SOCIAL AND AFFORDABLE HOUSING BILL 2016

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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.

NAMA is given the power to give financial assistance to local authorities and approved housing bodies.

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.

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.
>
> 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
Preliminary and General

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
Compulsory acquisition of land: assessment of compensation

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
Amendments to Residential Tenancies Act 2004

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
Amendments to National Asset Management Agency Act

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.

NAMA is given the power to assist housing authorities and approved housing bodies in respect of the provision and management of housing accommodation, and in respect of other matters in relation to housing, and is conferred with the power to give assistance conferred by section 6 of the Housing (Miscellaneous Provisions) Act 1992, as if it were a housing authority.

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

PART 5
Amendments to Taxes Acts

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.

SOCIAL AND AFFORDABLE HOUSING BILL 2016

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PART 4

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11. Amendments to National Asset Management Agency Act 2009.

PART 5

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13. Amendment to Value-Added Tax Consolidation Act 2010.

14. Amendment of Urban Regeneration and Housing Act 2015.

ACTS REFERRED TO

Acquisition of Land (Assessment of Compensation) Act 1919 (9 & 10 Geo. 5, c. 57)

Conveyancing Act 1881 (44 & 45 Vic. c. 41)

Conveyancing Act 1911 (1 & 2 Geo. 5 c. 37)

Freedom of Information Act 2014 (No. 30)

Housing (Miscellaneous Provisions) Act 1992 (No. 18)

Land and Conveyancing Law Reform Act 2009 (No. 27)

Local Government (Planning and Development) Act 1963 (No. 28)

Local Government (Planning and Development) Act 1990 (No. 11)

National Asset Management Agency Act 2009 (No. 34)

Planning and Development Act 2000 (No. 30)

Planning and Development (Amendment) Act 2002 (No. 32)

Registration of Title Act 1964 (No. 16)

Residential Tenancies Act 2004 (No. 27)

Taxes Consolidation Act 1997 (No. 39)

Urban Regeneration and Housing Act 2015 (No. 33)

Value-Added Tax Consolidation Act 2010 (No. 31)

SOCIAL AND AFFORDABLE HOUSING BILL 2016

BILL

entitled

AN ACT TO AMEND VARIOUS ENACTMENTS WITH A VIEW TO IMPROVING THE SUPPLY OF SOCIAL AND AFFORDABLE HOUSING AND TO PROVIDE FOR RELATED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1
Preliminary and General

Short title and collective citation and construction and commencement.

1. – (1) This Act may be cited as the Social and Affordable Housing Act 2016.

(2) Part 3 and the Residential Tenancies Acts 2004 to 2015 may be cited together as the Residential Tenancies Acts 2004 to 2016 and shall be construed together as one Act.

(3) Part 4 and the National Management Agency Act 2009 may be cited together as the National Management Agency Acts 2009 and 2016 and shall be construed together as one Act.

(4) This Act shall come into operation on such day or days as the Government may appoint by order or orders either generally or with reference to any particular purpose or provision, and different days may be so appointed for different purposes and different provisions.

Purposes of Act.

2. – (1) The purposes of this Act are –

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

(b) to address the compelling need to ensure a stable and functioning market in such accommodation.

(2) 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.

(3) 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.

PART 2

Compulsory acquisition of land: assessment of compensation

Assessment of compensation in respect of land compulsorily acquired for housing purposes.

3. – (1) This section applies where –

(a) compensation is payable by a public body in respect of land compulsorily acquired,

(b) the provisions of the Acquisition of Land (Assessment of Compensation) Act 1919 ("the Act of 1919") fall to be applied in the assessment of that compensation, and

(c) the land is acquired for housing purposes.

(2) For the avoidance of doubt, this section applies both –

(a) where section 2 of the Act of 1919 stands amended in cases where any compensation assessed will be payable by a planning authority or any other local authority, and

(b) where section 2 does not stand so amended.

(3) In subsection (1) (c), “housing purposes” includes –

(a) the provision by a housing authority of housing services within the meaning of section 10 of the Housing (Miscellaneous Provisions) Act 2009,

(b) the provision of housing by a body that is an approved body for the purposes of section 6 of the Housing (Miscellaneous Provisions) Act 1992,

(c) the provision of accommodation for students in third-level institutions in the State.

(4) Where this section applies, section 2 of the Act of 1919 is amended by substituting the following for Rule 2:

“2. (1) The value of land shall, subject as hereinafter provided be taken to be the amount which the land if sold in the open market by a willing seller might be expected to realise: Provided always that the arbitrator shall be entitled to consider all returns and assessments of capital value for taxation made or acquiesced in by the claimant.

