



# Bill Digest

## Residential Tenancies (Amendment) (No.2) Bill 2018

No. 140 of 2018

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### Abstract

The [Residential Tenancies \(Amendment\) \(No.2\) Bill 2018](#) updates the [Residential Tenancies Act 2004](#). It introduces new powers of investigation and sanction for the Residential Tenancies Board. It amends registration requirements and extends notification of termination periods. It also clarifies what constitutes a 'substantial change' for the purpose of exemption from capping rent in rent pressure zones. This Digest provides an analysis of the 2018 Bill and its principal provisions. It sets out an examination of the domestic legislative context of the private rental sector as well as policy changes over the past decade.

21 January 2019



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## Glossary

Acronym	Explanation
ADR	Alternative Dispute Resolution
AHB	Approved Housing Bodies
CIB	Citizens Information Board
CBI	Central Bank of Ireland
CPI	Consumer Price Index
IPOA	Irish Property Owners Association
<b>Part 4 Tenancy</b>	A fixed term tenancy is a tenancy that lasts for a specific amount of time as set out in your tenancy agreement or lease. The tenant is a sitting tenant. A 'part 4' tenancy runs alongside a fixed term tenancy, which means that the tenant shall, after a period of six months and as in the normal course, become entitled to the provision of a 'Part 4' tenancy. A Part 4 tenancy means they can stay in the property for a further 5 and a half years or 3 and a half years if the tenancy commenced before 24 December 2016 and subject to certain exceptions for termination. This means that irrespective of the length of a fixed term lease, a tenant has an entitlement to remain in the dwelling for up to six years and the landlord can only terminate on limited grounds.
PRS	Private Rental Sector
PRSA	Property Services Regulation Authority
PRT	Private Residential Tenancy
PRTB	Private Residential Tenancies Board
RLAI	Residential Landlords Association of Ireland
RPZ	Rent Pressure Zone
RTB	Residential Tenancies Board
TDP	Tenancy Deposit Protection Scheme

## Summary

The [Residential Tenancies \(Amendment\) \(No.2\) Bill 2018](#) provides the Residential Tenancies Board (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 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. The Bill 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.

The Digest sets out the legislative context for the private rental sector. It looks at the constitutional provisions around property rights and the State's efforts to regulate the rental market in a way that is proportionate and in the interest of the common good. It also provides an in-depth analysis of the current legislative framework by examining the main themes of the [Residential Tenancies Act 2004](#). It includes an examination of the provisions around rent, security of tenure, the dispute resolution process, the establishment of the Private Residential Tenancies Board (renamed the Residential Tenancies Board), registration requirements and tenancy obligations.

The Digest provides policy context on the issue by providing data on the PRS, including the size and changing composition of PRS households over the past decade and private rental market prices in the last number of years. This section outlines the current Government strategy for dealing with the challenges in the Housing sector, specifically in the PRS. This includes Rent Predictability Measures (RPM) such as RPZs and what these measures do. Finally, this section sets out how various other regulatory bodies carry out their functions.

## Summary of the Bill’s provisions

Table 1 below summarises the provisions of the *Residential Tenancies (Amendment) Bill 2018*. Further discussion of key provisions of the Bill can be found in the Principal Provisions section of this Bill Digest.

**Table 1: Provisions of the Residential Tenancies (Amendment) Bill 2018**

Section	Title	Effect
<b>Part 1</b>	<b>Preliminary and General</b>	
1.	Short title, commencement and collective citation	<p>It provides that the Act, or particular sections of the Act, will come into force by a commencement order of the Minister. The Minister may commence different sections of the Act at different times.</p> <p>This section provides for the short title of the Act, and that this Act and the <i>Residential Tenancies Acts 2004 to 2016</i> may be cited together as the <i>Residential Tenancies Acts 2004 to 2018</i>.</p> <p>This is a standard provision.</p>
2.	Interpretation	This section defines various terms used within the Act.
<b>Part 2</b>	<b>Amendment of <i>Residential Tenancies Act 2004</i></b>	
3.	Amendment of section 19 Principal Act	<p>This is a technical amendment to the <i>Residential Tenancies Act 2004</i>. It also sets out what constitutes substantial changes to a dwelling, which would satisfy an exception to setting a higher rent in rent pressure zones. It also requires that when a landlord sets a new rent that is an exception to the rent pressure zone calculation, he/she must notify the RTB of this and provide reasons for the exemption.</p> <p>It adds an extra exemption to rents which must be calculated in accordance with the rent pressure zone formulation.</p> <p>It imposes offences on landlords who fail to comply with rent pressure zone calculations and who fail to notify the RTB of rent increases in such areas, or those who provide false/misleading information.</p>
4.	Amendment of section 32 Principal Act	This section provides for a technical amendment to the <i>Residential Tenancies Act 2004</i> .
5.	Amendment of section 41 Principal Act	This section provides for a technical amendment to the <i>Residential Tenancies Act 2004</i> . In particular it provides that once a <b>Part 4 tenancy</b> expires and no notification of termination has been provided then a further Part 4 tenancy will automatically come into being. A further Part 4 Tenancy will

		come into being after the expiry of a 6 year Part 4 tenancy.
6.	Amendment of section 45 Principal Act	This section provides that once a <b>further Part 4 tenancy</b> expires and no notification of termination has been provided then another further Part 4 tenancy will automatically come into being. A further Part 4 Tenancy will come into being after the expiry of a 6 year further Part 4 tenancy.
7.	Amendment of section 66 Principal Act	This section provides for the addition of a subsection that deals with complaints regarding notification of termination. A Tribunal can require a Landlord to remedy an original notice of termination. It also sets out in tabular form the varying periods of notice.
8.	Amendment of section 75 Principal Act	This section provides for a technical amendment to the <i>Residential Tenancies Act 2004</i> .
9.	Amendment of section 93 Principal Act	The commencement of this provision will all the RTB to charge for mediation services.
10.	Amendment of section 109 Principal Act	Removes an earlier amendment which exempts payments for initial mediation by the RTB.
11.	Amendment of section 123 Principal Act	This section provides for a technical amendment to the <i>Residential Tenancies Act 2004</i> . It will make it mandatory to publish the RTB's determination orders and cancellation orders.
12.	Amendment of section 134 Principal Act	This provision now requires a landlord to register a tenancy, not just on commencement of the tenancy but annually also. The registration should occur for tenancies that occurred before, on or after the commencement of this section.
13.	Amendment of section 135 Principal Act	This provision removes the requirement for a new application for each new tenancy; removes the exemption of a new application for a Part 4 tenancy and removes the requirement for a new application for a further Part 4 tenancy.  The provision also requires acknowledgement of application to include information on the landlord's obligation to pay fees to the RTB.
14.	Amendment of section 136 Principal Act	This section provides for technical amendments to the <i>Residential Tenancies Act 2004</i> and will require a landlord and his/her agent to provide their addresses to the RTB
15.	Amendment of section 137 Principal Act	This section provides for technical amendments to the <i>Residential Tenancies Act 2004</i> including additional fees for applications to register a tenancy and additional penalty fees for late applications.
16.	Amendment of section 137A	This section provides for technical amendments to

	Principal Act	the <i>Residential Tenancies Act 2004</i> including fees for new applications made after the commencement of the section. It also reduces the single fee payment for applications made subsequent to the commencement of this section. It also provides for new delayed fee application penalties.
17.	Amendment of section 144 Principal Act	An additional section 144A is added to the Principal Act setting out details of the notice to be served by the RTB on a landlord when they fail to register a tenancy and the offences imposed to enforce such registration.
18.	Complaints, investigations and sanctions	<p>This inserts a new Part 7A into the 2004 Act</p> <p><b>148R:</b> Sets out definitions for Part 7A</p> <p><b>148S:</b> Sets out the powers of an authorised officer when carrying out an investigation. It empowers him/her to inspect records, require information, and request the intervention of the Gardaí to acquire such information. An authorised officer can require a person to answer questions under oath/affirmation. They can also apply to the District Court for an order where a person fails to comply with their requirements. An officer also has the authority to hold oral hearings where a person who is found to be in obstruction of his/her work can be found guilty on summary conviction or indictment.</p> <p><b>148T:</b> Complaints about the improper conduct of landlords can be made in writing to the RTB and investigated where considered appropriate.</p> <p><b>148U:</b> Officer and decision maker may be appointed to investigate by the RTB.</p> <p><b>148V:</b> Where an authorised officer is appointed by the RTB to investigate a complaint they must notify the landlord in writing and allow them time to respond.</p> <p><b>148W:</b> A landlord may acknowledge to the authorised officer that improper conduct occurred and the decision maker will take this into consideration when determining a sanction.</p> <p><b>148X:</b> Once all submissions are received and assessed the authorised officer will prepare a draft investigation report and allow the landlord and complainant time to respond. Following this a final report will be compiled and submitted to the decision maker. It is for the decision maker to determine whether a sanction should be imposed, whether a further investigation is required or if the complaint should be dismissed. In observing fair procedures the decision maker may provide the</p>

		<p>landlord and complainant with copies of the investigation report and opportunities to make submissions. The sanction, determined by the decision maker, can be either/both a financial penalty up to €15,000, costs incurred by the RTB not exceeding €15,000 or a caution.</p> <p><b>148Y:</b> Once the RTB receives the decision notice they will prepare a written record outlining the sanctions and reasons for them and issue the landlord with a copy of the written record.</p> <p><b>148Z:</b> A sanction will not take effect until confirmed by the Circuit Court. The landlord has the right to appeal it.</p> <p><b>148AA:</b> The landlord has the right to appeal to the Circuit Court regarding an imposed sanction. The Court can decide to confirm the sanction, set aside the decision, set it aside and replace it with a different sanction or impose no sanction.</p> <p><b>148AB:</b> Where the decision to impose a sanction is not appealed the RTB can apply to the Circuit Court to confirm the decision.</p> <p><b>148AC:</b> Sets out supplementary provisions including an opportunity to appeal to the High Court; powers of the RTB to recover expenses and an obligation to provide the complainant with copy of the notice of the decision.</p> <p><b>148AD:</b> Sets out the various matters which the Circuit Court can consider when determining the level of sanction to be imposed.</p> <p><b>148AE:</b> Enables the RTB to publish the particulars of the sanction.</p> <p><b>148AF:</b> Sets out procedural rules relating to the forms used, appointment of authorised officers and how they are to carry out their functions, procedures for carrying out investigations.</p> <p><b>148AG:</b> If a sanction is imposed on a landlord in accordance with the Bill then he/she will not be liable to criminal proceedings for the same action/s. Conversely, if the landlord is the subject of criminal proceedings a sanction may not be imposed. An acknowledgement in accordance with the Bill is not admissible in criminal proceedings.</p>
19.	Amendment of section 151 Principal Act	Adds to the functions of the RTB by specifying its ability to investigate and sanction landlords.
20.	Authorised officers and decision makers	This section provides for the appointment and circumstances of removal of authorised officers and decision makers.
21.	Amendment of section 176	This section provides for a technical amendment to



	Principal Act	the <i>Residential Tenancies Act 2004</i> .
22.	Amendment of Schedule Principal Act	This section provides for a technical amendment to the <i>Residential Tenancies Act 2004</i> .
23.	Improper conduct	This provision introduces a new schedule 2 to the Principal Act which outlines what improper conduct means.
24.	Oral hearings	This provision introduces a new schedule 3 to the Principal Act which sets out provisions for both an authorised officer and decision maker conducting oral hearings for the purposes of an investigation.
<b>Part 3</b>	<b>Amendment of <i>Residential Tenancies (Amendment) Act 2015</i></b>	
25.	Repeal of certain provisions in the 2015 Act	<p>Repeal of <a href="#">s.16 (g)</a> of the 2015 Act which sets out that a fee does not apply to applications to register a further Part 4 Tenancy.</p> <p>Repeal of <a href="#">s.17 (d),(e)</a> of the 2015 Act which sets out the fees to be paid by a landlord where an application to register a tenancy is not made within the specified timeframes.</p> <p>Repeal of <a href="#">s.63 (b),(c),(d)</a> of the 2015 Act which require certain signatures on prescribed forms , knowledge by the tenant of rent review settings and statements of comparable rent.</p>

Source: Compiled by the L&RS.

