



AN BILLE UM THIARNAI TALUN AGUS TIONONTAI  
(BUNCHIOSANNA) (UIMH. 2), 1977  
LANDLORD AND TENANT (GROUND RENTS) (NO. 2)  
BILL, 1977

*Mar a ritheadh ag dhá Theach an Oireachtais*  
*As passed by both Houses of the Oireachtas*

EXPLANATORY MEMORANDUM

I—SCOPE OF THE BILL

1. The main provisions of the Bill are as follows:—

- (a) A special procedure which will have effect for a period of 5 years is being introduced, and operated by the Land Registry, to enable ground rent tenants of dwellinghouses to acquire the fee simple. The Land Registry will undertake the legal work involved in the acquisition on payment of a fixed fee of £5 by a tenant in occupation where he and the ground landlord(s) are in agreement. If the ground landlord(s) and the tenant cannot agree on such matters as entitlement to purchase or the purchase price, the Registrar of Titles can be called on to act as arbitrator. In that event, the arbitration fee will be £12.
- (b) Up to the present, a ground landlord normally had, under the terms of the lease, a right to the possession of the house if the ground rent was not paid. This right was additional to the right to sue for payment of the rent as an ordinary civil debt. Section 27 of the Bill abolishes the right to the possession of a dwellinghouse for non-payment of the ground rent.
- (c) The right to acquire the fee simple is being extended to new classes of ground rent tenants (including purchasers of local authority houses, who will be able to acquire the fee simple direct from the local authority on payment of the purchase price and a £5 fee).

2. The Bill will form part of the general law on ground rent leases. Other provisions affecting such leases are in the Landlord and Tenant (Ground Rents) Act, 1967, the Landlord and Tenant (Reversionary Leases) Act, 1958 and the Landlord and Tenant (Amendment) Act, 1971. However, so far as *entitlement to acquire the fee simple* is concerned the Bill contains (in Part II and section 26) a comprehensive set of provisions, i.e. a consolidation of the provisions in the earlier Acts with amendments. These amendments are designed to extend the right to acquire the fee simple to new categories of tenants so that the right will in future be given to every class of ground tenants covered by the recommendations of the Landlord and Tenant Commission. This right is exercisable in accordance with the 1967 Act procedures. In addition, if the ground rent is in respect of a *dwellinghouse*, the tenant may opt to avail himself of the new procedure in Part III and, where he is in occupation, the fees fixed in the Bill will apply. The purchase procedure for local authority lessees is dealt with in paragraph 25 of this Memorandum.

## II—PART I OF THE BILL

### PRELIMINARY

3. This Part (*sections 1 to 7*) contains the preliminary provisions and deals with such matters as commencement, definitions, regulations and repeals.

4. *Section 3* is the definitions section.

5. *Section 4* provides that the Act will not bind the State. *Section 5* provides for the making of regulations. Such regulations are required to prescribe forms, e.g. the forms for applications under *sections 20* and *21* and the forms of the vesting certificate under *section 22*.

## III—PART II OF THE BILL

### PURCHASE OF FEE SIMPLE

6. The provisions in *Part II* of the Bill replace the provisions of the 1967 Act (as amended by the 1971 Act) that set out the classes of persons who are given the right to purchase the fee simple of their properties, whether used for residential or other purposes, and that bear on the fixing of the purchase price. The classes of persons who are given the right of purchase are being enlarged (*sections 9 to 15*) and the provisions for fixing a maximum purchase price for the fee simple are being varied somewhat (*section 17 (2)*) and clarified (*section 17 (3), (5) and (6)*).

[Note: In their Report entitled "*Report on Certain Questions arising under the Landlord and Tenant Acts, 1958 and 1967*" (Pr. 59), hereinafter called the "Second Report", the Landlord and Tenant Commission recommended that the right to purchase the fee simple should be extended to new classes of lessees and yearly tenants, including lessees who hold from housing authorities (local authorities) under tenant purchase schemes (paragraphs 36, 40, 44, 63, 68, 120, 131 and 165 of that Report). One of their recommendations was carried into the law by the Landlord and Tenant (Amendment) Act, 1971 which extended the right to purchase the fee simple to a category of tenants who held under a certain type of pre-1931 lease.]

7. *Section 8*, which replaces *section 3 (1)* of the 1967 Ground Rents Act, provides for the right to acquire the fee simple for the classes of persons set out in *Part II* of the Bill. (*Section 3 (1)* of the 1967 Act is repealed by *section 7*.)

