



L&RS Note

Private Rental Sector: a comparative study

Roni Buckley, Parliamentary Researcher, Law

Abstract

This Note provides a comparative analysis of the private rental sector across select European countries and Australia. It contains an analysis of European Convention protections of property rights and the balance that must be struck between a State's interference with freedom of contract in the private rental sector (PRS) and procedural safeguards to ensure rent regulation impact on landlords is not arbitrary. Finally, it sets out a comparative analysis of the history behind the PRS and current legislative provisions for rent setting and dispute resolution. This Note should be read in conjunction with the [Bill Digest on Residential Tenancies \(Amendment\) \(No.2\) Bill 2018](#).



12 January 2019

Contents

Glossary	1
Introduction.....	2
European Convention on Human Rights.....	2
Comparative Study of PRS.....	4
Ireland	4
Germany	5
The Netherlands.....	8
Finland	9
United Kingdom.....	10
Australia	13
Appendix	18

This L&RS Note may be cited as:

Oireachtas Library & Research Service, 2018, *L&RS Note: Private Rental Sector: an international comparative study*.

Legal Disclaimer

No liability is accepted to any person arising out of any reliance on the contents of this paper. Nothing herein constitutes professional advice of any kind. This document contains a general summary of developments and is not complete or definitive. It has been prepared for distribution to Members to aid them in their parliamentary duties. Some papers, such as Bill Digests are prepared at very short notice. They are produced in the time available between the publication of a Bill and its scheduling for second stage debate. Authors are available to discuss the contents of these papers with Members and their staff but not with members of the general public.

Glossary

Acronym	Explanation
ACAT	Australian Capital Territory Civil and Administrative Tribunal
ADR	Alternative Dispute Resolution
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
Part 4 Tenancy	A fixed term tenancy is a tenancy that lasts for a specific amount of time as set out in your tenancy agreement or lease. 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 5.5 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
QCAT	Queensland Civil and Administrative Tribunal
RPZ	Rent Pressure Zone
RTA	Queensland Residential Tenancy Authority
RTB	Residential Tenancies Board

Introduction

This Note is intended as an accompaniment to the [Bill Digest on Residential Tenancies \(Amendment\) \(No.2\) Bill 2018](#). The [Residential Tenancies Act 2004](#) was intended to provide reform of residential landlord and tenant law in the mainstream private rented sector. Some of the main provisions of the Act are:

- The obligations that both tenants and landlords must abide by;
- The regulation of rents;
- Security of tenure based on 4 year cycles;
- Conditions for tenancy termination;
- Registration of tenancy details with the Private Residential Tenancies Board and use of that information for analysis;
- Placing the Private Residential Tenancies Board (now referred to as the Residential Tenancies Board (RTB)) on a statutory footing. The [RTB](#) is a public body set up to regulate the rental sector. It provides information to landlords and tenants in the private rental sector and monitors trends by gathering data.

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.

This Note provides an international perspective on the private rental sector and the dispute resolutions available in other jurisdictions.

European Convention on Human Rights

The European Convention on Human Rights (ECHR) provides for the protection of property and permits the State to regulate, by law, the exercise of property rights in the public interest. Article 8 and Article 1 of the first protocol are the most relevant articles when considering property rights:

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

The ECHR was incorporated into Irish law by the [European Convention on Human Rights Act 2003](#). When a case has been brought before the European Court of Human Rights (ECtHR) and the applicant alleges that domestic legislation providing for the regulation of rents amounts to a 'deprivation of possessions' the ECtHR has examined these complaints having regard to the following:

- a) The lawfulness of the impugned measures;
- b) The pursuit of a legitimate aim in the general interest;
- c) The achievement of a 'fair balance'.

The jurisprudence of the ECtHR demonstrates that interference with rights protected by the Convention is only authorised where it is in accordance with the law and is necessary in a democratic society and is proportionate to the aim sought. The ECtHR has consistently held that there must be a reasonable relation of proportionality between the means employed by the State and the legitimate aim that is sought to be realised.¹ The ECtHR will therefore conduct an overall examination of the various competing interests and ascertain whether the operation of rent regulation measures imposes a disproportionate and excessive burden on the individual concerned. This assessment will generally involve a consideration of a number of factors, which include the extent of the State's interference with freedom of contract in the private rented sector, as well as the existence of procedural safeguards to ensure that rent regulation and its impact on the private property rights of landlords is arbitrary.

In the case of [Hutten-Czapska v Poland](#)² the ECtHR found that there had been a violation of the landlord's property rights arising from the combined effect of defective provisions relating to the determination of rent, the restrictions in relation to the termination of leases, the financial burdens placed on them by statute and the absence of any mechanism whereby landlords could offset expenses incurred in maintaining or repairing the rented property. In [Bittó v Slovakia](#)³ the applicant landlords argued that the relevant rent regulation scheme amounted to an interference with their private property rights because it prevented them from freely negotiating the level of rent in respect of the properties and made the termination of tenancies contingent upon them providing the tenants with adequate alternative accommodation. The ECtHR was satisfied that the interference was lawful within the meaning of Article 1 of Protocol No. 1 and that the measures concerned pursued a legitimate aim of social policy 'in accordance with the general interest'. However, the Court held the rent regulations did not present a proportionate interference with the private property rights of landlords because they did not strike a fair balance between the general interests of the community and the protection of the applicant's right to private property, including the right to derive profit from their property.

The European Courts therefore allow legislation which regulates rent but require that it must achieve a balance between the rights and interests of landlords and those of the community at large. Such legislative measures must therefore impair the constitutionally protected right to private property as little as possible and their effect on such rights must be proportionate to the objective sought to be obtained.⁴

¹ Threshold, (2015) "[Legislative Proposals for the introduction of Rent Certainty Measures](#)", para 17.

² Application no. [35014/97](#) (19 June 2006).