## Background to the Bill's Introduction

This section looks at the policy context and legislative background to the Bill's introduction.

### Policy Context

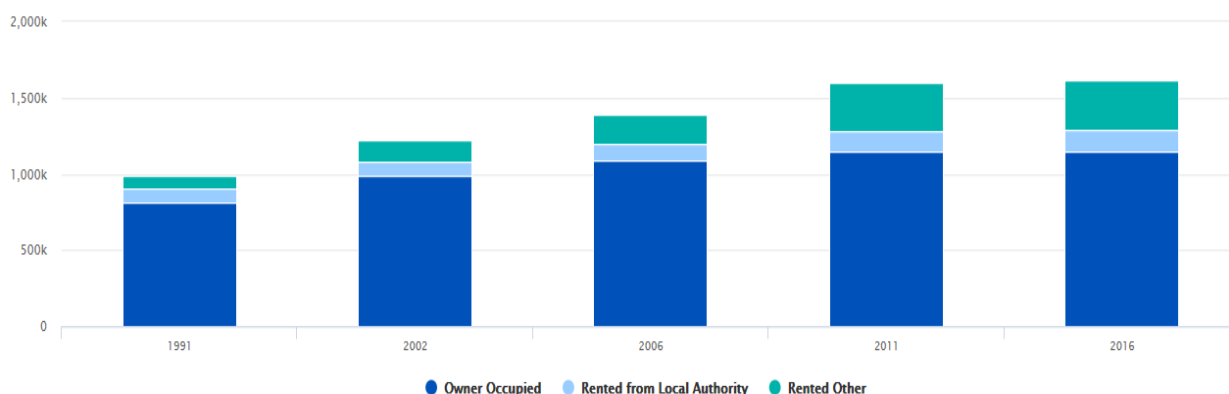
This section contains background information on the changes taking place within the PRS over the past decade and the recent policy responses to the challenges this has created.

### Size and Composition of the Private Rental sector (PRS)<sup>1</sup>

Between 2006 and 2011 the number of households renting in the PRS rose by 64%, at a time when total households rose by 15.8%.<sup>2</sup> The 2016 Census recorded an additional increase of 4.7% in 2011 (or 497,111 occupants in total). Renting was the tenure status for almost 30% of all occupied dwellings in the last census. A 2017 report indicated that 18.6% of the total population in Ireland were living in private rented accommodation (which equates to 322, 200 households).

While the number of people renting has increased over the years, the composition of the PRS has also changed. Single people and lone parents have always been over-represented in the sector, and this continued to be the case up to the last census (2016). However, the number of other types of families in this sector has risen significantly over the last number of years. In 2006, 22% of two parent families with pre-school children and 18% of two parent families with primary school children rented; compared to 35% and 29% respectively, in 2011 (CSO 2012). By 2016 the number of married couples with children had increased by 20% to 101,741 and the number of co-habiting couples with children had increased to 39,981 families (a jump of 37.9%).<sup>3</sup>

**Figure 1: below illustrates the changing composition of the private rental sector for the quarter of a century between 1991- 2016.**



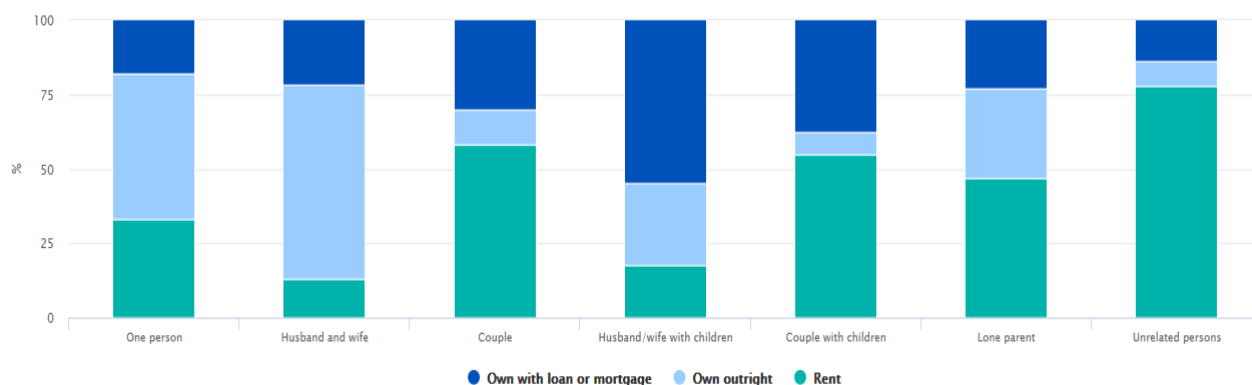
Source: [Central statistics office](#)

<sup>1</sup> See also the [L&RS Constituency Dashboard](#) for constituency level 2016 census data on households and housing.

<sup>2</sup> Hayden, A. (2018) 'Private rental housing in Ireland' in 'The changing institutions of private rental housing: An international review' AHURI, Appendix 2, p.100.

<sup>3</sup> Census 2016 data, [Profile 4: Households and Families](#).

Figure 2: identifies the tenure types by household composition in 2016



Source: [Central statistics office](#)

### Current Rental Prices

According to the most recent [Daft report](#)<sup>4</sup> (Q3, 2018), rents have risen nationwide for the 25th consecutive quarter and for the 10<sup>th</sup> consecutive quarter a new rent record has been set.<sup>5</sup> Daft is a property website which provides quarterly rental reports based on property rental prices advertised on their website and held in the Daft archives. Daft describes their reports as “*the only objective monitor of trends in the rental sales market on a quarterly basis.*” The daft figures show **rents charged in Ireland are now almost 30% higher than at their peak in 2008**. The average market rent nationwide has risen by 80% since the lowest point in 2011. In 2016, rents had surpassed the 2008 peak. However, in Dublin, rents are, on average, 36% above their previous peak. In Cork and Galway cities, rents are 29% and 45% higher, respectively. Outside the main cities, the average rent is 20% above its previous peak in 2008. According to these figures, the ‘asking price’ for rents rose by 11.3% compared to the same period last year. However, the RTB recommends interpreting analysis of ‘asking prices’ provided in other market monitoring reports with caution.

### RTB rent index

The latest [RTB Rent Index](#)<sup>6</sup> report also presents data for Q3 2018. The RTB/ESRI Rent Index is based on regulatory data covering all new tenancy agreements registered with the RTB nationally. Access to this breadth of data is unique to the RTB. It states that the Rent Index report is “*the most accurate and authoritative of its kind*”<sup>7</sup> on the private rental sector in Ireland because the index is based on their national register of tenancies and records **actual rents being paid** for rented properties rather than the asking prices which are used as the basis for analysis in other reports. The latest Rent Index report for the July-September period of 2018 shows an increase in the standardised national average rent from €1,044 in Q3 2017, to €1,122 per month in Q3 2018. This is an increase of €78. Outside the greater

<sup>4</sup> Daft.ie 2018 [Q3 rental report](#).

<sup>5</sup> Daft.ie 2018 [Q3 rental report](#) (Accessed November 13 2018).

<sup>6</sup> [RTB Rent Index Q3, 2018](#).

<sup>7</sup> [RTB Rent Index Report Q2 2018](#)(Accessed November 14 2018).

Dublin area (GDA) average rents for Q3 were €859 per month. However, rental price inflation dropped to 1.9% in Q3 2018, down from 3.6% in Q2 2018.

The Index also reports that rent increases for existing tenancies (5.4%) were lower than those for new tenancies (8%) compared to the previous year. This would suggest that RPZs may be having a positive effect on slowing the level of increase on rents. Average rent for new tenancies was €1,208 per month, compared with €956 per month for existing tenancies.

Unsurprisingly, the highest rents continue to be sought in Dublin. With the average rent set at €1,620 per month, up from €1,479 for the same quarter in 2017. This represents an increase of €142 in a 12 month period. Outside of Dublin, the highest rents were sought in Galway city (€1,187) and Cork city (€1,172). However, in terms of a percentage increase rents in Limerick City grew most rapidly, at 11.8%.

### A New Housing Initiative

In July 2016, the current Government launched the '[Rebuilding Ireland' Housing Initiative: Action Plan on Housing and Homelessness](#)'.<sup>8</sup> One of the five pillars which make up the action plan aims to improve the rental sector. One of the objectives relates directly to "*moderating rental price inflation, particularly in urban areas*"<sup>9</sup> and to address this objective the strategy proposes a number of actions, including:

- Introducing rent pressure zone areas;
- Streamlining and improving the regulatory system so that landlords and tenants are clear on their respective rights and responsibilities and strengthening the protections for both.

Pillar four of the action plan committed to the development of a Rental Sector Strategy. This was launched, following public consultation in December 2016. At this time (Q4, 2016) rents had increased nationally by 13.5%. This was the largest increase, at that time, in the history of the rent report, with the average national rent at a record high of €1,111 per month. In Dublin, the annual rate of rent inflation in 2016 was 14.5%, with rents in this area averaging €1,643 per month. The [Rental Sector Strategy](#)<sup>10</sup> focuses on four main areas: security, supply, standards and services.<sup>11</sup> Under the 'security' heading a commitment was made to develop "*a new mechanism for both setting and reviewing rent, similar to some continental European models.*" The Strategy introduces a system of rent predictability based on rent pressure zones (RPZs) which apply for a limited period of three years.

