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Report on Scrutiny of the Anti-Evictions Bill 2018 [PMB]

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Introduction –

This is the report of the Joint Committee on Housing, Planning and Local Government's detailed scrutiny of the Anti-Evictions Bill 2018 (the Bill).

The Bill was referred to the Select Committee on Housing, Planning and Local Government by order of the Dáil of 13th December 2018.

The Minister for Housing, Planning and Local Government was included in the circulation of a draft of this report, in accordance with Standing Order 95, as an *ex officio* Committee Member.

Scrutiny of the Bill was held alongside scrutiny of the *Residential Tenancies (Greater Security of Tenure and Rent Certainty) Bill 2018* as both Bills are of a similar nature, deal with similar themes, and aim to address similar issues.

Procedural basis for scrutiny –

At its meeting of the 12th February 2019, the Committee agreed to undertake scrutiny of the Anti-Evictions Bill 2018. Private Members Bill's referred to Select Committee are subject to the provisions of Standing Order 141 [Dáil], which provides that a Select Committee "*shall undertake detailed scrutiny of the provisions of such Bills ... and shall report thereon to the Dáil prior to Committee Stage consideration ...*" unless the Committee decides in relation to a particular Bill that detailed scrutiny is not necessary.

Paragraph (c) of Standing Order 141 permits scrutiny of the Bill in Joint Committee, viz. "*Nothing in this Standing Order shall preclude a Joint Committee from undertaking detailed scrutiny and reporting thereon to both Houses prior to Committee Stage consideration of the Bill by the Select Committee*".

Purpose of the Bill –

The purpose of the Bill is to amend the **Residential Tenancies Act 2004**¹ (the Principal Act) to provide for greater security of tenure by extending tenancy rights for those with a licence to reside in student specific accommodation -

- by the inclusion of receivers and lenders that have taken possession of properties in the definition of a landlord;
- by the extension of notice periods for termination of new tenancies; by making all tenancies over two months Part 4 tenancies;
- by making Part 4 tenancies of indefinite duration;
- by removing sale of property as a ground for terminating a tenancy;
- by providing for compensation where a tenancy is terminated on the ground that the dwelling is required by the landlord or a relative of the landlord for their own occupation;
- by removing renovation and refurbishment as a ground for termination of a tenancy; and
- by the extension of notice periods for new rents and for the termination of tenancies.

Policy and legislative context –

In 2016, the Government published the *Strategy for the Rental Sector*², which was the first strategy for the private rental sector in Ireland.

The strategy contains three core objectives:

1. Moderating rental and purchase price inflation, particularly in urban areas;
2. Maturing the rental sector so that tenants see it as one that offers security, quality and choice of tenure in the right locations and providers see it as one they can invest in with certainty;

¹ Residential Tenancies Act 2004. <http://www.irishstatutebook.ie/eli/2004/act/27/enacted/en/html>

² Strategy for the Rental Sector.

https://www.housing.gov.ie/sites/default/files/publications/files/strategy_for_the_rental_sector_final.pdf

3. Ensuring housing's contribution to the national economy is steady and supportive of sustainable economic growth.

Increase in number of households renting

The Census of Population taken in 2016 showed a 113% increase in the numbers of households renting from private landlords, with 309,728 renting in 2016, up from 145,317 in 2006, with the majority of this increase between 2006 and 2011. By comparison, the number of households which are owner occupied increased by 5% from 2006 to 2011, before falling slightly. In 2017 it was estimated that the number of households in the private rented sector represented 18.2% of all households.³

Increasing Rents

Trends in the rental sector over time show that people are renting for longer. Data from the latest census shows that those aged under 35 are more likely to rent than own their own home. As well as increases in the length of time people are renting for, the cost of renting has also increased over recent years, and the Central Statistics Office shows that there was a 166% increase in the number of households that paid private landlords €300 or more a week (from 18,485 in 2011 to 48,993 in 2016), with more than 85% of these households in the Dublin region.⁴

Legal context and recent initiatives

The main pieces of legislation governing the rights and obligations of landlords and tenants in Ireland are as follows:

- Landlord and Tenant Acts 1967 to 1994;
- Residential Tenancies Act 2004;
- Residential Tenancies (Amendment) Act 2015;
- Planning and Development (Housing) and Residential Tenancies Act 2016; and the
- Residential Tenancies (Amendment) Act 2019

³ Report of the Working Group on the Tax and Fiscal Treatment of Rental Accommodation Providers, 2017. http://www.budget.gov.ie/Budgets/2018/Documents/Report_of_the_Working_Group_on_the_Tax_and_Fiscal_Treatment_of_Landlords.pdf

⁴Census of Population 2016 - Profile 1 Housing in Ireland. <https://www.cso.ie/en/releasesandpublications/ep/p-cp1hii/cp1hii/tr/>

In 2016, the government introduced Rent Pressure Zones, RPZs, in an effort to create more certainty at a time of increasing rents. Rent Pressure Zones are a form of Rent Predictability Measure. RPZs are designated areas where annual rent increases are capped at 4% per year. They apply to both new tenancies and to rent reviews during an ongoing tenancy. RPZs are located in parts of the country where rents are highest and rising, and where households have the greatest difficulty finding accommodation they can afford. They are intended to moderate the rise in rents in these areas. Properties which are new to the rental market or those which have undergone extensive refurbishment are exempt.

