



An Bille um Thithíocht Shóisialta agus Incheannaithe, 2016

Social and Affordable Housing Bill 2016

Mar a tionscnaíodh

As initiated



AN BILLE UM THITHÍOCHT SHÓISIALTA AGUS INCHEANNAITHE, 2016
SOCIAL AND AFFORDABLE HOUSING BILL 2016

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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)

Housing (Miscellaneous Provisions) Act 2009 (No. 22)

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

Registration of Title Act 1964 (No. 16)

Residential Tenancies Act 2004 (No. 27)

Residential Tenancies Acts 2004 to 2015

Urban Regeneration and Housing Act 2015 (No. 33)



AN BILLE UM THITHÍOCHT SHÓISIALTA AGUS INCHEANNAITHE, 2016
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. 5

Be it enacted by the Oireachtas as follows:

PART 1

PRELIMINARY AND GENERAL

Short title, collective citation, construction and commencement 10

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) 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. 15

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 20
 - (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. 25
- (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— 5
- (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 10
 - (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 15
 - (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, 20
 - (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: 25
- “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. 30
- (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 35 together—
- (a) the cost of acquiring the land (including the cost of any loan entered into for the purpose),

- (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;

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‘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

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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”

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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,

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

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(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,

30

(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,

35

- (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; 5

‘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”) 10

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 15
- (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. 20

- (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. 25

- (c) In prescribing an area to which this subsection shall apply, the Minister shall have regard to— 30

- (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, 35

- (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 *Social and Affordable 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. 5
- (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: 10
- (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; 15
 - (v) the category to which the dwelling belongs, namely—
 - (I) a house,
 - (II) a maisonette,
 - (III) an apartment,
 - (IV) a studio, 20
 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 25
 - (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: 30
- “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— 35
- (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— 5
- (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, 10
- 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 per cent of the total cost, 15
- (ii) if the total cost of the improvement works exceeds €50,000, by €5,000 plus not more than 7.5 per cent 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— 20
- (a) the increase in the letting value of the dwelling attributable to the improvement works, and
- (b) the costs of the improvement works.”; 25
- and 25
- (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. 30
- (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 this Part.”. 35

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; 5
- (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; 10
- (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 per cent of the total of cost of the improvement works.”. 15

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”) 20

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): 25
 - “(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 30

AMENDMENT TO URBAN REGENERATION AND HOUSING ACT 2015

Amendment of Urban Regeneration and Housing Act 2015

11. 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”, 35

(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.”.

An Bille um Thithíocht Shóisialta agus
Incheannaithe, 2016

BILLE

(mar a tionscnaíodh)

dá ngairtear

Acht do leasú achtacháin éagsúla d'fhonn an soláthar tithíochta sóisialta agus incheannaithe a fheabhsú agus do dhéanamh socrú i dtaobh nithe gaolmhara.

*An Teachta Jan Bean Uí Shúilleabháin a thug
isteach,*

15 Samhain, 2016

Social and Affordable Housing Bill 2016

BILL

(as initiated)

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.

Introduced by Deputy Jan O'Sullivan,

15th November, 2016

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