### What are Rent Pressure Zones (RPZs)?

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

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<sup>8</sup> [http://rebuildingireland.ie/Rebuilding%20Ireland\\_Action%20Plan.pdf](http://rebuildingireland.ie/Rebuilding%20Ireland_Action%20Plan.pdf) (Accessed October 25 2018)

<sup>9</sup> [https://www.housing.gov.ie/sites/default/files/publications/files/strategy\\_for\\_the\\_rental\\_sector\\_final.pdf](https://www.housing.gov.ie/sites/default/files/publications/files/strategy_for_the_rental_sector_final.pdf) p.8 (Accessed October 30 2018).

<sup>10</sup> [https://www.housing.gov.ie/sites/default/files/publications/files/strategy\\_for\\_the\\_rental\\_sector\\_final.pdf](https://www.housing.gov.ie/sites/default/files/publications/files/strategy_for_the_rental_sector_final.pdf) (Accessed October, 30 2018)

<sup>11</sup> [Rebuilding Ireland Rental Sector Strategy](#), p. 70 (Accessed October, 30 2018)

new to the rental market or those which have undergone extensive refurbishment are exempt<sup>12</sup>. According to the Strategy, the exclusion of new or refurbished properties is “to prevent negative impacts on the supply of new rental units in areas of high demand.”<sup>13</sup> **An area is designated an RPZ if annual rent inflation in that area has reached or exceeded 7% in four of the last six quarters**; and the average rent in the most recent quarter is above the national average rent. Additionally, in RPZs rents cannot be set above the local market rents for similar properties.

In March 2017 the Department of Housing, Planning and Local Government (DHPLG) issued a press release stating:<sup>14</sup>

*“[S]ome 57% of tenancies nationally are now located in rent pressure zones. The Minister advised that “the practical effect of these measures is that more than 186,000 households who currently rent their homes in these areas now know exactly what maximum rent they will have to pay over the next three years.”*

Below is a list of locations for each of the RPZs throughout the country. There are five Local Authority areas and 16 Local Electoral Areas which have been designated as Rent Pressure Zones:

- Cobh, Co. Cork
- Ballincollig – Carrigaline, Co. Cork
- Cork City Council
- Dublin City Council
- South Dublin County Council
- Dun Laoghaire/Rathdown County Council
- Fingal County Council
- Galway City Council
- Galway City East
- Galway City West
- Maynooth, Co. Kildare
- Celbridge-Leixlip, Co. Kildare
- Naas, Co. Kildare
- Newbridge, Co. Kildare
- Ashbourne, Co. Meath
- Laytown-Bettystown, Co. Meath
- Ratoath, Co. Meath
- Bray, Co. Wicklow
- Wicklow, Co. Wicklow
- Drogheda, Co. Louth
- Greystones, Co Wicklow

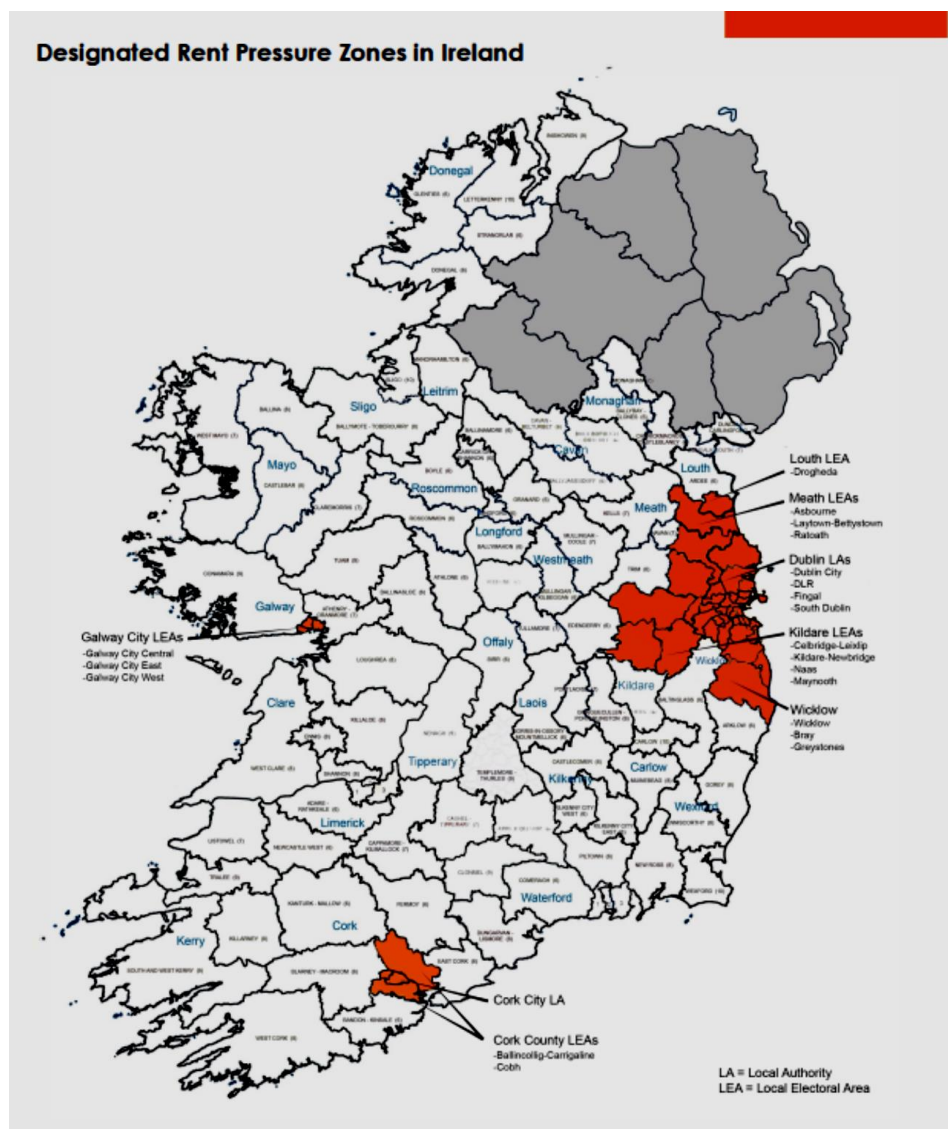
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<sup>12</sup> See Rental Sector Strategy, Appendix 3, Pp.35

<sup>13</sup> See Rental Sector Strategy, Appendix 3, Pp.35

<sup>14</sup> Department of Housing, Planning and Local Government press release, ‘[Coveney announces further Rent Pressure Zones and launches expanded RTB rent index report](https://www.housing.gov.ie/housing/private-rented-housing/coveney-announces-further-rent-pressure-zones-and-launches-expanded)’, 29 March 2017 <https://www.housing.gov.ie/housing/private-rented-housing/coveney-announces-further-rent-pressure-zones-and-launches-expanded> (Accessed November, 05 2018)

Figure 3: Location of Rent Pressure Zones by Local Authority and Local Electoral Area



Source: Department of Housing, Planning and Local Government (DHPLG) website

### Rent Predictability Measures

A [review of Rent Predictability Measures](#) was conducted in April 2018. This included a public consultation, in which submissions from landlords, letting agents, tenants and local authorities were received. Actions arising from the review included strengthening RPZ enforcement such as:

- Charging rents above those permitted by the *Residential Tenancies Acts 2004-2016* would become an offence;
- The RTB would be provided with the required powers of enforcement so that it will no longer be solely up to the tenant or landlord to initiate a dispute;
- A landlord would be required to notify the RTB of any exemption claimed from the rent increase limits and the RTB will be empowered to take follow-up investigative and enforcement action, if required.

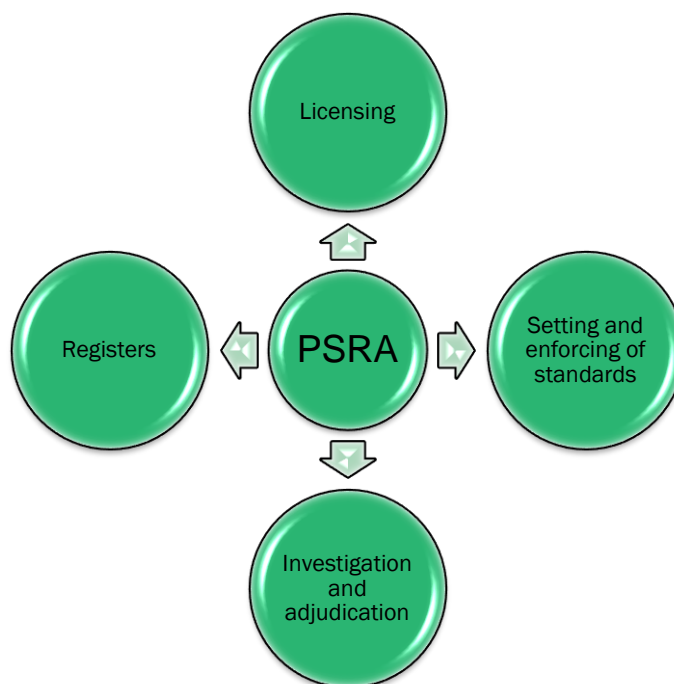
Following this public consultation, the General Scheme of the [Residential Tenancies \(Amendment\) Bill](#) was published in May 2018. One of the objectives of the legislation is to strengthen the impact

of Rent Predictability Measures and slow growth in rents nationwide. The main aim of the legislation however, is to enhance the inspection and enforcement powers of the RTB, which is the regulatory body responsible for residential tenancies in private dwellings and AHBs. The following section examines the role and function of similar regulatory bodies currently operating in Ireland.

### Property Services Regulatory Authority (PSRA)

The [PSRA](#) was established under the [Property Services \(Regulation\) Act 2011](#) and was placed on a statutory footing on 3 April 2012. The main function of the PSRA is to **control and regulate Property Services Providers (auctioneers, estate agents, letting agents and management agents)**. This involves licensing, complaints investigation and redress for consumers, setting and enforcing standards and creation of public registers.<sup>15</sup> The PSRA was established following recommendations by the [Auctioneering/Estate Agent Review Group](#)<sup>16</sup> that the existing statutory framework for the industry was outdated, inappropriate and inadequate for the present day market and did not provide an ongoing official supervisory, disciplinary or consumer redress system. The regulatory environment provides for:

Diagram 4: PSRA Regime



Source: Compiled by the L&RS and sourced from the [PSRA](#) website.

<sup>15</sup> See [PSRA](#) website.

<sup>16</sup> Auctioneering/Estate Agent Review Group, (2005) "[Report to the Minister for Justice, Equality and Law Reform](#)".

Under the 2011 Act the PSRA is empowered to investigate complaints made against Property Service Providers and initiate investigations for ensuring compliance with the law. An inspector is appointed to carry out an investigation and has extensive powers whereby they can:

- Require a person to supply any information requested;
- Question any person;
- Enter, inspect, examine and search a place;
- Inspect any account opened by a property services provider; and,
- Be accompanied by a member of an Garda Síochána if they fear there might be a serious obstruction.

