



**AN BILLE UM THIARNAI TALUN AGUS TIONONTAI, 1965**  
**LANDLORD AND TENANT BILL, 1965**

*Mar a tugadh isteach*

*As introduced*

**EXPLANATORY MEMORANDUM**

*General*

1. The main objects of the Bill are—

- (a) to give leaseholders and certain yearly tenants, who hold their property subject to a ground rent, a right to purchase the fee simple;
- (b) to give leaseholders who have to collect ground rents from neighbouring leaseholders for payment to the landlord a right to have the total rent apportioned and paid separately by each leaseholder;
- (c) to establish a simplified arbitration procedure to settle disputes, including disputes as to the purchase price of the fee simple, arising from these matters (a maximum price, related to the yield from the most recent long-term Government security is being provided);
- (d) to amend the existing statutory law on landlord and tenant in a number of respects.

2. Sections 1 and 2 are the commencement and interpretation sections and call for no special comment.

*Purchase of fee simple*

3. Section 3 sets out the persons who are to be entitled under the Bill to acquire the fee simple. They are—

- (a) persons holding under building and proprietary leases within the meaning of the Landlord and Tenant (Reversionary Leases) Act, 1958, or who, notwithstanding that their leases have expired, are entitled to be granted reversionary leases under that Act, and
- (b) yearly tenants whose families have been in possession for at least fifty years and whose rent is in the nature of a ground rent (i.e. it is less than three-quarters of the valuation), provided that they, or a previous lessee or tenant, have erected the buildings; a presumption, rebuttable by the landlord, that the buildings have been so erected is provided (subsection (4)(b)).

Subsection (3) provides for the exclusion from the right to purchase of—

- (a) leases of business property (including blocks of flats) which contain provisions for a review of the rent within the term,

(b) leases where the development works on the land have not been completed, and

(c) leases by harbour authorities.

Also excluded is a lease the lessor of which has obtained a declaration under section 15 of the 1958 Act entitling him to refuse to give a reversionary lease on the ground that he has redevelopment plans for the property (*subsection (4) (a)*). By reason of section 79 (3) of the Local Government (Planning and Development) Act, 1963, this exclusion applies to a lease given by a planning authority in an area which is shown in a development plan as an obsolete area. *Subsection (5)* provides for the certification and the apportionment of valuations by the Commissioner of Valuation for the purpose of the section.

4. *Section 4* provides that a person who intends to buy the fee simple under this Act must serve a prescribed notice of his intention to purchase on all persons holding a superior interest in the land.

5. *Section 5* deals with the case where a building lessee (*subsection (1)*) or a proprietary lessee (*subsection (2)*), who proposes to purchase the fee simple, has let the land or part of it under a proprietary lease. It is provided that the purchasing lessee must either get the consent of every proprietary lessee to his purchase of the fee simple, or alternatively, exclude from his notice to purchase the fee simple any part of the land in respect of which that consent has not been obtained. *Subsection (3)* provides that where a lessee buys out the fee simple of part only of the land he shall be entitled to have the rent apportioned as between that part and the other parts of the land demised in the lease.

6. *Section 6* imposes a duty on every person who has been served with notice of intention to purchase and on the lessee or tenant who has served the notice, to take, without unreasonable delay, all necessary steps to effect a conveyance, free from incumbrances, of the fee simple and any intermediate interests in the land.

7. *Section 7* is a precedural provision enabling a lessee who proposes to purchase the fee simple to ascertain, by service of notices, who are the other parties who must join in the conveyance.

8. *Section 8* is designed to deal with the difficulties arising where a person bound to join in a conveyance is unknown or under a legal disability and is on the lines of subsections (3) to (6) of section 24 of the 1958 Act, which are concerned with similar difficulties in connection with the grant of reversionary leases.

9. *Section 9* imposes on the purchasing lessee or tenant the liability to pay all the reasonable costs actually and necessarily incurred by any party upon whom he has served a notice. Under *section 19 (2)* power is given to transfer this liability for costs, in whole or in part, where any lessor has behaved unreasonably. Under *section 10*, where the lessee withdraws his notice of intention to purchase, his liability for further costs ceases.

#### *Apportionment of rent*

10. Many leaseholders are obliged to collect ground rents from one or more of their neighbours and pay the total to a common landlord.

11. *Section 11* enables such persons to have the total rent apportioned so that each lessee will be liable to pay a proportionate part of the rent to the landlord. No fine may be charged for the apportionment but if the landlord has to incur additional expenses of collection arising from the apportionment this additional cost

may be added to the new rent which is to be paid by the person who has requested the apportionment.

12. *Sections 12 to 16* are procedural provisions. *Section 12* provides for the service of notice of intention to have a rent apportioned. *Section 13* imposes a duty to proceed with the apportionment without unreasonable delay. *Section 14* deals with the procedure when the landlord is unknown or under a legal disability, etc. *Section 15* provides that the applicant for apportionment will be liable for costs incurred, though he may, where he decides not to proceed with his application, avoid liability for further costs by serving the notice provided for in *section 16*.