³ Application no. [30255/09](#) (28 April 2014).

⁴ Threshold (2015), *supra* note 1, paras 21-23.

Comparative Study of PRS

Regulation of PRS in other jurisdictions

This section provides a comparative analysis of legislative and policy developments as well as dispute resolution provisions within the private rental sector across select European and Australian jurisdictions. See Appendix for comparative summary table.

Ireland

The number of households in residential rental accommodation has grown significantly in Ireland in the last 20 years. It has increased threefold between 2000 and 2018 and now accounts for almost one fifth of all Irish households.⁵ As the number of people renting in the PRS has risen in Ireland rents have also increased nationwide for the 25th consecutive quarter. Rents charged in Ireland are almost 30% higher than their peak in 2008.⁶

Box 1: History of Private Rental Sector in Ireland

Following the 1801 Act of Union⁷ Dublin city fell into gradual decline and by the end of the century a third of the population were living in one-room tenement slums. In 1860 the [Landlord and Tenant Law Amendment Act Ireland 1860](#), also known as Deasy's Act, was passed which gave the landlord the power to eject tenants for breach of contract. After Independence in Ireland local authority housing schemes were set up whereby housing stock was built by the State. Between the 1940s and 1970s the size of the private rental sector shrank from approximately 25% of all homes to just over 10%.⁸ After the first World War temporary rent controls were introduced to limit rent increases caused by major shortages in housing. The [Rent Restrictions Act 1960](#) was introduced to lift controls on the majority of rented homes. A legal challenge by a number of landlords in the case of [Blake & Ors v Attorney General](#) resulted in a Supreme Court ruling that rent control was unconstitutional. 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. During the 1990s and 2000s an economic upturn contributed to escalating house prices, a surge in construction and increases in rent for private accommodation. The [Residential Tenancies Act 2004](#) sought to modernise and professionalise the sector by introducing longer security of tenure and a dispute resolution mechanism.

Rent pressure zones are designated areas where rent can only be increased by 4% a year. They were brought about as a part of the Rent Predictability Measure which was introduced by the [Planning and Development \(Housing\) and Residential Tenancies Act 2016](#) and took effect from 24 December 2016. They are focused on areas where rents are highest and rising. They are intended to moderate the rise in rents in these areas and create a stable and sustainable rental market. 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

⁵ O'Sullivan, P. & McGuckin, R. (2018) "[The Private Rented Sector in Ireland](#)" [AIB Real Estate Finance](#)".

⁶ Daft.ie 2018 [Q3 rental report](#).

⁷ **Act of Union**, (Jan. 1, 1801), legislative agreement uniting Great Britain (England and Scotland) and [Ireland](#) under the name of the [United Kingdom](#) of Great Britain and Ireland.

⁸ O'Brien, C. (2015) "[A short history of renting in Ireland](#)" [Irish Times](#).

six months of the tenancy was for continuous occupation. This entitlement is referred to as a “**Part 4 Tenancy**”.

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;⁹ 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;¹⁰ 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 members of the Dispute Resolution Committee, will hear the dispute and make a decision based on the evidence before it.

See the [Bill Digest: Residential Tenancies \(Amendment\) \(No.2\) Bill 2018](#) for further information on the PRS in Ireland.

Germany

Germany has one of the largest rental sectors in all OECD countries and the private rental sector (PRS) comprises 41% of the housing stock.¹¹ Renting is considered a secure and long-term option for many households in Germany.

⁹ See [Residential Tenancies Board website](#).

¹⁰ *Ibid.*

¹¹ de Boer, R. & Bitetti R. (2014) “[A Revival of the Private Rental Sector of the Housing Market?: Lessons from Germany, Finland, the Czech Republic and the Netherlands](#)” *OECD Economics Department Working Papers*, No. 1170 (OECD Publishing: Paris) p.15.

Box 2: History of Private Rental Sector in Germany¹²

After the Second World War a shortage of dwellings constituted one of the major problems facing the country and so was considered an issue of national importance. What was created in response was a well-functioning system of social housing and a market-orientated housing supply. The whole of society was the target group, as opposed to any particularly disadvantaged class of people. In 1950 and 1956 legislation was passed for the promotion of social housing by making public funds available for the construction of rented housing for anybody wishing to invest. After a period of time these dwellings moved into the private rental market. Due to this privatisation process, the broad availability of private rental housing came into existence and remains characteristic for Germany. The promotion of adequate housing was a common effort by the Federal Government (*Bundesregierung*), States (*Länder*) and Municipalities under the auspices of the Federal State (*Bund*).

Germany's PRS has combined protective regulation comprised of strong contract protection and rent control, with extensive tax incentives for new construction of rental housing. The basis of the German system of rent price formation for new contracts is known as '*Mietspiegel*'. This is a mechanism through which the level of rent that can be charged is determined. The *mietspiegel* is a database of all the rents in a local area. It keeps track of all the agreed rents in a region for the preceding four years. Landlords use this database to determine an appropriate rent for their property by referencing the average rent for dwellings of comparable size, quality and location (the 'reference rent'). Accordingly, the rent may not exceed 10% of the reference rent in the locality. During the tenancy the rent may only be increased once every 12 months using the reference rent. The rent may not be raised more than 20% over three years.¹³ This rental regulation strikes a balance between the interests of tenants and landlords because the landlords have acceptable yields and tenants' rights are well protected.¹⁴ Newly constructed dwellings are exempt from this regulation but a rent increase of no more than 20% of the rent reference is permitted.¹⁵ There are also tax deductions for landlords by providing for depreciation allowances, mortgage interest tax relief, deduction of maintenance costs and the possibility to deduct losses from the income tax base.¹⁶

However, recent changes¹⁷ to rent regulations, which prevent new contracts from charging rents in excess of 10% of 'reference' rents in the local rental market, have been criticised in some academic quarters.¹⁸ Databases of representative rents (or 'reference rents') vary from municipality to municipality. In a 2016 article featured in the *International Journal of Housing Policy*, Deschermeier *et.al*, examine the databases used in two German cities, namely Cologne and Berlin. Cologne uses a 'simple' database of representative rents while Berlin takes a more 'sophisticated' approach using a 'qualified' rent index. The authors argue both are largely inaccurate and "*neither provide a sound*

¹² Cornelius, J. & Rzezniak, J. (2013) "[Tenancy Law and Housing Policy in Multi-level Europe: National Report for Germany](#)", pp.3-4. Report funded by the European Union's Seventh Framework Programme.