Where an inspector is satisfied that a property service provider has engaged in improper conduct following an investigation they can impose any/combination of the following sanctions:

- A reprimand, warning or caution;
- Revoke the provider's license;
- Suspend the provider's license;
- Instruct that an amount of up to €50,000 is paid into the Property Services Compensation Fund;<sup>17</sup>
- Instruct payment of up to €50,000 is paid to the Authority for the cost of the investigation;
- A payment of up to €250,000 to the Authority by way of a financial penalty.

## Legislative Context

The right of a tenant to remain in a dwelling and the rights of the landlord to take back possession of his/her property are competing rights which legislation has tried to strike a balance between. Diarmaid O'Sullivan (NUIG) discusses the rationales for regulating the property market and suggests that it may be legitimate, in certain circumstances, to regulate in the public interest.<sup>18</sup> O'Sullivan adds that achieving consensus on what defines the public interest poses a significant challenge; regulating in the public interest must have a clearly expressed rationale and the legitimacy of such interventions must be established.<sup>19</sup> Regulatory strategies have both strengths and weaknesses and the challenge is therefore to set out a democratic and constitutional legitimate basis for regulation which can withstand opposition from proponents of the market.

The earliest attempts in Ireland at regulating the market can be seen in the [Landlord and Tenant Law Amendment Act Ireland 1860](#), also known as Deasy's Act, which was a reformatory piece of legislation that changed the basis of the landlord and tenant relationship in Ireland. The effect of Deasy's Act was to deem that relationship as one founded on the express or implied contract of

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<sup>17</sup> This is a fund from which compensation is awarded for people who have suffered a loss due to the dishonesty of a Property Services Provider.

<sup>18</sup> O'Sullivan, D. (2016) "[Rent, Regulation and the Public Interest in Ireland](#)" 4 *Conveyancing and Property Law Journal* pp.74-81.

<sup>19</sup> *Ibid.*



the parties and not upon tenure or service.<sup>20</sup> However, over the 19<sup>th</sup> and 20<sup>th</sup> century the nature of the landlord and tenant relationship evolved through further legislative reforms.

### Constitutional Context

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°](#) 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° 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 citizen.”*

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

The 1982 Supreme Court case of [Blake & Ors v Attorney General](#)<sup>21</sup> involved a challenge to the validity of the *Rent Restrictions Acts* 1960 and 1967. The legislation restricted the level of rents a landlord could require of tenants in relation to dwellings to which the legislation applied. It also restricted the recovery of possession of those dwellings. The effect was that rents were restricted by reference to the rents payable in June 1966; this was highly disproportionate from market rents. The Supreme Court found that these legislative provisions, which provided for security of tenure and rent control, but without providing compensation for landlords amounted to an unjust attack on the property rights of landlords. O’Higgins C.J. stated that:<sup>22</sup>

*[The] absence of any power to review such rents, irrespective of changes in conditions, is in itself a circumstance of inherent injustice which cannot be ignored...the provisions of Part II...restrict the property rights of one group of citizens for the benefit of another group.”*

The court did not suggest, however, that rent control was invalid, but that it can only be considered valid where a reasonable balance is struck between affected interests.<sup>23</sup>

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<sup>20</sup> Cassidy, U. and Ring, J. (2010) “[Landlord v Tenant: Security of Tenure as we now know it-the Residential Tenancies Act 2004](#)” 15(4) *Conveyancing and Property Law Journal* pp.83-87.

<sup>21</sup> [1982] IR 117.

<sup>22</sup> [1982] IR 117, p.139-140.

<sup>23</sup> Cassidy, U. & Ring, J. (2010) *Landlord and Tenant Law-The Residential Sector* (Roundhall, Dublin) p.6.

In the later Supreme Court case of [Madigan v AG, The Revenue Commissioners and the Minister for Finance](#)<sup>24</sup> the applicants sought a determination that the manner in which Residential Property Tax was imposed upon them infringed the rights of the person, privacy and property in contravention of Articles 40.1, 40.3 and 41 of the Constitution. O’Hanlon J, in dismissing the applicants’ claims, said that:

*“ ... so far as the courts are concerned this is a taxation measure. As such it necessarily interferes with the property rights of affected citizens. However, such interference cannot be challenged as being unjust on that account, if what has been done can be regarded as action by the State in accordance with the principles of social justice and having regard to the exigencies of the common good as envisaged by Article 43.2 of the Constitution.”*

### Proportionality

The doctrine of proportionality has formed an element of the court’s assessment of whether a particular legislative measure amounts to an unjust attack on private property rights (See Blake and Re Article 26 cases discussed below), having regard to the principles of social justice and the exigencies of the common good.<sup>25</sup> In light of the development of the proportionality doctrine, the prevailing view is that there is no Constitutional or legal impediment to the regulation of rents provided such measures are proportionate.<sup>26</sup> In its 1996 report the [Constitution Review Group](#) emphasised that where legislation regulating the exercise of private property rights had been found to be unconstitutional, this was invariably in circumstances where the legislation at issue was disproportionate, unfair or arbitrary.<sup>27</sup> The Commission on the Private Rented Residential Sector concluded that the reintroduction of a system of rent regulation was not unconstitutional provided it was not unfair or oppressive and corresponded to the interests of the common good.<sup>28</sup>

### Residential Tenancies Acts

The next significant changes came about as a result of the [Residential Tenancies Act 2004](#) which was introduced in an attempt to modernise the law so that it would more appropriately regulate the landlord and tenant sector in line with developments at that time. The Act is made up of 9 Parts and 202 sections. Some of the areas it legislates for are as follows:

- Tenancy obligations;
- Rents;
- Security of tenure;
- Tenancy terminations;
- Dispute resolution;
- Registration of tenancies;
- Private residential tenancies board;

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<sup>24</sup> [1986] ILRM 136.

<sup>25</sup> Threshold, (2015) “[Legislative Proposals for the introduction of Rent Certainty Measures](#)” para. 10.

<sup>26</sup> *Ibid*, para 11.

<sup>27</sup> Constitution Review Group, (1996) “Report of the Constitution Review Group” p.338.

<sup>28</sup> Report of the Commission on the Private Rented Residential Sector (2002).

- Leases and tenancy agreements; and,
- Accommodation standards and rent books.

### Tenancy obligations

[Sections 12-15](#) of the 2004 Act set out the landlord's obligations which include, amongst other things, a requirement to allow the tenant enjoy peaceful and exclusive occupation of the dwelling; to carry out repairs, insure the dwelling and refund deposits where no damage has been caused to the dwelling. [Sections 16-18](#) set out the tenant's obligations which include a requirement to pay rent and charges, to avoid causing damages and to avoid engaging in anti-social behaviour.

### Rent control

Rent control measures were first introduced in Ireland during the First World War to deal with the effects of the shortages of housing. The [Rent Restriction Acts 1960 to 1981](#) placed a series of restrictions on the property rights of owners of certain controlled properties, including the rent chargeable. This legislation fixed rents at well below market level and restricted the rights of owners to recover possession of controlled properties. In [Blake v Attorney General](#)<sup>29</sup> Parts II and IV of the Rent Restrictions Act 1960 were struck down as being an unjust attack on the property rights of landlords contrary to [Article 40.3.2](#) of the Constitution. The case highlighted the concerns of the courts in relation to legislation that unequally imposed the cost of achieving a social good on one section of the community.<sup>30</sup> Subsequent proposed legislation to phase out rent restrictions over time was also found to be unconstitutional in [Re Article 26 of the Constitution and the Housing \(Private Rented Dwellings\) Bill 1981](#).<sup>31</sup> It is suggested that the outcome of these cases is that the State may limit the property rights of landlords but may not do so in a manner which is arbitrary or unfair.<sup>32</sup> According to the 2004 [Ninth Report](#) of the All Party Oireachtas Committee on the Constitution the decision in Blake did not find that all forms of rent controls were unconstitutional. Instead, it was the specific form of rent control, as sanctioned by the Rent Restriction Acts, which essentially froze rents for an arbitrary selection of properties that was unconstitutional.<sup>33</sup>

### Rent review

Part 3 of the 2004 Act required that rent may not be greater than the open market rate and may only be reviewed (upward or downward) once a year, unless there has been a substantial change in the nature of the accommodation that it warrants a review. The [Residential Tenancies \(Amendment\) Act 2015](#) amended this and provides that, for a period of four years, from the 4<sup>th</sup> December 2015, reviews may only take place every 24 months. For existing tenancies, the Act provides that rent reviews may not be carried out for 24 months from the date of the commencement of the tenancy for the date of the most recent review. The 2015 Act also requires that a 90-day notice period be given before a rent review is imposed.

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<sup>29</sup> [1982] 1 IR 117.

<sup>30</sup> O'Sullivan, note 17.

<sup>31</sup> [1983] 1 IR 181.

<sup>32</sup> Fergus, R. (2008) *Constitutional Law* (Dublin, Roundhall: 2<sup>nd</sup> edition), p.182.

<sup>33</sup> All Party Oireachtas Committee on the Constitution, (2004) [Ninth Progress Report-Private Property](#) (Dublin, The Stationary Office) p.40.

## Security of Tenure

Part IV of the 2004 Act places a minimum period of security of tenure for tenants on a statutory footing. A tenant is entitled to remain in occupation of the dwelling for three and a half years, provided the first six months of the tenancy was for continuous occupation. This entitlement is referred to as a “Part 4 Tenancy”. The landlord can only take back possession of the property in two circumstances during this four year period:<sup>34</sup>

1. The landlord can terminate the tenancy during the first six months without giving reason, provided that the tenant is given at least 28 days notice;
2. After the first six month period the landlord can only terminate the Part 4 Tenancy where one of the following six grounds are met:
  - a) The tenant does not comply with the obligations of the tenancy;
  - b) The dwelling has become overcrowded;
  - c) The landlord intends to sell the dwelling in the next three months;
  - d) The landlord requires the dwelling for their own occupation or that of a family member;
  - e) The landlord intends to refurbish the dwelling;
  - f) The landlord intends to change the business use of the dwelling.

Amendments made by the 2015 Act require a landlord to give particular reasons for terminating a Part 4 Tenancy. The first change requires a notice in writing where the termination is on the grounds of tenant breach. Where termination is on the grounds of overcrowding, additional notification is also required to specify this reasoning. There is a statutory requirement to declare terminations on the grounds of sale and occupation by the landlord and his/her family. More detail is required where a tenancy is being terminated under grounds of refurbishment and there is a six-month period in which the landlord must re-offer the tenancy to the tenant after the works are complete.

## Residential Tenancies Board (RTB)

The RTB was set up under the [Residential Tenancies Board Act 2004](#) (as amended).<sup>35</sup> It was formerly called the Private Residential Tenancies Board (PRTB) but renamed on 7 April 2016 when the Approved Housing Bodies (generally known as housing associations) were brought under its remit by the [Residential Tenancies \(Amendment\) Act 2015](#). Before the 2004 Act was established tenants had limited rights and rarely engaged in litigation to enforce those rights because of the cost involved in the court proceedings.<sup>36</sup> The 2004 Act aimed to modernise and professionalise the private rented sector and to provide a mechanism by which to resolve disputes cheaply and speedily.<sup>37</sup> The Act therefore sets out the various rights and obligations of landlords and tenants and established the RTB to replace the courts in the majority of disputes within the private rented sector.