At time of writing there are 5 Local Authority areas and 39 Local Electoral Areas which have been designated as RPZs⁵.

Residential Tenancies (Amendment) Act 2019

*The Residential Tenancies (Amendment) Act 2019*⁶ was signed into law on the 24th May 2019 and contains a number of provisions affecting tenancies in the private rental sector –

- It provides the Residential Tenancies Board, the RTB, with enhanced powers of investigation and the power to impose sanctions where contraventions have been confirmed by an authorised officer and decision maker.
- It extends the notice of termination periods required to be given by landlords.
- It also requires a landlord to register a tenancy with the RTB on commencement and annually from the time of commencement.
- It sets out exceptions to rent caps within rent pressure zones on the grounds that a substantial change has been made to the dwelling and sets out the different scenarios which constitute a substantial change.
- It also clarifies that a further Part 4 tenancy is to be considered as an extension of a Part 4 tenancy, rather than as a new tenancy.

⁵ Rent Pressure Zones, Residential Tenancies Board. <https://onestopshop.rtb.ie/during-a-tenancy/rent-review-in-a-rent-pressure-zone-rpz/where-are-rent-pressure-zones/>

⁶ Residential Tenancies (Amendment) Act 2019. <http://www.irishstatutebook.ie/eli/2019/act/14/enacted/en/html>

- It also revised the rules relating to some of the grounds for the termination tenancies including;
 - Termination for reason of sale
 - Termination for reason of occupation by landlord or landlord’s family member
 - Termination for reason of substantial refurbishment
 - Termination on grounds of change of use
- It provides for Higher Educational Institutions who provide Student Specific Accommodation to students during the academic year to fall under the remit of the RTB.
- The legislation also clarifies that Student Specific Accommodation provided by the private sector falls within the jurisdiction of the RTB, regardless of whether there is a lease or license agreement in place.

Constitution and rent restrictions

The introduction of rent certainty measures can be regarded as a legislative interference with the exercise of landlords of their private property rights, as guaranteed by Articles 40.3.2^o and 43 of the Constitution. While the Constitution also permits for the regulation by law of the exercise of property rights in the interest of the common good under Article 43.2, it is necessary, in light of the protection afforded to property rights, to ensure that the introduction of rent certainty measures does not amount to an unjust attack on the exercise of such rights by landlords.

The Constitution affords the dual protection of the right to private property both as a personal right and as an institution. Article 40.3.2^o requires the State to protect property rights from unjust attack:

“The State shall, in particular, by its laws protect as best it may from unjust attack and, in the case of injustice done, vindicate the [...] property rights of every citizen⁷.”

Article 43 guarantees that the institution of private property will not be abolished, while recognising that the exercise of this right should be regulated by the

⁷ Constitution of Ireland. <http://www.irishstatutebook.ie/eli/cons/en/html>

principles of social justice; in other words, that the State may regulate such rights by law according to the requirements of the common good.

Pre-committee stage scrutiny –

The Joint Committee held three sessions to scrutinise the Bill – with all three sittings taking place on the 20th February 2019. The Committee also received a written submission on the Bill from the Residential Landlords Association of Ireland, the RLAI.

In the first session the sponsor of the Bill Mick Barry T.D. briefed the Committee on the main provisions of the Bill.

Deputy Barry informed the Committee that the Bill aims to target five of the main reasons for evictions from the private rented sector and into homelessness. The reasons, Deputy Barry noted, are the private rented home being removed from the market due to the landlord selling, the landlord's property being repossessed or sold by a bank, the landlord moving back in, major renovations, or the landlord giving the property to a family member. Deputy Barry explained that the Bill would also cover the reasons cited in 40% of all eviction notices disputed with the Residential Tenancies Board, the RTB.

Deputy Barry gave the Committee an overview of the Bill and the reasons for the provisions within it. Deputy Barry noted that, according to Threshold's 2017 Annual Report⁸, sale of a property was the most common reason given in eviction notices, having been used in 38% of the eviction notices dealt with by Threshold. Deputy Barry advised that this Bill would ban the sale of a property as a reason for eviction, and that would allow properties to be sold with tenants *in situ*. Deputy Barry noted that the Bill would give tenants of buy-to-let properties in receivership the protections of the *Residential Tenancies Acts*, by including bank and receivers in the definition of "landlords", as called for by Threshold. According to Deputy Barry, this would remedy the current situation whereby tenants essentially lose

⁸ Threshold Annual Report 2017.

<https://www.threshold.ie/assets/files/pdf/thresholdannualreport2017updated.pdf>

their rights if their landlord defaults on a loan and the home is repossessed by a bank.

On the issue of a landlord claiming that a relative is moving into the property, Deputy Barry explained that the Bill would oblige landlords to pay six months rent in compensation to the tenant in the case of a break of lease for this purpose. Deputy Barry said the purpose of this provision is to prevent landlords from using the relative argument as an excuse to evict tenants in order to bring in new tenants on a higher rent.

