



TENLAW: Tenancy Law and Housing Policy in Multi-level Europe

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1. Housing situation

1.1 General Features

The Tenlaw research project sets out to provide the first large-scale comparative and European law survey of tenancy law.¹ Private tenancy law is existentially affecting the daily lives of Irish citizens, as about one third of them depend on rental housing. This means that the policies and laws concerning rental housing have a tangible impact on the daily lives of a substantial section of the Irish population. However, rental housing is part of a larger housing system and therefore before examining private tenancy law, it is necessary to first place the rental system in context within the Irish housing system. Therefore this research project is divided into two parts; with the first part providing a general overview of the Irish housing system and the second part focused primarily on the role and operation of private tenancy law in Ireland. This report constitutes the first part of this research effort and will begin by setting out some of the general features of the Irish housing situation before describing economic factors, urban and social aspects before detailing key aspects of Irish housing policy. Finally the paper will consider various subsidisation and taxation policies before describing the different regulatory types of rental tenures.

1.2 Historical evolution of the national housing situation and policies

The Irish legal system

The Republic of Ireland is a democratic republic with a common law legal system derived from the English common law tradition. At a mechanical level the Irish common law bears much in common with the English tradition, in that both systems operate through a scheme of legal precedent, so case law figures prominently in legal exposition. This legal system was introduced into Ireland with the Norman invasion of the late twelfth century and as such Ireland is often described as the first adventure of the common law. Initially the common law, and its scheme of property law, failed to take hold. It was not until the seventeenth century and the campaigns of Cromwell that the English common law fully supplanted the native legal system of Brehon law.²

This transition was marked by a period of almost constant conflict regarding land ownership, the main source of economic wealth, giving rise to bitter sectarian and political struggles as vast estates of land were redistributed to those in political favour.³ The victory of Protestant William of Orange over Catholic King James II at the Battle of the Boyne in 1691 led to the introduction of the penal laws during the eighteenth century. These were a series of laws which restricted the property, education, religious and political process rights of Catholics and led to much bitterness and resentment. While there were brief periods which followed where Ireland enjoyed limited sovereignty the 1798 Rebellion led to the Act of Union 1800 by which the Kingdom of Great Britain and the Kingdom of Ireland were amalgamated into the United Kingdom of Great Britain and Ireland. From then until 1922 Ireland was governed directly from Westminster. Given this centralisation of

¹ The law relating to commercial tenancies is not covered in this report.

² Brehon law was the indigenous system of law dating from Celtic times which was largely based on custom which was fully supplanted by the common law in the 17th century.

³ For a general overview see J. Wylie, *Irish Land Law*, (Dublin: Butterworths, 4th edn, 2010) ch. 1.

political authority, much of the development of Irish property law and housing law was inextricably linked to developments taking place in the United Kingdom (UK).

Land reform

There were a variety of features which distinguished Ireland from the rest of the UK and influenced the development of housing in Ireland. In particular, the industrial revolution and rapid urbanisation which took place in England and much of Europe during the eighteenth and nineteenth centuries, failed to materialise in Ireland⁴ which remained a predominantly rural society whose economy was based on agriculture. Under the economic system which prevailed during the eighteenth and nineteenth centuries the ruling class was a small group of, generally Protestant, land owners who leased property to the, generally Catholic, agrarian masses.⁵ The contrast between landlord and tenant was enormous; the average landlord owned approximately 2,000 acres with many landlords possessing estates in excess of 20,000 acres.⁶ The average tenant held on under a yearly lease and their average holding was roughly forty acres with many tenants, particularly on the western seaboard, holding less than fifteen acres, and one to five acres was common.⁷ Landlords often consolidated their authority through exercising political and administrative office in their locality. Living conditions for many tenants were meagre at best with one-roomed dwellings often accommodating multiple generations of the same family. The legal system often served to exacerbate the difficulties facing



tenants in their struggles to achieve security of tenure and affordable rent rates with the most common agricultural lease being the yearly tenancy which could be terminated by six months' notice to quit while rents under this arrangement could be increased each year.⁸

In this environment eviction was a constant threat hanging over the tenants who generally lacked the capital and income necessary to improve their situation.⁹ Indeed, should the tenant farmer improve the condition of their leased property the landlord was entitled to claim any improvements, and ultimately raise the rent. As such, clearances of estates by landlords, while although generally infrequent in practice, where they occurred they were not

⁴ Except in the north of Ireland to some degree.

⁵ The 1851 census recorded that 83 per cent of the population of Ireland lived in the countryside. Of this figure, the tenant farmer households accounted for over half of the rural tenant population. The remainder was made of landless labourers as well as a small group of property owning landowners, of which there were approximately 10,000. This small group of landlords owned most of the land in Ireland. For further discussion see W.E.Vaughan, *Landlords and Tenants in Ireland 1848-1904*, (Dublin, Economic and Social History of Ireland, 1984).

⁶ Respectively (very approximately) 800 and 8000 hectares.

⁷ See D.B. Grigg, *Population growth and agrarian change* (London, Cambridge University Press, 1980), p. 122.

⁸ J. Wylie, *Irish Landlord and Tenant Law* (Dublin: Bloomsbury, 2nd edn, 1998) ch. 1.

⁹ Over 50,000 evictions took place in 1849: J. Kay, *Free Trade in Land* (London: Kegan Paul, 5th edn, 1880), p. 304.

attended with pecuniary loss by the landlord. For the tenants, larger families provided labour but also led to increasing subdivision of estates and resulted in smaller farms, particularly on the Western seaboard. The repeated blight of the potato crop during the 1840s devastated the country and gave rise to famine which combined with emigration and disease resulted in the population of Ireland falling from almost eight million to roughly four million over the following decades.¹⁰

The conditions endured by the overwhelming majority of people laid the foundation for the subsequent movement for political, social and legal reform. The Irish Land League was founded in Straide, Co. Mayo, and began to lobby politically, through mass protests and civil disobedience for fair rent, fixity of tenure and free sale. The League's campaigning resulted in substantial reform of Irish land law as tenants ultimately achieved their goals of fair rent, fixity of tenure and free sale.¹¹ In addition, from 1870 to 1903 the Westminster Parliament pursued a policy of redistribution of land, which allowed qualifying tenants to purchase their holding from their landlord with the aid of financial support from the British Exchequer. These reforms substantially reduced the number of rural renters in what remained a predominantly agricultural society transforming those qualifying tenants into landowners.¹² Reforms aimed at the urban sector did not arrive until well into the 20th century.

Housing law and policy since Irish Independence

The land reforms enacted failed to appease the desire for political independence, and the rebellion of Easter 1916 set in motion the armed struggle which resulted in the partition of Ireland in 1922 into two political entities;¹³ the southern twenty six counties became a Free State with political independence within the dominion of the United Kingdom while the northern six counties of Ireland retained their position within the United Kingdom.¹⁴ Over the following decades the Irish Free State became increasingly sovereign, in 1937 the Irish Constitution, *Bunreacht na hÉireann*, came into force after a popular plebiscite, and in 1948 the Irish Republic was declared. The Constitution enshrines traditional civic and political rights but does not enumerate socio economic rights. Under the Constitution, the right to property receives double protection both as an institution and separately as a personal right. While the Constitution remains the highest authority of law in Ireland accession to the European Economic Community in 1973 introduced the legal principle of supremacy of European Union law into Irish law. In addition, Ireland has been party to the European Convention on Human Rights (ECHR) since 1950, the provisions of which have been enshrined in statute.¹⁵ As such public bodies, including local authorities,

¹⁰ When set against the pre-famine period, the fall in occupied houses appears most dramatic, as in 1841 there were 1,041,719 inhabited houses while by 1851, after the famine, this had fallen to 794,740 inhabited houses.

¹¹ Some of the statutes introduced during this period continue to form the basis for modern tenancy law, the prime example being the Landlord and Tenant (Amendment) (Ireland) Act 1860 which is referred to as Deasy's Act.

¹² Successive Acts of Parliament widened the scope of redistribution and led to widespread uptake of the scheme: Landlord & Tenant (Ireland) Act 1870; Land Law (Ireland) Act 1881; Irish Land (Purchase) Act 1885; (Balfour's) Irish Land Act 1887 and (Wyndham's) Land (Purchase) Act 1903.

¹³ See the image above which has been released into the public domain.

¹⁴ Government of Ireland Act 1920.

¹⁵ European Convention on Human Rights Act 2003.

must act in accordance with the provisions of the ECHR and this has had a significant impact in Ireland, as elsewhere, on property law and housing law.¹⁶

Following independence housing policy was largely centred upon increasing the supply of housing through the use of subsidies available to local authorities and private builders,¹⁷ with local authorities playing a particularly dominant role. Indeed, by 1940 over 40% of the total housing stock had been constructed by local authorities.¹⁸ It was during the latter half of the 20th century that urban housing issues came increasingly to the fore in national housing policy with major slum clearance and regeneration policies launched during the 1960s. From the 1970s onwards there was an increased urbanisation and industrialisation in Ireland and a consequent increase in demand for housing. In response Government policy increasingly turned to the private sector to provide new housing and the direct large scale provision of housing was scaled back.¹⁹

Taxation and subsidisation policy was consistently directed towards promoting home ownership²⁰ and by the 1970s the tenure balance was characterised by a high (ca. 70%) and growing owner occupier sector and a small and declining rented sector (ca 30%). This decline can be traced to the high uptake of the local authority tenant purchase scheme and the general neglect of the private rented sector in housing policy.²¹ During this period the housing market became the main provider of housing in Ireland and local authority construction rates declined. All the while there was an acute housing policy focus on addressing perceived supply side constraints within the Irish housing market during the 1990s and 2000s.²² However the market became over stimulated in the 2000s and after reaching a peak of production in 2007 the housing market collapsed dramatically. Affordability challenges, which characterised the property market in Ireland during the first decade of the twentieth first century, were increasingly expressed through rapid growth in applications for social housing supports and other supplementary social welfare supports (including rent supplement and mortgage interest relief). Since the onset of the economic crisis Irish housing policy has been dramatically reformed with the Housing Policy Statement (2011) laying the blame for the economic crisis in part on the sustained support for the home ownership sector and signalling the policy shift to a tenure neutral approach.

¹⁶ In *Donegan & Gallagher v. Dublin City Council* [2012] IESC 18 the Irish Supreme Court ruled that the power of eviction accorded to local authorities under Housing Act 1966 s. 62 was incompatible with the provisions of the ECHR. This was only the second such declaration of incompatibility since the introduction of the ECHR and marks the growing influence of international law on the Irish legal system and in particular on the Irish housing law.

¹⁷ P. Kenna, *Housing Law Rights and Policy* (Dublin: Clarus Press 2011), p. 37.

¹⁸ *Ibid.*, p. 39.

¹⁹ *Ibid.*, p. 48.

²⁰ NESR Report No. 23, *Report on Housing Subsidies*, p. 13. In addition to the local authority tenant purchase schemes, the subsidies directed towards owner occupation included tax exemption of net imputed rent, mortgage interest relief, reconstruction and repairs grants, exemption from stamp duty, rates remission and exemption from capital gains tax.

²¹ See Part B below.

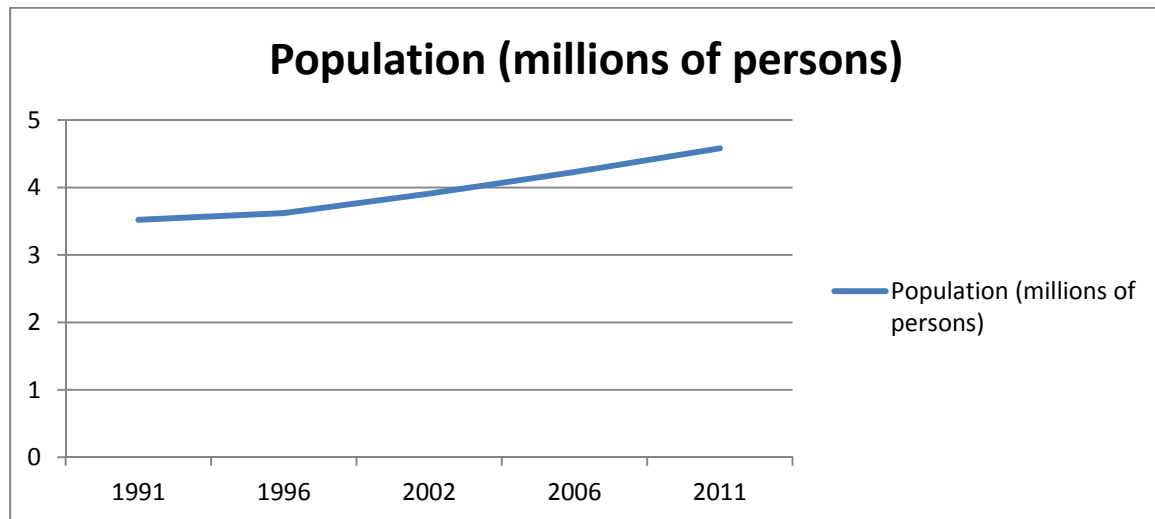
²² Bacon & Assoc., *An Economic Assessment of Recent House Price Developments* (Dublin: Stationery Office, 1998), Bacon and Assocs, *The Housing Market: An Economic Review and Assessment* (Dublin: Stationery Office, 1999), Bacon & Assocs, *Medium Term Projections of the Supply and Demand for Apartments in Dublin City Centre* (Wexford: Peter Bacon & Assocs, 2003), P. Bacon & F. McCabe, *The Housing Market in Ireland: An Economic Evaluation of Trends and Prospects* (Dublin: Stationery Office, 2000).