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<sup>34</sup> See section 34 of the 2004 Act.

<sup>35</sup> This is a link to the Law Reform Commission consolidation of the 2004 Act.

<sup>36</sup> Ryall, A., (2012) “[Strengthening the Regulation of Residential Tenancies: Revision of Residential Tenancies Acts 2004 and 2009](#)” 17(4) *Conveyancing and Property Law Journal* pp. 74-79.

<sup>37</sup> Long title to the Residential Tenancies Act 2004.

The RTB was established as a statutory body under the 2004 Act. Its main functions are set out under [section 151](#):

- Maintaining a register of private residential tenancies and tenancies of approved housing bodies (AHB);<sup>38</sup>
- Providing a dispute resolution service for tenants and landlords (including approved housing bodies, as of April 2016);
- Carrying out research into the private rented sector.

## Registrations

Registration of tenancies is dealt with under [Part 7](#) of the 2004 Act. It requires landlords to register details of all their tenancies with the RTB, landlords who fail to register will be subject to penalties. The Board then uses this registration data for information provision functions and for resolving certain types of disputes.<sup>39</sup> The [Residential Tenancies \(Amendment\) Act 2015](#) amended the registration process to provide that existing AHB tenancies shall be registered within 12 months of the commencement of the relevant section.

## Dispute Resolution

The RTB provides a dispute resolution service under [Part 6](#) of the 2004 Act. This service was established **in order to re-route private rented sector disputes away from the courts and to reduce costs for applicants**. The RTB deals with a range of disputes relating to: deposit refunds, breaches of tenancy obligations, lease terms, termination of tenancies, market rent, rent arrears and complaints from neighbours regarding tenant behaviour. Either the landlord or the tenant can initiate the process and legal representation is not required. The dispute resolution process consists of the following stages:

1. **Self resolution** whereby the issue is resolved privately between the landlord and tenant;
2. **Mediation** is a free service provided by the RTB to tenants and landlords who have an issue with their tenancy. The agreement will form the basis for a binding 'Determination Order'. This gives the outcome of a case and sets out both the terms to be complied with and timescale for compliance. If a mediation is not successful, one or both parties can apply to have the dispute dealt with by a Tenancy Tribunal;<sup>40</sup> or,
3. **Adjudication or mediation** is a formal and confidential process whereby an appointed adjudicator makes a decision, based on evidence presented by both parties, on the issue of dispute. The decision of the adjudicator is binding, and results in a Determination Order being issued to both parties concerned. While the process is confidential the names of the parties involved in the case and the rental property will be published on the RTB website along with the Determination Order;<sup>41</sup> or
4. An appeal to a **Tenancy Tribunal** is available to both parties where they are unhappy with the result of the mediation or adjudication agreement. The Tribunal Members, who are

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<sup>38</sup> All private residential landlords and Approved Housing Bodies must register their tenancies. The RTB then uses this register to collect data on the sector. It is also a way of regulating the sector by ensuring that landlords and tenants are aware of their rights and responsibilities.

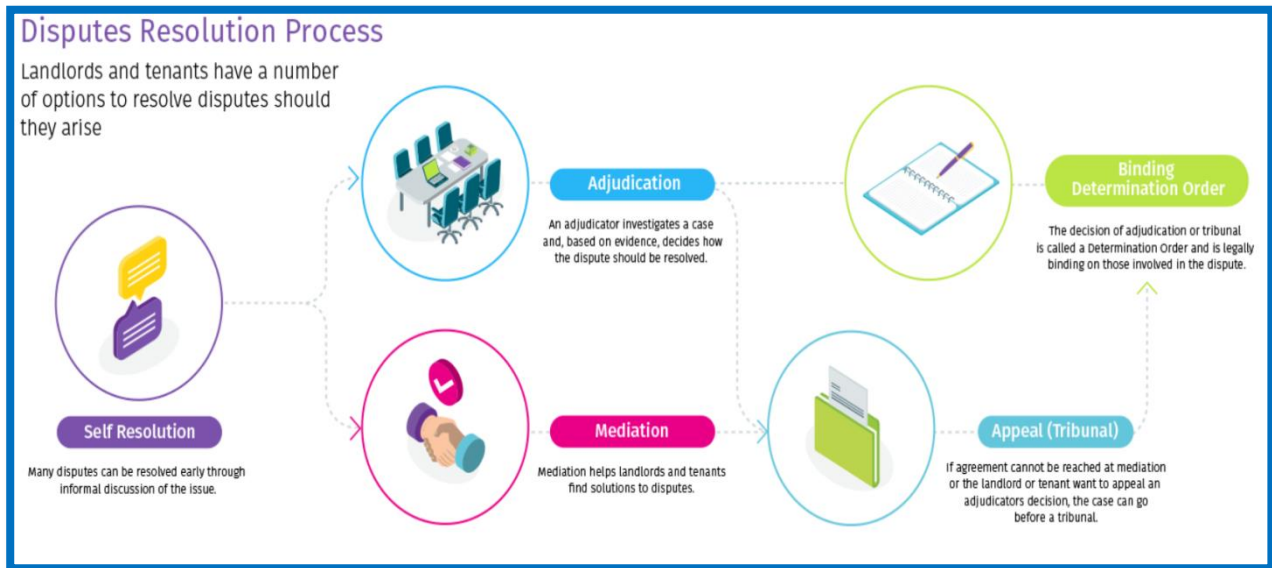
<sup>39</sup> The registration requirement does not apply to local authority housing, the rent a room scheme, if the tenant lives with a spouse, partner, parent or child of the landlord and there is no written agreement or if the property has been let through Airbnb.

<sup>40</sup> See [Residential Tenancies Board website](#).

<sup>41</sup> *Ibid.*

members of the Dispute Resolution Committee, will hear the dispute and make a decision based on the evidence before it.

### Diagram 1: Dispute Resolution



Source: [Residential Tenancies Board website](#)

[Section 35](#) of the 2014 Act provides for a “fast-track” dispute resolution procedure where there is already a dispute before the RTB and where the tenant fails to continue paying rent. The failure to pay rent can be subject to separate adjudication. The 2015 Act also lists additional categories of issue that may be subject to dispute resolution, including the failure of the landlord to remit a deposit and failures of both parties to abide by their notification obligations.<sup>42</sup> The Act also allows the RTB to dismiss dispute applications it considers frivolous. It also provides for free mediation over the phone. The cooling-off period is reduced to 10 days and the internal process is simplified.<sup>43</sup>

### The Residential Tenancies Act and the Courts

One of the main purposes of the 2004 Act was to divert residential tenancy disputes away from the courts to the RTB. However, certain preliminary decisions taken by the RTB may be the subject of an appeal to the Circuit Court pursuant to [section 84](#) of the Act. An appeal to the High Court is available under [section 123](#), on a point of law from a Tenancy Tribunal’s determination. However, there is no general right of appeal to the courts.

### Sanctions

Offences under the 2004 Act may be prosecuted by the RTB in the District Court. A person found guilty of an offence is liable on summary conviction to a Class B fine of between €2,500 and

<sup>42</sup> Baneham (2016), *supra* note 44, para.3.9.

<sup>43</sup> *Ibid*, para. 3.10.

€4,000 or a term of imprisonment not exceeding 6 months, or both.<sup>44</sup> Where a person is found guilty of an offence under the 2004 Act, the District Court will order that person to pay the Board's costs and expenses in relation to the investigation, detection and prosecution of the offence.

### **Determination Orders**

Following a request from a party to a Determination Order, the RTB may apply to the Circuit Court (pursuant to [section 124\(1\)](#)) for an order directing the respondent to comply with the terms of a Determination Order. Subject to section 125, the Circuit Court is obliged to make an order directing compliance with the Determination Order unless it considers one of the following:

- a) That procedural fairness was not observed in the relevant proceedings;
- b) That a material consideration was not taken into account;
- c) That a manifest error, in relation to a legal issue, was made during the proceedings;
- d) That the determination made by the adjudicator or the Tribunal was manifestly erroneous.

A person against whom a Determination Order has been made therefore has the indirect option of challenging the Order under the limited grounds set out above. Under the 2015 Amendment Act, Determination Orders can now be enforced in the District Court, with the monetary limit provided by the Act applying, instead of the maximum jurisdiction of the District Court.

### **Recent Developments**

#### ***Residential Tenancies (Amendment) Act 2015***

The [Residential Tenancies \(Amendment\) Act 2015](#) amends [section 3](#) of the 2004 Act. It removes the exclusion of tenancies of Approved Housing Bodies (AHBs). The amended section provides that tenancies created between AHBs and tenants housed according to their housing needs come within the scope of the Act and that this tenancy does not fall under the definition of sub-tenancy contained in the Residential Tenancies Acts. This prevents the public authority from being treated as a head-landlord where it lets a dwelling to an AHB, who in turn lets it to a tenant.<sup>45</sup> An AHB cannot terminate a Part 4 Tenancy on the grounds that it wishes to occupy a dwelling. Licensees of tenants of AHB do not have the statutory right to request to become a tenant.

In relation to deposits [section 61](#) of the 2015 Act provides that a landlord is obliged to transmit a deposit to the RTB and to comply with notification provisions to the Board and tenant at the end of the tenancy. At the end of the tenancy the landlord is obliged to respond to any notification issued by the Board regarding the deposit, notify the RTB of any tenant default, notify the RTB of any change in their correspondence address and provide them with notification of any default.

#### ***Guidelines on the Substantial Change Exemption in Rent Pressure Zone Areas***

In November 2017 the RTB published new [guidelines](#) for landlords and tenants on what constitutes "substantial change" in rented properties for the purposes of exemptions from rent pressure zone measures. Where substantial changes are made to a rented property it will allow the landlord to exceed the cap on rent increases in a RPZ. The cap, which is set at 4% per year, can only be

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<sup>44</sup> Pursuant to section 9 of 2004 Act as amended [Fines Act 2010](#) (8/2010, ss. 3 and 5, and ss. 3 and 8, [S.I. No. 662 of 2010](#)).

<sup>45</sup> Baneham, K. (2016) "[Introduction to Residential Tenancies \(Amendment\) Act 2015 and the Impact on Housing Associations](#)" (Information note prepared for the [Irish Council for Social Housing](#)).

exceeded if significant changes have been made to the property. The guidelines aim to support landlords and tenants in understanding what a substantial change in the nature of accommodation is and in what type of circumstances an exemption can be relied upon. The RTB sets out five guiding principles for landlords and tenants to consider when determining if a substantial change has been made which merits the exemption:

- Has the property changed substantially?;
- Are the works more significant than bringing the property up to minimum standards?;
- Are the works part of normal on-going maintenance?;
- Will the changes result in a change in the letting value?; and,
- How long did the works take and how much was spent to achieve it?