Deputy Barry explained that the Bill also removes renovation and refurbishment as grounds for eviction and noted to the Committee that some 74% of eviction notices dealt with by the RTB citing substantial refurbishment were found to be invalid. The Deputy noted that currently, landlords can evict tenants for any reason at the end of a four- or six-year Part 4 tenancy. The Bill would make Part 4 tenancies indefinite so that this recurring eviction period for long-term tenants would no longer exist. The Deputy outlined other measures in the Bill such as bringing purpose-built student accommodation under the remit of the *Residential Tenancies Acts* to ensure tenancy protections, including rent pressure zones, apply to the nearly 40,000 students living in student specific accommodation, whether private or publicly owned.

Deputy Barry informed the Committee that the Bill would reduce the timeframe at which Part 4 tenancy protections come into effect, from six months to two. The Bill would also extend the notice periods to be provided by landlords when terminating a tenancy.

The Committee agreed that there is a need to protect the rights of tenants significantly, and highlighted the disadvantages around attending schools, and disruptions to relationships with family and friends when families have to vacate a premises. Members acknowledged the importance of striking a balance between increasing the security of tenure for tenants and avoiding pushing investors and landlords out of the rental market. In this regard, members questioned whether or not the requirement that a landlord sell a property with tenants *in situ* would be constitutional. Deputy Barry informed the Committee that other European countries allow selling with tenants *in situ* and that this is the practice in Germany,

Sweden, The Netherlands, and Denmark. On the constitutional issue Deputy Barry stated –

"I note that the Constitution provides for the rights of private property. It also provides for the State to take action in the interests of what it describes as the 'common good'. It enshrines that as a strong and in some cases overriding principle. Our legal argument will be that the common good overrides the rights of private property."

The Committee expressed support for the sentiment of the Bill but advised caution with regard to some of the provisions, namely selling with tenants *in situ*, compensating tenants on eviction, and establishing indefinite Part 4 tenancies.

The Committee resumed scrutiny of the Bill in a second session on the same day, with invited stakeholders Ms. Margaret McCormick and Mr. Tom O' Brien from the Irish Property Owners Association, IPOA, Ms. Michelle Byrne and Ms. Megan Reilly from the Union of Students in Ireland, and Mr. John-Mark McCafferty and Ms. Ann-Marie O' Reilly from Threshold.

Ms. Margaret McCormick addressed the Committee and outlined the IPOA's view of Deputy Barry's Bill. In their opening statement, Ms. McCormick stated that the IPOA is of the view that if passed, the Bill *"will have a significant detrimental impact on the sector and will lead people with capital to invest their money in an alternative asset class"*.

Ms. McCormick advised the Committee that a move to selling with a tenant *in situ* will limit the selling market to investors, and together with rent pressure zone restrictions would substantially devalue a property. She stated that investment values are based on yield, and investors are less likely to purchase properties with restricted income as a result of restricted rent levels. The RLAI echoed these concerns and advised in their submission to the Committee that a requirement to leave tenants *in situ* when the property is being sold would halve the value of the investment property, make some properties unsellable, and effectively amounted to *"partial confiscation of property"*.

Ms. McCormick stated that indefinite tenancies are not workable, that a two-month probationary period is insufficient time to assess a tenancy, and that six months

is more reasonable. She advised that the existing six-year tenancy cycle allows for a no-fault method to get a property back and that is it essential that this remains in legislation.

In relation to the Bill's proposal to abolish substantial refurbishment or renovation as grounds for termination of a tenancy, the IPOA told the Committee that they believe that if a landlord does substantial refurbishment, he or she should be able to get a return on that investment. They questioned why anybody would invest money in refurbishing a property that meets the minimum standards if he or she cannot increase the rent, and advised the Committee that the unintended consequence of this is that in three or four years' time there will be a tired supply of rental stock.

Further to the issue of substantial refurbishment, Ms. McCormick informed the Committee that substantial refurbishment is essential as a grounds for termination, as after a number of years of a tenancy it is required to modernise and ensure the property is up to date and suitable for the changing accommodation needs of the market. In this regard Ms. McCormick noted that "*state housing policy should not lead to the running down of accommodation*". She advised that in a substantial refurbishment it is essential as a health and safety issue, and often as an insurance issue, that properties are vacated during the works. In their submission to the Committee, the RLAI also advised that it would be hazardous to leave tenants in accommodation while works are going on and that this measure could see a decline in the quality of rental accommodation.

The IPOA agreed with the proposal of including receivers in the definition of landlords, and noted that as the receiver collects the rent, they should comply with the obligations of landlords in their entirety, including upgrading, repairs, and refund of deposit.

In terms of the proposal to bring student specific accommodation under the Residential Tenancies Act, the IPOA told the Committee that including student specific accommodation under the Residential Tenancies Act would be impossible as the terms and conditions of licences are different. They do not have exclusive possession of the property, are licensed individually, are responsible only for their own accommodation cost, and may not have collective responsibility for the common areas of the accommodation.

