



The Voice of Auctioneers & Valuers in Ireland

**IPAV Submission
on the General Scheme
of the Residential Tenancies (Right to Purchase) Bill**

13th December 2023

The main impact of the proposed Bill is to give tenants, and approved Housing Bodies, a right to bid to purchase a rented dwelling where a landlord proposes to sell the dwelling, in certain circumstances.

The framework of the Bill will impact on the right of a landlord to sell his rented dwelling, and the Bill will set a precedent for legislative intervention affecting a landlord's right to sell a rented dwelling. This is the first-time legislation would impact on a landlord's right to sell a dwelling in this way. IPAV would be concerned that a future Government could extend the impact of this legislation further and restrict the rights of landlords to sell their property in a manner which would have a more considerable impact on landlords' constitutional property rights. There have been calls for landlords' rights to sell rented property to be abolished or severely restricted. This legislation could be seen as the thin edge of the wedge in terms of restricting landlords' right to sell property in the future.

The Residential Tenancies Act has been significantly amended since 2004 and measures which were introduced on a "temporary" basis, such as rent pressure zones, have not in fact been temporary and have increased in scope over the years. IPAV would be concerned that a similar approach could be taken with a tenant's right to purchase rented property if this Bill is passed, and it would operate as an opportunity to impose further restrictions on landlords' right to sell their rented dwellings in the future, or in response to trends in the housing market that cannot be foreseen. Legislative intervention affecting Landlords rights, even on a temporary basis such as with the "Winter Eviction Ban", should not be used as a political response to the housing crisis, particularly if such legislative intervention is likely to have minimum, if any, effect on improving the supply of housing.

Head 1 proposes that the Bill will come into immediate effect. IPAV would be concerned that this will not give landlords, and tenants, adequate time to fully understand the impact of the legislation before it comes into force. There should be a lead-in time of at least 6 months after the Act is passed and before it comes into force.

If the legislation comes into immediate effect, some landlords may be concerned about the possible (or unforeseen) impact of the legislation on their right to sell their property and may seek to put their property up for sale now, in advance of the legislation coming into force, or being extended further by future legislation. This may increase the supply of properties for sale on the market, in the short term. However, most properties put up for sale would be purchased by owner occupiers, and this will, in the short-term, reduce rental supply and further increase rents, distorting the market.

There may be a short-term impact on the property market as a result of this legislation coming into effect immediately, and this market-impact should be researched before the legislation proceeds further through the Oireachtas.

Parts of the Bill affecting the RTB will not come into immediate effect to allow resources to be allocated to the RTB before this part of the Bill becomes law. Similar consideration should be given to landlords who may be in the process of wishing to sell their property and may feel the need to expedite such a sale in advance of this legislation being brought into force. Similar concerns may arise as to resource allocation to Approved Housing Bodies in order for those bodies to be in a position to react to the legislation. IPAV would welcome clarity as to the intended allocation of resources to Approved Housing Bodies in order to avail of the opportunities which this legislation proposes to introduce.

Head 3 is a welcome amendment which will allow Notices under the Residential Tenancies Act to be served by electronic means. This reflects day-to-day reality, and the way landlord, agents and tenants communicate. As much clarity as possible should be given in this part of the Bill to ensure that Notices can be sent and received by electronic means as widely as possible and avoid any technical objections being taken to the way a Notice is served on a landlord or a tenant. Furthermore, this part of the Bill should clarify that notices copied to the RTB can also be served electronically.

Head 4 of the Bill concerns Notices served on a tenant being copied by the landlord to the RTB and extends this to non-Part 4 Tenancies. This practice of copying Notices to the RTB by the Landlord should cease. This creates unnecessary bureaucracy for landlords, agents and the RTB, including landlords of multiple units, who may have to copy numerous Notices to the RTB. The information supplied by the RTB on foot of a Notice being copied to the RTB is primarily information for the benefit of the Tenant. Section 39A of the Act should be amended to simply provide a Notice should inform the Tenant they may contact the RTB for information on foot of the Notice, without the Notice being copied to the RTB. This impacts on the administrative resources of the RTB who have to respond to each, and every Notice copied to the RTB. These resources can more appropriately be diverted to dealing with tenancy registration backlog and queries, as well as dispute resolution processes. RTB resources can more efficiently be allocated to dealing with queries from tenants who require information from the RTB, without the need for the RTB having to write generally to every tenant where a notice is copied to the RTB.