(2) In the case of development land, the value of the land shall, subject as hereinafter provided be taken to be 125 per cent of the current use value of the land.

(3) In the case of distressed land, the value of the land shall, subject as hereinafter provided be taken to be the amount determined by adding together –

(a) the cost of acquiring the land (including the cost of any loan entered into for the purpose),

and

(b) the amount, if any, assessable in respect of the cost of improvements carried out (other than work consisting only of maintenance, repairing, painting and decorating), which have added to the value of the land,

and

(c) an amount representing a return on investment in the land, calculated on the assumption that any amounts assessed under paragraphs (a) and (b) had, since the time of acquisition of, or improvements to, the land (as the case may be), been invested in securities yielding an annual rate of return on that investment which was 2 per cent higher than could have been achieved by investing (and, where appropriate, reinvesting) the monies in any of such issues of government stock as were available for purchase at the relevant time or times, but reduced by the amount of any return on investment in the land that has otherwise actually accrued to the claimant.

(4) Where both Rules 2 (2) and (3) are applicable, that provision shall be applied which results in the lesser amount of compensation being payable by the public body.

(5) Compensation payable under Rules 2 (2) and (3) shall not in any event be assessed as exceeding the open market value of the land on the date of the acquisition to which those rules apply.

(6) In this Rule –

“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 –

(a) purchased by the claimant, or by a person who is in relation to the claimant a connected person, from –

(i) the National Asset Management Agency, or

(ii) from a person exercising powers of sale by virtue of a mortgage, charge or lien in respect of the land, or

(b) acquired by the claimant, or by a person who is in relation to the claimant a connected person, as a result of purchasing a mortgage, charge or lien in respect of the land from –

(i) the National Asset Management Agency, or

(ii) from a person having the benefit of a mortgage, charge or lien in respect of the land;

"government stock" means the public stocks, funds, and securities (other than National Bonds or Land Bonds) of the Government;

"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;

"public body" has the meaning assigned to it by the Freedom of Information Act 2014.".

PART 3

Amendments to Residential Tenancies Act 2004

Interpretation of Part 3.

4. – In this Part, "the Act of 2004" means the Residential Tenancies Act 2004.

Additional definition: "reference rent".

5. – Section 4 of the Act of 2004 is amended by inserting the following definition:

""reference rent" has the meaning assigned to it by section 19;".

Definition of "landlord".

6. – Section 5 of the Act of 2004 is amended by deleting the definition of "landlord" in subsection (1) and inserting the following as subsection (1A):

"(1A) (a) In this Act "landlord" means –

(i) 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 thereof and, where the context so admits, includes a person who has ceased to be so entitled by reason of the termination of the tenancy;

(ii) where proceedings have commenced, a mortgagee in respect of a dwelling;

(iii) a receiver in respect of a dwelling.

(b) In paragraph (a) –

"proceedings" means legal proceedings in which any of the following reliefs are claimed in respect of a dwelling:

(i) recovery of possession of land on foot of a legal mortgage or charge;

(ii) an order declaring the amount due on foot of a mortgage to be well charged on land;

(iii) an order under sections 97 (2) or 100 (3) of the Land and Conveyancing Law Reform Act 2009;

(iv) an order under sections 18 or 24 of the Conveyancing Act 1881, sections 3, 4 or 5 of the Conveyancing Act 1911 or section 62 of the Registration of Title Act 1964;

"mortgagee" includes any person having the benefit of a charge or lien in respect of a dwelling and any person deriving title to the mortgage under the original mortgagee;

"receiver" includes any person appointed to be a receiver of the income in respect of a dwelling, or to exercise any powers delegated by the mortgagee or other person to the receiver.".

Amendment of Part 3 ("Rent and rent reviews").

7. – Part 3 ("Rent and rent reviews") of the Act of 2004 is amended –

(a) by substituting the following for section 19:

"**Setting of rent above lawful rent prohibited.**

19. (1) In –

(a) the initial setting of the rent under the tenancy of a dwelling, and

(b) any subsequent setting of the rent under the tenancy by way of a review of that rent,

an amount of rent shall not be provided for that is greater than the amount that can be set in accordance with this Part.

(2) Save where subsection (3) applies, in setting the initial rent under the tenancy of a dwelling, an amount of rent shall not be provided for that is greater than the amount of the market rent for that tenancy.