1.3 Current situation

(1) Population

The Irish population in 2011 is roughly 4.5 million. As the figure illustrates, the numbers living in Ireland underwent strong growth during the last two decades.

Figure 1: Population (millions of persons) Ireland 1991-2011

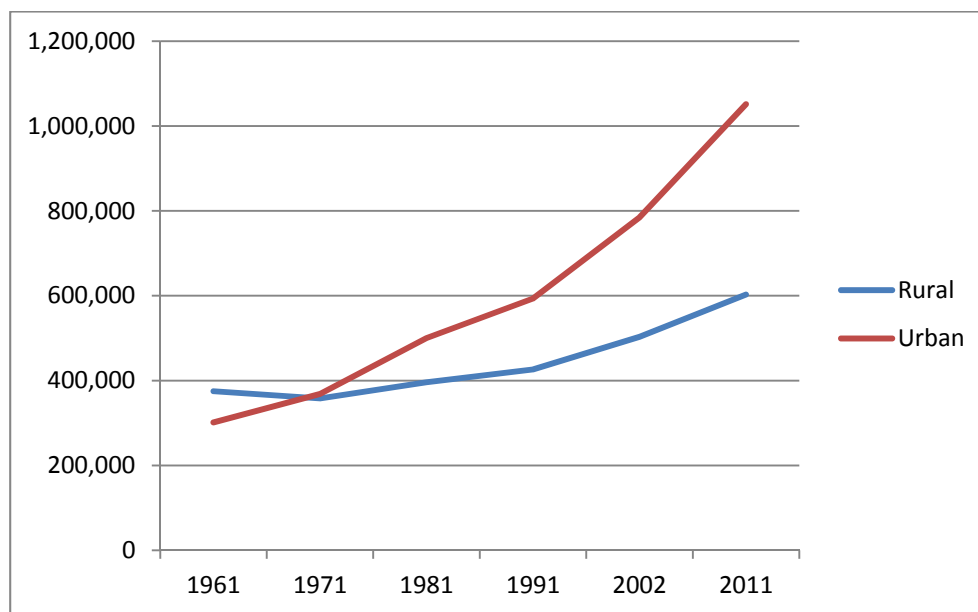


Ireland did not undergo an industrial revolution during the eighteenth and nineteenth centuries compared to that in England, remaining a predominantly rural society. At the time of independence (1922) two thirds of the population of almost three million lived in rural areas. From that time there was a shift towards urban life and a majority of the population have since 1971 been living in urban areas and at present two thirds of households now live in urban areas.²³ A marked divergence exists between housing in urban areas and rural areas in Ireland. Property prices and wages are generally higher in urban centres, particularly Dublin, Cork, Limerick and Galway while both property prices and wages tend to be lower in rural areas.²⁴ Occupancy rates are higher in urban centres, particularly those just mentioned when compared with rural areas and in particular areas along the western seaboard where holiday homes are much more prevalent

²³ Census definition of 'rural' is 'open countryside and towns or villages with a population less than 1,500 people'.

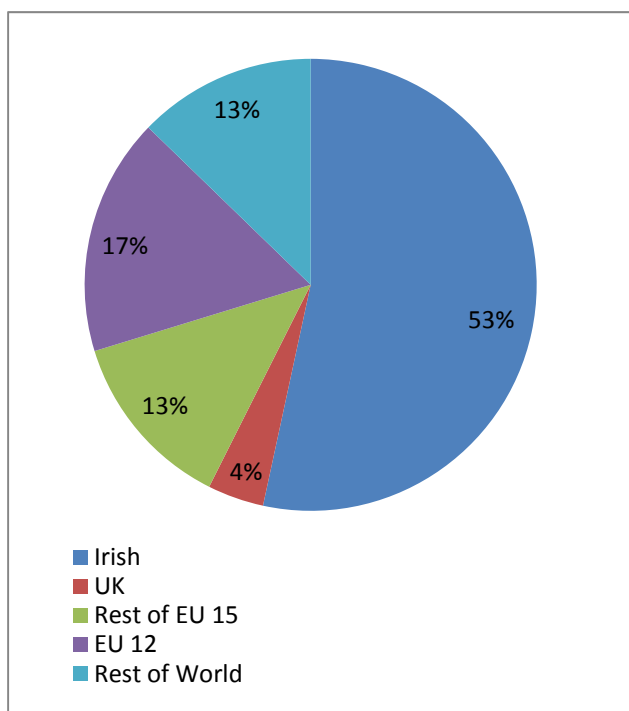
²⁴ Central Statistics Office, county profiles.

Figure 2: Households living in rural/urban area²⁵



(2) Impacts of migration

Figure 3: Migration from Ireland by Nationality of Emigrant (2011)²⁶



Since the famine of the 1840s, emigration became a consistent feature of Irish society. Census 1926 recorded that in the previous fifty years over two million persons had emigrated. Indeed, during the period 1871 to 1961 net migration from Ireland exceeded the natural increase and as a result **Ireland experienced almost continuous** population decline during this period. The vast majority of Ireland's emigrants went to English speaking countries, the United States and the United Kingdom being the primary destinations of choice. More recently, as a result of strong economic growth during the 1990s and 2000s Ireland experienced immigration during this period. Much of the immigration came from the European

Union; in 2002 less than one per cent of the Irish population was born in the rest of the EU (excluding Britain). However by 2011 this figure had risen to almost six per

²⁵ Central Statistics Office, *Census 2011: This is Ireland – Highlights from Census 2011 Part 1* (Dublin, Stationery Office, 2012), p.31.

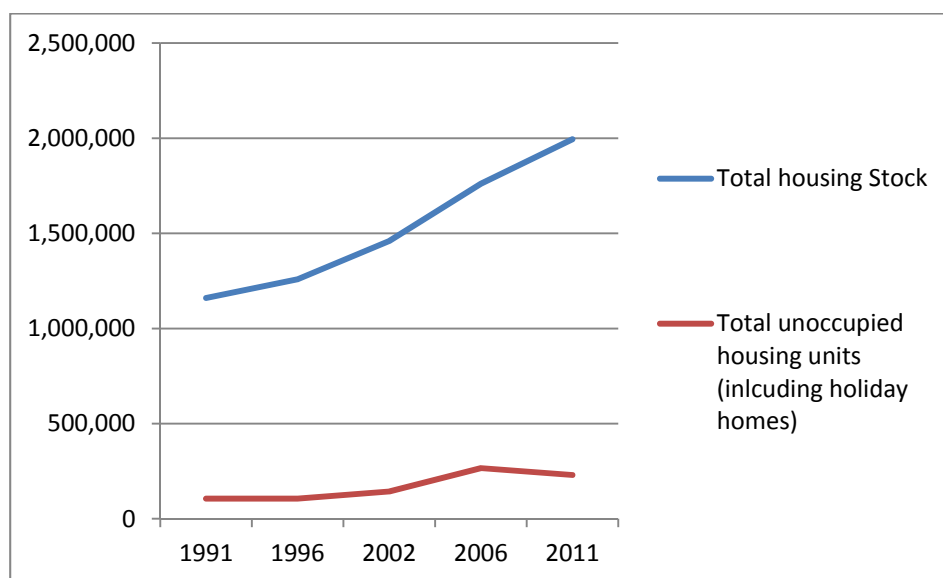
²⁶ *Ibid.*

cent. With the economic crises in 2007 Ireland once more experienced emigration with 89,000 persons leaving in the year to April 2013. Over half of all emigrants were Irish while roughly a third of all others were from the European Union. As with previous generations, English speaking nations remained a primary destination for Irish emigrants with over a fifth leaving for the UK and another third (excluding the UK) leaving for Australia, Canada and the United States.²⁷ The remaining emigrants left for EU nations, with many of these being earlier EU migrants to Ireland returning home.

(3) Housing stock

Since the 1950s, private builders and local authorities increased their activity in the provision of new build housing units with the result that the number of dwellings in Ireland began to increase consistently.²⁸ As the number of housing units increased in Ireland so too did the number of occupied houses albeit at a weaker rate. The graph above indicates the sharp increases in total housing stock during the late 1990s and 2000s. However, during this period there was also a large increase in the number of properties which have remained unoccupied or vacant.

Figure 4: Irish housing stock and vacancy rates 1991-2011²⁹



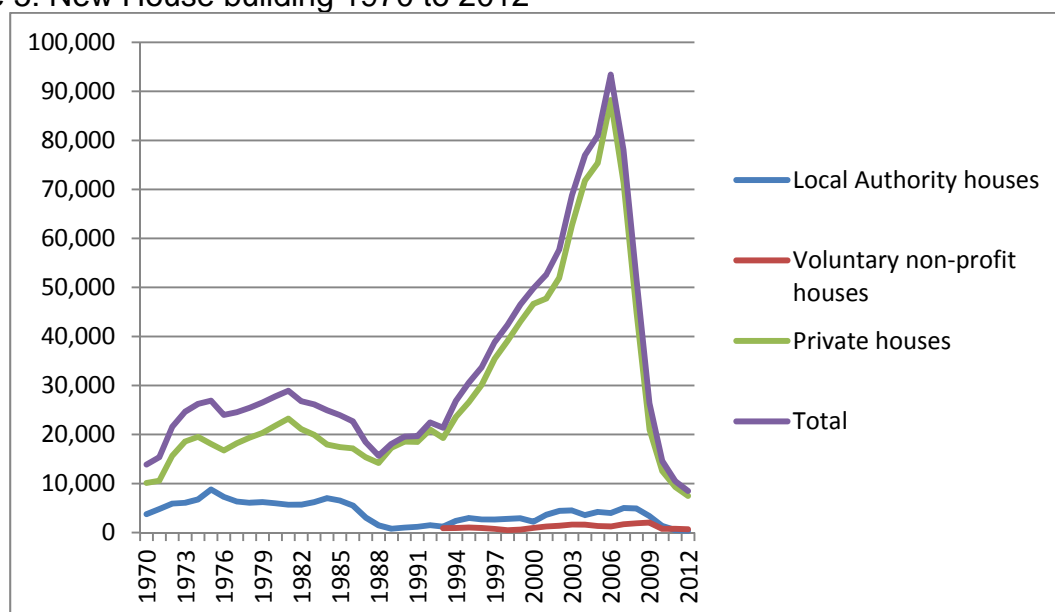
²⁷ Central Statistics Office, Population and Migration Estimates April 2013 (Dublin: Stationery Office, Dublin).

²⁸ M. Norris & N. Winston, *Housing Policy Review 1990-2002* (Dublin, Stationery Office, 2004), p. 13 where Norris estimates that in the period 1930 to 1980 local authority building comprised an average of 20 to 30 per cent of total housing output.

²⁹ Latest House Building and Private Rented Statistics (Dublin: Stationery Office, 2014).

The figure below shows the change in new build housing over the years 1970 to 2012. A number of features are evident. The private sector has been the dominant provider of housing throughout these four decades. There was a huge spike in construction between 1996 (30,000 new units) and 2006 (90,000 new units) to such an extent that a third of all Irish houses were built in that ten year period.³⁰ The graph below does not reveal how many of the private houses became part of the rental sector but between the early 1970s and mid 1980s significant numbers of local authority houses were built, and these constructions directly expanded the size of the rented sector.

Figure 5: New House building 1970 to 2012³¹



(4) Occupancy of rooms per person

In the years following the foundation of the Irish State, primitive housing conditions prevailed across the country as indoor sanitary facilities, running water and electricity services were not generally available. With regard to housing, overcrowding was a familiar feature, as the 1926 census revealed that the average number of persons per room nationally was 1.19 persons, 1.17 persons for urban areas and 1.19 persons for those in rural areas.³² However, over the following hundred years housing conditions across the State improved considerably. By the 1970s most households had indoor sanitary facilities, running water and electricity while the average number of persons per household reduced consistently. By 2011 the average number of persons per room nationally was 0.51 persons, with little difference between urban and rural areas.³³

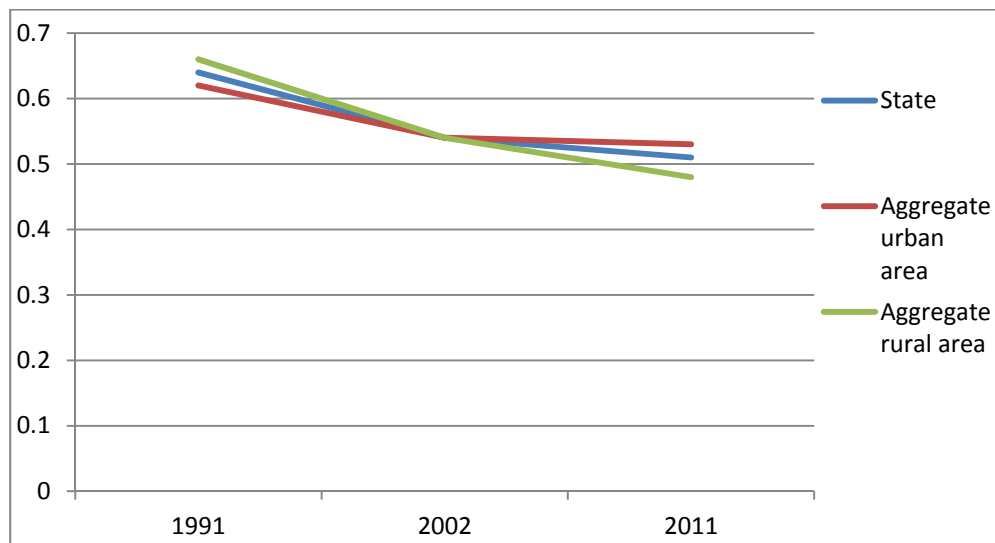
³⁰ Latest House Building and Private Rented Statistics (Dublin: Stationery Office, 2014).