¹³ Tenants Victoria (2016), "[Affordable rents: what we can learn from Germany](#)" information featured in the [Condition Report 2016](#).

¹⁴ de Boer & Bitetti (2014), *supra* note 11, p.15.

¹⁵ Tenants Victoria (2016), *supra* note 13.

¹⁶ de Boer & Bitetti (2014), *supra* note 11, p.15.

¹⁷ Since 2016

¹⁸ Deschermeier, P. *et.al.*, (2016) '[A first analysis of the new German rent regulation](#)', *International Journal of Housing Policy*, (vol.16, no.3) pp.293-315.

*basis for the new rent control.*¹⁹ The article notes that the new law was initially challenged as being incompatible with the property rights enshrined in Germany's constitution.

Deschermeier *et.al*, engaged in a “*speculative exercise*” to ascertain the likely impact of the new rent controls on properties in both cities. They argued that if the tables of representative rents are inaccurate, they will define rents which are significantly below market levels, effectively resulting in a rental freeze, rather than achieving the intended outcome of limiting rent increases. The authors postulate that rent controls will have a negative impact on the rental sector in Germany going forward.²⁰

Ultimately, the new rent controls will thus achieve the opposite of what they were intended to do, because they will frustrate the interests of tenants. The supply of rented accommodation will diminish while demand will actually increase still further as rent controls suggest that renting is affordable.

Dispute Resolution

The competency for litigation of private tenancy law lies with the civil courts. Conflicts arising from residential tenancies are dealt with in the local courts.²¹ Where the dispute is for an amount less than €750 it is compulsory in some *Länder* to undertake pre-trial mediation. If this is unsuccessful the case may be submitted to the ordinary courts. The court of first instance, in the case of residential tenancy disputes, is the local court. Legal representation is not necessary for hearings before this court. An appeal against the judgement of the first instance is admissible if the value of the dispute exceeds €600 or if the local court permits an appeal because of the fundamental importance of the matter in developing the law.²² The regional court is the court of second instance and checks the judgement of the local court for infringements as well as accuracy of its findings. An appeal against the second judgement is possible where the regional court agrees of the Federal Court of Justice (*Bundesgerichtshof*, BGH) grants an appeal.²³ The BGH reviews the judgement solely for infringements or questions of law based on the argument that the appeal shall serve to develop the law and protect legal uniformity. A case can ‘leap-frog’ from the court of first instance to the BGH where it is of fundamental significance or contributes to the development of the law.²⁴

¹⁹ Deschermeier, P. *et.al.*, (2016), *supra* note 18, p. 298.

²⁰ Deschermeier, P. *et.al.*, (2016), *supra* note 18, p. 312.

²¹ Section 23 of the [Courts Constitution Act 1975](#).

²² de Boer & Bitetti (2014), *supra* note 11, pp.98-99.

²³ *Ibid.*

²⁴ *Ibid.*

The Netherlands

The Dutch housing sector has a dual structure: an owner occupier sector (59%) and the rental sector (41%).²⁶ The PRS makes up only 23% of the rental market and 10% of the total dwellings.

Box 3: History of Private Rental Sector in the Netherlands²⁵

Tenancy law in the Netherlands stems mainly from the war eras. During the First World War the Dutch suffered from an economic crisis and a shortage of dwellings; the Government introduced a freeze on rents in response. After WWI the statute expired and the limits on price increases were lifted. Similarly, during WW2 rent prices were frozen but afterwards a more flexible regime was introduced. In 1950 a new system of tenancy law was introduced by way of the Lease Act (*Huurwet*). This legislation was introduced to protect tenants during a time of severe shortage of dwellings. The Lease Act regulated the prices, notice and the end of the contract. In 1979 the Civil Code replaced the Lease Act in regulating tenancy dwellings. Statutory approaches in the Netherlands were developed with the aim of protecting the weaker party to the contract, the tenant.

Dutch tenancy law is extensively regulated in the Dutch Civil Code and is characterised with a strong sense of protection for tenants. Most of the rules around tenancy are semi-obligatory in nature, meaning that the parties cannot deviate from the provisions where it would be to the detriment of the tenant.²⁷ Another major characteristic of Dutch tenancy law is that a contract does not necessarily end based on the terms of the contract. A landlord cannot terminate a lease agreement solely based on the grounds that the period named in the contract has expired; a tenant, however, can usually terminate the agreement with one month's notice. The Civil Code applies a rule known as the 'ill-reliance-doctrine'. This means that a contract can only be closed when both parties have a legitimate reason to trust that the other party is terminating the contract on terms that they understood to be true.²⁸ Another element of Dutch tenancy law is that it uses an obligatory price regime to set rent increases. The applicability of the regime does not depend on the nature of the landlord (for instance, it does not matter if the landlord is professional-non-professional or housing corporation), instead it is based on the characteristics of the dwelling. Dwellings that come within this regime are subject to yearly maximum percentages of rent-increase, set by the Minister. For dwellings that do not fall within this category there are no specific rules to determine price, except that the rent can only be increased once per year.²⁹

Dutch tenancy policies have led to a rental sector that is large in international comparison and of good quality and with a low degree of social segregation. However, on the other-hand, there are inefficiencies in the system, such as the lock-in effects from tenancy contracts and many tenants on higher incomes living in social housing.³⁰

²⁵ Haffner, M., van der Veen, M. & Bounjouh, H. (2014) "[Tenancy Law and Housing Policy in Multi-level Europe: National Report for the Netherlands](#)", pp.60-61. Report funded by the European Union's Seventh Framework Programme.