## Pre-legislative Scrutiny

The General Scheme of the *Residential Tenancies (Amendment) Bill 2018* was referred to the Joint Committee on Housing, Planning and Local Government on 10 May 2018 for pre-legislative scrutiny (PLS). The Committee held PLS meetings on the 12 and 14 June 2018. The following stakeholders appeared before the Committee and made submissions:

- Residential Tenancies Board;
- Threshold;
- Irish Property Owners Association;
- The Union of Students in Ireland.

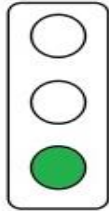
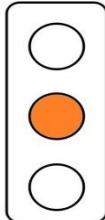
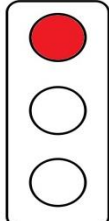
The Committee published its [report](#)<sup>46</sup> in July 2018. The report makes 26 recommendations under ten key issues, set out as follows:

1. The impact of regulatory measures on supply in the market;
2. The constitutionality/proportionality of the sanctions regime;
3. Data protection;
4. The complexity of the regulatory framework;
5. Tenancy registration;
6. Realignment of rent pressure zone rents;
7. Residential tenancies board resources;
8. Clarification of the working in Head 9-amendment to section 66 of the 2004 Act;
9. Student accommodation applicability to the 2004 Act;
10. Deposit retention scheme.

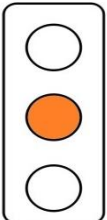
In preparing the Bill Digest, the Library & Research service asked the Department of Housing, Planning and Local Government to indicate how much of the Committee recommendations were implemented in, or influenced the drafting of the Bill. The following illustration provides a categorisation of the responses received in relation to the main issues raised by the Committee. The ‘traffic light system’ employed below is intended to highlight the impact the Committee’s PLS report had on the drafting and final content of the published Bill.

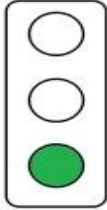
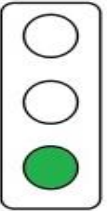
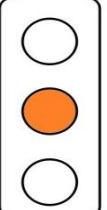
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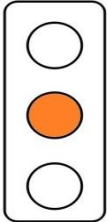
<sup>46</sup> Joint Committee on Housing, Planning and Local Government, (July 2018) [“Report of the Joint Committee on the General Scheme of the Residential Tenancies \(Amendment\) Bill 2018”](#).

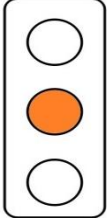
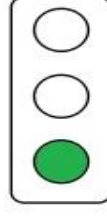
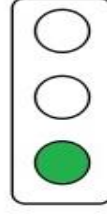
L&RS categorisation of the Department’s response to the key issues identified by the Committee	‘Traffic light dashboard’ used in Table 2 to highlight the impact of the Committee’s PLS report
<p>Key issue has had an impact on the drafting of the Bill.</p>	
<p>The Bill may be described as adopting an approach consistent with the key issue <u>or</u> the impact of the key issue on the drafting of the Bill is unclear.</p>	
<p>Key issue has not had an impact on the drafting of the Bill.</p>	

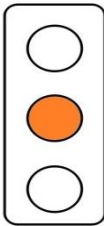
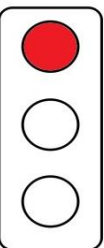
Source: L&RS

No.	Recommendation as per Joint Committee on Housing, Planning & Local Government Report		Response from Department of Housing, Planning and Local Government on whether addressed (either in whole or in part) in the Bill or elsewhere
1	<p><b>Impact of Regulatory Measures on Supply in the Market</b></p> <p>The Committee recommended that:</p> <ul style="list-style-type: none"> <li>• Consideration be given to the possible introduction of tax and subsidy incentives to encourage small scale landlords to remain or participate in the rental market.</li> <li>• Regular post-enactment reviews be undertaken to assess whether the proposed legislative measures are working as intended and have not had a negative impact on supply.</li> </ul>		<ul style="list-style-type: none"> <li>• Taxation is a matter for the Minister for Finance, and the Department will continue to engage with his Department on the tax and fiscal treatment of rental accommodation providers.</li> <li>• A review clause has been included in the amendments to Section 66 of the Act. As a matter of course, the Residential Tenancies Acts are kept under constant review to ensure their effectiveness.</li> </ul>

No.	Recommendation as per Joint Committee on Housing, Planning & Local Government Report		Response from Department of Housing, Planning and Local Government on whether addressed (either in whole or in part) in the Bill or elsewhere
2	<p><b>Constitutionality /Proportionality of sanctions regime</b></p> <p>The Committee recommended that an assessment of the constitutionality of the proposed sanctions regime be undertaken.</p>		<ul style="list-style-type: none"> <li>The Department are satisfied that all provisions of the Residential Tenancies (Amendment)(No.2) Bill 2018 are proportionate and constitutionally robust.</li> </ul>
3	<p><b>Data Protection</b></p> <p>The Committee recommended that consideration be given as to whether the information required is excessive or proportionate, and whether its use is compatible with issues of data privacy and GDPR.</p>		<ul style="list-style-type: none"> <li>The Department and the RTB are anxious to ensure that the Act and the RTB continues to comply with all relevant data protection legislation.</li> <li>The Department has engaged with the Office of the Data Protection Commissioner and will continue to do so should the need arise during the passage of the Bill through the Houses of the Oireachtas.</li> </ul>
4	<p><b>Complexity of the Regulatory Framework</b></p> <p>The Committee recommended that:</p> <ul style="list-style-type: none"> <li>Fast tracking of a revision or consolidation of the 2004 Act with the intention of making the Act easier to navigate and more understandable be undertaken;</li> <li>Consideration be given to a public information campaign as a way to promote understanding of tenant and landlord rights and obligations.</li> </ul>		<ul style="list-style-type: none"> <li>It is the intention to simplify the regulatory framework for the rental sector.</li> <li>A number of key measures have already been introduced to promote understanding of tenant and landlord rights and obligations. <ul style="list-style-type: none"> <li>the RTB developed a 'One-Stop Shop' to improve access to information for tenants and landlords</li> <li>A voluntary landlord accreditation scheme to educate landlords on best practice and their rights and responsibilities as landlords has been developed.</li> <li>Regular tweets on RTB Twitter account explaining tenant and landlord rights and responsibilities and directing customers to our website for further information on these.</li> <li>RTB ran a number of digital advertising campaigns in 2018 to promote awareness of landlord and tenant rights and responsibilities and will</li> </ul> </li> </ul>

No.	Recommendation as per Joint Committee on Housing, Planning & Local Government Report		Response from Department of Housing, Planning and Local Government on whether addressed (either in whole or in part) in the Bill or elsewhere
			<p>continue to do so in 2019.</p> <ul style="list-style-type: none"> <li>○ Developed Partnership with (Citizens Information Board) CIB during 2018 where RTB staff attended clinics in CIB branches with members of the public to assist them with any renting queries, RTB staff also provided training sessions to CIB staff to enable them to effectively disseminate information on landlord and tenant rights and responsibilities throughout their many branches and through their website. RTB also provided training to staff of the Dublin Regional Homeless Executive.</li> <li>○ RTB held Stakeholder information sessions throughout the year including visiting many colleges to promote to students, also provided lunch and learn sessions to those living and working in the rental sector as well as having information stands at relevant events and conference and we will continue to seek out further such opportunities in 2019.</li> </ul>
5	<p><b>Tenancy Registration</b></p> <p>The Committee recommended that an analysis be undertaken as to whether a requirement for landlords to register their tenancies each year is a more effective approach to regulation and outweighs any potential additional burden that would be placed on landlords.</p>		<ul style="list-style-type: none"> <li>• Annual registration is necessary in order for the RTB to collect and analyse more robust data which will enable them to evaluate rental market trends and will inform policy decisions going forward.</li> </ul>

No.	Recommendation as per Joint Committee on Housing, Planning & Local Government Report		Response from Department of Housing, Planning and Local Government on whether addressed (either in whole or in part) in the Bill or elsewhere
6	<p><b>Realignment of Rent Pressure Zone Rents</b></p> <p>The Committee recommended that consideration be given as to whether it is appropriate or not to introduce a mechanism for realignment of rents below market rent in RPZs to market rent levels.</p>		<ul style="list-style-type: none"> <li>The Department are considering how best to resolve the problem of good landlords who did not increase rents during the downturn and are now unable to charge market rents due to the Rent Predictability Measure.</li> </ul>
7	<p><b>Residential Tenancies Board Resources</b></p> <p>The Committee recommended that the workforce plan currently under consideration should be fast tracked, and that any resources identified and agreed upon as being required should be implemented as soon as possible.</p>		<ul style="list-style-type: none"> <li>The Department are confident that the RTB will have sufficient resources to implement the provisions of the Residential Tenancies (Amendment)(No.2) Bill 2018 upon enactment.</li> <li>The RTB Workforce plan has been submitted to the Department and is under consideration.</li> </ul>
8	<p><b>Clarification of the wording in Head 9 – Amendment to Section 66 of the 2004 Act</b></p> <p>The Committee recommended that clarity be provided on the wording of the amendment to ensure there is no misunderstanding of its intention.</p>		<ul style="list-style-type: none"> <li>Section 7 (formerly Head9) amends section 66 of the Act of 2004 Act to extend the notice periods that a landlord provides in serving a notice of tenancy termination to any tenant who has occupied a dwelling for more than 6 months and less than 5 years. Also, where a notice of tenancy termination notice is determined to be invalid due to a defect contained in it, or occurring during the service of the original notice by the landlord, the RTB will be empowered to permit a landlord to remedy such a defect by issuing a 'remedial notice' to the tenant which provides at least a further 28 days on top of the original notice period for tenancy termination. Provision is made for a review of the new tenancy termination provisions to commence during the third year of their operation.</li> <li>The section as published has been prepared by the Office of Parliamentary Counsel.</li> </ul>

No.	Recommendation as per Joint Committee on Housing, Planning & Local Government Report		Response from Department of Housing, Planning and Local Government on whether addressed (either in whole or in part) in the Bill or elsewhere
9	<p><b>Student Accommodation Applicability in the 2004 Act</b></p> <p>The Committee recommended that:</p> <ul style="list-style-type: none"> <li>• Clarity be provided on the definition of student accommodation and licences and how the 2004 Act applies to them;</li> <li>• Consideration be given to introducing a section in this legislation to alleviate the confusion in this area.</li> </ul>		<ul style="list-style-type: none"> <li>• The Minister intends to introduce amendments to the Bill at Committee Stage to clarify the position of licences in student specific accommodation.</li> </ul>
10	<p><b>Deposit Retention Scheme</b></p> <p>The Committee recommended that an analysis be undertaken on the most appropriate model for a deposit retention scheme and whether amendments to existing legislation should be introduced.</p>		<ul style="list-style-type: none"> <li>• There have been significant changes in the rental market since the 2015 scheme was first designed. Careful consideration is required to introduce any necessary reforms to the 2015 Deposit Retention scheme to make it fit for purpose and suitable for current and future rental and financial markets</li> <li>• Given the volatility of the current financial market combined with the increasing work load of the RTB going forward under the multi-annual Change Management Plan, it is important the full and comprehensive analysis of data is considered</li> <li>• It is recommended that a deposit protection scheme is deferred and reviewed at a later point in time, when the RTB is sufficiently resourced and more enhanced and robust data and information is available for consideration.</li> </ul>

Source: L&RS, based on PLS Report of the Joint Committee on Housing, Planning and Local Government (2 February 2018) from the Department of Housing, Planning and Local Government to the Library & Research Service.