³¹ *Ibid.*

³² Census 1926, Table 1: Persons in Private Families: - Summary table showing housing conditions in counties and country boroughs on 18th April, 1926.

³³ Central Statistics Office, *Census 2011: Profile 4 The Roof over our Heads - Housing in Ireland* (Dublin: Stationery Office, 2011), p. 22.

Figure 6: Average number of persons per room³⁴



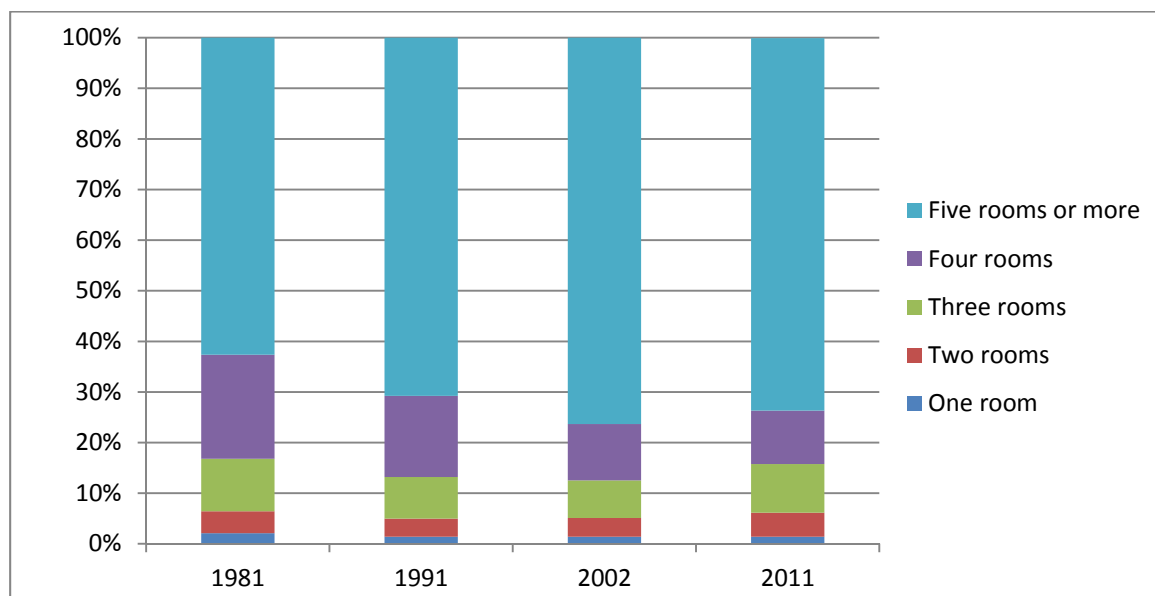
The graphic below details changes in the number of rooms per Irish household from 1991 to 2011. During this period the number of households with five or more rooms increased to almost eighty per cent of all households in 2002 before declining to just above seventy five per cent in 2011. Only 1% of households have to live in a single roomed dwelling and these are no longer available as noted, according to Housing (Standards For Rented Houses) Regulations 2008³⁵ Between 2002 and 2011 the number of households with three rooms or less has increased significantly, rising by approximately sixty per cent. This change is strongly linked to the growth in apartment building over this period.³⁶

³⁴ Various census. See Central Statistics Office, *Census 2011: Profile 4 The Roof over our Heads - Housing in Ireland* (Dublin: Stationery Office, 2011).

³⁵ Housing (Standards for Rented Houses) Regulations 2008 (S.I. No. 534/2008) and Amendment Regulations 2009 (S.I. No. 462/2009).

³⁶ Central Statistics Office, *Census 2011: Profile 4 The Roof over our Heads - Housing in Ireland* (Dublin: Stationery Office, 2011), p. 11.

Figure 7: Number of rooms per household³⁷



The Housing Act 1966 introduced a legal definition of overcrowding.³⁸ This is based on the number of bedrooms in a dwelling and the people in a household who can share a bedroom. This standard sets out that certain groups or individuals require a separate bedroom. Overcrowding occurs where any two persons, being persons of ten years of age or more of opposite sexes and not being persons living together as husband and wife, must sleep in the same room or where the free air space in any room used as a sleeping apartment, for any person is less than four hundred cubic feet.³⁹ The local authority is responsible for enforcement of housing standards and is empowered to serve a notice requiring owners to desist from allowing overcrowding to take place.

(5) Types of dwellings

Ireland's housing stock is distinguished internationally by the high number of detached houses, which are often one-off housing units located in rural areas, and low number of flats or apartments.⁴⁰ Census 2011 revealed that 87% of housing units were houses, whether detached, semi-detached or terraced, while 9% were flats or apartments in a purpose built or converted block. This is in stark contrast to general housing stock trends across the EU where flats or apartments are much more prevalent.⁴¹ The prevalence of detached housing has been a consistent feature of the Irish housing situation over the past one hundred years notwithstanding the marked growth in the number of flats or apartments over the last ten years. Most dwellings built prior to 1919 tend to be either detached houses or terraced houses. The period 1919 to 1970 is notable for the increase in urban dwellings as a

³⁷ Various census. See Central Statistics Office, *Census 2011: Profile 4 The Roof over our Heads - Housing in Ireland* (Dublin: Stationery Office, 2011), p. 11.

³⁸ Housing Act 1966, s. 63.

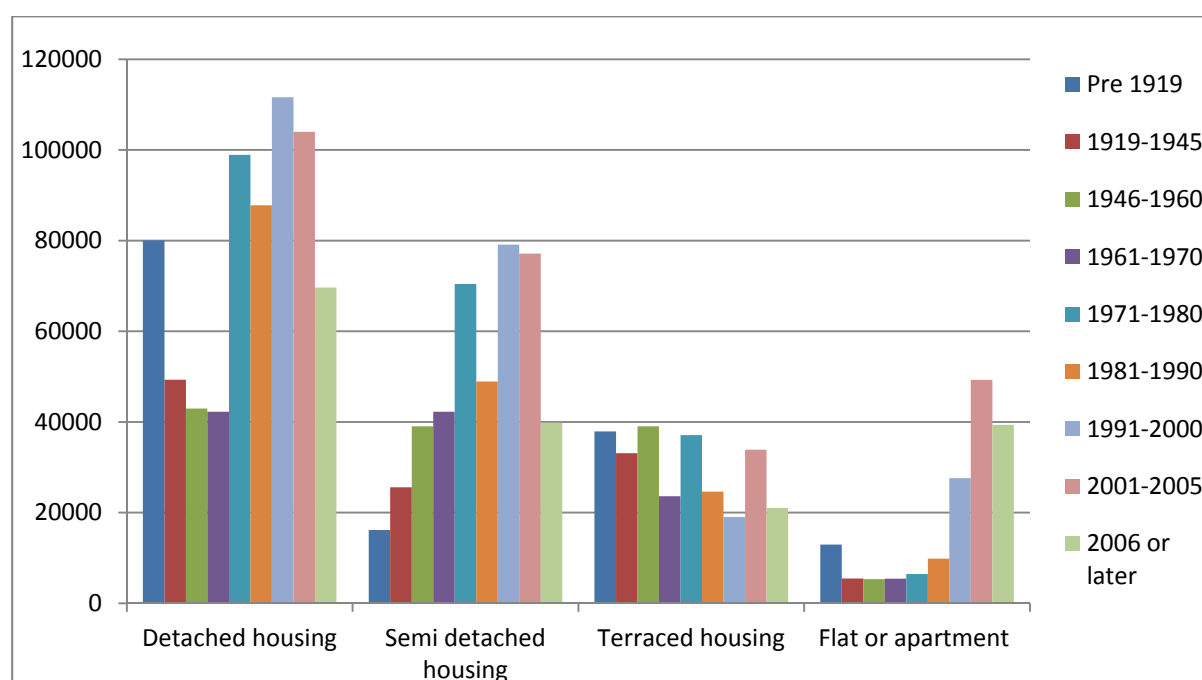
³⁹ The height of the room, if it exceeds eight feet, being taken to be eight feet, for the purpose of calculating free air space.

⁴⁰ Central Statistics Office, *Census 2011: Profile 4 The Roof over our Heads - Housing in Ireland* (Dublin: Stationery Office, 2011) p. 10.

⁴¹ On average detached housing contain 6.3 rooms per households, while flats or apartments contain 2.9 rooms per households.

substantial number of dwellings built during this period are semi-detached and terraced houses. In the period 1970 to 1990 construction of detached and semi-detached houses predominate. The period of economic growth beginning in the 1990s saw two trends, a substantial increase in the proportion of detached housing and a substantial increase in the proportion of flats or apartments as property prices increased nationwide, with the largest increases taking place in urban areas.⁴² From 2002 many apartment buildings were constructed, with a significant increase in the number of private dwellings containing three rooms or less. Much of this construction was been concentrated in urban areas with many urban households living in small flats.⁴³

Figure 8: Dwellings (2011): Period of construction and dwelling type⁴⁴

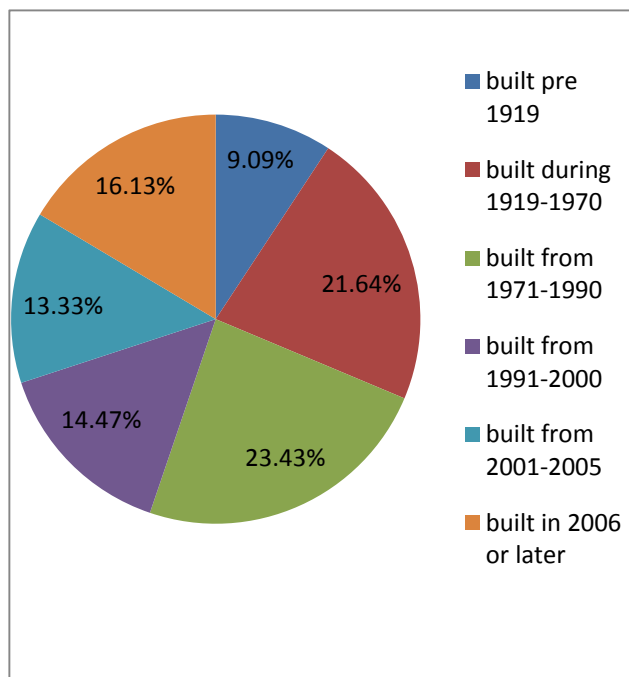


⁴² Central Statistics Office, *Census 2011: Profile 4 The Roof over our Heads - Housing in Ireland* (Dublin: Stationery Office, 2011) p. 10.

⁴³ Central Statistics Office, *Census 2011: Profile 4 The Roof over our Heads - Housing in Ireland* (Dublin: Stationery Office, 2011), p. 11. The number of urban households having three rooms or less increased from 15 per cent in 2002 to 21 per cent in 2011.

⁴⁴ Central Statistics Office, *Census 2011: This is Ireland – Highlights from Census 2011 Part 1* (Dublin, Stationery Office, 2012), p. 109.

Figure 9: Period of Construction of Residential Units 2011⁴⁵



The high rate of construction which took place in the 1990s and 2000s has led to a dramatic increase in the national housing stock. Roughly one third of the national housing stock has been constructed since the turn of the 21st century and just under half of all stock has been constructed since 1991. Less than one in ten households live in dwellings that are over one hundred years old. As such the high levels of housing construction which took place from the 1950s onwards resulted in Ireland having a high proportion of new housing.⁴⁶

(6) Housing Condition

Housing condition is mainly regulated by statute. While the Housing Act 1966 implied a condition into every contract for letting that the house was at the commencement of the tenancy “in all respects reasonably fit for human habitation”,⁴⁷ by far the most important statutory provision regarding housing conditions for rented houses is the statutory provision for the landlords repair and maintenance obligations set out in the Housing (Miscellaneous Provisions) Act 1992 (as amended).⁴⁸ Under section 18 the Minister is empowered to make regulations setting out the standards for houses. The current standards are set out in the Housing (Standards for Rented Houses) Regulations 2008 (as amended).⁴⁹ The regulations mandate that the dwelling must comply with a range of requirements. A dwelling will meet the housing standard if it has:

- been maintained in a proper state of structural repair (this means sound, internally and externally, with roof, roofing tiles and slates, windows, floors, ceilings, walls, stairs, doors, skirting boards, fascia, tiles on any floor, ceiling and wall, gutters, down pipes, fittings, furnishings, gardens and common

⁴⁵ Central Statistics Office, *Census 2011: This is Ireland – Highlights from Census 2011 Part 1* (Dublin, Stationery Office, 2012), p. 109.

⁴⁶ Central Statistics Office, *Census 2011: Profile 4 The Roof over our Heads - Housing in Ireland* (Dublin: Stationery Office, 2011) p. 10.

⁴⁷ Housing Act 1966, s. 114. In *Siney v Dublin Corporation* [1980] I.R. 400 the court held that this provision did not apply to local authority tenancies however such tenancies would be liable in damages for breach of contract due to the implied warranty that housing would be fit for human habitation.