Mr. Tom O' Brien from the IPOA informed the Committee that there has been a decline and deterioration of rental stock, and that this was not because people have suddenly decided that the rental market is unattractive, but because people *"have looked at the tax cuts and provisions and legislative changes since 2009 and decided that there are easier ways of making money. They can put their money elsewhere without being subject to legal, tenant or funding risk. They can make the same return and more elsewhere."*

Mr. O' Brien advised the Committee that the most important issue affecting the rental sector is the lack of supply and that the supply issue must guide legislation. The IPOA expressed frustration that *"all of the provisions that have been directed at the rental sector in the past ten years have been anti-landlord and anti-investment"*. They expressed concern that the provisions of the Bill would, if enacted, lead to the unintended consequences of a reduction in the existing stock of rental properties.

Ms. Michelle Byrne of the Union of Student in Ireland, USI, addressed the Committee and outlined the support of the USI for the Bill. She noted three areas of concern with purpose-built student accommodation, PBSA, namely the lack of affordability, rent pressure zones and the lack of tenants' rights. Ms. Byrne advised the Committee that much of the new student accommodation being built is PBSA, funded by Irish and global property investors, but the rents being charged are frequently unaffordable for the average student.

Ms. Byrne explained that in their experience PBSA is predominantly targeted at international students, who are generally fee-paying and thus attractive for underfunded universities. She said that students in PBSA are treated as licensees rather than tenants and, therefore, do not have the same rights. She noted that students sign a licensee agreement rather than a contract and there is little legal protection for licensees. She advised that they do not have to be registered with the RTB, for example, and no minimum standards, rent-book regulations or minimum notice periods are required. Ms Byrne noted that even in rent pressure zones, PBSA does not fall under the Planning and Development (Housing) and Residential Tenancies Act 2016. Ms. Byrne also stated she hopes that the Anti-Evictions Bill will address some of these concerns.

Ms. Byrne informed the Committee of the rent increases facing students across the State, highlighting instances of 19%, 27%, and 10% increases in student accommodation rents in Galway, Dublin and Cork respectively. She outlined some of the negative effects of the increases on students, with students dropping out of college, staying in the library, staying on friend's couches, and commuting for hours. All of this directly affects students' ability to get a decent education, Ms. Byrne advised. Ms. Reilly from the USI expressed concern that the issues they are dealing with in Galway, Dublin and Cork are spilling out of these cities and can now be seen throughout the country with problems mounting in relation to student's access to education and academic performance.

It should be mentioned that in this regard, the Committee notes that the recently enacted *Residential Tenancies (Amendment) Act 2019* has addressed the concerns outlined above to some degree, including issues surrounding Rent Pressure Zones applying to student accommodation, and student accommodation now falls under the remit of the RTB.

Mr. John-Mark McCafferty of Threshold informed the Committee that the organisation has long called for the recognition of banks and receivers as landlords to ensure that tenants' rights are respected and as such welcomed this proposal in the Bill. Mr Mc Cafferty said the establishment of such security is essential if private rental is to exist as a legitimate tenure alternative to owner occupation and social housing.

Mr. McCafferty also welcomed the proposal to include licences for student accommodation in the definition of tenancies and licensees in student accommodation in the definition of tenants and noted that it is Threshold's position that all licenses and licensees, and not just exclusively those living in student accommodation, should be added to the definitions of tenant and tenancy.

Threshold informed the Committee that they see merit in extending Part 4 rights to tenants once they have been in occupation for two months, and in addition to this, they support the creation of indefinite tenancies through the removal of section 34(b) which has been a long-standing position of the organisation. They advised that this is an essential step in making the private rented sector a viable, sustainable tenure choice.

In relation to extending Part 4 rights to tenants once they have occupied a property for two months, the Residential Landlords Association of Ireland, RLAI, in their submission to the Committee stated that this provision is there for the benefit of tenants as well as landlords. The RLAI maintain that this provision would benefit tenants involved in anti-social or vexatious behaviour and who could force housemates to leave their accommodation.

Mr. McCafferty advised that sale as a ground for termination has no place in a modern rental sector and that this was the number one reason for tenants to contact Threshold in 2016, 2017, and 2018. He stated that *“continuing to permit sale as a ground for termination prevents the establishment of a sustainable private rented sector and undercuts the effectiveness of housing assistance payment, HAP, as a social housing support”*.

Threshold informed the Committee that they support the extension of notice periods for tenants, and in particular for those who have been in occupation for less than six months and for long-term residents who may have lived in a home for a substantial period of their life and are possibly at a later stage in life. In this regard they stated that *“if renting is to become a tenure of choice and given that an increasing number of people are renting into older age, one year or more is not an unreasonable notice period.”*

With regards the proposal in the Bill to require landlords to pay compensation to tenants where the landlord terminates a tenancy because they require it for occupation by a member of his or her family, Ms. Ann-Marie O’ Reilly from Threshold noted that this happens in other European countries but advised that it’s usually expected that the landlord and the tenant would agree between themselves and that there are some restrictions in this regard. Ms. O’ Reilly said that as proposed in the Bill, one could see a tenant who has lived in a place for one month receiving notice and then compensation, which would seem excessive and would be a harsh levy to impose on a landlord who may be in genuine need of the property. The RLAI, in their submissions, also raised concerns over this proposal and said it would amount to excessive penalisation of landlords and would do nothing to encourage investment in the sector.