²⁶ de Boer & Bitetti (2014), *supra* note 11, p.17.

²⁷ *Ibid*, p.63.

²⁸ *Ibid*, p.65.

²⁹ *Ibid*, p.63.

³⁰ de Boer & Bitetti, *supra* note 11, p.18.

Dispute Resolution

Where a dispute arises it can be brought before the Rent Tribunal (*Huurcommissie*). Disputes about rent levels, maintenance or service charges can be submitted to the Rent Tribunal. The Tribunal is a national, independent and impartial agency which can mediate and adjudicate on disputes between tenants and landlords. It does not deal with nuisance, housing benefit and business/office accommodation.³¹ The Tribunal is an Alternative Dispute Resolution (ADR) service. It provides information, mediation and arbitration.³² The ruling of the Tribunal is binding for both parties. An appeal is available to the Dutch courts.³³ Some municipalities and community centres in various cities have created “rent-teams” as an interim step before going to the Tribunal. These teams provide aid in disputes regarding rent. The teams are more accessible than the Rent Tribunal. Their service is free of cost and commitments.³⁴

Finland

The Finnish housing market is considered to operate well with 65% of households being owner-occupied, 4% in cooperative living, 17% in the private rental sector and 14% social housing.³⁵ The most important reform within the rental housing sector was the abolition of strict rent control regulations in the beginning of the 1990s. The complete reduction of rent price controls on the 1990s had important repercussions for the PRS. Finland transitioned from being a highly regulated rental regime to a very liberal one.³⁶ This was in an effort to bring more rental apartments into the market in the aftermath of an economic crisis and housing market bubble. **Since the reform Finland has no legal limits for initial rents or annual rent increases in the PRS. Consequently there is complete contractual freedom in Finland and tenancy security has been reduced.** The deregulation of PRS was successful in that it increased PRS dwelling supply from 12% of the housing stock in 1990 to 17% of the stock by 2012.³⁷

In terms of rent increases, the landlord may not unilaterally increase the rent unless the grounds for rent increase have been agreed in the contract. Before amending the rent price, the tenant must be notified in writing of when the increase will take effect.³⁸ Guidelines, known as ‘Fair Rental Practices’ do exist which recommend that any negotiations around rent increases must be initiated at least six months prior to introduction and should be reasonable. In addition, the guidelines set out that increases must not exceed 15% per year, except in situations where extensive renovations are being made to improve the property.³⁹

Dispute Resolution

Where tenancy disputes occur the general courts have jurisdiction. The courts can examine whether rent is reasonable. At a tenant’s request the courts may reduce the rent or alter a stipulation on

³¹ Government of the Netherlands “[Rented Housing](#)”.

³² *Ibid.*

³³ Dutch Student Union “[Rent Tribunal](#)”.

³⁴ *Ibid.*

³⁵ de Boer & Bitetti, *supra* note 11, p.16.

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ Ralli, T. (2014) “[Tenancy Law and Housing Policy in Multi-level Europe: Tenant’s Rights Brochure for Finland](#)”, p.15. Report funded by the European Union’s Seventh Framework Programme.

³⁹ *Ibid.*

determining the rent if it significantly exceeds the current market rate charged in the area for similar property.⁴⁰ Prior to 2002 there were ten general courts which had a special housing court division. These courts were wound up in 2002 and from 2007 the Consumer Disputes Board has handled disputes concerning rental housing. The Board gives recommendations to resolve disputes concerning rental housing when the landlords are private landlords.⁴¹

United Kingdom

England

Box 4: History of the Private Rental Sector in England⁴²

Rent controls were first introduced in England during WWI to prevent landlords from profiteering as a result of a shortage in housing supply. Rent controls were gradually relaxed during the interwar years, but were fully restored in 1939 with the onset of WWII. The 1965 Rent Act heralded a move away from rent control toward rent regulation, with long term security of tenure and 'fair rents' assessed by independent Rent Officers. It was expected that rent regulation would allow rents to be determined by the market. Disputes between tenants and landlords could be referred to the Rent Officer Service. The Housing Act 1988 brought an end to rent regulation in England and Wales.

Since January 1989 most new private lettings have been assured or assured shorthold tenancies, for which full market rents may be charged (not subject to any rent regulation). Tenants have limited rights to refer disputes relating to rent increases to a [Tribunal](#). In the intervening years since the introduction of the Housing Act, an attitude to rent regulation as "*too much red tape*"⁴³ has prevailed. However one of the concerns about the removal of rent regulation was the impact of rising rent levels on Housing Benefit (HB) expenditure. This concern was borne out in a 2013 report by England's Department for Work and Pensions which found that private sector rent (eligible for HB) had grown by 45% in the ten years leading up to 2011. Almost £3 billion of HB expenditure in the private sector for that year could be attributed to rent increases in the previous decade. In an effort to curtail these 'ballooning' payments a freeze was placed on HB payments. However, this has resulted in greater hardship for lower income households attempting to access the PRS. Some stakeholders have suggested that alternative approaches, such as introducing predictable rent increases (as distinct from rent control) may be more effective than restricting entitlement to benefits.⁴⁴

In 2007 the Tenancy Deposit Protection Scheme (TDP) became operational in the UK under the [Housing Act 2004](#) which requires landlords to protect tenants' deposits, failure to do so would result in financial penalties. The aim of the scheme was to ensure:

⁴⁰ *Ibid.*

⁴¹ *Ibid*, pp.19-20.