⁴⁸ This was amended by the Housing (Miscellaneous Provisions) Act 2009.

⁴⁹ S.I. No. 534 of 2008. The 2008 Regulations were amended by the Housing (Standards for Rented Houses) (Amendment) Regulations 2009. This is covered in detail in Part 2.2.d below.

areas maintained in good condition and repair and not defective due to dampness or otherwise

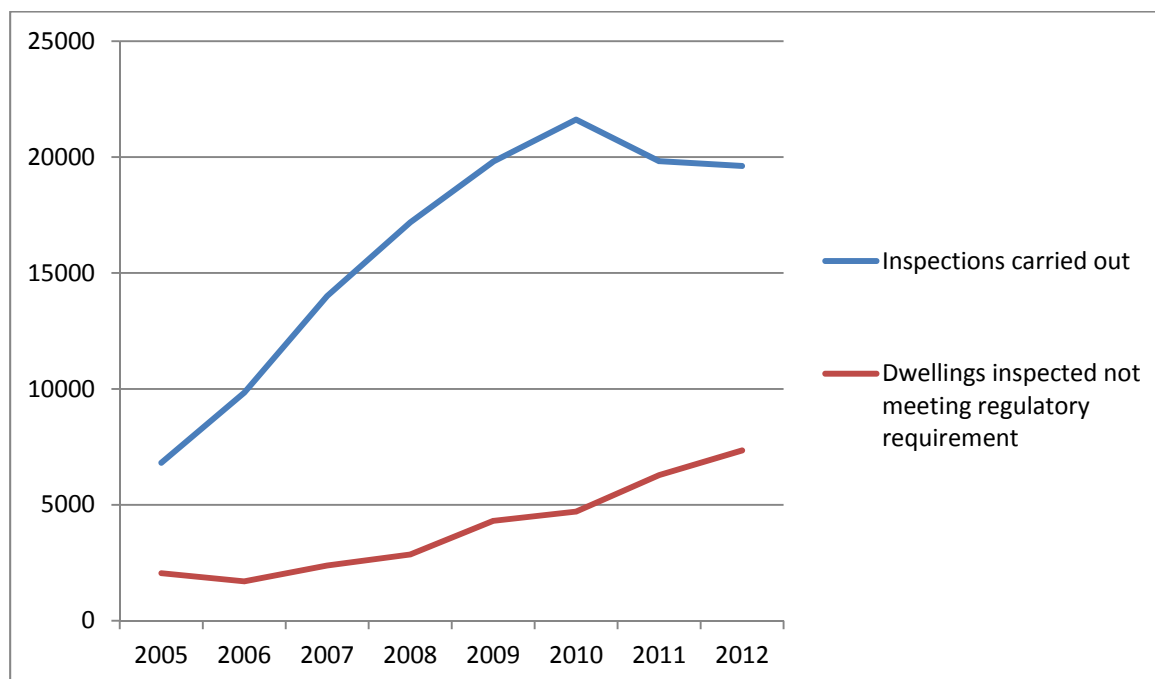
- sanitary facilities including a watercloset, with dedicated wash hand basin adjacent thereto with continuous supply of cold water and a facility for the piped supply of hot water, and a fixed bath or shower with continuous supply of cold water and a facility for the piped supply of hot water
- heating facilities in each habitable room (this means a permanently fixed heating appliance and suitable) and adequate ventilation
- foot preparation and storage and laundry facilities (this includes:
 - 4 ring hob with oven and grill
 - Suitable facilities for the effective and safe removal of fumes to the external air by means of a cooker hood or extractor fan
 - Fridge and freezer or fridge-freezer
 - Microwave oven
 - Sink, with a piped supply of cold water taken direct from the service pipe supplying water from the public main or other source to the building containing the house and a facility for the piped supply of hot water, and an adequate draining area,
 - Suitable and adequate number of kitchen presses for food storage purposes
 - Washing machine, or access to a communal washing machine facility within the curtilage of the building, and
 - Where the house does not contain a garden or yard for the exclusive use of that house, a dryer (vented or recirculation type).
- adequate ventilation
- adequate natural lighting in habitable rooms and in non-habitable rooms adequate artificial lighting (any room containing a bath and/or shower and water closet must be screened to ensure privacy)
- adequate fire safety protections including a fire blanket and smoke alarms
- access to suitable and adequate pest and vermin proof refuse storage facilities
- effective and safe electricity and gas installations and ventilation

Regulation of the Quality of Private Rented Housing

The favoured model of enforcement involves a commitment to carrying out random though pre-arranged internal and external visual inspections of all rented accommodation within the housing authority's area. Levels of inspection vary widely between authorities. In 2012 local authorities inspected 19,616 dwellings, during which 7,348 dwellings were held not to meet the regulatory requirements.⁵⁰

⁵⁰ *Ibid.*

Figure 10: Enforcement of Requirements for Standards 2005-2011⁵¹



Enforcement procedures are laid down.⁵² An authority may give an improvement notice in writing to the landlord of the house concerned where in the opinion of the housing authority the landlord is contravening a regulatory requirement. This notice must set out the breach alleged and the reasons for the opinion that it is a breach and directs the landlord to remedy the contravention within the period specified. Information will be included regarding objections and appeals, but if the landlord fails to object or appeal the notice the landlord will be deemed to have accepted the notice and agreed to comply in the required fashion. The tenant of the house is also given a copy of the notice. Once the landlord is of the opinion that the improvement notice has been complied with, this is confirmed to the housing authority and copied to the tenant. This will either lead to the authority confirming that the necessary work has been carried out or will lead to a notice of non-compliance. A landlord can appeal to the District Court where the improvement notice can be confirmed, varied or cancelled. Failure to comply with an improvement notice can lead to a prohibition notice which (subject to an appeal) will direct that the landlord not re let the house until the landlord effected the necessary improvements.

Enforcement of the housing condition standard is ultimately the responsibility of the local authority which can receive complaints from concerned tenants and take actions to enforce the standard. This is problematic in the social rented sector where the local authority is both landlord and regulator. There is no annual national survey of housing conditions in Ireland and enforcement largely takes the form of pre-arranged spot checks and replying to tenant complaints. In the private rented sector a tenant may apply to local authority but may also apply to the Private Residential Tenancies board for dispute resolution by reason of the landlord's failure to meet the

⁵¹ Latest House Building and Private Rented Statistics (Dublin: Stationery Office, 2014).

⁵² Housing (Miscellaneous Provisions) Act 1992 ss. 18A and 18B, inserted by the Housing (Miscellaneous Provisions) Act 2009 sch.2, part 4.

standard of repair.⁵³ This is provided for under the Residential Tenancies Act 2004 (henceforth referred to as the RTA 2004).

⁵³ RTA 2004, s. 78(1)(e).

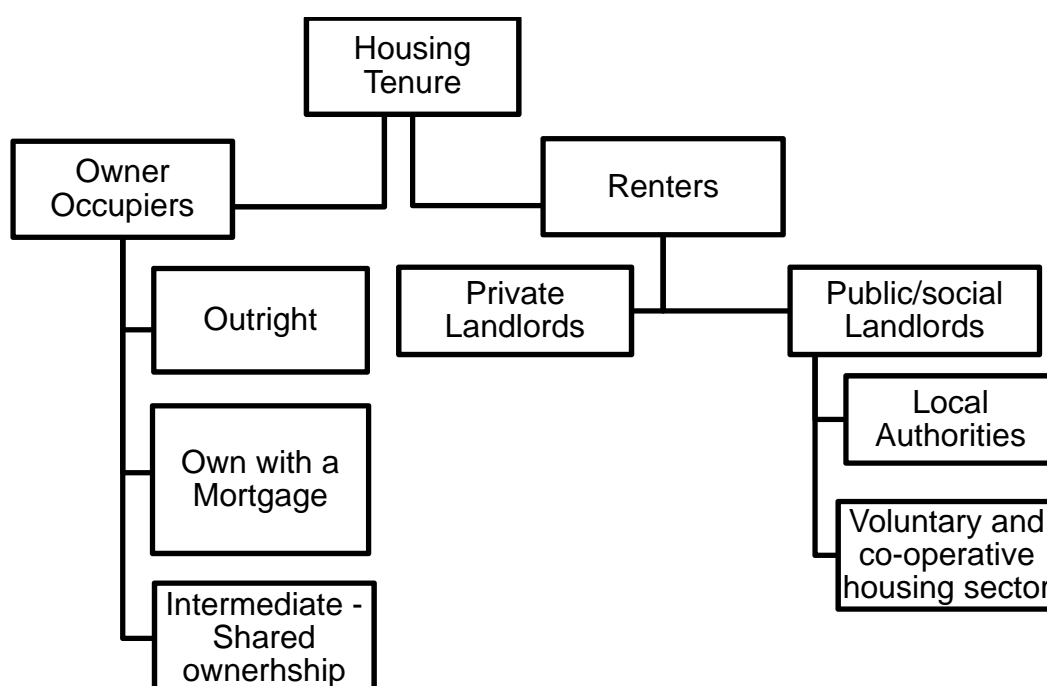
1.4 Types of housing tenure in Ireland

Tenure mix

For the purposes of statistical analysis tenure structure in the Republic of Ireland is classified into owned, social rented and private rented. Owned housing is divided into owned outright, owned with a mortgage or loan or paying part rent and part mortgage through a shared ownership scheme. Social rented housing includes rented from a, Voluntary Housing Association, while Renting from a Council refers to housing rented from a local authority in Ireland. Private rented describes renting from a private landlord or letting agency, employer of a household member, a relative or friend of a household member or other person.

Types of housing tenures

Figure 11: Categories of Tenures

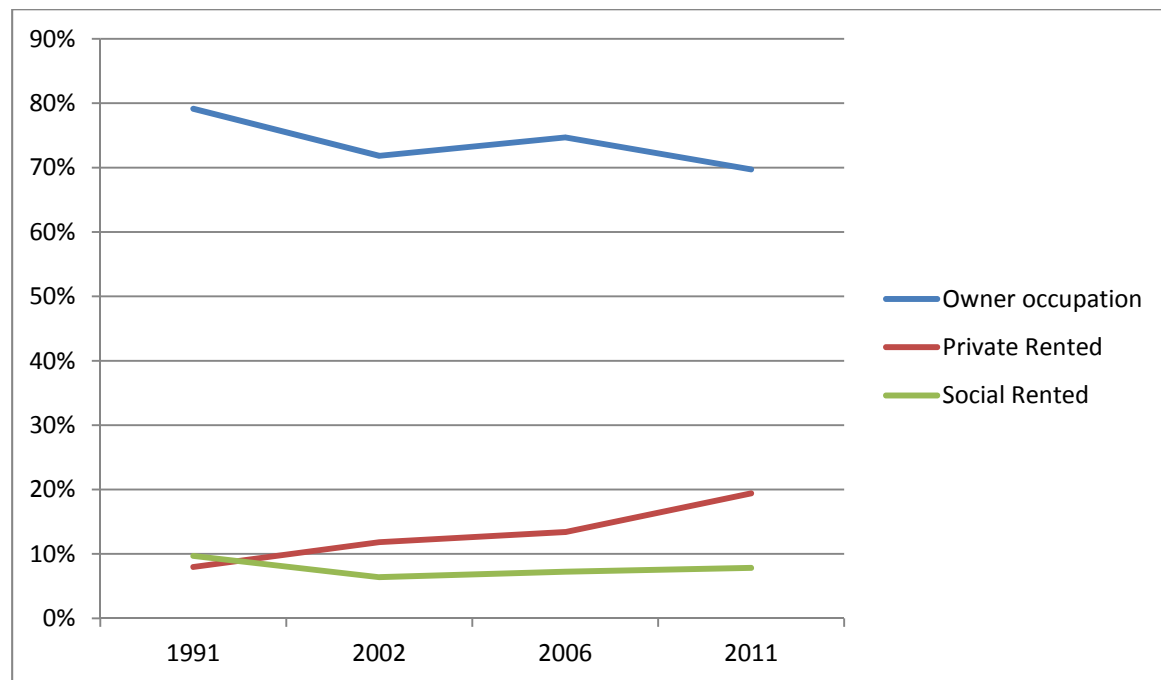


Ireland has been distinguished internationally by high rates of owner occupation and to a lesser extent by low rates of private renting and social renting. The Office of the Revenue Commissioners defines an owner occupier as a person who purchases a house which is to be occupied by the purchaser, or a person on his behalf, as his only or principal place of residence and no rent, other than rent under the rent-a-room scheme, is derived from the property for a period of five years from the date of the current purchase.⁵⁴ A person purchasing a second house/apartment, including a holiday home, is not regarded as an owner occupier even where no rent is obtained from the letting of the property; this is because the property is not occupied as a principal place of residence. The owner occupier sector is split into those who own the property outright and those who own with the aid of a mortgage. The mortgage market expanded rapidly during the early 2000s as low interest rates in combination with financial innovation by lenders combined to reduce barriers to accessing credit

⁵⁴ See the website of the [Office of the Revenue Commissioners](#).

and in 2011 just over fifty per cent of owner occupiers held their property with the aid of a mortgage or loan. Residential renting is divided into two broad sectors with the private rented sector generally associated with for profit renting and the social rented sector, mainly local authority housing with a small voluntary and co-operative housing sector, fulfils a not for profit or social housing function.