8. *Sections 9 to 15* set out the persons, apart from lessees under housing authorities (see *section 26*), who are being given the right to purchase the fee simple. These are—

- (1) those persons who have the right to a reversionary lease under the 1958 and 1971 Acts, i.e. those persons called "building lessees" or "proprietary lessees" under the present law;
- (2) those persons who, in addition to the persons at (1), have the right to purchase the fee simple under the 1967 Act—these comprise certain other lessees and yearly tenants;
- (3) certain other classes of lessees who are being given the right to purchase the fee simple for the first time (see paragraph 9);
- (4) certain further classes of persons who under *section 15* are, for the first time, being given the right to purchase the fee simple (see paragraphs 14 and 15 of this Memorandum).

9. The new classes of persons coming under (3) in the preceding paragraph are those who do not come under (1) and (2) of that paragraph but who nevertheless fall within the following categories—

(a) persons with leases for a term of at least 50 years where the yearly rent or greatest rent (see *section 11*) is less than the rateable valuation provided that the buildings on the land were not erected by the lessor, any superior lessor or any of their predecessors in title—a presumption to the effect that they were not so erected is provided (*section 10.2* and Second Report, paragraphs 68 and 120 (2), (5));

(b) persons with leases for a term of at least 50 years—

(i) where the lease was made partly in consideration of a payment other than rent, or of expenditure on the premises (apart from expenditure on decoration) or a combination of such payment and expenditure, provided that the payment and/or expenditure was not less than 15 times the yearly rent or greatest rent (*sections 10.7* and *11*, Second Report, paragraph 36), or

(ii) where the lease requires the lessee to carry out specified works on the premises and it is proved that the reasonable cost of those works—together with any fine or other payment—was not less than 15 times the yearly rent or greatest rent (*Section 12* and Second Report, paragraph 44).

Leases in categories (a) and (b) above, like the leases in every other category, must also satisfy, in accordance with *section 9*, the following conditions (which are also in the present law) in order to attract the right to acquire the fee simple—

(i) that there are permanent buildings on the land and that any land apart from the buildings is subsidiary and ancillary to those buildings;

(ii) that the buildings on the land are not simply an improvement (as defined in *section 9* (2)); and

(iii) that the buildings on the land were not erected in contravention of the lease.

10. *Section 10.7* extends recognition as a ground lease to a type of lease which was identified by the Landlord and Tenant Commission (Second Report, paragraphs 34 to 36; see also paragraph 9 (b) of this Memorandum) where the permanent buildings on the land were erected not by the lessee but by the lessor and the lessor sells the property by way of the lease. (See also section 3 of the Landlord and Tenant (Ground Rents) Act, 1978 which extends the prohibition on the creation of future ground rent leases to such leases.)

11. *Section 10.5* reflects section 8 (1) of the 1971 Act (which provides that certain leases given on the expiry before 31st March, 1931 of old building leases should attract the right to a new lease and the right to purchase the fee simple) with some changes of wording to ensure that the rights in question are not excluded in cases where the new lease was not given immediately on the expiry of the old one (cf. Second Report, paragraph 63 (1)) and with a further change to protect lessees in cases where the lessee under the new lease lacks certain evidence that would establish his rights.

12. *Section 13* extends the right of purchase, for a period of one year after the commencement of the legislation, to persons who would, for the first time, have the right of purchase under the other provisions in *Part II* of the Bill but for the fact that their leases expired up to 10 years before that commencement.

13. *Section 14*, which deals with the rights of lessees under partly-built leases, is a provision on the lines of section 6 of the 1958 Act with one change of substance that is designed to enable a lessee to avail himself of the benefit of the provision without having to await the termination of the lease, as he must do under the provisions of the 1958 Act. The effect is that the ground rent tenant of buildings where unbuilt-on land is in excess of what would be ancillary and subsidiary to the buildings, instead of having to await the termination of the lease, is given the right to acquire at once the fee simple in respect of the buildings and so much of the land as is ancillary and subsidiary.

14. *Section 15* gives the right of purchase to those yearly tenants who already have that right under section 3 of the 1967 Ground Rents Act and also to certain new classes of yearly tenants. The latter are described in the following paragraph.