## Principal Provisions

The [Residential Tenancies \(Amendment\) \(No.2\) Bill 2018](#) consists of 25 sections and is divided into three parts. This part of the Digest is structured around the principal themes of the Bill:

- Preliminary and general;
- Registration of tenancies;
- Rent reviews;
- Complaints, investigations and sanctions

The main developments that this Bill will bring about are: the extension of notice periods for tenancies which exist for a minimum of six months to less than five years. It also requires registration of a tenancy on its commencement and annual registration thereafter. This will require an annual registration fee to be paid by the landlord. The Bill provides for the definition of 'substantial change' to a dwelling which allows for rent to be set above the 4% limit. It also provides for a new investigation and enforcement regime under the remit of the RTB. Investigations are to be carried out by appointed authorised officers and sanctions will be decided by a designated decision maker. Any sanctions imposed can be the subject of appeal in the Circuit Court.

Sections 4, 8, 11, 21 and 22 of the Bill are not discussed because they are technical amendments which do not provide any substantive changes to the Principal Act.

### Preliminary and General: Part 1

**Section 1** of the Bill empowers the Minister to commence various parts of the Act by way of order for different purposes. **Section 2** sets out definitions.

### Registration of Tenancies and fees: Part 2

#### Registration of Tenancies and relevant fees

**Section 12** of the Bill amends section 134 of the Principal Act and sets out that a landlord is required to register a tenancy on its commencement. A new addition requires the landlord to now register annually one month from each anniversary of the commencement of the tenancy. The obligation to register annually applies to tenancies created before, on or after the commencement of this section. The requirement to accompany the new application to register, or the annual application to register, with a fee does not apply where certain conditions are met. These are situations where an application to register, accompanied by the fee, has already been made 12 months preceding the relevant application.

**Section 13** of the Bill deletes [section 135\(1\) of the 2004 Act](#) which sets out that a new application must be made for each new tenancy that is created in respect of a dwelling, it removes the wording which sets out that a Part 4 Tenancy does not give rise to a requirement to register and that a further Part 4 Tenancy does require registration. This is to clarify that a further Part 4 Tenancy is to be treated as an extension of a Part 4 Tenancy and not a new tenancy. The effect of this amendment is to ensure the correct application of notice periods for further Part 4 Tenancies (see

below for discussion of notice periods). Section 13 also requires that an RTB acknowledgement receipt must now include information on the landlord's obligation to pay fees to the RTB.

**Section 15** of the Bill amends [section 137](#) of the Principal Act and extends the situations where a fee accompanying an application applies in order to reflect the amendments made to [section 134](#). A €40 fee will now apply where the application is made within 12 months of the commencement of section 15. Or an amount which, in time, is more reflective of the changing values of money. The section also provides that a single fee payment of €170 can be made to the RTB where the application is made within 12 months, or subsequent period, of the commencement of this section. Amendments are made which introduce penalty fees for late applications. Applications that go beyond the required time limit set out in [section 134](#) will be doubled (€140) and the new fees set out under section 15 of the Bill will be calculated as an increase of half that value (€60).

**Section 16** of the Bill amends [section 137A](#) of the Principal Act. It introduces a fee of €20 for application for Approved Housing Body tenancies made within 12 months of the commencement of this section. A single fee payment of €85 will also be accepted for such applications once made within 12 months of the commencement of this section, or subsequent period. It also provides for late application penalty fees regarding tenancies under [section 134\(2A\)](#) (Approved Housing Body tenancy). Penalty fees range from €45, €90 or €30 plus an additional €20 for each subsequent month. Section 16 removes the provision which caps these fees at €240.

**Section 17** of the Bill inserts a new section 144A to strengthen the enforcement powers of the RTB by the issuing of notices identifying a landlord's failure to notify the Board of alteration in rent payable within the one month time period, as set out under [section 139\(1\)](#) of the Principal Act. The notice will request the landlord to comply with section 139(1) and to furnish the Board with reasons for the failure. If the landlord fails to comply with this request the Board can serve a further notice allowing the landlord 14 days to comply. Failure to comply with the further notice will result in the landlord being guilty of an offence.

### Mediation

**Section 9** of the Bill removes [section 93 \(2A\)](#). This results in the removal of a provision which excluded payment for mediation where parties agreed to the dispute being the subject of mediation. **Section 10** removes an amendment made to [section 109\(2\)\(c\)](#) which exempts fees for mediation referred to in [sections 93\(1\) and \(2\)](#). This means that the RTB may now charge for the mediation service.



## Rent Reviews: Part 2

### Rent calculation and adjustment

**Section 3** of the Bill amends [section 19](#) of the Principal Act. It inserts section 19(5A) which clarifies what constitutes a ‘**substantial change**’ to a dwelling. This substantial change exempts landlords from applying the formula that calculates rent within rent pressure zones (RPZ). Effectively, it allows a landlord to set rents higher than the RPZ restrictions in cases where a substantial change has been made to the dwelling. Such changes include work carried out which:

- Renovates at least 50% of the floor area;
- Permanently alters the internal layout of the dwelling;
- Provides for disability access and use by tenants;
- Increases the number of rooms in the dwelling;
- Adds a permanent extension; or
- Improves the building energy rating (BER).

It also inserts a new section 19(5B) which requires a landlord to notify the RTB, using the prescribed form, of a rent increase within a RPZ. The notice must set out the reasons for the increase and how much the increase is within one month of setting the new rent. [Section 19\(6\)](#) is amended to exempt RPZ restrictions where the landlord has notified the tenant of a rent review before the relevant date<sup>47</sup> or before the Minister newly designates an area, by order, as a rent pressure zone. Section 3 of the Bill also introduces a number of offences:

1. A failure to comply with RPZ calculations will be an offence;
2. It will be an offence not to notify the RTB of a rent increase in a RPZ;
3. It will be offence where a landlord notifies the RTB of a rent increase but uses false or misleading information in the prescribed form.

## Extension of tenancies and notice of termination: Part 2

### Notice of termination

**Section 7** of the Bill inserts a new [section 66](#) (2A) to deal with complaints about notice of termination of tenancy. On receipt of a complaint a tenancy Tribunal may make one of the following determinations:

- The original notice of termination is invalid due to a defect contained therein;
- The defect does not prejudice the original notice;
- The original notice is in compliance with the provisions of the Act.

The Tribunal can make a determination providing the landlord with the opportunity to remedy the original notice by serving a new notice on the tenant. The landlord has 28 days from the issuing of the determination order to serve the remedial notice. Where the original notice has expired, the period of notice to be given by the remedial notice is 28 days. Where the original notice has not expired, the period of notice will be the remaining days plus the 28 days. Table 1 of section 66 is

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<sup>47</sup> When [section 33](#) of the [Planning and Development \(Housing\) and Residential Tenancies Act 2016](#) comes into operation.

updated to reflect the extended periods of notice of termination required to be served on a tenant by a landlord, depending on the duration of the tenancy. After commencement of the section the Minister will be required to undertake reviews and report on these amendments.

### Extension of tenancies

**Section 5** of the Bill amends [section 41](#) of the Principal Act. It provides that, once a Part 4 Tenancy (a sitting tenancy) continues until the expiry of the 6 year period, without notice of termination, then a further Part 4 Tenancy will automatically come into being. Similarly, **section 6** of the Bill amends [section 45](#) of the Principal Act. Once a further Part 4 Tenancy expires after 6 years without any notice of termination then the tenancy will be extended and another 'further Part 4 tenancy' will come into being.

## Complaints, investigations and sanctions: Part 2

**Section 18** of the Bill inserts a new Part 7a into the Principal Act. It provides for the appointment of authorised officers and decision makers and gives them the power to retrieve information for the purposes of an investigation related to a complaint. It also sets out the complaints procedure: the investigation of complaints by authorised officers followed by the consideration of their findings by the decision maker and their subsequent decisions on what action to take. It provides the landlord with a right to appeal in the courts. It also sets out sanctions to be imposed on the landlord where a contravention is found to have occurred.

### Authorised officers and decision makers

**Section 20** of the Bill inserts a new section 164A into the Principal Act. This section provides for the appointment for authorised officers and decisions makers. It also outlines the circumstances for their removal from office. Both officers will be given a warrant of appointment which they can produce if a person under investigation requests it. **Section 19** of the Bill adds to the functions of the RTB by specifying that it has the ability to investigate and sanction landlords. **Section 18** inserts section 148U which enables the RTB to appoint an authorised officer and decisions maker to carry out an investigation.

**Section 18** of the Bill inserts section 148S under Part 7A of the 2004 Act. This sets out the powers of an authorised officer, some of which include:

- Power to inspect, examine and search a premises;
- Inspect and remove records;
- Request any person connected to the premises to assist with the provision of information and records;
- Require the Garda Síochána to assist them;
- Require a landlord to provide information about the contents of records.

An officer may request a person, who they believe holds relevant information, to attend before them for the purpose of providing such information. They may be required to answer under oath or affirmation. Where an officer is satisfied that a person has failed to comply with any of the requirements set out, they may apply to the District Court to have an order issued compelling them to comply. It does provide the caveat that any statements made by a person so requested will not

be admissible against them in criminal proceedings and also provides the protection of legal professional privilege. The court may issue an authorised officer with a warrant to enter premises, by force if necessary, in order to carry out his/her functions.

An officer can hold oral hearings where a person, who if found to be in obstruction of his/her work, can be found guilty of a summary conviction (Class A fine<sup>48</sup> or term not exceeding 12 months) or on indictment (a fine not exceeding €50,000 or a term not exceeding 5 years).

### Complaints procedure

**Section 18** inserts section 148T which provides that complaints can be made in writing to the RTB and investigated where they are considered appropriate. Complaints which will not be considered appropriate are complaints which have insufficient information, do not relate to improper conduct, are not made in good faith or are frivolous and vexatious. Under the new section 148V, as inserted by **section 18**, an authorised officer must notify the landlord in writing that a complaint is being investigated. The landlord should be allowed 21 days to respond.

Section 148W (as inserted by **section 18** of the Bill) provides the landlord with an opportunity to acknowledge to the authorised officer that improper conduct occurred and the decision maker will take this into consideration when determining a sanction.