Figure 12: Tenure Trends 1991-2011



- **Owner occupation**

Ireland has been distinguished internationally by relatively high rates of owner occupation. In 1991, almost eighty per cent of Irish households were owner occupiers.⁵⁵ Over the next twenty years while the number of owner occupiers increased as a percentage of total Irish households, the tenure type actually declined by almost ten per cent. This shift appears to be a predominantly urban phenomenon, as in rural areas the rate of owner occupation has remained consistent over the last forty years. Urban areas, however, have experienced considerable variations in the home ownership rate, growing from 38% in 1961 to a peak of 73% in 1991, with a continuous decline since then to 61%.⁵⁶ The reason for this decline can be traced to the disproportionate growth in the number of households in rented accommodation.

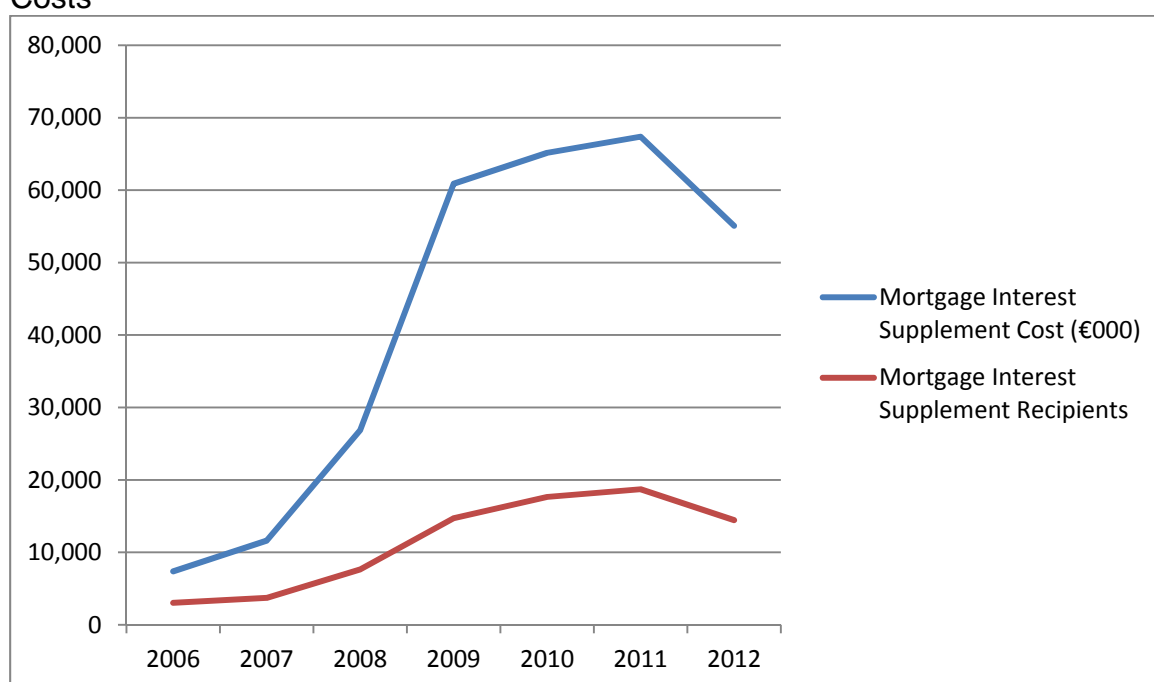
Owner occupiers can be differentiated between those who own their house outright and those with an outstanding mortgage or loan. The mortgage market expanded rapidly during the early 2000s, as low interest rates in combination with financial innovation by lenders combined to reduce barriers to accessing credit. In 2011, just over fifty per cent of owner occupiers held their property with the aid of a mortgage or loan, but this still leaves a high proportion who owns their property outright. Since the onset of the recession there has been a dramatic reduction on the availability of credit. In addition, the number falling into arrears or calling upon the State social welfare support scheme for indebted homeowners, i.e. mortgage interest supplement, has increased dramatically.⁵⁷

⁵⁵ Central Statistics Office, *Census 2011: Profile 4 The Roof over our Heads - Housing in Ireland* (Dublin: Stationery Office, 2011), p. 12.

⁵⁶ *Ibid*, p. 13.

⁵⁷ Department of Social Protection, *Annual SWS Statistical Information Report 2012* (Dublin: Stationery Office, 2012), Section G.

Figure 13: Trends in Mortgage Interest Supplement, Number of Recipients and Costs⁵⁸



From 2007 to 2010 there has been a significant increase in the numbers accessing Mortgage Interest Supplement⁵⁹ and during the same period there has been a dramatic increase in the cost of the scheme. Indeed, the historically low interest rates prevailing at present may obfuscate the true cost of Mortgage Interest Supplement given the preponderance (above eighty per cent) of variable mortgages in Ireland. From 2011 to 2012 both the number of claimants and the cost of the scheme have fallen sharply.

State Support for Homeownership

The high rates of owner occupation which characterised the Irish housing sector during much of the twentieth century derived substantial momentum from extensive State support. The support was expressed through various direct and indirect subsidies, taxation schemes and the operation of various tenant purchase schemes. The role of the private rented and local authority rented sectors, while recognised as being of value, were nonetheless clearly subservient to owner occupation as a form of tenure for much of the 20th century. A major contributor to the high homeownership rate was the tenant purchase schemes available to local authority tenants. This began with the Small Dwellings Acquisitions Act 1899, which provided a State supported finance scheme through which private renters could purchase their dwelling from their landlord. Tenant purchase was initiated through the Labourers Act 1936 which allowed rural tenants the opportunity to purchase their dwelling. This scheme was extended to urban tenants by the Housing Act 1966. Estimates suggest that two thirds of all housing constructed by local authorities from the mid-1960s to the late 1990s had been bought by tenants. It has been estimated that the result of

⁵⁸ Department of Social Protection, *Annual SWS Statistical Information Report 2012* (Dublin: Stationery Office, 2012), Section G.

⁵⁹ *Ibid.*

such sales was the addition of roughly twenty five per cent to the owner occupier rate.⁶⁰

It has been suggested that demographic and socio-economic factors have influenced the development of this housing policy. In particular, up to the 1960s Ireland's population distribution was predominantly rural and dispersed. This in part can be attributed to the various Land Acts from the 1870s on to the early 1900s which effected wide-spread land redistribution across rural Ireland. Such reforms operated to break up and distribute large estates, which had been controlled by small groups of landowners, among a multitude of tenants who availed of the various schemes of State sponsored purchase extended by the Land Acts. Pfretzschner⁶¹ argued that the political campaign which achieved this land reform boosted owner occupier rates in rural areas but also crucially operated to elevate the cultural value of homeownership amongst Irish households. In a similar vein, Blackwell has theorised that the strong demand for homeownership in Ireland could be viewed as a product of the troubled development of housing in Ireland prior to Independence and the tension which existed between the security of the property owning landlord and the insecurity of the tenant. In this paradigm, it has been argued that the demand for homeownership expresses a deep rooted cultural preference of owning one's own home.⁶² Blackwell explained that 'this may be due to a long history of hated foreign landlords, peasant farming traditions, and perhaps a related tradition of saving money and investing it in real property.'⁶³ Such was the strength of this demand for homeownership, that Blackwell described this form of tenure as being politically impregnable.

However, Kenna argues that the political benefit of addressing the housing demands of the electorate was not lost on politicians.⁶⁴ He identifies this as a factor in explaining the high status accorded to the owner occupier sector among the various Irish political parties. Kenna further queries the relationship between certain politicians and various members of the construction industry, a relationship which, he sets out, has formed the subject matter for numerous Tribunal inquiries regarding impropriety concerning planning and development in Ireland. Such critique undermines historic arguments that owner occupation is the natural and ultimate tenure of choice for households within Ireland. The critique further queries the true political motive behind such generous supports.

⁶⁰ T. Fahey & B. Maitre, 'Home Ownership and Social Inequality in Ireland', in K. Kurz & H. Blossfeld (eds.), *Homeownership and Social Inequality in Comparative Perspective* (Palo Alto, CA: Stanford University Press, 2004), p.284.

⁶¹ Pfretzschner, *Dynamics of Irish Housing*, p. 125.

⁶² The high rate of home ownership in Ireland was linked 'to the surrender and re-grant policy pursued by the Tudors in the sixteenth century' and '[t]he expropriation of native Irish landowners a century and a half later': Government of Ireland, All-Party Oireachtas Committee on the Constitution, *Ninth Progress Report – Private Property* (Dublin: Stationery Office, 2004), p. 66.

⁶³ Blackwell, *Review of Housing Policy*, p. 88.

⁶⁴ Kenna argues that in the early years of the Irish State 'The new State and its politicians had discovered that the careful development and allocation of social housing could be a useful means of political patronage, clientelism and control. Thus began a long and very questionable relationship between housing policy, certain industries, key politicians and political parties, akin to the legacy which had emerged in the rural land reform actions of the State.' P. Kenna, *Housing Law Rights and Policy* (Dublin: Clarus Press 2011), p. 39.

It has also been suggested that the strong demand for owner occupation was a result of its perception as a superior form of tenure as against the rented sector whether private or social rented.⁶⁵ During the greater part of the twentieth century owner occupation offered greater security from eviction and greater freedoms with respect to the property than the rented sector though the perceived strengths of the owner occupier sector could be viewed as being artificially exacerbated by State housing policy. Indeed, it is apparent that during much of the twentieth century owner occupation was prioritised both politically and legally, through the provision of numerous and extensive, direct and indirect, supports for home owners, and equally, though more subtly, through the relative neglect of the private rented sector and the widespread incentivisation of local authority tenants to move away from the social rented sector and towards owner occupation. State policy, or lack of policy, largely operated as a disincentive to households and prospective landlords from entering the private rented sector, which for much of the twentieth century was poorly regulated and was characterised by poor housing conditions. Additionally, from a landlord perspective the rent control system which operated from 1914 to 1981 restricted rental returns to below their market values, and sometimes even below cost, and operated to decrease the appeal of the private rented sector. The weak position of the private rented sector tenant during the twentieth century improved the attraction of owner occupation.

Explaining the prioritisation of the owner occupier sector in Irish housing policy is far from straightforward. Numerous explanations, discussed above, reflecting cultural and historic, socio-economic, political and pragmatic factors have been advanced throughout Irish housing discourse. While each theory offers insight it is apparent that there is no single straightforward answer as to why the prioritisation of the owner occupier sector dominated housing policy in post-independence Ireland. The complexity lies in the wide disparity of contributory factors at play and also derives directly from the political and legal structures, which developed in the Irish State post-independence, through which tenure choice came to be expressed by Irish households.

- **Private Rented Sector**

Forms of tenancy

Attaining security of tenure and an affordable rent are concerns common to tenants across the residential, agricultural and commercial leasehold sectors. Generally speaking it is the nature of the tenant which distinguishes the residential sector from other rented sectors, such as the agricultural or commercial sectors. Indeed, the concept of home, as understood to include tangible (financial value) and intangible factors (security, safety and identity), distinguishes residential tenants from the other tenancy relationships and continues to influence regulatory theory in this area. In the residential sector Ireland has traditionally had a dualist rented sector, with the private

⁶⁵ 'Owner occupation provides security of tenure and also provides freedom to occupiers to develop, maintain, refurbish and use their homes. In these respects the tenure is superior to the private rental and local authority rental tenures. These tenures however have important roles in the housing system. The Council therefore accepts owner occupation as socially desirable and agrees that it should be encouraged as the main housing tenure.' Blackwell, *Review of Housing Policy*, p. 13.

rented generally associated with profit renting while the social rented sector, mainly local authority housing, fulfils a not for profit broader social function.⁶⁶

There has been a long history of regulatory intervention in the residential sector in Ireland however regulatory theory and practice in this sector has, for the greater part of the twentieth century, failed to develop beyond a poorly designed rent control system which ultimately operated to the detriment of both landlord and tenants, before being declared unconstitutional in the early 1980s. Indeed, only in the last ten years has the private rented sector surged ahead of the other tenure forms in the residential sector by embracing a new regulatory model set out in the RTA 2004. This scheme provides for a purpose built regulatory body, the Private Rented Tenancy Board, which is empowered to hear and resolve disputes between landlord and tenant while maintaining a register of all landlords. The reforms of 2004 have marked out the private rented sector in Ireland as having perhaps the most advanced private rented regulatory body in the British and Irish Isles.⁶⁷ The Act sets out the substantive law regulating private rented tenancies in Ireland and sets out a range of implied rights and responsibilities which it is not possible to contract out of and as such the vast majority of private residential tenancies are governed by the provisions of the Act.

At the turn of the twentieth century the vast majority of Irish households were accommodated in the private rented sector. For the greater part of the following century the private rented sector declined consistently as State housing policy increasingly prioritised homeownership above other forms of tenure. Since it was largely ignored in housing discourse during the greater part of the twentieth century, the private rented sector came to be characterised as the “forgotten sector”.⁶⁸ The sector was “economically weak, in both supply and demand aspects” with tenants tending to have lower than average incomes and having to put up with housing that was generally poorer quality.⁶⁹ The high uptake in rent supplement welfare allowance among private rented tenants indicated that tenants often needed financial support in order to meet housing costs.⁷⁰ The National Economic and Social Council argued that public policy preference for owner occupation focused policy on the owner occupation to the owner occupier sector to the exclusion of the private rented sector.⁷¹ While supporting the State preference for the owner occupier sector, the Council considered that the private rented sector could have a positive role by providing flexible accessible accommodation to mobile sectors of the population, and

⁶⁶ It has been argued that Ireland is moving towards a weak unitary model. See M. Norris, ‘Path Dependence and Critical Junctures in Irish Rental Policy: From Dualist to Unitary Rental Markets?’ *Housing Studies* (2014).