⁴² Wilson, Wendy (2017), "[A short history of rent control](http://researchbriefings.files.parliament.uk/documents/SN06747/SN06747.pdf)", House of Commons Briefing Paper <http://researchbriefings.files.parliament.uk/documents/SN06747/SN06747.pdf> (Accessed December 4 2018).

⁴³ AHURI International Review (2016).

⁴⁴ Wilson, Wendy (2017) '[Private Rented Housing: The rent control debate](http://researchbriefings.files.parliament.uk/documents/SN06760/SN06760.pdf)' <http://researchbriefings.files.parliament.uk/documents/SN06760/SN06760.pdf> (Accessed December 4 2018).

- a) Good practice in deposit handling, so that when a tenant pays a deposit they can be assured they will get it back;
- b) By assisting with resolution of disputes through and ADR service.⁴⁵

Landlords are required to join the statutory TDP scheme if they take deposits off assured shorthold tenants.⁴⁶ Landlords can choose between one of two schemes:

1. A **custodial scheme**, in which the deposit is held by the scheme. This is free to join and is funded by the interest generated by the deposits;
2. An **insurance-based scheme**, in which the landlord keeps the deposit and pays a fee to the scheme.

Both schemes offer alternative dispute resolution (which is funded by the scheme providers as part of the overall running costs). The ADR only deals with disputes where both tenant and landlord agree to it; however they will deal with a dispute where a landlord refuses to make a decision. The service is independent and authoritative but cannot award compensation. The final decision of the adjudicator is binding on both landlord and tenant and can only be challenged through a court of law.⁴⁷

The [Housing Ombudsman Scheme](#) was established under the [Housing Act 1996](#). The purpose of the Housing Ombudsman Scheme is to enable tenants and other individuals to have complaints about members investigated by a Housing Ombudsman. The Scheme comes into effect on 1 April 2018. The role of the Ombudsman is to resolve disputes involving members of the Scheme, including making awards of compensation or other remedies when appropriate, as well as to support effective landlord-tenant dispute resolution by others.⁴⁸

London

London's PRS is noteworthy for its dramatic growth in the last decade. In 2016, 27% of London households rented privately (up from 16% in 2004). This is compared with 20% of the population nationally. **London is also the only region in England (and Wales) with more households renting privately (776,000), than owner occupied households (690,000).** It is estimated that by 2020, more than 33% of households in London will be living in private rented accommodation.⁴⁹ Similar to the composition of Ireland's PRS, London's PRS is increasingly made up of households with children (285,000 in 2014, compared with 95,000 in 2004). **In fact, the number of children**

⁴⁵ House of Commons Library, (2018) "[Briefing Paper: Tenancy deposit schemes](#)", p.5.

⁴⁶ A tenancy can be an **assured shorthold tenancy** if all of the following apply:

- you're a private landlord or housing association
- the tenancy started on or after 15 January 1989
- the property is your tenants' main accommodation
- you do not live in the property

See "[Tenancy agreements: a guide for landlords \(England and Wales\)](#)", sourced from gov.uk website.

⁴⁷ House of Commons Library (2018), *supra* note 45, p.7.

⁴⁸ Housing Ombudsman Service, (2018) "[The Scheme](#)".

⁴⁹ London Assembly Housing Committee, (2016), p. 9. "[At home with renting: Improving security for London's private renters](#)" (Accessed December 3 2018).
https://www.london.gov.uk/sites/default/files/at_home_with_renting_march_2016.pdf

living in London's PRS has more than tripled, to over half a million.⁵⁰ As in Ireland and particularly in Dublin, rents in London have become unaffordable for many in recent years. In a 2016 report by the London Assembly Housing Committee, renters in London were spending 59% of their income (after benefits) on rent, compared with 38% of income spent by renters living outside of London.

Scotland

The [Private Housing \(Tenancies\) \(Scotland\) Act 2016](#) commenced on 1 December 2017 and introduced the new 'private residential tenancy' (PRT). Its purpose is to improve security, stability and predictability for tenants and provide safeguards for landlords, lenders and investors. The new regime also removes the 'no fault' ground for recovery of possession of property, meaning that there is no specific date on which landlords will be entitled to recover possession of their property. The PRT will continue indefinitely unless the tenant serves notice to leave, or the landlord satisfies one of the grounds for eviction.⁵¹ PRT landlords may review the rent once a year by serving a rent increase notice on the tenant at least three months in advance. The legislation allows landlords to review rent to a market level but also seeks to protect tenants where a landlord seeks to increase rent to a level that pushes the tenant out of the property.⁵² The PRT also allows local authorities to create rent pressure zones (RSZ) which cover a smaller area within a wider local authority area. **The local authority has to show that rents in the area are rising to a level that is too high and are consequently causing issues for tenants. As a result the authority must provide more housing or subsidise the cost of housing.**⁵³ RPZs do not affect the initial setting of rent and landlords can still review annually but will not be able to increase rent beyond 1% of the consumer price index.

Dispute Resolution for England, Scotland and Wales

Where disputes arise around rent or repair issues they can be referred to the [First-tier Tribunal for Scotland \(Housing and Property Chamber\)](#). The policy drivers behind the establishment of Chamber was to offer flexible, proportionate, fair and impartial access to a legal system that assisted parties to present their cases, avoid delays and encourage participation.⁵⁴ The Chamber offers two methods of dispute resolution:

1. **Mediation:** If an agreement is reached it is put in writing and signed by both parties with a timeline for action to be taken. The mediator will write to both parties to ensure they have complied with the agreement. If the agreement is not complied with the case goes to Tribunal with different panel members.