Ms. O’ Reilly advised that if it is the case that the measure is being proposed to prevent landlords from abusing such grounds for termination, there may be better

mechanisms to use, and as most landlords own one property it would be quite an expense for them to pay compensation. In this regard, the Committee notes that the *Residential Tenancies Act 2019* addresses this issue to some degree in that it provides that a statutory declaration from the owner or family member intending to occupy the property must accompany the termination notice, and a landlord must offer the property back to the tenant who vacated if the property becomes available for rent within 12 months of the termination of tenancy.

The Committee resumed scrutiny in a third session on the Bill later the same day along with invited stakeholders Ms. Rosalind Carroll, Ms. Caren Gallagher, and Ms. Catriona Walsh of the Residential Tenancies Board (RTB).

Ms. Walsh informed the Committee of the series of legislative changes introduced over recent years and advised that the regulatory framework established in 2004 has grown increasingly complex to the point where most landlords and tenants do not understand their rights and responsibilities. The RTB told the Committee that they believe this is the biggest threat to successful implementation of any further regulatory change.

The RTB advised the Committee that the powers in the Residential Tenancies Act will enable them to build on the protections in current legislation but they cannot rely on regulation alone and existing supply must be protected while future investment also needs to be encouraged. In that context, The RTB noted that since 2017, the number of private rental tenancies has fallen from 313,000 to just over 307,000 at the end of 2018 and that "*this is a significant reduction given the extreme demand pressures in the current market at this time.*"

The RTB further stated that given the amount of regulatory change introduced in recent times, there is a need to allow legislation to become established to allow them to exercise the new regulatory powers to ensure they do not worsen the situation, even with the best intentions. The RTB also noted that a number of areas in Deputy Barry's Bill were under consideration as amendments within the context of the *Residential Tenancies (Amendment) No. 2 Bill 2018* [since enacted as the *Residential Tenancies (Amendment) Act 2019*].

Ms. Walsh informed the Committee that the RTB supports the further strengthening of security of tenure but notes that there are legal considerations and that given the data that exists relating to supply in the sector and notices of termination, there is a need for a careful balance and a strong evidence base to support further regulatory change.

The RTB informed the Committee that the proposed new powers under the *Residential Tenancies (Amendment) (No. 2) Bill 2018* (now enacted as the *Residential Tenancies [Amendment] Act 2019*) are a significant change for the RTB as an organisation and for the rental sector. They hope that many of the measures will address the issues in the sector and that the legislation will enable more effective, proportionate and smarter regulation. They stated that they are focused on the successful and smooth implementation of the proposed legislation for both landlords and tenants in what is an extremely complex and bureaucratic regulatory framework and that this will take time. They informed the Committee that the RTB is committed to supporting all those involved in the sector, whether they are landlords or tenants, on pathways to compliance.

Ms. Rosalind Carroll informed the Committee that with regards notices of termination, statistics from 2017 show that for those notices that were served for rent arrears, 78% were found to be valid. For those served for sale, 50% were found to be valid, and for those served for the property to be used for family members 48% were found to be valid. For those served for substantial refurbishment, 74% were found to be invalid. However, Ms. Carroll advised that where these cases come before the RTB the current legal framework is effective in resolving disputes.

Ms Carroll also noted to the Committee that the RTB feel one of the biggest issues with regulating the rental sector is that people simply do not know what they should be doing. She advised that every time a new law is brought in, there is more non-compliance, and that there are people out there who knowingly do not comply but also people who are "*just not getting it right*" and the RTB are trying to support the people trying to get it right.

The RTB acknowledged that there has been a decrease in the amount of rental properties in the market over the last two or three years and told the Committee that, as with any body, there comes a saturation point in terms of regulation. They

advised that the sector can only be regulated so much before it reaches saturation point and people say they are not bothered anymore and that it is too much for them. She advised of the need to support both landlords and tenants in the sector, and the more successful their relationship, the more successful the sector.

Ms. Rosalind Carroll advised that while the RTB supports further security of tenure measures, they would like to see them coupled up with reforms on the supply side.

In relation to the Bill's proposals to broaden the definitions of tenancy and tenant to include those living in student accommodation, the RTB advised that they support reform and clarity in this area given the increasing numbers of student-specific accommodation that will be provided over the next number of years.

With regards the proposal in the Bill to allow the selling of a property with the tenants "*in situ*", Ms. Carroll informed the Committee that institutional investors wouldn't have an issue with this, however this would impact the more vulnerable landlords.