⁶⁷ England and Wales does not have a purpose built regulator of the private rented sector and while the Private Rented Housing Panel in Scotland display many of the characteristics of the Private Rented Tenancy Board, most notably with regard to resolving rent and repair disputes; it does not offer the same range of alternative dispute resolution services.

⁶⁸ B. Dillion & L. O’Brien, *Private Rented Accommodation: The Forgotten Sector of Irish Housing* (Dublin: Threshold, 1982), p. 28.

⁶⁹ Norris & Winston, *Housing Policy Review 1990-2002*, p.35.

⁷⁰ *Ibid.*, p.55.

⁷¹ *Ibid.*, p.35 “The private rental tenure can be described as economically weak, in both supply and demand aspects. The tenure shows little activity in terms of new construction for rent (except for a very limited market segment) and, on the demand side, a significant proportion of inhabitants tend to have lower than average incomes and poorer quality housing.” However, this statement fails to take account of the fact that new private rented units are counted with new private housing units.

for those unable to afford owner occupation.⁷² Various policy documents during the late 1980s and the 1990s raised concerns about the need for regulatory reform.⁷³ Of particular concern was the poor quality of housing, the absence of a tailored dispute resolution scheme, the need for flexibility of rent regulation and reform of what was considered to be an inadequate security of tenure framework. In 1999 the Commission on the Private Rented Residential Sector was set up to consider reform of the private rented sector.⁷⁴ It proposed a radical overhaul of the private rented sector with major reforms of security of tenure and dispute resolution, most of which reforms were implemented by the RTA 2004. This Act has substantially reformed the law regulating the relationship of landlord and tenant with respect to residential tenancies and is the principal Act. In particular, the Act established the Private Residential Tenancies Board which was charged with primary responsibility for regulating the residential tenancies sector. All residential landlords were to register each tenancy with the Board. Security of tenure was now based upon four year cycles and with obligatory notice periods linked directly to the duration of the tenancy. The Board was empowered to provide alternative dispute resolution mechanisms, including mediation and arbitration and ultimately a hearing before a board from the Private Residential Tenancies Board.

Figure 14: Total disputes dealt with by the Private Residential Tenancies Board 2012⁷⁵

Nature of dispute	Total Disputes 2012
Deposit retention	836
Rent arrears	719
Breach of landlord obligations	462
Breach of tenant obligations	424
Invalid Notice of termination	419
Standard and maintenance of dwelling	369
Overholding	283
Unlawful termination of tenancy (Illegal eviction)	202
Other	116
Anti-social behaviour	115
Breach of fixed term lease	113
Damage in excess of normal wear and tear	105
Rent more than market rate	61

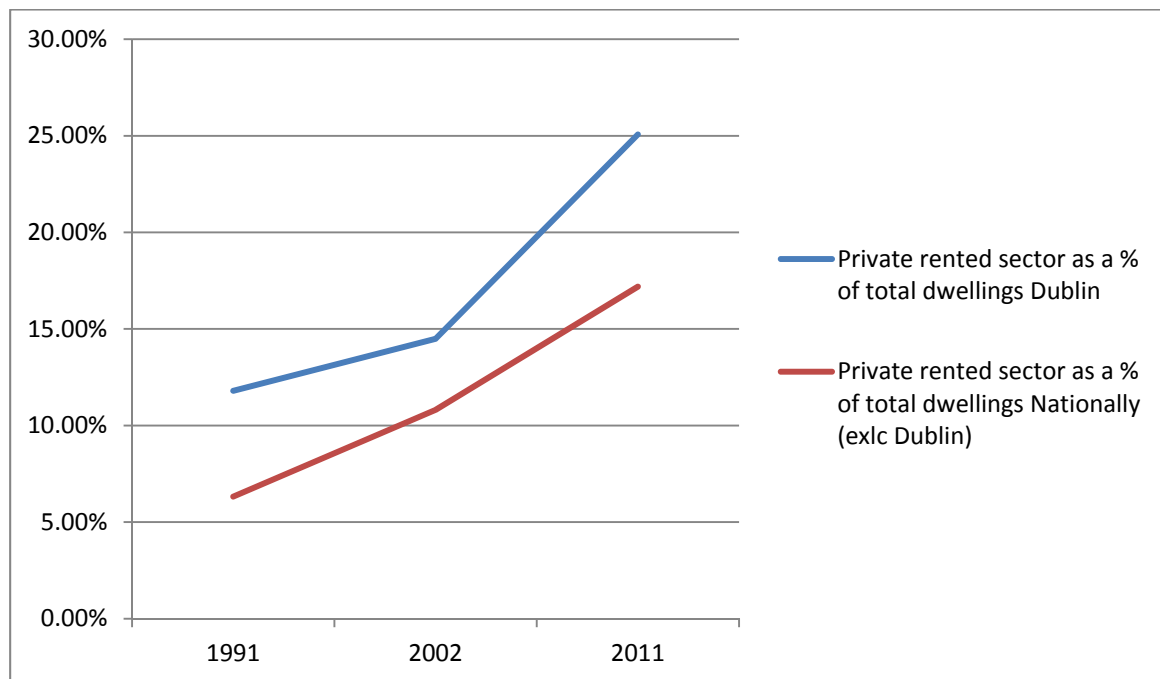
⁷² *Ibid.*, p.35.

⁷³ Norris & Winston, *Housing Policy Review 1990-2002*, p. 55.

⁷⁴ Department of the Environment and Local Government, *Report of the Commission on the Private Rented Residential Sector* (Dublin: Stationery Office, 2000), p. 1.

⁷⁵ Private Residential Tenancies Board, *Annual Report and Accounts 2012* (Dublin: Stationery Office, 2013).

Figure 15: Private rented dwellings in permanent housing units, Dublin, Nationwide⁷⁶



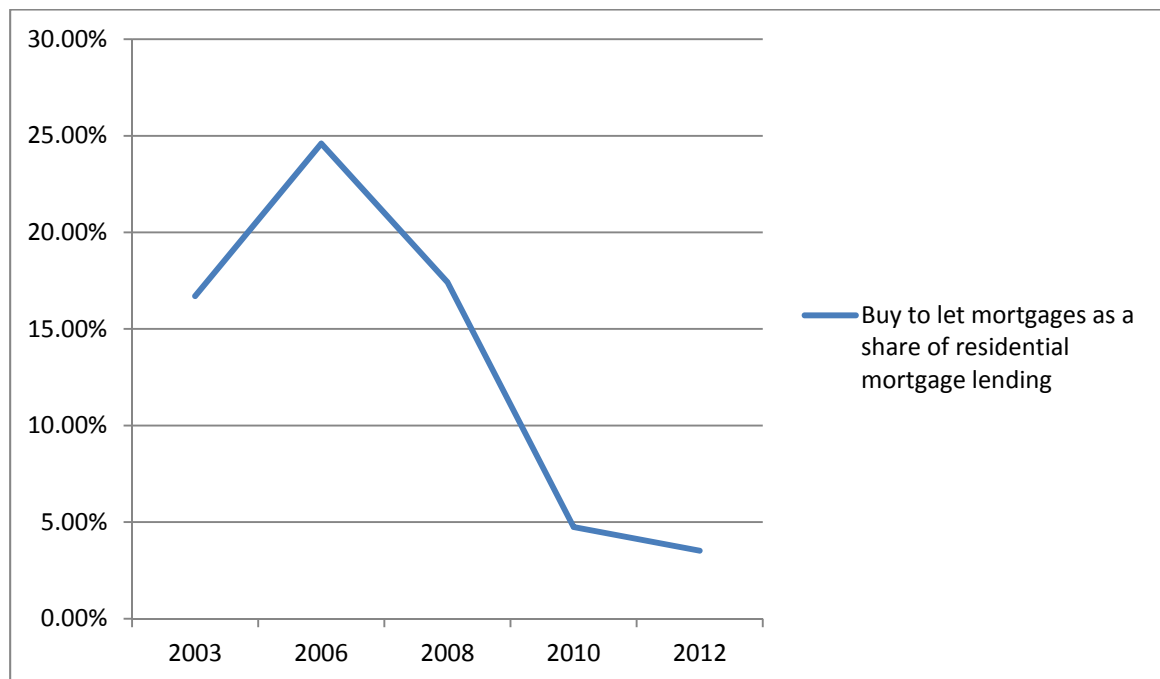
The graph above shows that the number of private rentals has increased nationwide but more rapidly in Dublin than elsewhere.⁷⁷ In recent years the private rented sector has grown considerably as affordability of housing to buy and reduced access to credit have channelled households towards the private rented sector. The size of this sector has increased sharply. In 1991 fewer than 8% of Irish households were accommodated in the homes rented from private landlords whereas by 2011 this figure had risen to 20% of total households.⁷⁸ As noted above housing law and policy was transformed during this period. Moreover, during this period State housing policy has increasingly been directed towards harnessing the capacity of the private rented sector in order to meet social housing need. Long term leasing arrangements, such as the Rental Accommodation Scheme between traditional social housing providers and private landlords have assumed a key position amongst current housing policies.

⁷⁶ Central Statistics Office, *Census 2011: Profile 4 The Roof over our Heads - Housing in Ireland* (Dublin: Stationery Office, 2011).

⁷⁷ where 'This climate of high demand for private rented accommodation coupled with limited availability of accommodation has facilitated a market where "profit renting" is the norm i.e. where landlords can charge the maximum obtainable rent for a dwelling regardless of the historic cost': *Interim Value for Money and Policy Review of the Rental Accommodation Scheme*, (Dublin, Stationery Office 2009), p. 15.

⁷⁸ The private rented sector has played a major role in providing accommodation to non Irish households. In 2011 over 150,000 rented households that had a non-Irish national as the householder in 2011. Central Statistics Office, *Census 2011: Profile 4 The Roof over our Heads - Housing in Ireland* (Dublin: Stationery Office, 2011).

Figure 16: Buy to let mortgages as a share of total residential mortgage lending⁷⁹



Buy to let refers to the purchase of a property with the specific aim of renting property. In recent years the rapid expansion in the private rented sector has been facilitated in part by a high levels of lending to residential investment or buy to let landlords (see figure above). During the 2000s residential investment letting became much more prevalent and in 2006 buy-to-let mortgages accounted for almost a quarter of all residential mortgage lending. However since the onset of the economic crises the residential investment letting sector has fallen dramatically, accounting for less than five per cent of all residential mortgage lending in 2012 and many buy to let landlords have fallen into arrears.⁸⁰

There is no comprehensive data on the ownership of private rented dwellings in Ireland⁸¹ however a number of studies have suggested that the vast majority of private landlords are small investors who own one or two properties, while institutional investors are very rare.⁸² The Commission on the Private Rented Residential Sector described a number of different types of landlord present in the private rented sector. These include;

1. Professional individual landlords who own a portfolio of property and for whom their rented accommodation provides a significant source of income;
2. Commercial landlords for whom rented accommodation is both a business and an investment. The commission regarded these landlords as constituting “a very small proportion of landlords”.⁸³

⁷⁹ Irish Banking Federation/PwC, *Mortgage Market Profile* (Dublin: Irish Banking Federation, 2012), full IBF/PwC Mortgage Market Profile data series.

⁸⁰ *Ibid.*

⁸¹ There is also no comprehensive data on financing of private rented housing.

⁸² *Commission on the Private Rented Residential Sector Report*, pp. 42-44. Also see M. Norris, ‘The Private Rented Sector in Ireland’ in K. Scanlon & B. Kochan (eds), *Towards a Sustainable Private Rented Sector: The Lessons from Other Countries*, (London: LSE, 2011), pp. 115-116.

⁸³ *Commission on the Private Rented Residential Sector Report*, p 42.

3. Resident landlords who are letting out a part of their principal dwelling. This type of letting arrangement is usually short term and would not be governed by the RTA 2004 and would instead be governed primarily by the common law.⁸⁴
4. Investor landlords who purchase property as an investment and who rent them out in the interim. The commission have set out that this type of landlord has increased considerably during the 1990s.
5. Circumstantial and accidental landlords who are letting out the property which they are unable to sell or to prevent the property being left vacant. Since the property market crash it is likely that this group of landlords has increased considerably.
6. Short term developer landlords who let property pending development.

⁸⁴ RTA 2004 s. 3(2)(g).

Housing Supports

Rent supplement

Rent Supplement is part of the Supplementary Welfare Allowance (SWA) scheme which was introduced in 1977.⁸⁵ It provides financial assistance on the basis of need, to those private rented sector tenants who are experiencing difficulties in paying their rent. The objective of the scheme is to provide short-term income support to assist with reasonable accommodation costs of eligible persons living in private rented accommodation who are unable to provide for their accommodation costs from their own resources, and who do not have accommodation available to them from another source.⁸⁶ Successful applicants must fulfil various income and housing requirements. Applicants must not be in full time employment or in full time education⁸⁷, and are means tested and also subject to a habitual residence test.⁸⁸ In determining habitual residence it is presumed, until the contrary is shown, that a person is not habitually resident in the State at the date of the making of the application concerned unless the person has been present in the State or any other part of the Common Travel Area⁸⁹ for a continuous period of two years ending on that date. However, a deciding officer is required to also take into account all the circumstances of the case including, in particular, the length and continuity of residence in the State or in any other particular country, the length and purpose of any absence from the State, the nature and pattern of the person's employment, the person's main centre of interest; and the future intentions of the person concerned as they appear from all the circumstances.⁹⁰ The accommodation must be suitable for the applicant's needs and the rent is capped to a maximum set by the local authority.⁹¹ Since inception there was consistent increase in both the number and duration of rent supplement schemes. This provided the impetus for reform in this area, which led to the introduction of the Rental Accommodation Scheme in 2004⁹² and the introduction of the Housing Assistance Payment scheme in 2014 and this is dealt with below.