(3) (a) The Minister may by order prescribe an area within the State to which this subsection applies.

(b) In setting the initial rent under the tenancy of a dwelling in an area to which this subsection applies, an amount of rent shall not be provided for that is greater than the reference rent applicable to that tenancy.

(c) In prescribing an area to which this subsection shall apply, the Minister shall have regard to –

(i) the rate of increase (if any) in the letting value of dwellings in the area;

(ii) the supply of dwellings in the area;

(iii) the demand for dwellings in the area;

(iv) the desirability of ensuring that the right of tenants to security of tenure is not unduly undermined;

(v) the desirability of ensuring that the property rights of landlords are not unduly restricted;

(vi) the prevention of homelessness;

(vii) the purposes of the Housing Act 2016 and the exigencies of the common good.

(4) (a) The reference rent applicable to a tenancy in an area to which subsection (3) shall be determined by reference to the index of reference rents for that area published by the Board under this subsection.

(b) The index of reference rents shall be derived from information contained in the register and shall, in relation to an area, contain a list of the average letting values of comparable dwellings, having regard to the following criteria –

(i) the area in which the dwelling is situated;

(ii) the estimated floor area;

(iii) the number of bedrooms;

(iv) the amount of rent payable under the tenancy;

(v) the category to which the dwelling belongs, namely –

(I) a house,

(II) a maisonette,

(III) an apartment,

(IV) a studio,

and, in case of a house or a maisonette, whether it is detached, semi-detached, or terraced.

(c) The Board shall –

(i) review and update the particulars contained in the index of reference rents for an area every 12 months, for so long as this subsection applies to that area, and

(ii) publish the index in electronic form and make it available for inspection on a website maintained and controlled by the Board.”;

(b) by inserting the following as section 22A:

“**Rate of increase in rent.**

22A. – (1) Subject to subsection (3), 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.

(2) For the purposes of this subsection (1), “change in the consumer price index” means the difference between –

(a) the All Items Consumer Price Index Number last published by the Central Statistics Office before the date of the increase in rent, and

(b) the Number last published before the date when the rent was last set,

expressed as a percentage of the first-mentioned number.

(3) Where a landlord satisfies the Board that he or she has carried out improvement works that result in an increase in the letting value of the dwelling, other than works carried out under –

(a) section 12 (1) (b) (i) or (ii),

(b) section 12 (1) (g), or

(c) otherwise to ensure compliance with any standards for houses for the time being prescribed under section 18 of the Housing (Miscellaneous Provisions) Act 1992,

the annual rent payable under the tenancy of the dwelling may be increased –

(i) if the total cost of the improvement works, does not exceed €50,000, by not more than 10% of the total cost,

(ii) if the total cost of the improvement works exceeds €50,000, by €5,000 plus not more than 7.5% of the amount by which the total cost exceeds €50,000.

(4) In any dispute as to the amount of increase in the rent payable under the tenancy of a dwelling that is claimed to be attributable to improvement works, the onus shall be on the landlord to establish –

(a) the increase in the letting value of the dwelling attributable to the improvement works, and

(b) the costs of the improvement works.”; and

(c) by inserting the following as section 24A:

“**No contracting out from terms of Part permitted.**

24A. – (1) Subject to subsection (2), no provision of any lease, tenancy agreement, contract or other agreement (whether entered into before, on or after the coming into operation of this Part) may operate to vary, modify or restrict in any way a provision of this Part.

(2) Subsection (1) does not prevent the parties from entering into an agreement in respect of the rent payable under a lease or tenancy agreement which is more favourable to the tenant as to its terms than those which would apply under of this Part.".

Amendment of section 78 ("Particular matters that may be referred (non-exhaustive list)").

8. – Section 78 ("Particular matters that may be referred (non-exhaustive list)") of the Act of 2004 is amended by inserting the following after subsection (1) (q):

"(r) the determination of the lawful rent in respect of the tenancy of a dwelling;

(s) the determination of the applicable reference rent in respect of the tenancy of a dwelling;

(t) 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;

(u) 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;

(v) 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;

(w) 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.".

Amendment of section 34 ("Grounds for termination by landlord").

9. – Section 34 (“Grounds for termination by landlord”) of the Act of 2004 is amended in the Table to the section by deleting paragraph 3.

Amendment of section 115 (“Redress that may be granted on foot of determination”).