15. Under section 3 (2) (d) of the 1967 Ground Rents Act the right to purchase the fee simple is given to yearly tenants who, with their predecessors in title, have been in continuous occupation as yearly tenants for at least 25 years where the rent is less than the valuation, provided that they or a previous occupying tenant erected the buildings (section 3 (4) (b) of the 1967 Act) and provided the property is a "tenement" as defined in the 1931 Act. The Bill provides, in accordance with the recommendations in paragraph 131 of the Second Report, for the relaxation of these conditions. Firstly, the requirement that the land should have been held under a yearly tenancy during the whole of the period of 25 years is being dropped. Provided the land is held under a yearly tenancy, it will be sufficient (*section 15 (1) (b)* and (c)) that it has been continuously held during the preceding 25 years under any one or more of the following tenancies—

- (1) a contract of yearly tenancy;
- (2) a yearly tenancy arising by operation of law or by inference on the expiration of a lease;
- (3) a statutory yearly tenancy implied by holding over rent-controlled property on the expiration of a lease.

The 25 years mentioned above may, in any of the cases at (1), (2) and (3), include any period in which the tenant formerly held the property under a lease.

Secondly, the conditions to be satisfied by yearly tenants to qualify for the right to purchase the fee simple are being further relaxed by the replacement of the requirement that the property must be a "tenement" (section 3 (2) (d) of the 1967 Ground Rents Act) by certain other requirements that are set out in *section 15 (1)*. The effect of the changes will be to relax the existing restrictions on the right of yearly tenants to purchase the fee simple as follows

- (a) A purchasing tenant will no longer be required to be in occupation of the premises.
- (b) It will no longer be necessary to establish, in the case of property outside an urban area, that the land does not exceed an acre and has a "house" on it.

Furthermore, the conditions in regard to the erection of the buildings on the property that are to be satisfied by yearly tenants in order that they may have the right to purchase the fee simple are being varied. Under section 3 (4) (b) of the 1967 Ground Rents Act the buildings must have been erected by an occupying lessee or tenant although a rebuttable presumption that the buildings were so erected is provided. The corresponding requirement under the Bill (*section 15 (1) (e)*) is that the buildings were not erected by the landlord or any superior landlord with a rebuttable presumption that the buildings were not so erected. Finally, for the purpose of qualifying for the right

to purchase the fee simple, yearly tenants whose land does not satisfy the requirement in *section 15 (1) (a)* that any unbuilt-on portion of the land is subsidiary and ancillary to the buildings on the land may, alternatively, exercise the right to purchase the fee simple in respect of the permanent buildings and of so much of the land as is subsidiary and ancillary to those buildings (*section 15 (2) to (5)*).

16. *Section 16* provides for the re-enactment of *section 3 (3) and (4) (a)* of the 1967 Ground Rents Act (wherein are set out certain exceptional categories of leases which do not attract the right to acquire the fee simple) with one change in favour of tenants (in *subsection (2) (c)*).

17. *Section 17* deals with the determination of the purchase price of a fee simple by arbitration (including an arbitration conducted under the proposals in *section 21* of the Bill). It provides for the re-enactment of *section 18* of the 1967 Ground Rents Act with the following changes:

- (1) The considerations to which the arbitrator is to have regard before determining a purchase price are being varied (in *subsection (2) (g)*) and an additional consideration (*subsection (2) (h)*) is being added.
- (2) The benefit of the maximum purchase price provision in *section 17 (3)* is being extended to those lessees whose ground leases have 15 years or more to run (instead of 25 years or more as is the case under *section 18* of the 1967 Act).
- (3) The benefit of the maximum purchase price provision is also being extended to those statutory yearly tenants who, under *section 15 (1) (b)*, are being given the right to purchase the fee simple (*section 17 (3) (b)* and c.f. Second Report, paragraph 131).
- (4) *Section 17 (3)* clarifies that the maximum purchase price will be determined in accordance with the current market price of the most recent National Loan type security.
- (5) *Subsection (5)* deals with the purchase price of the fee simple where a lease is surrendered at some date before the date it would otherwise expire and a new lease is granted at the old rent for the balance of the term of the surrendered lease and thereafter at a modern rent. Under *section 18* of the 1967 Act a lessee in such a case could purchase the fee simple at a maximum purchase price based on the lower rent at any time during the currency of the "old" rent (i.e. up to the termination date of the surrendered lease). If at the time of purchase his old lease would have had less than 25 years to run, he would thus be placed in a more favourable position than lessees generally who could only avail themselves of the maximum purchase price up to the time when their leases had 25 years to run. *Subsection (5)* rectifies the situation by providing that the maximum purchase price provision will not apply where an increased rent is payable under a lease within 15 years (see paragraph 17 (2)) of the service of the relevant notice.
- (6) *Subsection (6)* is a new provision. It is designed for cases where the provision in *subsection (3)* for determining a maximum purchase price does not apply because the relevant lease has less than 15 years to run. The new provision will enable a purchase price to be fixed with greater certainty in such cases by relating the price to the number of years that the lease has yet to run.

