



**AN BILLE RIALTAIS ÁITIÚIL (RÁTAÍ AGUS FORÁLACHA
ILGHNÉITHEACHA), 2014**
**LOCAL GOVERNMENT (RATES AND MISCELLANEOUS
PROVISIONS) BILL 2014**

EXPLANATORY MEMORANDUM

Background

The law relating to rates in Ireland has not been substantially reformed since its inception in 1838. At that point the Poor Relief Ireland Act 1838 was introduced to alleviate the suffering of the destitute in Ireland and empowered the administrative body of the Guardians of the Union, to raise the “*poor rate*” to fund their activities. The very crude and inaccessible provisions of this Act have never been repealed. Instead, the rating process has been constructed around this early nineteenth century statute through a series of amendments. There now stands no less than 15 statutes governing the rating process in this country. The result is that the rating process is largely inaccessible for those using the system.

The failure to reform the rating process to date has had negative consequences for all participants in the process. Local Authorities have been forced to fashion *ad hoc* solutions in the absence of express statutory cover for their activity, which have questionable legal standing. They have had no simple and cost effective way of securing judgement against a party unwilling to discharge a rate bill. Occupiers in turn have been forced to deal with unclear refund provisions that are not uniform throughout the country and have led to a significant inequity for those on the borders of rating areas. Finally the absence of a clear mode of recovery frustrates the recovery of rates in the District and Circuit Court.

This Bill is designed to provide a coherent and accessible structure for the imposition of rates and their collection in each rating area. The Bill is also designed to ensure that those occupying commercial premises are encouraged to exploit their premises for commercial purposes so as to improve economic activity in each rating area, but also ensures that those who hold the right to occupy premises are treated fairly when it is not possible to do so.

In order to address these objectives, the Bill has four main features:

1. It introduces one single mechanism for the making of what is called the *annual rate on valuation* and the making of the rate in respect of each relevant property in a rating area. Crucially the Act provides explicit statutory cover for the manner in which the *annual rate on valuation* is calculated in each rating authority, something which has never been done previously.

2. It provides a fair and equitable refund scheme to those whose properties are unoccupied for stated reasons. It also provides a mechanism to remove barriers to entry into local business by providing a reduced rating liability for start up enterprises for their first year in operation.
3. The Bill also deals with the question of when a landlord should be fixed with liability for rates that have not been discharged by a tenant, by repealing section 32 of the Local Reform Act 2014 and replacing it with a measure that better serves the interests of both landlords and local authorities.
4. Finally, the Bill provides a coherent mechanism for reviewing all aspects of the rating process and the collection of rates, which is in line with the requirements of the Constitution and the European Convention on Human Rights.

Sections 1 and 2

Sections 1 and 2 of the Bill include a commencement provision and a series of definitions which are designed to make the Bill conform with the Valuation Act 2001 and the Local Government Act 2001.

Section 3

Section 3 refers to the Acts that have been repealed and gives power to the Minister for the Environment, Community and Local Government to introduce regulations to assist in the implementation of the statutory code.

Section 4

Section 4 confers a new jurisdiction on a rating authority to make a rate. This replaces the provisions of section 61 of the Poor Relief Ireland Act 1838 (1&2) Vict c.56 and section 11 and 18 of the Local Government Act 1946, which when read together, confer a power on County Councils and Urban Authorities, now local authorities, to make a county rate and municipal rate, respectively.

Section 5

Section 5 empowers a rating authority when adopting its local authority budget to make an *annual rate on valuation*. The term '*annual rate on valuation*' was first used in section 103 of the Local Government Act 2001 and simply replaces the term *rate in the pound* or *striking of the rate*. While the concept of making the *annual rate on valuation* or *striking the rate*, has been in existence since 1838, at no point has there been statutory cover for the manner in which this process is actually carried out. Rating authorities throughout the country have employed the entirely logical process of identifying the amount of money required from the rating process to fund local government activities and dividing it by the total valuation of rateable property in its rating area, and thereby getting the annual rate on valuation, or what is referred to colloquially as "*the multiplier*" against which the value of every property is multiplied to identify its rating liability for any year. It is important that this process, which is an integral feature of raising the rate on an occupier, is authorised by statute.