10. – Subsection (2) of section 115 (“Redress that may be granted on foot of determination”) of the Act of 2004 is amended –

(a) in paragraph (h) by substituting “by reason of any provision of this Act” for “by reason of section 184”; and

(b) by inserting the following after paragraph (i):

“(j) a declaration as to whether or not an amount of rent set under the tenancy of a dwelling is the lawful rent;

(k) a direction as to the return or repayment of a specified amount of rent.”.

PART 4

Amendments to National Asset Management Agency Act 2009

Amendments to National Asset Management Agency Act 2009.

11. – The National Management Agency Act 2009 is amended by inserting the following as Part 16:

“PART 16

Transition to National Housing Development and Finance Agency

Transition day.

242. – (1) The Government shall by order appoint a day to be the transition day for the purposes of this Part.

(2) On and from the transition day, NAMA shall be known as the National Housing Development and Finance Agency.

Transfer of Housing Finance Agency.

243. – On the transition day –

(a) the Housing Finance Agency is dissolved,

(b) the functions of that Agency under the Housing Finance Agency Act 1981 are transferred to become functions of NAMA, and

(c) the objects of that Agency under its memorandum of association become functions of NAMA.

Transfer of Housing and Sustainable Communities Agency.

244. – (1) On the transition day –

(a) the Housing and Sustainable Communities Agency is dissolved,

(b) the functions of that Agency under the Housing and Sustainable Communities (Establishment) Order 2012 (S.I. No. 264 of 2012) are transferred to become functions of NAMA, and

(c) NAMA may perform the functions transferred to it by this section as if it were a body established to provide shared services to local authorities under the Local Government Services (Corporate Bodies) Acts 1971 to 2012.

Amendments to purposes of Act and purposes and functions of NAMA.

245. – On the transition day –

(a) paragraph (b) of section 2 ("Purposes of Act") stands amended –

(i) by the deletion of subparagraph (viii), and

(ii) by the insertion of the following as paragraph (c):

"(c) as the matters aforesaid are progressively addressed –

(i) to address in addition 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, and

(ii) to contribute to the social and economic development of the State.";

(b) section 10 ("Purposes of NAMA") stands amended –

(i) by the insertion of the following after subsection (1):

"(1A) Following the transfer to it of functions under Part 16, NAMA's purposes shall also include performing those functions and exercising its powers in relation to the sale and supply of housing and development land so as to contribute to the provision of affordable housing and a smoothly functioning housing market.", and

(ii) in subsection (2), by the insertion after "So far as possible" of "and bearing in mind the functions transferred to it under Part 16 and its social and economic development function";

(c) section 11 ("Functions of NAMA"), stands amended by the insertion of the following after subsection (1) (b):

"(ba) perform the functions transferred to it under Part 16, and such other of its functions as relate to the management or realisation

of acquired bank assets consisting of housing or development land, including in cooperation with housing authorities, approved housing bodies and, in relation to accommodation for students in third-level institutions, those institutions, so as to contribute to the provision of affordable housing and a smoothly functioning housing market;

(bb) assist housing authorities and approved housing bodies in respect of the provision and management of housing accommodation, and in respect of other matters in relation to housing, and, for the purposes of this paragraph, NAMA shall have the power to give assistance conferred by section 6 of the Housing (Miscellaneous Provisions) Act 1992 as if it were a housing authority;".

Regulations to facilitate transition.

246. – (1) The Government may make such regulations as appear to it to be necessary or expedient for smoothly facilitating the transition effected by this Part and the continuation of the performance of functions under the enactments concerned.

(2) Without prejudice to the generality of subsection (3), regulations under that subsection may include provisions relating to –

(a) the transfer of employees and pension liabilities,

(b) the transfer of real and personal property (including things in action), rights and liabilities,

(c) the continuation of contracts and the adaptation of contractual references, and

(d) the preservation of records.".

PART 5

Amendment to Taxes Consolidation Act 1997.

12. – The Taxes Consolidation Act 1997 is amended by the substitution of the following for section 97 (2A) to (2K):

"(2A) For the purposes of subsection (2) (e) –

(a) borrowed money employed on the construction of a residential premises on land in which the person chargeable has an estate or interest shall, together with any borrowed money which that person employed in the acquisition of such land, be deemed to be borrowed money employed in the purchase of a residential premises, and

(b) where a premises consists in part of residential premises and in part of premises which are not residential premises, paragraph (a) shall apply to the interest accrued on the part of the borrowed money employed in the purchase, improvement or repair of the premises that is attributable, on a just and reasonable basis, to residential premises.