Ms. Carroll advised the Committee of the concerns of the RTB that landlords may start to pick what they think are short-term tenants, for example students or people without families, and that landlords might discriminate against certain elements of the market to give themselves room to be able to sell openly on the market. Ms. Carroll stated that at the moment there is a significant valuation issue and noted that the RTB have been provided with evidence of a 28% fall in the value of a home when sold with a tenant *in situ*. The RTB advised the Committee that they have liaised with some of the financial institutions to get an idea of the current situations with valuations within that framework and found that it ranges from between 20% and 30% in terms of the impact of selling with a tenant *in situ*. The RTB said they would like to normalise this so they can get to a point where there can be security of tenure with a sale with a tenant *in situ*.

The Committee acknowledged the need for greater security of tenure for tenants in the rental market, yet they expressed the need for striking a fair balance with the rights of the landlords and cautioned against implementing legislation which may drive landlords out of the market and reduce further the supply of rental properties.

The Committee also noted that some of the issues the Bill proposes to address have been dealt with to some degree by the Government's *Residential Tenancies (Amendment) No. 2 Bill 2018* [since enacted as the *Residential Tenancies (Amendment) Act 2019*].

Legal Analysis -

Compatibility with the Constitution

The Committee is of the opinion that a number of the provisions in the Bill appear to engage provisions of the Constitution, specifically the protections of property under Article 40.3 and 43.

The proposals that particularly engage constitutional considerations include the proposal to remove sale of the property as grounds for termination of a tenancy (section 5); the proposal to require the payment of compensation for the termination of a tenancy on the grounds of need by a family member (section 6); and the proposal to remove substantial refurbishment as a grounds for termination of a tenancy (section 7). In this regard the Committee notes that issues surrounding arbitrariness in the Bill's application and the allocation of compensation may engage constitutional issues, discussed below.

i. Arbitrariness

The Committee is aware of the need to achieve a fair balance between the property rights of landlords and the rights of tenants and in this regard the Committee notes the issue of arbitrariness in legislation may engage constitutional issues. The Committee are concerned that this issue of arbitrariness may arise in the measures proposed by the Bill, particularly the proposal to require the payment of compensation to a tenant when a tenancy is terminated on the grounds of family use. The Committee notes this appears to be provided without limitation or without regard to the specific circumstances of a given case. Similarly, the proposal to remove sale as a grounds for termination of a tenancy may engage the issue of arbitrariness as it would not take account of the relative positions of a landlord or tenant in any given tenancy.

The issue of arbitrariness also arises in relation to the restrictions on property rights, with particular emphasis on measures that involve an uneven distribution of the cost of social policy interventions, such that one section of society pays disproportionately for the costs of a particular measure. The Committee is aware that any measure perceived to be transferring a social cost onto one sector will at a minimum engage, if not fall foul of, the property rights protections in the Constitution and in this regard, it is noted that it could be argued that the social cost of the housing crisis and lack of supply of housing would be transferred onto landlords if the Bill were to be passed.

However, in this regard the Committee notes that the substantial leeway granted to the legislature to advance social and economic matters does allow for some measures that place a burden on certain property owners in the furtherance of a social good, so long as it is proportionate in nature.

ii. Compensation

The Committee is also aware that where there are significant encroachments on the right over property of a landlord, in order to avoid possible breaches to Article 40.3.2 of the Constitution it may be necessary for legislation to provide for a “compensatory factor”. In the circumstances where the Bill proposes to prevent a landlord selling a property with vacant possession, thus potentially negatively affecting the value of the property, the absence of a compensatory factor for such a landlord may give rise to a constitutional objection. The Committee notes that compensation does not arise in the provisions of the Bill that limit the property rights of landlords and indeed where compensation is provided for, it is for tenants rather than landlords and this is likely to affect the proportionality of the measures proposed.

With regards the above, the Committee emphasises the need to strike a balance between constitutional property protections and the common good, and in this regard attention should be given to the question of whether the measures proposed in the Bill would impose the burden of solving a social or economic issues (the housing/homelessness crises) on one sector (landlords), whether they may be seen to be arbitrary in their application, and whether the measures are proportionate in light of all the circumstances.

The Committee notes that the Bill does not differentiate between the landlords and tenants it affects, such that it may not in all circumstances in fact be seen to be in furtherance of the aim of the alleviation of social injustice as it may apply equally to a wealthy tenant and less well-off landlord. This may be particularly so where, for example, a landlord needs to sell a property due to debts owed and they are unable to advertise at market rate due to tenants remaining in the property.

Compatibility with EU Law and the ECHR

The Committee notes that the Bill gives rise to some issues for consideration under the European Convention on Human Rights, particularly Article 1 Protocol 1 of the ECHR, which provides for the protection of property and is engaged by a number of the Bill's proposals.

The Committee is aware that a wide margin of appreciation is afforded to member states in relation to the balance to be struck between the rights of tenants and landlords in residential tenancies. However, the Committee notes that the Bill's provisions, particularly the provision which provides for compensation to be required for termination of a tenancy to allow a relative to use the property, the proposal for the abolition of substantial refurbishment as a ground for termination, and the proposed abolition of sale as a ground for termination, may be seen as significant interferences with the rights of landlords insofar as they restrict the ability of a landlord to maintain or increase the value of the property while a tenant is in situ, and may impact on the value of the property if sale must take place with tenants in place.