Head 5 is a welcome amendment to the right of a landlord to sell his rented property and provides a landlord may terminate a tenancy when property is being transferred for no consideration, or partial consideration, for example where property is being transferred to a spouse or family members. This clarification is welcome.

Head 6 deals with Notice of Termination where a landlord requires to sell a dwelling being copied to the RTB. This practice of Notice of Termination being copied to the RTB is unnecessary and increases bureaucracy within the RTB and this impacts on resources which should be allocated elsewhere in the RTB.

Head 7 of the Bill is the main part of the Bill dealing with the tenant's right to bid to purchase the rented dwelling. Fundamentally, this provision is unnecessary, as tenants and Approved Housing Bodies are currently able and not excluded from bidding to purchase a rented dwelling if the property is being put up for sale.

In practice tenants are often the first to know if a property is being put up for sale and are in a good position to apply for finance and arrange to bid for the property where appropriate. **The aim of this legislation can more effectively be achieved in other ways, for example tax incentivisation or grants, or greater resource allocation to Approved Housing Bodies to purchase a rent property.** For example, consideration could be given to amending the Tax Code in relation to Capital Gains Tax if a landlord is prepared to sell a rented dwelling to a tenant or Approved Housing Body, or in relation to Stamp Duty where a tenant purchases a property they had been renting previously. Amending the Tax Code may have a more meaningful effect for tenants, than amending the Residential Tenancies Act.

Legislation is not in fact required to give tenants, and Approved Housing Bodies the opportunity to bid to purchase rented property. Furthermore, without appropriate resource allocation to Approved Housing Bodies, and the Housing Agency, a mere change in legislation will not provide the means for such Bodies to acquire private rented properties for the purpose of public or social housing.

IPAV would welcome further research on the market impact of Approved Housing Bodies purchasing previously private rented properties for social housing, and the impact this may have on the private tenancy market. Greater clarity on the proposed resource allocation to be made to Approved Housing Bodies (and the Housing Agency) to purchase private properties would be welcome. IPAV would also welcome further information on how many tenants have been refused by landlords to sell them a property and how many landlords have sold their property to sitting tenants.

IPAV are concerned that this legislation restricts a landlord's right to sell their rented property, with the aim of achieving a benefit for tenants and approved housing bodies. This benefit can be achieved in different ways without impacting on landlord's rights to sell property at all. In that sense the measure contained in the Bill is not proportionate, as the same aim can be achieved without impacting on landlord's property rights. IPAV are concerned this legislation could be extended in future and further impact on Landlord's rights, as previous Residential Tenancy Act measures have done (for example, Rent Pressure Zones).

A landlord may find it difficult to put their property up for sale by Public Auction after the 90 days period if they must come back to a tenant to give them an opportunity to make another bid if the property does not achieve at auction a bid equal to or greater than the tenant's original bid. Provision should be made for sale by auction, so that the tenant is simply notified of the date and time of the auction and therefore able to bid for the property in the normal way if they chose.

I am aware some members of your committee are of the opinion this proposed bill will not change landlord's rights what slightly confuses me if that's the case why is this bill needed?

Head 7 provides a landlord cannot agree to sell their rented dwelling for a period of 90 days to allow a tenant, or Approved Housing Body, time to bid to purchase the Dwelling. This is a clear encroachment on a landlord's right to alienate and sell their property. This part of the Bill may also impact on transfer of property between family members and this impacts on the privacy of the family under the Irish Constitution (although the Bill currently tries to avoid this). Although the 90-day period may be short in the overall scheme of things, IPAV are concerned this time period may be increased in future, as previous time limits under the Residential Tenancies Act have been increased for example notice periods for termination of tenancies and before rent increases take effect.

This is the thin edge of the wedge so to speak, and IPAV are concerned Head 7 of the Bill could be amended in future and significantly affect a landlord's right to sell or transfer property. If landlords are concerned about future amendment of this legislation, which creates a precedent, they may decide to sell or transfer their property now before this legislation takes effect or is extended further. The full market impact of this measure should be researched before this legislation goes further.

Head 7 (3) of the Bill provides that if a tenant makes a bid within the 90-day period and this is not accepted by the landlord, the landlord is required to give the tenant an opportunity to make a further bid where the property cannot be sold for an amount equal to or greater than the tenant's original bid. However, if a tenant indicates in writing they are not interested in bidding for the property, then the 90-day period should not apply. It makes no sense for a landlord to be restricted in selling a property if the tenant has no interest at all in purchasing the property.