⁸⁵ Social Welfare (Supplementary Welfare Allowances) Regulations 1977 S.I. No. 168/1977 introduced under the Social Welfare (Supplementary Welfare Allowances) Act 1975.

⁸⁶ 'Review of the Supplementary Welfare Allowance Phase II' (Dublin, Stationery Office, 2006), p. 80; D. Coates & M. Norris, *Supplementary Welfare Allowance, Rent Supplement: Implications for the Implementation of the Rental Accommodation Scheme* (Dublin, Centre for Housing Research, 2006), p. 101; *Interim Value for Money and Policy Review of the Rental Accommodation Scheme*, passim; Kenna, *Housing Law Rights and Policy*, pp. 897-899.

⁸⁷ i.e. 30 hours or more in a week.

⁸⁸ The criteria for determining whether a person is habitually resident is set out in of the Social Welfare Consolidation Act 2005 s. 246, as amended by the Social Welfare and Pensions Act 2007 s. 30.

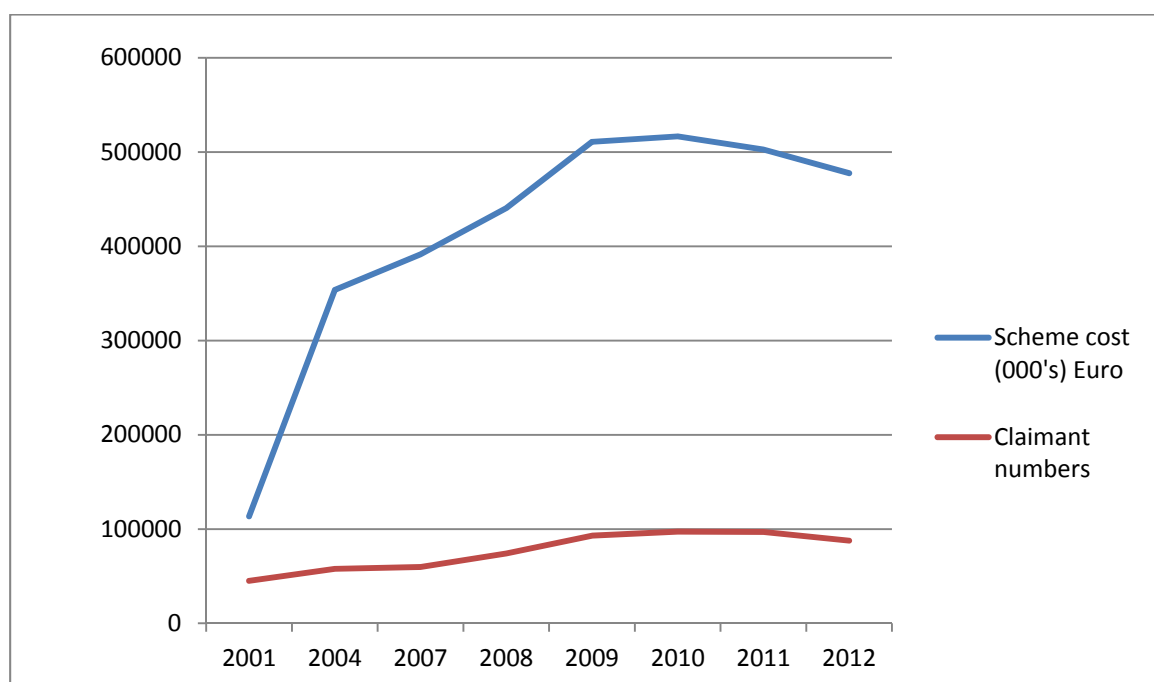
⁸⁹ Apart from the Republic of Ireland, this refers to the United Kingdom of Great Britain and Northern Ireland, the Channel Islands and the Isle of Man.

⁹⁰ Social Welfare Consolidation Act 2005, s. 246, as amended by Social Welfare and Pensions Act 2007, s. 30.

⁹¹ Department of Social Protection, *Annual SWS Statistical Information Report 2012* (Dublin: Stationery Office, 2012), Section G; P. Kenna, *Housing Law Rights and Policy*, pp. 897-899.

⁹² The local authority is empowered to enter into such letting agreements as part of its statutory powers to provide housing under the Housing Acts 1966-2009.

Figure 17: Trends in rent supplement 2001 – 2012



The rent supplement scheme has grown considerable in the last twenty years⁹³ and in particular since the onset of the economic crises. In 2011 approximately 40% of private rented households were in receipt of rent supplement, making the State a significant player in this market.⁹⁴ Figures from the Department of Welfare's Supplementary Welfare Allowance scheme have revealed a substantial increase in the number of private renters availing of rent supplement. The economic crisis has been attended with a dramatic increase in the numbers in receipt of rent supplement. Between 2001 and 2011 recipients rose from 45,000 to 97,000 and the overall cost rose from €114 million to €503 million. In recent years the cost of the scheme and the number of applicants has decreased. In 2012 the number of recipients was 87,684 and the cost of the scheme was €477.6 million. While the improvement is positive the level of need remains high. The increase in the level of recourse to rent supplement has resulted in the scheme addressing need outside its original target group, the National and Economic Social Council has pointed out that the introduction of rent supplement was initially to deal with emergencies and short-term housing need which arose from a change in personal circumstances. However, the current scheme had in effect become a long-term housing support for many. The *Supplementary Welfare Allowance Review 2006 on the Effectiveness of rent Supplement* recommended that the rent Supplement scheme should be time bound when responding to short term need with the goal being that long term need would be transferred to Rental Accommodation Scheme at the first appropriate

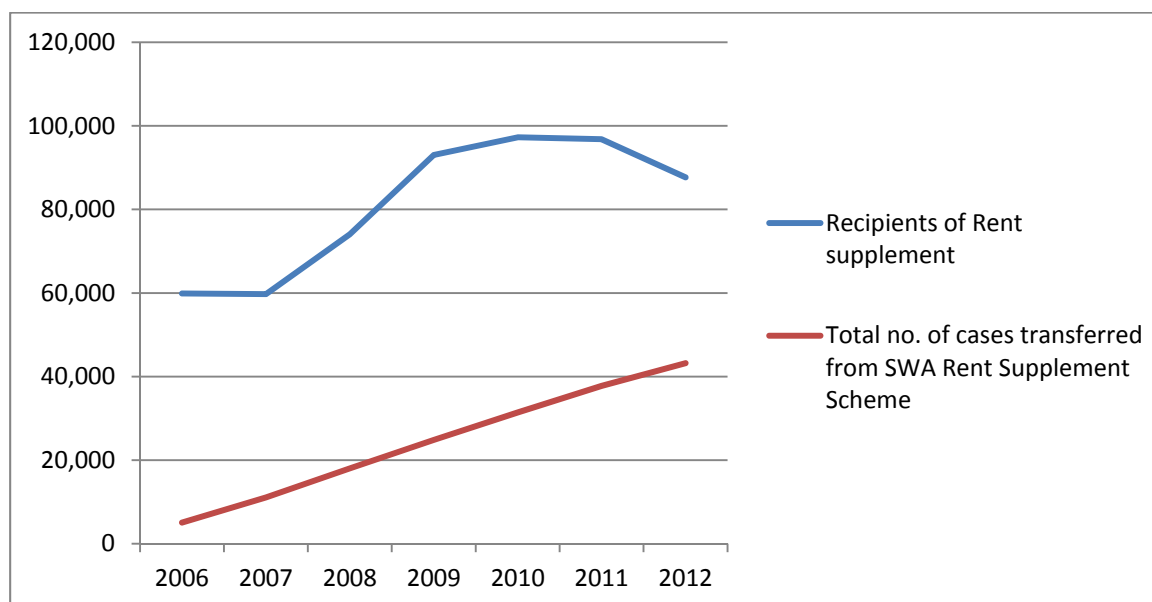
⁹³ See M. Norris, J. Healy & Coates, D 'Drivers of Rising Housing Allowance Claimant Numbers: Evidence from the Irish Private Rented Sector', *Housing Studies* 23(1) (2008): 89-109.

⁹⁴ Department of Social Protection, *Annual SWS Statistical Information Report 2012* (Dublin: Stationery Office, 2012), Section G.

opportunity.⁹⁵ The rise in claimant numbers and the long term duration of claims has provided the impetus for the introduction of the Rental Accommodation Scheme.

The Rental Accommodation Scheme

Figure 18: Trends in rent supplement and transfers to the Rental Accommodation Scheme 2006 - 2012⁹⁶



The Rental Accommodation Scheme harnesses the supply of rented housing within the private market in order to meet the high demand for social housing. Local authorities source suitable properties within the housing market and then negotiate medium term leases from a private landlord, the bargaining power of the local authority being used to impose downward pressure on rental rates. In practice, the local authority pays the full rent (which is slightly less than market level) to the landlord on behalf of the tenant. The landlord must register the tenancy with the Private Residential Tenancies Board, and as such, Rental Accommodation Scheme tenancies are governed by the RTA 2004. The local authority also requires a Tax Clearance certificate from the landlord. Furthermore, the property must meet minimum standards for private rental accommodation.

The Housing Assistance Payment

In 2013 the Government announced plans to overhaul the rent supplement scheme, replacing it with a housing assistance payment which will allow recipients of rent supplement who take up full-time employment to retain a portion of their payments.⁹⁷ This change will lead to all of the social housing services provided by the State coming together under the local authority system. Under the housing assistance payment scheme applicants will source their own accommodation within the private

⁹⁵ Department of Social Protection, *Annual SWS Statistical Information Report 2012* (Dublin: Stationery Office, 2012), Section G.

⁹⁶ *Ibid.*

⁹⁷ Department of the Environment, Community and Local Government [announcement](#).

rented market and the tenancy agreement will be between the Housing Assistance Payment recipient and the private landlord. The local authority will pay the new assistance payment on the tenant's behalf directly to the landlord. This change was designed to reduce the possibility of landlords requiring illegal top up payments. The tenant will pay a rental contribution to the local authority based on the differential rent scheme for the relevant local authority; therefore the exact amount will depend on a tenant's ability to pay.

- **Intermediate tenures**

Shared Ownership Scheme

The Shared Ownership scheme was introduced in 1991 in order to provide discounted financial support to local authority tenants who could not afford to purchase their entire home in one go. The scheme operated so to allow participants make payments on a mortgage for the part being purchased while the remainder value of the house would be purchased through an increased rent rate which would operate concurrently with repayments on the mortgage. To qualify for the Scheme, applicants had to meet various income and housing need assessments. Overall, from 1991-2001 11,276 shared ownership transactions were completed. From 2002-2012 5,224 shared ownership transactions were completed.⁹⁸ Take up on the scheme peaked in 2002 with 1,686 transactions completed, since then there has been dramatic reductions in transactions with only a handful taking place in 2011 and 2012 combined as the scheme was abolished by the Minister in 2011 and replaced by the incremental purchase scheme.

⁹⁸ Department of the Environment, Community and Local Government, *Social and affordable housing statistics 2012* (Dublin: Stationery office, 2012).

- **Social Housing**

Local authority landlords

Local authorities are the primary provider of social housing in Ireland. Local authority housing has played a key role in the development of the Irish housing system through meeting the housing needs of lower income households. Tenant purchase schemes which expanded homeownership rates across a broad socio-economic spectrum. Local authority housing is provided under the Housing Act 1966, which remains the principal statute in this area, though supplemented by regulations, guidelines and memoranda and quasi-legal administrative measures. The Housing (Miscellaneous Provisions) Act 2009 has further shifted the focus from the direct provision of housing to the provision of indirect social housing supports. As well as a range of long lease initiatives and the introduction of a new “Chapter 4” tenancy for local authority housing tenants, the 2009 Act updated and amended the housing functions of the local authority within the existing elective, as opposed to imperative, terminology of the 1966 Act. A housing authority⁹⁹ has power to provide various housing supports, ownership schemes and more direct ancillary services. Eligibility for social housing depends upon an applicant satisfying income criteria, and applicants must not have suitable alternative accommodation. Once an applicant has been declared eligible for social housing their application is added to an available housing waiting list. Eventually a qualified applicant may be allocated housing and if accepted the applicant will enter into a tenancy agreement with the local authority.

The tenancy agreement is the legal basis of the relationship between the local authority and its tenants and sets out the rights and responsibilities of the parties. The terms and conditions of the tenancy agreement are framed principally by various statutory provisions; however, constitutional and human rights principles are very influential. Although, local authorities are reluctant to use their powers of eviction, legally the local authority is empowered to serve notice to quit and then seek an order for possession for almost any breach of the tenancy agreement.¹⁰⁰ This has the effect of reducing the security of tenure of local authority tenants.

Incentives for LA tenants to purchase

The first tenant purchase scheme was introduced by the Labourers Act 1936 which allowed rural tenants of local authorities the opportunity to purchase their rented dwelling. This scheme was extended to urban tenants by the Housing Act 1966.¹⁰¹ It has been suggested that the tenant purchase scheme added roughly a quarter to the rate of owner occupier.¹⁰² The rationale for the tenant purchase schemes had both

⁹⁹ In this report the terms local authority and housing authority are used interchangeably.