Sections 6 and 7

Section 6 and 7 of the Bill prescribes how a rate in respect of a rateable property, or what is now referred to since the Valuation Act 2001, as relevant property, is to be calculated, made and billed. Section 6 makes clear that the rate is not actually made until such time as the ratebook is sealed by manager's order. This section also

incorporates the notification requirements contained in the Local Government (Financial and Audit Procedures) Regulations 2002 S.I. 508/2002.

Section 7 provides when a rates bill is to issue and that staged payments can be made to a rating authority.

Section 8

Section 8 empowers the Minister to order that a supplemental rate be made in respect of each relevant property in a rating area in certain circumstances.

Section 9

Section 9 stipulates who is liable for a rate and when that party ceases to be liable for a rate. This section together with the repeal of section 71 of the Poor Relief Ireland Act and section 32 of the Local Government Reform Act 2014, removes the obligation on a subsequent occupier to discharge any outstanding rates arising in connection with a previous occupier. The section clarifies that where a person vacates a premises during the course of local financial year that he is only liable to discharge the rate proportionate with his time in occupation of the premises.

Section 9 also deals with the circumstances in which a landlord becomes liable for rates that have not been paid. Recognising that Local Authorities require rates to fund local services and that where a premises is commercially active rates should be paid, section 9 introduces a measure whereby a landlord is notified if a tenant fails to discharge his rates and that he becomes jointly liable with the tenant for any subsequent default. This measure does not unfairly penalise a landlord and puts him on notice of when he needs to take action to ensure that a tenant discharges his obligations.

Section 10

Section 10 applies the refund provisions previously contained in sections 14 and 23 of the Local Government Act 1946 to all Local Authorities. Currently Dublin City Council by virtue of section 71 of the Local Government (Dublin) Act 1930, Cork City Council, pursuant to section 20 of the Cork City Management (Amendment) Act 1941, Limerick City and County Council, pursuant to section 29 of the Limerick City Management Act 1934 and Waterford City and County Council pursuant to section 28(1) of the Waterford City Management Act 1939, are only obliged to refund $\frac{1}{2}$ of the rate for any given year, while every other rating authority is obliged to refund the entire rate for a year, when the requisite conditions are met. There does not appear to be any rational basis for privileging Dublin, Cork, Limerick and Waterford Councils above all other local authorities. While this position was addressed somewhat by section 31 of the Local Government Reform Act 2014, which introduced a provision allowing each rating authority to determine its own rate of refund, this introduces a new inequity whereby commercial operators are potentially treated differently throughout the country.

In addition to extending the right to a full refund to all rate payers, the Act broadens the circumstances in which such refund is allowed. Previously it was only where the property was unoccupied as a consequence of additions alterations, or repairs, or because it was not possible to secure a suitable tenant. This exemption has been extended to include when the property is unoccupied as consequence of being for sale.

There are circumstances in which a person is occupying only a part of his premises. Many local authorities across the country have

operated an *ad hoc* system whereby they only seek rates in respect of the occupied portion of the building. Section 10 provides statutory cover for this practice and therefore makes it available as of right to all rate payers in the country.

Section 11

Section 11 provides a partial exemption for the payment of rates to any occupier who has started a business for the first time. Many start ups complain that the cost of insurance and rates act as a bar to entering business. This section provides a means whereby the cost of rates for new businesses is reduced. This provision coupled with the removal of any obligation on an occupier to meet the liabilities of a previous occupier, should reduce the number of vacant commercial premises in a rating area and increase income for Local Authorities.

As the question of whether a person is entitled to an exemption, or partial exemption, is of considerable significance to both rate payer and any local authority, section 11 also provides a mechanism through which this issue can be resolved, including an appeal mechanism to the Valuation Tribunal.

Sections 12, 13 and 14

These sections provide a means through which both a rating authority and an occupier can ensure that the valuation list and rate book for a rating area are accurate.