### Investigation report and subsequent decision

Section 148X (as inserted by **section 18** of the Bill) requires the authorised officer to prepare a draft investigation report once all the submissions have been received and assessed. The landlord and complainant should be allowed time to make submissions responding to the draft report. Following this a final report will be compiled and submitted to the decision maker. The authorised officer is not permitted to make any recommendations in the final report; it is for the decision maker to determine whether a sanction should be imposed, whether a further investigation is required or if the complaint should be dismissed. The decision maker can take into consideration an acknowledgement by the landlord of improper conduct when imposing a sanction. In observing fair procedures the decision maker may conduct an oral hearing and provide the landlord and complainant with copies of the investigation report and the opportunity to make submissions in response. Once a final decision has been made the decision maker will notify the RTB along with reasons for that decision. The sanction, determined by the decision maker, can be either/both a financial penalty up to €15,000; the costs incurred by the RTB up to €15,000, or a caution. Under section 148Y (as inserted by **section 18** of the Bill), once the RTB receives the decision they will prepare a written record outlining the sanctions and reasons for them. They should issue a copy of this to the landlord.

### Appeal of sanctions to the Circuit Court

Under section 148Z (as inserted by **section 18** of the Bill), a landlord has the right to appeal a sanction imposed. The sanction will not take effect until confirmed by the Circuit Court. Under section 148AA the Circuit Court can decide, following an appeal by a landlord, to confirm a sanction, set aside a decision and replace it with a different sanction or impose no sanction. If no

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<sup>48</sup> The maximum fine under a Class A fine on summary conviction is €5,000 as set out under [section 4 of the Fines Act 2010](#).

appeal occurs the RTB can apply to the Circuit Court to confirm the decision under section 148AB. Under section 148AE the RTB can publish the particulars of a sanction. Under section 148AG a landlord will not be liable for criminal proceedings if a sanction is imposed and conversely, if the landlord is the subject of criminal proceedings then a sanction under this Bill may not be imposed.

## Improper Conduct: Part 2

**Section 23** of the Bill introduces a new section 148R under Schedule 2 which sets out behaviour that constitutes ‘improper conduct’. It is where a landlord contravenes a number of scenarios including:

- Setting the rent above the RPZ limits set out in [section 19\(4\)](#);
- Failure to notify the RTB where the rent is set above the RPZ limits as set out in section 19(5B) (inserted by section 3 of the Bill);
- Failure to register a tenancy with the RTB on commencement or annually, under section 134(1) as amended by section 12 of the Bill);
- Failure to notify the RTB of alterations to rent within the one month timeframe as set out in [section 139\(1\)](#); and,
- Failure to comply with requirements that allow for an exception to rent increases in a RPZ, as set out under [section 19\(5\)](#).

## Oral Hearings: Part 2

**Section 24** of the Bill introduces a new Schedule 3 to the Principal Act. It sets out provisions for both an authorised officer and a decision maker when conducting oral hearings for the purposes of an investigation.

### Oral hearing conducted by an authorised officer

An authorised officer who conducts an oral hearing for the purpose of an investigation, pursuant to section 148S (as inserted by section 18 of the Bill) may take evidence on oath. The authorised officer may require any person to attend and produce relevant documents. This person may be cross-examined at the hearing but shall be entitled to the same immunities and privileges as a witness attending the High Court. Where a person fails to attend, the authorised officer may apply to the District Court in a summary manner for an order requiring that person to comply. The oral hearing will be heard in private. The authorised officer may draw from moneys disposable, to cover the travel and subsistence expenses of people required to attend hearings.

### Oral hearing conducted by a decision maker

The same conditions as set out for an authorised officer above apply to a decision maker, pursuant to section 148X (as inserted by section 18 of the Bill).

## Repeal of certain provisions of *Residential Tenancies (Amendment) Act 2015*: Part 3

### Repeal of section 16(g) of the 2015 Act

[Section 16\(g\)](#) of the 2015 Act is repealed which inserted a section 134(7) into the Principal Act.<sup>49</sup> This provision sets out that a fee does not apply to applications to register a further Part 4 Tenancy.

### Repeal of sections 17(d) and (e) of the 2015 Act

[Sections 17](#)(d) and (e) of the 2015 Act is repealed which replaced section 137(6) of the Principal Act and inserted section 137(7).<sup>50</sup> The subsections set out the fees to be paid by a landlord where an application to register a tenancy is not made within the specified timeframes.

### Repeal of sections 63 (b), (c), and (d) of the 2015 Act

[Sections 63](#) (b), (c) and (d) of the 2015 Act is repealed which amended parts of section 63 of the Principal Act.<sup>51</sup> These subsections required certain signatures on prescribed forms; knowledge by the tenant of rent review settings and statements of comparable rent.

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<sup>49</sup> Note that section 134(7) of the 2004 Act was never commenced.

<sup>50</sup> Note that section 137(6),(7) of the 2004 Act was never commenced.

<sup>51</sup> Note that the relevant parts of section 63 of the 2004 Act were never commenced.

## Stakeholder Commentary

Following Government approval to publish the Bill in December 2018, a number of stakeholders issued statements reacting to its provisions.

As detailed earlier in this Digest, the Bill will provide the RTB with increased powers of investigation and sanction of landlords who fail to comply with rent restrictions in RPZs (including prosecution). In response, the Irish Property Owners Association (IPOA) has stated that, in their view, RPZs “*limit the income of investors*” without limiting the cost [to landlords] associated with providing and maintaining rental accommodation. “*The Residential Tenancies (Amendment) Bill ... does not address the situation [whereby] property owners who rewarded good tenants by keeping the rent low, have been unfairly and substantially disadvantaged.*” This issue also emerged during the Department’s consultation on Rent Predictability Measures (RPMs) in 2017. Landlords who charged low rents before the introduction of RPZs and are now restricted by the 4% cap it imposes. It was also raised by the JOC Housing Committee in its’ PLS report on the General Scheme of the Bill.

In a written response to the L&RS, following a written request for information in January 2019, the Department stated that it was “*considering how best to resolve the problem of good landlords who did not increase rents during the downturn and are now unable to charge market rents due to the Rent Predictability Measure.*”

Recent RTB figures (Rent Index Q3, 2018) indicate that rent increases for existing tenancies are growing at a slower rate (5.4%) than for new tenancies (8%). This is likely to benefit tenants, by “*slowing the pace of rent increases for existing tenancies*”<sup>52</sup>. However, in a press release issued by the IPOA, the association called for “*fair play ... for both landlords and tenants.*” It suggests that “*increased supply of accommodation is the only solution to the housing crisis. [R]ent control reduces the supply of available accommodation. [T]he evidence is clear; 1778 landlords have left the sector and nearly 9000 rental homes are no longer available*”<sup>53</sup>. “*Continual interference in the private rental sector has resulted in less accommodation for rent, contributing to homelessness.*”

The IPOA concluded with a message to Government: “*Value the service provided by landlords; and simplify the legislation around the sector. Investors need confidence and stability*”<sup>54</sup>. It also reassured its members that “*our legal counsel is currently reviewing the Bill and the IPOA will strongly lobby for amendments.*”<sup>55</sup>

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<sup>52</sup> Residential Tenancies Board (RTB) Press release on Rent Index, Q3 2018 <https://onestopshop.rtb.ie/news/q3-2018-rent-index/>

<sup>53</sup> The figures used here by the IPOA were taken from a press release accompanying the latest RTB Rent Index, Q3 2018 <https://onestopshop.rtb.ie/news/q3-2018-rent-index/>

<sup>54</sup> IPOA Press release, 14 December 2018 <https://ipoa.ie/as-ipoa-predicted-landlords-exiting-the-sector/>

<sup>55</sup> IPOA Press release, 03 January 2019 <https://ipoa.ie/residential-tenancies-bill-2018-published/>

A press release issued by the Residential Landlord's Association of Ireland (RLAI), a voluntary body set up to provide support and advisory services to landlords<sup>56</sup>, described its reaction to a requirement to register tenancies on an annual basis rather than when a new letting is created. It referred to the provision as *"overly bureaucratic and unnecessary and is solely designed to generate extra cash from landlords"*.<sup>57</sup> In its report, the JOC Housing Committee also cautioned against annual registration, without first undertaking additional analysis. The Committee raised concerns that this may result in an unnecessary burden on landlords. The Department defended this decision, stating that the availability of up-to-date, robust data will allow the RTB to evaluate rental market trends and contribute to evidence informed housing policy in the future. Threshold, the national housing charity, have welcomed this provision<sup>58</sup> and also called for the expansion of the annual registration to include information relating to updated rents during the year. Threshold also suggested that the fee associated with registration be reduced or abolished, *"so as not to place an undue burden on landlords"*. They also expressed a desire that the registration process will be simple and user-friendly.

Threshold also welcomed the substantial increase in termination notice periods provided for in the Bill. *"Longer notice periods will also reduce the risk of homelessness associated with tenancy terminations."* However, the charity would like the legislation to go further, and recommends increasing notice periods for tenancies of less than 6 months.

The charity described the lack of a clear definition of 'substantial change in the nature of a dwelling' in earlier legislation as a *"major concern for threshold"* so they welcome this provision in the Bill. The rent pressure zone regulations allow for certain exemptions from the 4% rent increase limit. The most significant exemption relating to a property that underwent "substantial change" since the rent was last set. This exemption allowed a landlord to set a new rent above the 4% limit for a property in a designated RPZ. Threshold has suggested that *"in the absence of a definition of "substantial change" the measure was used to justify large rent increases where the property had not undergone significant alteration. Threshold's experience would suggest that abuse of this section is a significant issue."* However, the charity continues to have reservations about the exemption (as amended) and has called for *"clear limitations and robust criteria... to ensure the impact of this amendment is robust."* Threshold also notes that *"without a verification and approval process it is unlikely that invalid rent increases will be prevented on this basis and recommend that landlords are required to submit a request for such an exemption in advance of the work taking place and approval given or denied on inspection of the completed works."*

The provision of the Bill which caused Threshold particular concern relates to changes of notice periods for invalid termination notices. Threshold describes this section of the Bill as *"imprecisely drafted and therefore ripe for abuse and may also lead to an increase in people presenting as homeless having failed to secure alternative accommodation in the period allowed."*

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<sup>56</sup> Residential Landlord's Association of Ireland (RLAI) website [http://www.rlai.ie/index.php#top2\\_modules](http://www.rlai.ie/index.php#top2_modules)  
Accessed 17 January 2019

<sup>57</sup> *Ibid.*

<sup>58</sup> In correspondence with the L&RS.

Finally, Threshold expressed disappointment the Bill does not make provision for a *‘dwelling specific Rent Register.’* *“Without accurate information new tenants are unable to determine the legally permitted rent and therefore are unable to enter into a contract with the landlord as an informed consumer. Without this knowledge, they are unable to assert their rights to challenge an illegal increase and RPZ legislation is undermined.”*<sup>59</sup>

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<sup>59</sup> [www.threshold.ie](http://www.threshold.ie) ; In correspondence with L&RS.





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