(2B) (a) A deduction shall not be authorised by subsection (2) (e) by reference to interest payable for a chargeable period on borrowed money employed in the purchase, improvement or repair of a rented residential premises unless the person chargeable can show that the registration requirements of Part 7 of the Residential Tenancies Act 2004 have been complied with in respect of all tenancies which existed in relation to that premises in that chargeable period.

(b) For the purposes of paragraph (a), a written communication from the Private Residential Tenancies Board to the chargeable person confirming the registration of a tenancy, relating to a rented residential premises to which paragraph (a) applies, shall be accepted as evidence that the registration requirement in respect of that tenancy (and that tenancy only) has been complied with.

(2C) (a) In this subsection –

‘Board’ means the Private Residential Tenancies Board;

‘household’ has the meaning assigned by the Housing (Miscellaneous Provisions) Act 2009;

‘housing authority’ has the meaning assigned by the Housing (Miscellaneous Provisions) Act 1992;

‘lease’ means any lease or tenancy in respect of a residential premises required to be registered by the person chargeable under Part 7 of the Residential Tenancies Act 2004;

‘Minister’ means Minister for Housing, Planning and Local Government;

‘qualifying lease’ means a lease granted by the person chargeable to a qualifying tenant;

‘qualifying tenant’, in relation to a qualifying lease, means –

(i) a household in respect of which rent is payable by a housing authority –

(I) in accordance with Part 4 of the Housing (Miscellaneous Provisions) Act 2014, or

(II) under a contract under section 19 of the Housing (Miscellaneous Provisions) Act 2009, between the housing authority and the person chargeable,

or

(ii) an individual in respect of whom a rent supplement is payable by, or on behalf of, the Minister for Social Protection;

'register' means the private residential tenancies register maintained by the Board under Part 7 of the Residential Tenancies Act 2004;

'relevant undertaking', in relation to a residential premises, means an undertaking under paragraph (b) (i);

'rent supplement' means any payment under section 198 of the Social Welfare Consolidation Act 2005 towards the amount of rent payable by an individual in respect of a residential premises;

'specified period' means a continuous period of 3 years commencing on or after 1 July 2016 but not later than 1 July 2020.

(b)(i) The person chargeable shall submit to the Board, in such form and containing such information as shall be prescribed by the Minister for the purposes of this subsection, an undertaking to the effect that the person chargeable will let a residential premises under a qualifying lease for the duration of a specified period commencing on –

(I) in the case of a qualifying lease commencing on or after 1 July 2016, the date of commencement of that lease, or

(II) in the case of a lease that commenced prior to 1 July 2016, which would, if the lease commenced on that date, be a qualifying lease, 1 July 2016.

(ii) The Board shall register the relevant undertaking in the register, and the provisions of Part 7 of the Residential Tenancies Act 2004 shall apply to information regarding a relevant

undertaking registered in the register as they apply to information regarding a tenancy registered in the register, subject to any necessary modifications.

(iii) A relevant undertaking shall be submitted to the Board under subparagraph (i) –

(I) in the case of a lease referred to in clause (I) of that subparagraph, at the time the person chargeable is required to make an application to register the tenancy under section 134 of the Residential Tenancies Act 2004, and

(II) in any other case, by 31 September 2016.

(iv) Where the person chargeable submits a relevant undertaking in accordance with this paragraph and, following the end of the specified period (in this subparagraph referred to as the 'first period'), submits a relevant undertaking (in this subparagraph referred to as the 'subsequent undertaking') in respect of a subsequent specified period (in this subparagraph referred to as the 'second period'), the second period shall commence on –

(I) in the case of a qualifying lease commencing on or after the day following the end of the first period, the date of commencement of that lease, and

(II) in the case of a qualifying lease that commenced before the end of the first period, the day following the end of the first period, and

the subsequent undertaking shall be submitted to the Board –

(A) in the case of a lease referred to in clause (I), at the time referred to in subparagraph (iii)(I), and

(B) in any other case, not later than 3 months after the second period commences,

and subparagraph (ii) shall apply to a subsequent undertaking as it applies to an undertaking.

(c) For the purposes of this subsection, where a lease has commenced before 1 July 2016, which would, if the lease commenced on that date, be a qualifying lease and a relevant undertaking is submitted to and registered by the Board, the lease shall be deemed to be a qualifying lease commencing on 1 July 2016.