⁵⁰ London Assembly Housing Committee, (2016), ["At home with renting: Improving security for London's private renters"](#) p. 14. (Accessed December 3 2018).
https://www.london.gov.uk/sites/default/files/at_home_with_renting_march_2016.pdf

⁵¹ Murray, J., (2018) ["Dealing with residential tenancies in Scotland"](#). Legal briefing for the In-House Lawyer and Legal 500.

⁵² *Ibid.*

⁵³ *Ibid.*

⁵⁴ Housing Rights, (2017) ["Alternative Dispute Resolution in the Private Rented Sector"](#). Research paper examining the case for the establishment of an independent dispute resolution service for tenants and landlords in Northern Ireland.

2. **Tribunal:** Tribunals are held in community venues in close proximity to the rental property. Before the Tribunal the property is inspected. The Tribunal panel is made up of three members including a legal member, a surveyor and/or housing member.⁵⁵

According to the Housing Rights⁵⁶ [research paper](#) the Chamber has had limited success due to an imbalance of power and the breakdown of relationships.⁵⁷

Australia

There are no national rent controls in Australia. Tenancy law is administered by each State/Territory.

Queensland

Outside of the Northern Territory, Queensland has the highest percentage of renting households.⁵⁸ The initial rent of a tenancy is unregulated and tenants cannot challenge the initial rent. There are no limits to rent increases. **The initial rent is unregulated and tenants cannot contest it.** Rent increases can be introduced once every 12 months and must be notified in writing with at least 2 months notice. There are no limits to rent increases.⁵⁹

Dispute Resolution

If a dispute arises the tenant or landlord can apply to the Residential Tenancy Authority (RTA) to have it resolved. The RTA provides a free, confidential dispute resolution service. An RTA conciliator helps to negotiate an agreement between the parties involved. The dispute can be resolved over the phone, by three-way teleconference or by face-to-face conference. Conciliators do not determine who is right or wrong; instead they make decisions about disputes or enforce the rules and regulations. The process is voluntary and people cannot be compelled to take part. If no resolution is reached, or the matter is unsuitable for conciliation, then an application may be made to the [Queensland Civil and Administrative Tribunal](#) (QCAT). Unless the dispute is urgent applicants cannot apply to the QCAT until they have been through the RTA dispute resolution process.

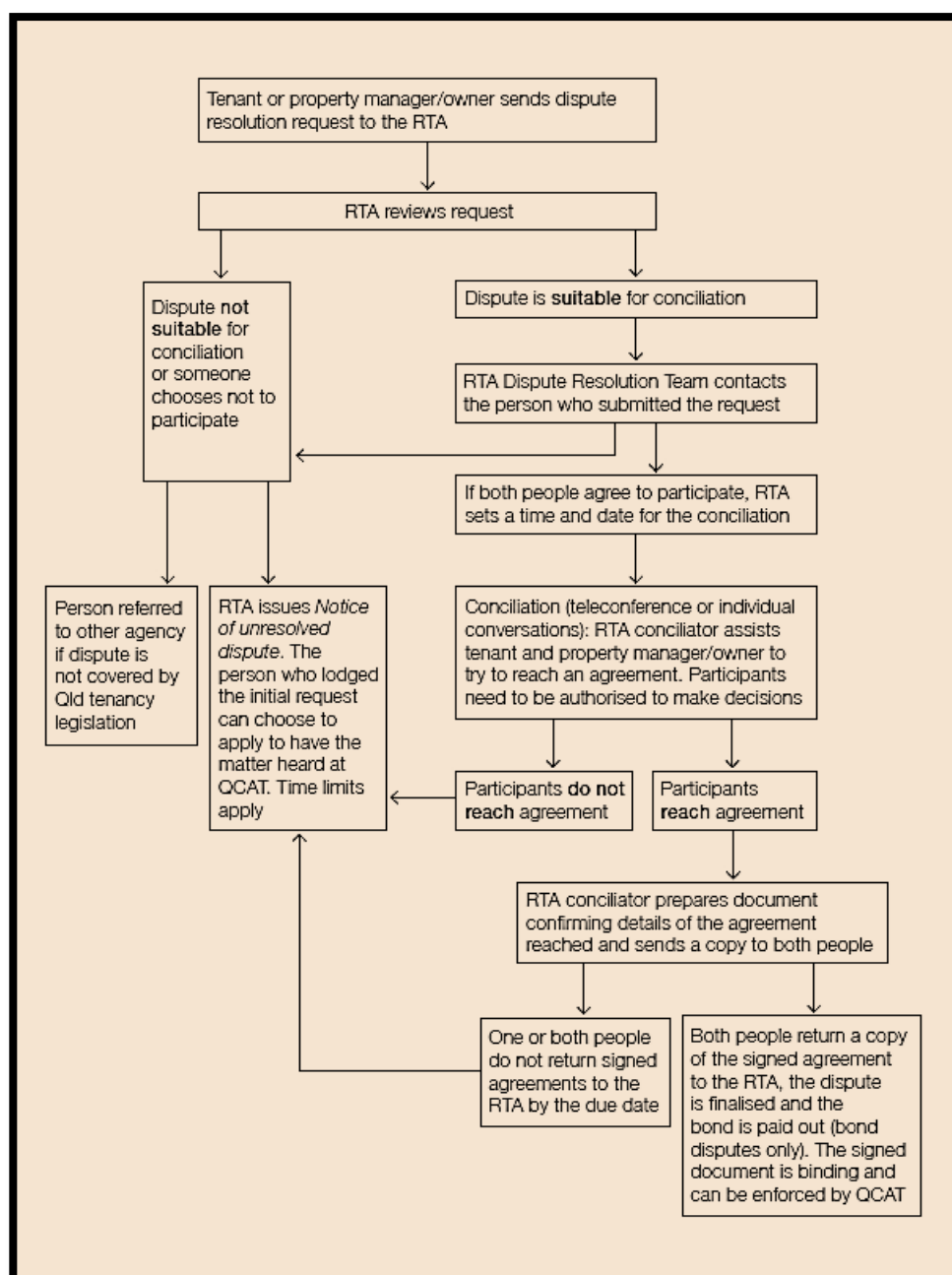
⁵⁵ *Ibid*, p.20.