The section also provides a means by which any dispute as to whether a person remains liable to rates can be resolved by appeal to the Valuation Tribunal. These sections incorporate aspects of section 60 of the Local Government Act 1941 and replace entirely the disparate and unclear right of appeal that a rate payer currently enjoys under sections 106 — 112 of the Poor Relief Ireland Act 1838. One of the difficulties with the right of appeal in the Poor Relief Ireland Act 1838, is that is unclear whether in appealing a party is confined to challenging the rate as made, or whether an appeal can call into question the rate in the pound.

Sections 15, 16 and 17

These sections detail the payment and refund obligations of a rating authority, how payments on account are to be treated, and the obligation on a rating authority to inform the members of the local authority of the rates outstanding.

Section 18

Section 18 represents an entirely new departure. Currently a rating authority may sue in the Circuit Court to recover an unlimited sum¹ but has no legal authority to institute proceedings in the District Court to recover rates within that Court's jurisdiction².

A rate collector can institute proceedings in the Circuit Court in the name of a rating authority, and can also sue for a decree in his own name in the District Court and, in the event that payment is not made, apply for a warrant of distress³. A rating authority enjoys a right under existing legislation to exercise a claim for distress without the need for a warrant⁴.

¹Section 78 of the Poor Relief Ireland Act 1838 (1&2) Vict.c.56.

²Section 52 of the Courts of Justice Act 1936 conferred jurisdiction on a District Court to adjudicate on a claim for the recovery of rates, but no power was ever conferred on a rating authority to actually institute such proceedings.

³Section 78 of the Poor Relief Ireland Act and s.73 of the same Act which incorporates the powers of collection conferred on a collector of the County Cess by s.152 of the Grand Jury Act 1836 (6&7) Will.4.c.116.

⁴Section 78 of the Poor Relief Ireland Act (1&2) Vict.c.56 and s.59 and section 59 of the Local Government Act 1941.

Section 18 proposes to abolish the varied approaches to debt recovery, which are cumbersome and expensive. In particular it is proposed to allow a rating authority to sue in its own name in the District Court for all sums owing and to secure a judgment capable of registration thereafter. The right to effect distress is dispensed with entirely. Most local authorities and rate collectors do not exercise the right of distress and it appears that many District Court judges are uncomfortable facilitating the process. Rather than effecting distress, under this legislation a party will secure a judgement that can be registered in the ordinary way, or the subject of an application to the Sheriff or County Registrar.

It is of significant importance that the new debt collection procedure will be quick and inexpensive for all parties. Any issue relating to occupancy or the application of an exemption or partial exemption under this new Bill, will be resolved prior to the hearing before the District Court, leaving the District Court with the limited exercise of ensuring that the documents evidencing the rating liability are in order. This procedure is entirely consistent with the Constitution and the European Convention of Human Rights as recently interpreted by the Supreme Court⁵, as the Bill has built into it the right of the occupier to raise any issue relating to the question of his occupancy before a rating authority and if dissatisfied with that decision to appeal it in writing to the Valuation Tribunal. Further, in the event that there is a factual dispute at issue, an appellant is at liberty to request an oral hearing.

Sections 19 and 20

These sections impose an obligation on a District Court to stay proceedings pending the outcome of any application before a rating authority and give a District Court power to award interest on any judgment given.

Section 21

This section clarifies from what point to measure time running for the purposes of the statute of limitations.

Section 22

This section allows for a right of set off as between a ratepayer and a local authority.

Section 23

Section 23 allows for judgments registered against relevant property to stand in priority to all other debts when registered.

Section 24

Section 24 prohibits the appointment of any further statutory rate collectors after the passing of this Act, but does not seek to effect the employment of a person who currently holds that post, save that after the commencement of the Act a rate collector will exercise the rights of recovery created in the new Act and, then, only in the name of the rating authority in question and with approval of a managerial order.

Section 25

Section 25 proposes to introduce some transitional provisions which will facilitate the application of the new code.

Section 26

⁵Donegan v. Dublin City Council [2013] s *ILL.R.M.233*

Section 26 makes it an offence for a person to knowingly supply false information to a rating authority or the Valuation Tribunal.

Miscellaneous

Section 27

This section seeks to address an anomaly whereby a community hall could become entirely rateable by simply being licensed to sell alcohol.

*Deputy John McGuinness,
Meitheamh, 2014.*