Head 7, subsection 4 refers to a landlord being required to accept a tenant's further bid. A landlord is never required to accept any offer, or bid, when property is put up for sale on the open market, and this provision should be deleted. The tenant may have a right to be informed that a "sale" has fallen through and to make a further bid, if necessary, however the landlord should not be required to accept that bid, particularly if the property market is unstable.

There does not appear to be any time-limit on a landlord being required to accept a further bid: this is not satisfactory as it does not provide a landlord with the opportunity to consider, in consultation with his financial and legal advisors, any further bid made by the tenant, and it appears a landlord would be required to accept such a further bid "forthwith". A landlord should be given the opportunity to take financial and legal advice on foot of any bid. Consideration should be given to the fact that the property market may have improved since a tenant made their original bid to purchase the property.

Subsection 4 does not appear to take account of the not unusual scenario where a higher offer may be accepted from a third-party, but the intended sale "falls through", and a landlord, under pressure, may feel it appropriate to accept a reduced offer from that third party in order to speedily complete an intended sale. **As the legislation is currently drafted, a landlord may be deprived of an opportunity to speedily complete a sale of property to a third-party purchaser who is ready and willing to complete the sale. If a landlord is required to go back to the tenant to provide an opportunity to make a further bid, this will restrict a landlord's right to sell their property as they see fit.**

The legislation should take into account that in most cases a landlord will want to accept the highest bid for the sale of a property, and only in extremis would a landlord be prepared to accept a lower offer than the tenant had originally proposed. The legislation should not be unduly technical in this respect, and under no circumstances should a landlord be forced by law to accept any bid for the sale of the property.

It should be recalled there are many reasons why a landlord may wish to sell their property or may wish to sell their property in a speedy manner. These reasons can include: sudden ill-health or unexpected diagnosis of a terminal illness or even death of a landlord or family member; declining mental capacity or personal autonomy such as the need to reside in a care home; the need to take early retirement; unexpected financial obligations including to dependents; relocation or the unexpected requirement to travel more extensively abroad for career purposes; pressure from a bank or lending institution including the threat of a receiver being appointed or even bankruptcy if the property is not sold in a voluntary and timely manner. Perceived legislative changes, or further changes, can also be a concern for some landlords in deciding to sell property. The legislation, directly or indirectly, should not require a landlord to disclose the reasons or circumstances whereby property has to be sold, or restrict or delay the conclusion of a sale of property.

There is a concern that some tenants could seek to frustrate a sale of a rented dwelling, for example by not permitting viewings by prospective purchasers, delaying the carrying out of necessary refurbishment or repair, or even indicating the tenant will not vacate the dwelling at the end of their notice period to terminate the tenancy. The legislation should clarify that if a tenant makes any direct or indirect threat, oral or in writing, to obstruct a sale of the property that the tenant will no longer enjoy any privileges under the Act in terms of bidding for the purchase of the property. Consideration should also be given to making such conduct a specific criminal offence under the RTA.

The legislation may provide an opportunity for some persons to take unfair advantage of elderly or infirm or vulnerable landlords; persons who may have inherited property from a spouse or family member but who have no experience themselves of managing a rented dwelling or residential tenancy law, and who may be faced with an unexpected tax burden upon the death of the landlord; or landlords in financial difficulty or facing the threat of insolvency in this or another jurisdiction. Consideration should be given to avoiding possible unfair or unconscionable conduct and appropriate safeguards being put in place particularly where a doubt may arise about a landlord's decision-making capacity to sell a dwelling. Tenants are often privy to information concerning a landlord and his or her financial or personal and family affairs, and the possibility of unfair advantage in certain cases is not remote.

Even a 90-day restriction of property being sold may cause distress to some landlords faced with a sudden or unexpected emergency for example diagnosis of terminal illness or threat of a receiver being appointed or even a bankruptcy process being commenced in this or another jurisdiction. Some consideration should be given to a landlord being permitted to apply to the Circuit Court for an Order that this part of the Bill should not apply in extreme circumstances particular to an individual landlord and where property is genuinely required to be sold within 90 days.

Clarification should be provided as to whether Head 7 of the Bill will apply if a Receiver is appointed and intends to sell a dwelling on foot of a mortgage. IPAV are concerned that the way the legislation is currently drafted, a Receiver may be obliged to sell the dwelling to a tenant as provided for in Head 7, subsection 4, even though there is the possibility of a better offer being made for the property despite a sale falling through or if there has been an up-turn in the market since a sale fell through.