#### IV—PART III OF THE BILL

##### VESTING OF FEE SIMPLE IN DWELLINGHOUSES

18. Part III of the Bill provides a new method for the purchase of the fee simple, to operate for a period of five years from the commencement of the legislation (*section 18*), in the case of ground rent tenants of ordinary dwellinghouses (*section 19*). This new method is an alternative to the purchase system under the 1967 Ground Rents Act and is set out in *sections 20, 21* and *22* while the fees entailed are set out in *section 23*.

19. *Section 20* provides that a person who has the right to purchase the fee simple in a dwellinghouse and who has obtained consent to that purchase from every other party concerned may apply to the Registrar of Titles, Land Registry Office, for a vesting certificate (*section 22*).

20. *Section 21* provides for cases where the consents required under *section 20* have not been obtained. In such a case the intending purchaser, besides applying to the Registrar of Titles, gives notice of the application to his immediate ground landlord, or to the person to whom he pays the ground rent—by registered post, if he is posting it (*subsection (1)*). If the applicant cannot serve the notice mentioned the Registrar of Titles will deal with the difficulty (*subsection (2)*). In either case the application will then fall to be determined by the Registrar of Titles acting as arbitrator under the provisions of the 1967 Ground Rents Act (*subsections (3) and (4)*) subject to the provisions of this Part. Any appeal against an arbitration decision of the Registrar of Titles is to be heard in the Circuit Court for the area where the dwellinghouse (or any part of it) is situate (*subsection (5)*).

21. *Section 22: subsection (1)* provides for the issue by the Registrar of Titles of a "vesting certificate" which is to operate to convey the fee simple to the purchaser on a specified date free from incumbrances and from any intermediate interests. In the case of applications under *section 21* the issue of the vesting certificate must await the conclusion of the arbitration, and of any appeal arising therefrom. Before being granted a vesting certificate the applicant must have paid the relevant fee(s), have either paid the purchase price to the landlord or deposited it in the Land Registry and have paid his ground rent up to date, apart from any arrears that are statute-barred (*subsection (2)*). In cases where the purchase of the fee simple must be registered in the Land Registry (that is, where the land either is already registered or is in an area where compulsory registration applies) the Registrar will require the necessary documents to be produced (*subsection (4)*) and the purchaser will in due course receive a Land Certificate from the Registry. *Subsection (3)* ensures that the vesting certificate is an effective instrument for Land Registry purposes. Persons whose estates etc. in the land have been extinguished following arbitration by the operation of the vesting certificate (including the owners of any incumbrances as well as the immediate ground landlord and any superior landlord or landlords) will, so far as they can reasonably be ascertained, be notified by the Registrar (*subsection (5)*) and may apply for their shares of the purchase money (*subsection (6)*). Instead of distributing the purchase money under *subsection (6)* the Registrar may, if he thinks proper, lodge the money in Court whereupon its distribution will become a matter for the Circuit Court for the area where the dwellinghouse in question is situate (*subsection (7)*).

22. *Section 23* deals with the fees payable to the Land Registry in return for the services being provided under Part III of the Bill. The fee for the issue of a vesting certificate is £5 where the applicant is in occupation and can lodge the consents required under *section 20* of the Bill (*subsection (1) (a)*): where these consents are not lodged an additional £12 is payable as an arbitration fee (*subsection (1) (b)*).

The fees to be charged in the case of a dwelling where the person entitled to acquire the fee simple is not in occupation are being fixed by regulations which will as far as possible meet the full cost of dealing with the application (*subsections (2) and (3)*). The vesting fee of £5 is payable by the tenant. He will also be liable for the £12 arbitration fee, except in a case where any party has behaved unreasonably, in which event the arbitrator can direct that the whole or part of that fee, as well as any other costs of dealing with the arbitration, are to be borne by the party who has behaved unreasonably. No payments other than the fees will be payable in the Land Registry by owner-occupiers for the services provided under this Bill except in cases where parties have behaved unreasonably (*subsections (4) and (5)*). The provisions of the 1967 Ground Rents Act which deal with a purchaser's liability for costs and with the question of liability for arbitration costs under that Act are being excluded where applicants are in occupation of their dwellinghouses (*subsection (6)*) and it is being provided that the statutory obligation of the Land Registry to cover its costs by way of the fees it charges will not apply to costs incurred under Part III (*subsection (7)*).