⁵⁶ Established in 1964 Housing Rights was originally known as Catholic Housing Aid, and then subsequently Belfast Housing Aid. The original aim of the organisation was to help raise a deposit to buy a home for those who couldn't otherwise afford it. It is now recognised as the go-to organisation for anyone experiencing housing issues in Northern Ireland. See [website](#) for further detail.

⁵⁷ Housing Rights (2017), *supra* note 54, p.20.

⁵⁸ International Union of Tenants, (2016) "Rent regulation and security of tenure in the private rental sector", p.12. Reports from IUT members to the 20th congress, Glasgow.

⁵⁹ *Ibid*.

Diagram 1: Resolution Flow Chart Queensland

Source: Residential Tenancies Authority "[Dispute Resolution Process Flow Chart](#)"

Australian Capital Territory (ACT)

In ACT the initial rent is not regulated and there are no legal limits on how much rent a landlord can ask for. However, the rent cannot be increased during a fixed term tenancy (this is where the tenancy is agreed for a specified period of time) unless the amount of the increase is set out in the tenancy agreement.⁶⁰ During a periodic tenancy (this is where the fixed term agreement has expired or no fixed term is specified) the rent may not be increased at intervals of less than 12

⁶⁰ International Union of Tenants, (2016) "Rent regulation and security of tenure in the private rental sector", p. 8. Reports from IUT members to the 20th congress, Glasgow.

months from either the beginning of the tenancy or from the last increase. A landlord must give tenants eight weeks notice of the increase in writing.⁶¹

Dispute Resolution

Where a dispute occurs parties may apply to the [ACT Civil and Administrative Tribunal](#) (ACAT). The Tribunal was set up in 2009 and is an independent body which has exclusive jurisdiction to hear and determine all matters arising from private and public residential tenancy agreements under the [Residential Tenancies Act 1997](#). Either a landlord or tenant can apply to the ACAT about a dispute. The Registrar of the Tribunal may conduct a pre-hearing conference to:

- Define and limit the relevant issues for discussion;
- Ensure that the parties have used all their endeavours to resolve the dispute;
- Actively assist the parties to resolve the dispute;
- Assess the time required for the hearing.⁶²

If the dispute cannot be resolved at the conference the Registrar will then refer it to an ACAT member for consideration. Under [section 55](#) of the [ACT Civil and Administrative Tribunal Act 2008](#) the ACAT may, by order, make a decision without holding a hearing or without completely dealing with an application at a hearing, once the hearing has already begun. A tenant may apply to the ACAT for review of an excessive increase in rent before it is due to take effect. If the increase amounts to less than 20% of the consumer price index (CPI) since the last increase then the obligation is on the tenant to show the Tribunal that the increase is excessive. Where the increase is greater than 20% of CPI then the landlord must satisfy the Tribunal that it is not excessive.⁶³ The Tribunal must consider a number of factors when deciding on such cases, such as:

- The rental rate before the proposed increase;
- If the landlord previously increased the rental rate during the same tenancy;
- The amount of the last increase;
- The state of repair of the premises;
- The value of any work or improvements carried out on the place;
- The rental rates for comparable premises.⁶⁴

The Tribunal has wide ranging powers under the 2008 Act. These powers are specified under Division 6.1 of the Act. The Tribunal has the power to issue an interim order if it believes the party applying for it would suffer a disadvantage if the order was not made. Some orders which the Tribunal issues are:

- ❖ An order terminating a tenancy agreement;
- ❖ An order for payment of rent arrears;
- ❖ An order for stay of eviction;
- ❖ An order for compensation for wrongful eviction; and,
- ❖ An order reducing the rental rate payable.⁶⁵

⁶¹ *Ibid.*

⁶² The Australian Capital Territory Civil and Administrative Tribunal, "[Residential Tenancies Disputes](#)".

⁶³ International Union of Tenants (2016) *supra* note 60, p.8.

⁶⁴ *Ibid.*

⁶⁵ The Australian Capital Territory Civil and Administrative Tribunal, "[Residential Tenancies Disputes](#)".

A party can request written reasons for the decision of the ACAT and may appeal to the ACAT Appeal President on a question of law or fact.⁶⁶ ACAT hearings are open to the public unless there are exceptional reasons and the ACAT is of the opinion that the proceedings should be closed.⁶⁷

New South Wales (NSW)

Similar to Queensland and NSW the initial rent when a tenant moves in is not regulated and there are no legal limitations on how much rent a landlord can ask for. Where a fixed term contract is greater than two year duration the landlord may increase the rent once per year.⁶⁸ There are no limits on rent increases for periodic leases. Rent increases must be in writing with at least 60 days notice.

Dispute Resolution

When a dispute arises parties can apply to the [NSW Civil and Administrative Tribunal](#) (NCAT). Under the [Residential Tenancies Act 2010](#), NCAT can make legally binding and enforceable decisions on a wide range of tenancy disputes such as rental bond, rent increases, unpaid rent, termination of tenancy agreements, compensation, repairs and other breaches of the residential tenancy agreement. When deciding if a rent increase is excessive the NCAT will consider, amongst other things, the following:

- Rents for similar premises in similar areas;
- A landlord's outgoings under the tenancy agreement;
- Any fittings, appliances or other goods, services or facilities provided with the premises;
- The state of repair of the premises;
- The accommodation and amenities provided;
- The amount of the last increase;
- Any work done to the premises.⁶⁹

Victoria

In Victoria, the landlord may not increase the rent more than once in any six-month period or increase the rent before the end date of a fixed-term agreement (of 12 months or more), unless the terms of the lease allow for this. Landlords must give a minimum of 60 days notice of their intention to increase the rent. There are no limits on the amount a landlord may increase the rent. However, if a tenant believes a landlord has increased the rent by an excessive amount (above market value) they can apply to [Consumer Affairs Victoria \(CAV\)](#)⁷⁰ for a rent assessment.

