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 payable under the tenancy may in addition be increased by not more than 10% of the total cost of those improvement works, up to an improvement works spend of €50,000, plus €7.5% of any spend above that amount.

The third amendment to Part 3 inserts a new section 24A, which prohibits contracting out from the terms of this Part.

Section 8 amends section 78 of the 2004 Act, which lists particular matters of dispute that may be referred to the PRTB for determination, by adding to the list:

- the determination of the lawful rent in respect of the tenancy of a dwelling;
- the determination of the applicable reference rent in respect of the tenancy of a dwelling;
- a complaint that the rent under the tenancy of a dwelling is greater than the amount of the lawful rent in respect of the tenancy at the material time;
- a complaint that the landlord has increased the rent under the tenancy of a dwelling 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 payable under the tenancy of a dwelling due to improvement works;
- a complaint that an increase in the amount of annual rent under the tenancy of a dwelling attributable to improvement works is greater than 10% of the total of cost of the improvement works.

Section 9 of the Bill amends section 34 of the Act of 2004, which sets out lawful grounds for the determination of a tenancy by a landlord. The amendment deletes paragraph 3, which permits a landlord to determine a tenancy 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, 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 this 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."

Section 10 makes consequential amendments to section 115 of the 2004 Act, which deals with the forms of redress that may be granted under that Act. It enables the PRTB to make a declaration as to whether or not the rent set under a tenancy dwelling is the lawful rent, and to direct the return or repayment of a specified amount of rent.

Part 4 of the Bill amends the National Asset Management Agency Act 2009. The 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) stand dissolved and their functions are transferred to NAMA.

The Part makes consequential amendments to the statutory purposes of the NAMA Act and to the purposes and functions 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.

Part 5 contains two sections. Section 12 amends section 97 of the Taxes Consolidation Act 1997, which sets out the computational rules and allowable deductions for landlords, in calculating their tax liability. As originally enacted, subsection (2) (e) allowed for the deduction of any 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.

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 goods or services 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.

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.