The Committee notes that the balance to be struck is a matter for the Oireachtas, and while there is a margin of appreciation afforded, it will be for the Oireachtas to justify the interference with property rights with reference to social injustice or other legitimate social or economic aims in a proportionate manner.

Ambiguity and/ or deficiencies in drafting

Section 5(3) of the Bill provides that “*Section 56(c)(1) is hereby repealed*”. This is ambiguous as the Act of 2004 (as amended) contains within Sections 56 a sub-section (1). Given that the next sub-section, 5(4) of the Bill provides for the amendment of subparagraph (c)(1) of the Table to Section 56, the reference is not to this sub-section but is presumably in reference to Section 56(1). The Committee is of the view that this should be clarified.

Potential unintended legal consequences

Section 7 of the Bill proposes to prevent the termination of a tenancy for the purposes of substantial refurbishment. The Committee notes that the *Residential Tenancies (Amendment) Act 2019* has amended the definition of substantial refurbishment to become more detailed. If the aim of the proposed amendment in the Bill is to prevent the inappropriate use of substantial refurbishment as a grounds for termination of a tenancy, the Committee notes that the changes made under the 2019 Act may go some way to achieving the aims of this proposal.

If it is assumed that the changes in the 2019 Act do not achieve the aims of the Bills’ proposals, the potential impact of the amendments on both the value of the property and on health, safety and maintenance obligations of the landlord should be considered.

Under the *Residential Tenancies Act 2004* a landlord has obligations to maintain the property and to maintain minimum standards for the dwelling. It is possible that in complying with these obligations a landlord may be required to substantially refurbish a property periodically. Given that the Bill also provides for an indefinite Part 4 tenancy it would seem that no substantial refurbishments (within the meaning of the 2019 Act) could be carried out during a tenancy, which could be very lengthy in duration. This would likely have implications for health, safety and maintenance (noting the landlord’s obligations in relation to the maintenance of the property) and potentially also for the landlord’s insurance. In circumstances of a very lengthy indefinite tenancy this may create difficulties for the landlord to meet their obligations in relation to maintenance and standards.

Observations of the Joint Committee –

The Committee in its scrutiny of the Bill and pursuant to Standing Orders, agreed to report to the Houses of the Oireachtas that it has undertaken and completed detailed scrutiny of the Bill. The Committee has made the following observations and conclusions: -

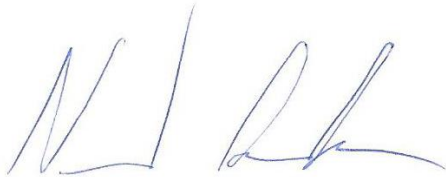
- the Committee notes the support expressed for the principle of the Bill, however the Committee are aware of the need to strike a fair balance in terms of the rights of both tenants and landlords
- the Committee would like to emphasise the need to exercise caution when passing legislation that might affect the regulatory environment surrounding the rental market;
- since the publication of the Bill in 2018, the *Residential Tenancies (Amendment) Act 2019* has come into operation and the Committee notes that some of the issues intended to be addressed by the Bill have now been addressed to some degree by this Act.
- the Committee acknowledges the actions currently in motion at Government level to enact similar legislation and recommend that the sponsor of the Bill and the Department engage further, with a view to ensuring a more robust Bill.

The Committee recommends that: -

- consideration be given to legislative and policy developments, such as those in the *Residential Tenancies (Amendment) Act 2019*, since the publication of the Bill in 2018 and the Bill be updated to reflect these developments.
- in light of the recent legislative developments, the sponsor engage with the Department when amending the Bill, and the Bill be amended taking these legislative developments into account.
- the sponsor take into account the possible constitutionality issues raised by the Committee when seeking to amend the Bill, and that the Bill be amended accordingly.

Conclusion –

The Committee concluded that the Bill proceed to Third Stage consideration and that the proposer of the Bill take account of the observations of the Committee in framing their respective amendments to the Bill, in particular in relation to recent policy and legislative developments, such as those contained in the *Residential Tenancies (Amendment) Act 2019*.



Noel Rock T.D.

Chair

October 2019

Appendix 1 – Committee Membership

Joint Committee on Housing, Planning and Local Government

Committee Membership:

Chairperson: Noel Rock (Fine Gael)

Deputies¹

Pat Casey (Fianna Fáil) (Vice Chair)³

Mick D. Barry (Solidarity-PBP)

Mattie McGrath (Rural Independent Group)

Darragh O'Brien (Fianna Fáil)

Eoin Ó Broin (Sinn Féin)

Fergus O'Dowd (Fine Gael)

Senators²

Victor Boyhan (Independent)

Martin Conway (Fine Gael)

Colette Kelleher (Independent)

Jennifer Murnane O'Connor (Fianna Fáil)

Notes:

1. Deputies nominated by the Dáil Committee of Selection and appointed by Order of the Dáil of 16 June 2016.
2. Senators nominated by the Seanad Committee of Selection and appointed by Order of the Seanad on 21 July 2016.
3. Elected Vice Chair on 24 May 2017.