Dispute Resolution

When a dispute arises parties can apply to the [Victoria Civil and Administrative Tribunal](#) (VCAT). Under the [Victorian Civil and Administrative Tribunal Act 1998](#), VCAT can make legally binding and enforceable decisions on a wide range of tenancy disputes such as rental bond, rent increases,

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

⁶⁸ International Union of Tenants (2016) *supra* note 60, p.10.

⁶⁹ *Ibid.*

⁷⁰ <https://www.consumer.vic.gov.au>

unpaid rent, and termination of tenancy agreements, compensation, repairs and other breaches of the residential tenancy agreement.

Appendix

Table 1: Summary of International PRS sector

Country	Tenancy length	Tenancy termination	Rent Control	Landlord registration	Dispute resolution
Ireland	Part 4 Tenancy : entitled to remain for 3.5 years provided the first 6 months were for continuous occupation	After 6 months the landlord can terminate the tenancy in a limited number of circumstances under section 34 of the 2004 Act.	Under the revised 2004 Act rents may only be reviewed once every 24 months. A 90 day notice period is required for rent reviews	Landlord registration of details of all tenancies is mandatory under Part 7 of the 2004 Act. Penalties can be imposed for failure to register.	Part 6 of the 2004 Act provides for a dispute resolution provided by the RTB.
Germany		Landlord may terminate an open-ended tenancy contract, provided he can prove a justified interest . For example, where the tenant breaks contractual agreement; where the landlord needs the premises for himself or his family. See EU Tenancy Brochure for Germany.	Under the ‘Mietspiegel’ system a database of agreed rents in the region for the preceding 4 years is used to determine the appropriate rent. The rent may not exceed 10% of the reference rent in the locality and may only be increased once every 12 months. See EU Tenancy Brochure for Germany.		In some regions PRT disputes must undertake pre-trial mediation. Where this is unsuccessful the dispute is submitted, in the first instance to the ordinary courts , to the regional courts on second instance and finally, it can be appealed to the Federal Court of Justice. See EU Tenancy Brochure for Germany.
Netherlands		The Civil Code rule of ‘ill-reliance-doctrine’ applies whereby the contract can only be closed where both parties have a legitimate reason to trust the other is terminating the contract for valid reasons. See EU	Rent is set using an obligatory price regime based on the characteristics of the dwelling. Rent can only be increased once a year. See EU Tenancy Brochure for The Netherlands.		Huurcommissie (Rent Tribunal) is a national, independent agency that can mediate and adjudicate disputes. It provides an ADR service, information, mediation and arbitration. Its rulings are binding but can be appealed to the Dutch courts. See EU Tenancy Brochure for The Netherlands.

	Tenancy Brochure for The Netherlands.		
Finland	The landlord should notify in writing if s/he is terminating a PRS contract. Although there are no grounds for legal notice laid down in legislation and any reasons will suffice provided they are not contrary to good rental practice. See EU Tenancy Brochure for The Netherlands.	There are no legal limits for initial rent increases, however a landlord may not increase the rent unless it was provided for in the contract. Guidelines set out that increases should not exceed 15% per year. See EU Tenancy Brochure for The Netherlands.	A consumer Disputes Board gives recommendations to resolve disputes. The courts, however, have general jurisdiction. See EU Tenancy Brochure for The Netherlands.
Qld (Aus)		Initial rent is unregulated and cannot be challenged. Rent increases can only be introduced once every 12 months and must be notified in writing 2 months in advance. There are no limits to rent increases	The Residential Tenancy Authority is a voluntary dispute resolution service whereby a conciliator makes decisions or enforces rules and regulations. If a resolution is not reached an application can be made to the Queensland Civil and Administrative Tribunal
ACT (Aus)		Initial rent is not regulated and there are no legal limits. Rent cannot be increased during a fixed term contract and can only be increased once every 12 months for a periodic tenancy.	The ACT Civil and Administrative Tribunal (ACAT) has exclusive jurisdiction over PRS agreements. The Registrar of the Tribunal may conduct a pre-hearing conference. If this is unsuccessful then it can be referred to an ACAT member for consideration. The Tribunal has extensive powers under legislation to issue orders to, for example, terminate a

					tenancy agreement or reduce rent payable.
NSW (Aus)			Initial rents are not regulated and there are no legal limits on how much rent a landlord can ask for. Rents for fixed term contracts of greater than 2 years can only be increased once per year.		The NSW Civil and Administrative Tribunal can make legally binding and enforceable decisions on a wide range of tenancy dispute issues.
United Kingdom	Standard 6 month tenancy length	Typically 30 day notice with no requirement to justify termination	No limitations on how rents are determined	Compulsory licencing of houses of multiple occupation (HMOs); selective licencing of landlords in some local authority areas	Under the Housing Act 2004 schemes were set up to protect tenants' deposits. ADR is available under the schemes. The Housing Ombudsman provides investigation of complaints about tenancies and can provide compensation. In Scotland disputes are referred to the First-tier for Scotland (Housing and Property Chamber) which provides mediation and Tribunal services.

Source: Library and Research Service



Contact:

Houses of the Oireachtas
Leinster House
Kildare Street
Dublin 2
D02 XR20

www.oireachtas.ie
Tel: +353 (0)1 6183000 or 076 1001700
Twitter: @OireachtasNews

Library & Research Service
Tel: +353 (0)1 6184701
Email: library.and.research@oireachtas.ie

Connect with us