Fundamentally, a landlord should not be required by law to accept any bid for the sale of private property put for sale on the open market. While the legislation may provide for a time and opportunity for a tenant to make a bid, it should not require a landlord to accept that bid in anyway. Head 7, subsection 4 should be deleted in so far as it requires a landlord to accept any bid in any circumstance.

The legislation should make clear, that if at any stage the tenant vacates the rented property after the initial 90-day period, the landlord is not required to give the tenant an opportunity to make a further bid.

The right of a tenant to bid to purchase a dwelling will not apply if a tenant is in breach of some of a tenant's obligations under section 16 of the RTA. Only some tenant obligations are specified, and this should include (e) the obligation to allow the landlord to enter the property to carry out repairs, which is presently omitted from Head 7 of the Bill. Consideration should be given to revoking the tenant's right to bid to purchase the dwelling if they are in breach of any of their statutory obligations. Furthermore, the legislation should clarify that a tenant should permit reasonable viewings of a rented property if the property is being put up for sale and a tenant intends to avail of the opportunity to bid for the property.

Head 7, subsection 5 should be amended to refer to the landlord's solicitor or agent. This provision requires a tenant to demonstrate proof of funds.

Head 7 of the Bill will not affect a landlord transferring his interest in the property for no or partial consideration, for example to spouses or family member. The Bill will also not impact on inheritance of property by will or

intestacy. The tenant's right to bid to purchase the Dwelling should not arise where a landlord intends to transfer his interest in the property to a spouse or certain defined family members, as well as the operation of inheritance rights. A tenant would otherwise enjoy a right to bid for a rented dwelling which is not intended to be put for sale on the open market. While the Bill proposes to make this clear, this should also be made clear to the public while the legislation is in the process of being passed by the Oireachtas. There should be a clearly communicated Government commitment that this Bill will not impact in anyway transfers of property for no consideration, or partial consideration, between spouses and family members.

The issue of family transfer of property, as well as inheritance, highlights the complexity of the legislation and reinforces the undesirability of interference with a landlord's rights to sell the Dwelling in the first place. Some landlords may be concerned the legislation could be amended in future to affect transfers of property between spouses and family members as well as inheritance rights and opt to leave the market before such changes might come into effect. Again, the Government should give a clearly communicated commitment that transfers of property to spouses and family members as well as inheritance rights are not affected by this or any future legislation.

The tenant's right to bid to purchase a rented dwelling will not apply to the sale of multiple-unit developments, or certain student accommodation. The legislation will therefore impact on the property rights of landlords in an unequal manner. Only some landlords will be affected and not others. The full market impact of the unequal application of the proposed legislation should be studied further.

The tenant's right to bid to purchase a dwelling should not apply to student accommodation, as this would be impractical. The Bill should make this clear.

Page 26 of the General Scheme of the Bill contains a template of information to be provided to Tenants by the RTB where a landlord intends to sell a dwelling. This information will include the statement "Landlords are encouraged to offer sitting tenants first refusal to buy their rented home" IPAV are concerned this type of information may raise tenant expectations in an unrealistic manner. Some tenants may be led to believe they have a right to remain in the dwelling until they have the means to purchase the property from the landlord, or that an Approved Housing Body or the Housing Agency will purchase the property on their behalf.

This type of information should be limited to what the legislation actually provides and make it clear that if a tenant cannot afford to purchase the property, the landlord is entitled to sell the property to someone else. Any information provided should make clear that a landlord has a right to sell the property on the open market, for full market value, and that a tenant must demonstrate proof of funds when making any bid to purchase the property.

Head 8 of the Bill does not seem to raise any issue in its current draft. However, I would have a concern if the time periods in this part of the Bill were extended.

Head 9 deals with the period a Tenant can refer a dispute to the RTB concerning a Notice of Termination. This period was extended from 28 days to 90 days in all cases except where the reason for termination is rent arrears, or breach of tenants obligations. IPAV can see no justification for the 90-day period to refer a dispute to the RTB. This is only contributing to the processing time for disputes. The time period to refer a dispute should revert to

28 days, as section 88 of the Act already allows the RTB to extend any time period where it is appropriate.

This part of the Bill should also make clear that an adjudicator or Tribunal cannot determine any issue in relation to the validity of a Notice of Termination in the course of any dispute referred to the RTB where the Tenant has not previously referred a dispute in relation to the validity of the Notice within the applicable time limit. The Landlord should be able to assume if the tenant has not challenged the validity of the Notice of Termination that the tenant will vacate the Dwelling on the termination date and will not raise objections to the Notice of Termination outside of this time period.