*Settlement of disputes (including determination of purchase price)*

13. *Section 17* provides for the settlement of any disputes or difficulties regarding the purchase of the fee simple or the apportionment of rents by an arbitration procedure to be operated by the county registrar for the area where the land in question is situate (*subsection (1)*). *Subsection (2)* authorises, in particular, the county registrar to determine who is to be entitled to acquire the fee simple, what the purchase price is to be and to whom it is to be paid; in the case of apportionments, he may determine whether a person is entitled to have the rent apportioned and may make the apportionment. *Subsection (3)* gives the county registrar power to make certain orders in relation to an arbitration, such as orders for security for costs, etc. *Subsection (4)* excludes from an arbitration under this Act a number of provisions of the Arbitration Act, 1954, which would otherwise apply by virtue of section 48(2) of the 1954 Act but for which the Bill makes specific provision. The excluded sections are section 29, which provides that the costs of the reference and award are to be in discretion of the arbitrator (see *section 19* of the Bill); section 35, which deals with the statement of a case to the Court by an arbitrator, and section 36, which empowers the Court to remit an award to an arbitrator for reconsideration (see *subsections (1) and (2) of section 22* of the Bill); section 37, which empowers the Court to remove an arbitrator on ground of misconduct; and section 41, which deals with the enforcement of arbitrators' awards (see *section 22 (3)* of the Bill).

14. *Section 18* sets out the provisions to be applied where, in default of agreement, it is necessary to have the purchase price of a fee simple determined by a county registrar. *Paragraph (a)* provides that the purchase price is to be the sum which, in the county registrar's opinion, a willing purchaser would give and a willing vendor would accept having regard to a number of specified considerations. This is the basis recommended by the Ground Rents Commission. However, a maximum price is being provided (*paragraph (b)*) in certain cases, i.e. (a) where the land does not exceed one acre and (b) where the land is held on a yearly tenancy or under a lease which has at least twenty-five years to run. In those cases the price is not to exceed the amount which, if it had been invested in the most recent Government long-term loan would give a gross annual return, calculated at the date of issue, equivalent to the ground rent which is being compulsorily acquired. For example, on the basis of the 6½% National Loan, 1986-1991, issued at par in November, 1965, the maximum purchase price of a £10 ground rent would be £148; if the Loan had been issued at, say, 97 the maximum price would be £143.

15. *Section 19* deals with the costs of arbitration. The county registrar is being empowered to tax and settle these costs and may require any party who has been unreasonable (for instance by failing to comply with a provision of the Act) to pay all or any part of the costs. The costs will be party and party costs and will include counsel's costs only where a question of law involved warrants the employment of counsel.

16. *Section 20* is the usual provision for the assistance by the Commissioner of Valuation in proceedings of this kind (cf. section 22 of the 1958 Act).

17. *Section 21* provides for the keeping of registers of awards made by county registrars under the Act and separate registers of awards relating to the price of the fee simple. The registers are to be made available to the public and provision is made with regard to inspection and the supply of copies on payment of prescribed fees.

18. *Section 22* provides that the Circuit Court may remit any matter to the county registrar for reconsideration or to another county registrar for rehearing, and also provides that an award of a county registrar may, by leave of the Circuit Court, be enforced as a judgment of that Court.

#### *Miscellaneous provisions*

19. *Section 23* is a procedural provision dealing with service of notices.

20. *Section 24* provides that the rent on renewal of a building or proprietary lease shall not exceed one-eighth of the gross rent; under section 18 of the 1958 Act the fraction is one-sixth of that rent (which is defined in the Act). It is provided also that where in future a revision of this fraction becomes necessary it may be done by an order of the Minister, but the order will require the prior approval of each House of the Oireachtas.

21. *Section 25* amends section 57 of the Landlord and Tenant Act, 1931. Under that section a landlord cannot unreasonably withhold his consent to a change of user which is prohibited by a covenant in the lease and he cannot charge for giving consent except where structural alterations are involved; it is now proposed that even where structural alterations are involved the landlord will not be entitled to make a charge or increase the rent.

22. *Section 26* of the Bill amends section 58 of the 1931 Act. The latter provides that the landlord cannot unreasonably withhold his consent to the carrying out of improvements which are prohibited or restricted by a covenant in the lease; no prohibition on his making a charge or increasing the rent is provided for in the section. It is now proposed that the landlord will not be entitled to make a charge or increase the rent for allowing improvements within the meaning of the 1958 Act. "Improvement" is defined in that Act as any addition to or alteration of buildings, including ancillary and subsidiary structures, but not including any alteration or reconstruction so that the buildings lose their original identity.

23. *Section 27* of the Bill provides that in the case of covenants to which sections 57 and 58 of the 1931 Act relate (covenants as to change of user and making improvements) the lessee will not require the landlord's consent to waiver of the covenants where he has obtained planning permission under the Local Government (Planning and Development) Act, 1963, or where planning permission is not required.

24. *Section 28* deems a covenant in a lease requiring the lessee to insure with a named insurance company to be one which enables the lessee to insure with any insurer. Such covenants in leases have given rise to practical difficulties where lessees have mortgaged their property to another insurance company which requires that the property be insured with themselves or their nominees; some lessees have, in such circumstances, been forced to take out insurance policies with two companies.

25. *Section 29* provides for the continuation, after the purchase of the fee simple, of certain covenants affecting the lessor's own amenities or relating to the performances of a statutory duty imposed on him. These would include, for example, a covenant requiring the lessee not to obstruct a view, not to cut trees, to keep drains open, etc., for the benefit of the lessor and his successors in title.

26. A lessee, under the present practice, is liable for the payment of the costs of both parties in the drawing up of a lease (except in the case of a sale by way of lease). *Section 30* provides that in future the lessee will not be liable for the landlord's costs unless the parties agree otherwise in writing.

27. *Section 31* is the usual provision for regulations and *section 32* contains the short title, construction and collective citation.

*An Roinn Dlí agus Cirt,*  
*Márta, 1966.*