Appendix 2 – Terms of Reference of Committee

COMMITTEE ON HOUSING, PLANNING AND LOCAL GOVERNMENT

TERMS OF REFERENCE

a. Functions of the Committee – derived from Standing Orders [DSO 84A; SSO 70A]

- (1) The Select Committee shall consider and report to the Dáil on—
 - (a) such aspects of the expenditure, administration and policy of a Government Department or Departments and associated public bodies as the Committee may select, and
 - (b) European Union matters within the remit of the relevant Department or Departments.
- (2) The Select Committee appointed pursuant to this Standing Order may be joined with a Select Committee appointed by Seanad Éireann for the purposes of the functions set out in this Standing Order, other than at paragraph (3), and to report thereon to both Houses of the Oireachtas.
- (3) Without prejudice to the generality of paragraph (1), the Select Committee appointed pursuant to this Standing Order shall consider, in respect of the relevant Department or Departments, such—
 - (a) Bills,
 - (b) proposals contained in any motion, including any motion within the meaning of Standing Order 187,

(c) Estimates for Public Services, and

(d) other matters

as shall be referred to the Select Committee by the Dáil, and

(e) Annual Output Statements including performance, efficiency and effectiveness in the use of public monies, and

(f) such Value for Money and Policy Reviews as the Select Committee may select.

(4) The Joint Committee may consider the following matters in respect of the relevant Department or Departments and associated public bodies:

(a) matters of policy and governance for which the Minister is officially responsible,

(b) public affairs administered by the Department,

(c) policy issues arising from Value for Money and Policy Reviews conducted or commissioned by the Department,

(d) Government policy and governance in respect of bodies under the aegis of the Department,

(e) policy and governance issues concerning bodies which are partly or wholly funded by the State or which are established or appointed by a member of the Government or the Oireachtas,

(f) the general scheme or draft heads of any Bill,

(g) any post-enactment report laid before either House or both Houses by a member of the Government or Minister of State on

any Bill enacted by the Houses of the Oireachtas,

- (h) statutory instruments, including those laid or laid in draft before either House or both Houses and those made under the European Communities Acts 1972 to 2009,
- (i) strategy statements laid before either or both Houses of the Oireachtas pursuant to the Public Service Management Act 1997,
- (j) annual reports or annual reports and accounts, required by law, and laid before either or both Houses of the Oireachtas, of the Department or bodies referred to in subparagraphs (d) and (e) and the overall performance and operational results, statements of strategy and corporate plans of such bodies, and
- (k) such other matters as may be referred to it by the Dáil from time to time.

(5) Without prejudice to the generality of paragraph (1), the Joint Committee appointed pursuant to this Standing Order shall consider, in respect of the relevant Department or Departments—

- (a) EU draft legislative acts standing referred to the Select Committee under Standing Order 114, including the compliance of such acts with the principle of subsidiarity,
- (b) other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission as a basis of possible legislative action,
- (c) non-legislative documents published by any EU institution in relation to EU policy matters, and
- (d) matters listed for consideration on the agenda for meetings of the relevant EU Council of Ministers and the outcome of such

meetings.

- (6) The Chairman of the Joint Committee appointed pursuant to this Standing Order, who shall be a member of Dáil Éireann, shall also be the Chairman of the Select Committee.
- (7) The following may attend meetings of the Select or Joint Committee appointed pursuant to this Standing Order, for the purposes of the functions set out in paragraph (5) and may take part in proceedings without having a right to vote or to move motions and amendments:
- (a) Members of the European Parliament elected from constituencies in Ireland, including Northern Ireland,
 - (b) Members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and
 - (c) at the invitation of the Committee, other Members of the European Parliament.

b. Scope and Context of Activities of Committees (as derived from Standing Orders) [DSO 84; SSO 70]

- (1) The Joint Committee may only consider such matters, engage in such activities, exercise such powers and discharge such functions as are specifically authorised under its orders of reference and under Standing Orders.
- (2) Such matters, activities, powers and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Dáil and/or Seanad.
- (3) The Joint Committee shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Committee of Public Accounts pursuant to Standing Order 186 and/or the Comptroller and Auditor General (Amendment) Act 1993.
- (4) The Joint Committee shall refrain from inquiring into in public session or publishing confidential information regarding any matter if so requested, for stated reasons given in writing, by—
 - (a) a member of the Government or a Minister of State, or
 - (b) the principal office-holder of a body under the aegis of a Department or which is partly or wholly funded by the State or established or appointed by a member of the Government or by the Oireachtas:

Provided that the Chairman may appeal any such request made to the Ceann Comhairle / Cathaoirleach whose decision shall be final.

- (5) It shall be an instruction to all Select Committees to which Bills are referred that they shall ensure that not more than two Select Committees shall meet to consider a Bill on any given day, unless the Dáil, after due notice given by the Chairman of the Select Committee, waives this instruction on motion made by the Taoiseach pursuant to Dáil Standing Order 28. The Chairmen of Select Committees shall have responsibility for compliance with this instruction.