Head 10 is a welcome provision which extends the “slip rule” to warning notices, accompanying statements and Statutory Declarations as well as to Notice of Termination. This is a welcome provision to avoid Notices being declared invalid on the basis of minor technicalities. This part of the Bill should be amended however to make clear that more than one “slip or omission” contained within the document can be cured by the slip-rule where appropriate to do so. IPAV are aware that some adjudicators and Tribunal members have taken the view as the current section 64A refers to a slip or omission in the singular, this means if there are two or multiples errors in the Notice the slip-rule cannot apply. This is not correct as the Interpretation Act 2005 provides in every legislation the singular includes the plural and vice versa. However, this point should be clarified in legislation to ensure that decision makers are being consistent on this point.

Head 11 is a welcome provision as it now avoids a landlord having to give exactly 90-days’ notice when terminating a tenancy less than 6 months in duration. It is a welcome development because it recognises the practical difficulties in giving an exact period of Notice under the Residential Tenancies Act. Head 13 and Head 14 also refers.

Head 12 extends the application of the Residential Tenancies Act to provide for situations where a Remedial Notice of Termination can be directed to be served by an Adjudicator or the Tribunal. However, given current dispute processing times, and the lag between an adjudication or Tribunal hearing and the issue of a Determination Order, the practical effect of issuing a Remedial Notice of Termination is nil. IPAV would welcome clarification from the RTB exactly how many Remedial Notices of Termination are authorised to be issued and how many are actually issued. There are a lot of practical difficulties in issuing a Remedial Notice of Termination and it is often ineffective because of dispute processing times.

Head 13 and Head 14 are technical corrections to the Residential Tenancies Act. These provisions highlight the unsatisfactory nature of repeated piece-meal amendments to the Residential Tenancies Act in recent years.

Head 15 and Head 16 and Head 23 provide that in future Adjudication Hearings will be in public. IPAV would be interested to receive further clarification if Adjudication Hearings will continue to be online, remote hearings or will be physical hearings. IPAV would also welcome clarification of the criteria to be applied when deciding if an adjudication hearing should be in private and what may amount to “special circumstances”.

Head 17 and 19 deals with disputes concerning anti-social behaviour. I would welcome further clarification from the RTB concerning disputes of this nature and the difficulties this can cause. Adjudicators and Mediators should receive special training on dealing with difficult anti-social behaviour cases. The difficulty from the landlord’s perspective is that the landlord should not have to become involved in disputes between the tenant

and neighbours, and these disputes should be resolved between the tenant and the neighbours directly through the RTB, or another agency, if appropriate. Some landlords would welcome a review of this part of the Residential Tenancies Act and removing the involvement of the landlord in disputes between tenants and neighbours concerning anti-social behaviour.

Head 18 reduces the time period a party is entitled to receive advance notice of a hearing before an adjudicator or Tribunal from 21 days to 10 days. Some Landlords may have difficulty getting representation for a hearing within 10 days, but on balance 10 days appears satisfactory at least in most cases.

Head 22 concerns corrections to Determination Orders. IPAV would welcome clarification from the RTB how often Determination Orders need to be corrected, and what resources can be made available to avoid this. This section of the Bill should also include a time-period within which the RTB must issue a Determination Order on foot of an adjudicator's report or a decision of the Tribunal. Currently there is a time-lag between the hearing of the dispute, the issuing of a decision and the issuing of a Determination Order.

Head 24 concerns data sharing arrangements between the RTB and the Revenue and appears to apply only to Landlords. There should be a clear legislative basis permitting a landlord to collect and retain a tenant's PPS number when registering a tenancy and IPAV would welcome clarification from the Data Commissioner on this point. Many dispute decisions are unenforceable if the tenant cannot be contacted or traced after leaving the Dwelling, and use of the tenant's PPS number may be useful and there should be a legislative basis for this.

Head 27 concerns One-Person Member Tribunals. Some Landlords may be concerned that the appeal of a decision should continue to be heard by a panel of 3 members. IPAV would welcome clarification from the RTB as to the extent to which One-Person Tribunals will be in fact speed up processing times for disputes. There should be a clear commitment from the RTB that it will be in a position to schedule a certain increased amount of Tribunal hearings and decrease dispute processing times if this amendment is enacted. Clarification on how exactly dispute processing times will be reduced would be welcome.



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