23. *Section 24* provides for the general rule that applications shall be dealt with in order of receipt, so far as is consistent with the efficient discharge of all the functions of the Registrar of Titles.

24. *Section 25* provides that the functions of the Registrar of Titles under the provisions of the Bill may be delegated to authorised officials of the Land Registry Office.

25. *Section 26* confers a statutory right on lessees of local authority houses to acquire the fee simple in their dwellings. In the case of a tenant purchaser *subsection (2)* provides that the fee simple will be subject to the retention of certain conditions specified in the lease (other than the annual ground rent) for a period of twenty-five years from the date of the lease or while any amount of the purchase price remains outstanding, whichever is the greater. These conditions generally relate to the use of the house as a normal place of residence and to the consent of the housing authority being obtained to the resale. Where a house provided by a housing authority is purchased by a person who is not a tenant, *subsection (4)* enables the lessee to acquire the fee simple subject only to any conditions specified in the lease relating to repayment of the purchase price of the house and the refund of a subsidy. Under *subsection (5)*, the purchase price of the fee simple shall not exceed the price specified in *section 17 (3)*. *Subsection (7)* proposes that the fee simple shall be vested by means of a transfer order under *section 90* of the Housing Act, 1966. *Subsection (8)* provides for the payment of a fee of £5 to the housing authority for the issue of this transfer order, which is similar to the fee specified in *section 23 (1) (a)*. *Subsection (9)* removes any doubt regarding the entitlement of a local authority to acquire the fee simple interest in land on which the authority has provided dwellings.

26. *Section 27* provides (*subsection (1)*) that a lessor shall no longer be entitled to the possession of a dwellinghouse for non-payment of ground rent under the conditions of the lease. It also provides (*subsection (2)*) that *section 52* of the Landlord and Tenant Law Amendment Act, Ireland, 1860 (*Deasy's Act*) shall not apply to a ground-rented dwellinghouse. (*Section 52* of *Deasy's Act* gives a landlord a right to take an action in ejectment for the recovery of possession of (*inter alia*) a dwellinghouse whenever a year's rent is in arrear). The landlord's right to sue for the recovery of rent in arrear as a civil debt is not affected.

27. *Section 28* re-enacts, with amendments, *section 31* of the 1967 Ground Rents Act. That section provides for the continuation, after the purchase of the fee simple, of certain kinds of covenants, e.g. covenants affecting the immediate lessor's own amenities. *Subsections (1), (2) and (3)* of *section 28* of the Bill re-enact this provision with the following changes:

(1) All other covenants shall cease to have effect where the fee simple is acquired (however the acquisition is effected) provided the person acquiring the fee simple has an existing interest in the land (*subsection (1)*).

(2) No new covenants shall be created in conveying the fee simple (*subsection (1)*).

(3) In any case where the fee simple was acquired since the commencement of the 1967 Act by a person who already had an interest in the land all covenants other than the covenants specified in *subsection (2)* shall be deemed to have ceased to have effect at the date of the acquisition (*subsection (3)*).

*Subsection (4)* amends section 72 (1) of the Registration of Title Act, 1964 so as to ensure that, in cases where the purchase of the fee simple must be registered in the Land Registry, it will not be necessary to investigate whether any of the covenants specified in *subsection (2)* affect the lands and that any such covenants will continue in force even though they do not appear on the register of the Land Registry.

28. Section 29 re-enacts, with two changes, a provision contained in section 6 (2) of the 1967 Ground Rents Act which provides that a mortgage or charge on the leasehold interest should become a mortgage or charge on the fee simple following a purchase of the fee simple under that Act. One change is to the effect that such a mortgage or charge will, under the Bill, attach to the fee simple whether it is acquired under this legislation or otherwise. The other change makes it clear that "mortgage" in the provision includes a mortgage by subdemise.

*Roinn Dlí agus Cirt,  
Deireadh Fómhair, 1978.*

27. Section 28 re-enacts with amendments section 31 of the 1967 Ground Rents Act. That section provides for the continuation after the purchase of the fee simple of certain kinds of covenants. The covenants affecting the immediate lessor's own premises (*subsection (1)*) and (2) of section 28 of the Bill re-enact this provision with the following changes:—