(d)(i) For the purposes of this subsection, where a qualifying lease (in this subparagraph referred to as the 'first lease') terminates during a specified period the currency of that lease shall be deemed to include a period immediately following its termination (in this paragraph referred to as the 'intervening period') if –

(I) at the end of the intervening period, the person chargeable grants a subsequent qualifying lease in respect of the residential premises (in this paragraph referred to as the 'subsequent lease'), and

(II) during the intervening period –

(A) the premises was not let under a lease that was not a qualifying lease,

(B) the person chargeable immediately before the termination was not in occupation of the

premises or any part of the premises but was entitled to possession of the premises, and

(C) a person connected (within the meaning of section 10) with the person chargeable was not in occupation of the premises or any part of the premises,

and the first lease and the subsequent lease shall be taken together and treated as one qualifying lease.

(ii) More than one subsequent lease may be granted in respect of a premises under and in accordance with subparagraph (i).

(e) For the purposes of this subsection, where a qualifying tenant ceases to be a qualifying tenant during a specified period, the lease shall nonetheless be treated as a qualifying lease for so much of that period as the tenant occupies the premises under the lease.

(f) This subsection shall apply where the following conditions are met:

(i) a residential premises is let under a qualifying lease for one or more than one specified period, and

(ii) a relevant undertaking in respect of that premises for each specified period is submitted to and registered by the Board.

(g)(i) Subject to this section, a person chargeable who meets the conditions referred to in paragraph (f) may, after the end of the specified period, make a claim to have a deduction authorised by subsection (2) (e) in respect of the residential premises referred to in paragraph (f) computed as if an additional amount of interest on borrowed money employed in the purchase, improvement or repair of the premises for the specified period,

equal to 50 per cent of the amount that would apart from this subsection be so authorised, had accrued on the day immediately following the end of that specified period.

(ii) The additional interest referred to in subparagraph (i) shall not be included in any computation of interest for a specified period subsequent to the specified period referred to in that subparagraph.

(h) Any claim under this subsection shall –

(i) contain a statement to the effect that the conditions referred to in paragraph (f) are satisfied, and

(ii) be furnished to the Revenue Commissioners by electronic means and through such electronic systems as the Revenue Commissioners may make available for the time being for the purpose of a claim, and the relevant provisions of Chapter 6 of Part 38 shall apply.

(i) Where a premises in respect of which the person chargeable is entitled to a rent is let in part under a qualifying lease and in part under a lease other than a qualifying lease (in this paragraph referred to as the 'other lease'), the amount of deduction authorised under subsection (2) (e) by reference to interest on borrowed money employed in the purchase, improvement or repair of those premises shall be computed on the amount of interest on that part of the borrowed money which can, on a just and reasonable basis, be respectively attributed to the parts of the premises which are let under the qualifying lease and the other lease.

(j) Notwithstanding section 886, where a person chargeable makes a claim under this subsection, the period for which the linking documents and records (within the meaning of that section) relating to the claim are to be retained by the person required to keep the records under that

section shall commence on the final day of the specified period in respect of which the claim is made.

(k) This subsection shall come into operation on 1 July 2016.”.

Amendment to Value-Added Tax Consolidation Act 2010.

13. – Section 46 (1) of the Value-Added Tax Consolidation Act 2010 is amended with effect on and from 1 July 2016 –

(a) by substituting “paragraphs (b), (c), (ca), (cb) and (d)” for “paragraphs (b), (c), (ca) and (d)” in paragraph (a),

(b) by substituting “subject to paragraphs (ca) and (cb)” for “subject to paragraphs (ca)” in paragraph (c),

(c) by inserting the following after paragraph (ca):

“(cb) 9 per cent in relation to goods or services of a kind specified in paragraph 9 (1) of Schedule 3 on which tax would, but for this paragraph, be chargeable in accordance with paragraph (c), where such goods or services consist of the provision, construction, renovation or alteration of housing as part of a social and affordable housing policy jointly approved by the Minister for Housing, Planning and Local Government and the Minister for the purposes of this section and of Annex III to Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax.

PART 6

Amendment to Urban Regeneration and Housing Act 2015

Amendment to Urban Regeneration and Housing Act 2015.

14. – The Urban Regeneration and Housing Act 2015 is amended –

(a) in section 15 (1), by the substitution of “2017” for “2018”,

(b) in section 15 (3), by the substitution of “2018” for “2019”,

(c) in section 16 (1), by the substitution of “5 per cent” for “3 per cent”, and

(d) in section 16, by inserting the following subsection after subsection (2):

“(2A) Subsection (2) does not apply to a site that is owned in the course of a business that consists of dealing in or developing land.”.