¹⁰⁰ The local authority is empowered under the Housing Act 1966 s. 62 to initiate proceedings to secure an eviction where a tenant has breached the conditions of the tenancy agreement. In *Donegan & Gallagher v. Dublin City Council* the Supreme Court made a rare declaration of incompatibility with regard to the local authority power of eviction in section 62. The Court found that section 62 allowed for a process of eviction which did not allow the District Court discretion to examine the underlying merits of the case prior to granting the order for possession.

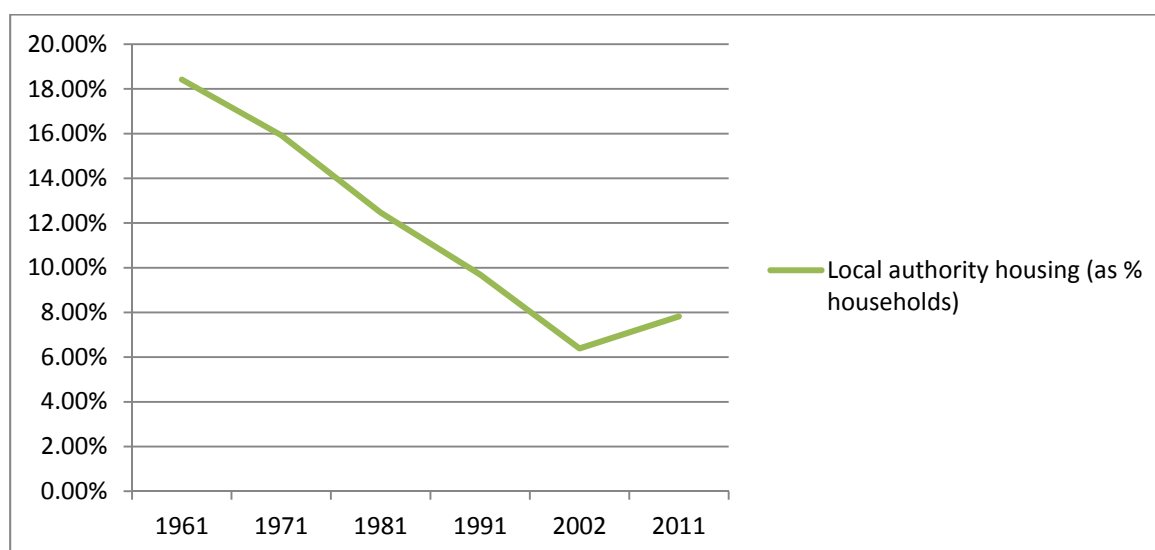
¹⁰¹ The tenant purchase scheme extended by the Housing Act 1966 predated similar reforms in the UK where the Right to Buy was not introduced until 1980. By this stage the scheme in Ireland was well past peak uptake and the first signs of residualisation were apparent.

¹⁰² T. Fahey (ed.) *Social Housing in Ireland: A Study of Success, Failure and Lessons Learned* (Dublin: Oak Tree Press, 1999), pp. 3-4.

economic and ideological arguments. In particular, revenue could be raised through sale of a local authority dwelling with further savings arising through the shift in responsibility for maintenance and repair from the local authority to the purchasing tenant. Support for tenant purchase schemes obviously fit with a broader policy of encouraging owner occupation which for much of the twentieth century had been a dominant aim of Irish housing policy. Whatever the driver of the various tenant purchase schemes, the practical effect of such generous support for tenant purchase was a sharp reduction in the housing stock available to local authorities and a limitation on their ability to meet the principal local authority housing policy of providing dwellings for those in need. Increasingly those remaining in local authority housing accommodation have tended to be lower income groups, leading to a general residualisation. Irish housing policy has altered significantly since the 1980s as universal direct State supports for owner occupiers were reduced and reformatted. In particular, the first-time buyer's grant was abolished, and access to local authority housing loans was limited to low-income households that had failed to gain finance from commercial lenders, while new schemes to support aspirational homeowners with low incomes were introduced. These included the shared ownership scheme, the mortgage allowance scheme and the affordable housing scheme. The low cost subsidised home ownership schemes and the purchase schemes for local authority tenants have lost momentum since the 1990s. However, as recent as 2005 the important role of tenant purchase was restated within the broader State housing policy of promoting owner occupation.¹⁰³

¹⁰³ The *Building Sustainable Communities* housing policy document set out in 2005 a range of housing commitments geared towards an owner occupier centric housing philosophy. Indeed, the document set out the prevailing State position that 'homeownership can be an important factor in underpinning social stability and promoting good civic values.' The document focused upon building sustainable communities, responding to housing need and delivering housing services. A range of housing commitments were made aimed at increasing owner occupation, including expanding and innovating existing tenant purchase schemes to allow for the sale of local authority flats. Additionally, the policy document set out a clear commitment towards granting better access to first time buyers via sustained increases in housing supply and improvements in tax reliefs and stamp duty. Department of the Environment, *Building Sustainable Communities* (Dublin: Stationery office, 2005), p. 2.

Figure 19: Trends in Local Authority Housing 1961-2011¹⁰⁴



From 1961 to 2006 the size of the local authority rented sector declined consistently relative to other tenures. At the start of this period some 18% of all dwellings in Ireland were rented from a local authority but by the end local authority dwellings represented just 7% of the total housing stock. The decline of the local authority rented sector during this period can be traced to the popularity of the various tenant purchase schemes and also, albeit to a lesser extent, to the growth of the voluntary and co-operative housing sector. However, with the onset of the economic crisis of the late 2000s the size of the local authority rented sector has recorded an increase for the first time in fifty years..

The recent increase in the size of the local authority sector has taken place amid rapid resurgence of the private rented sector.¹⁰⁵ While the increase in the private rented sector is comparatively larger the rise in the number of local authority households is all the more significant when viewed in light of the triennial State Housing Needs Assessment which has revealed a sharp rise housing applications during the period 2005 to 2011. In 2005 there were a total of 43,000 households assessed as bring in need of housing by 2011 the number of households assessed as being in need of housing had more than doubled to almost 100,000 households. This increase was largely due to a dramatic rise in the number of households unable to meet the cost of their accommodation, two thirds of those needing housing in 2011 for reasons of affordability.¹⁰⁶ With this surge in applications the average time spent on the Housing Waiting List has consistently increased; over a third of households had been on waiting lists for over three years. It is apparent that demand for social housing is growing at a very strong rate while local authorities are struggling to meet this demand.

¹⁰⁴ Census various years. See *Census 2011: Profile 4 The Roof over our Heads*, p. 12.

¹⁰⁵ From 2006 to 2011 the number of households in rented accommodation across the State increased dramatically rising by 46.99% overall; (323,007 - 474,788 households) with the numbers of private rented households increasing by 63.60% (196,797 - 320,319 households) and the number of local authority households rising by 22.30% (105,509 - 129,033 households). *Census 2011: Profile 4 The Roof over our Heads*, p. 12.

¹⁰⁶ Department of the Environment, *Housing Needs Assessment 2011* (Dublin: Stationery Office, 2011), p. 1.

Voluntary and Co-operative sector

This historic absence of the voluntary and co-operative sector has distinguished Ireland from most European countries.¹⁰⁷ In seeking to explain the reason for this absence the National Economic and Social Council has argued that the deep rooted tradition of working class collectivist self-help which drove the development of voluntary and co-operative housing in some European countries was largely absent from Ireland. After World War II European states devolved considerable active responsibility for housing low income groups to the co-operative sector, a move which was not matched by the Irish State. Although voluntary and co-operative housing in Ireland dates back to the 1950s the sector did not develop beyond local homeownership building co-operatives until the 1970s when the National Association of Building Co-operatives was established and it was not until the 1980s/1990s that the sector reached a stage of national influence. The benefits of a strong voluntary and co-operative sector, including increased direction of resources towards housing need, improved integration of communities and greater diversity of service, motivated a renewed focus on the sector beginning in the 1990s.

In the early 2000s Government policy in this area was concerned to expand the output of dwellings by the voluntary and co-operative housing sector and indeed during this period there was a rise in housing output from the voluntary and co-operative housing sector. By 2003 the sector had a managed stock of over 16,000 dwellings. In 2008 there were over 600 voluntary and co-operative housing bodies which, between them, operated and managed over 22,000 properties nationally.¹⁰⁸ By 2011 it was estimated that the voluntary and co-operative sector was made up of just over 700 approved housing bodies (AHBs) and provided 24,400 units of accommodation.¹⁰⁹

Approved status is given by the Minister¹¹⁰ Bodies which may be considered for approved status include limited companies formed by guarantee of their members and not having shareholdings, registered under the Companies Acts, 1963 – 2001, societies registered under the Industrial & Provident Societies Acts, 1893 – 1978 and trusts incorporated under the Charities Acts.

The provision of social housing by approved voluntary and co-operative housing bodies is generally funded under two Department of the Environment Community and Local Government funding schemes: the Capital Assistance Scheme (CAS) and the Capital Loan and Subsidy Scheme (CLSS). CAS was introduced in the 1980's and is used meet the special housing needs of persons including older people, people with a disability, homeless, returning emigrants etc. CLSS was introduced in the early 1990's and has been used to meet the general housing needs of low-

¹⁰⁷ 'Strategic Review of the Capital Funding Schemes for Voluntary and Co-operative Housing' (Dublin: Grant Thornton, 2009).

¹⁰⁸ *Ibid.*, p. 59.

¹⁰⁹ D. Silke & C. Farrell, 'Study to examine the implications of including the voluntary and co-operative sector under the PRTB registration and dispute resolution services' (Housing and sustainable communities agency: Stationery Office, 2011), p. 8.

¹¹⁰ Housing (Miscellaneous Provisions) Act, 1992, s. 6.

income families. The CLSS is currently being phased out.¹¹¹ To qualify for funding under the schemes, a housing body must obtain approved status from the Department. The scheme is administered by local authorities and provides social rental accommodation for general family type needs and persons with specific categories of need. A body seeking approved status must have as its primary object the relief of housing needs, or poverty or hardship or the welfare of Travellers, and the provision and management of housing and must also have within its constitutional rules provisions prohibiting the distribution of any surplus, profit, bonus or dividend to members and requiring that the assets of the body be applied solely towards its objectives. Also each approved housing body must have a Board of Directors or other similar governing body which is responsible for operational management. In Ireland the voluntary and co-operative sector is made up of:

“voluntary housing which is provided by non-profit organisations formed for the purpose of relieving housing need and the provision and management of housing; and

housing co-operatives which are self-help and jointly-owned member/user associations or societies. The members share responsibility for their co-op and are represented on the management committees or boards of directors. There are approximately 1,200 rental co-operative dwellings in Ireland”¹¹²

Where a project is designed exclusively to meet the housing needs of those on the local authority waiting list up to 100% of the approved cost of the project can be funded via Capital Assistance Scheme. Where the approved body opts to retain 25% of the tenancy nomination rights then funding of up to 95% of the approved cost of the project is available. In practice, funding for the approved projects is provided through a grant from this Department of the Environment to the local authority who provide the funding to the relevant approved housing body in the form of a 30 year mortgage with the loan charges being waived where the terms of the scheme are complied with. The Grant Thornton Report (2009) has set out that to a substantial extent, ‘the housing association sector has relied on sites that were previously in public ownership. On the other hand, many Capital Assistance Scheme funded units have been developed on land sourced from private ownership.’¹¹³

The normal means of access to this sector would be by registration on a local authority housing waiting list, though the wait may be substantial given the under investment in social housing stock over the years, though it may be shortened considerably by scoring highly in the points allocation process. When a person reaches the top of the waiting list, an offer of accommodation will be made either directly by the local authority or the applicant may be nominated to the approved housing body. Tenant experiences of housing in the voluntary and co-operative housing sector are substantially similar to those of local authority tenants with the major exception that tenants of housing associations do not have the right to buy their dwelling. Within Irish housing policy voluntary and co-operative housing operates to diversify the range of housing provision.

¹¹¹ D. Silke & C. Farrell, ‘Study to examine the implications of including the voluntary and co-operative sector under the PRTB registration and dispute resolution services’ (Housing and sustainable communities agency: Stationery Office, 2011), p. 4.

¹¹² *Ibid.*, p. 8 & 9.

¹¹³ *Ibid.*, pp. 5 & 6.

In the wake of the economic crises proposals were submitted to address the increasing number of households in mortgage arrears across both private and social sectors. The mortgage to rent scheme was introduced as a means of allowing a struggling homeowner to stay in their home by swapping private ownership for renting from a social landlord i.e. a housing association.¹¹⁴ The lender would sell the property to the housing association who would allow the tenant to continue to live in the dwelling as a social renter. Further reforms related to this sector include the proposed inclusion of voluntary and co-operative tenancies under the scope of the Residential Tenancies Act 2004¹¹⁵ and the proposed introduction of a voluntary regulation code for approved housing bodies.¹¹⁶

¹¹⁴ This was based on the Keane report see *Inter-Departmental Mortgage Arrears Working Group* (Dublin: Stationery Office, 2011).

¹¹⁵ D. Silke & C. Farrell, 'Study to examine the implications of including the voluntary and co-operative sector under the PRTB registration and dispute resolution services' (Housing and sustainable communities agency: Stationery Office, 2011), p. 3. Also see Residential Tenancies (Amendment)(No. 2) Bill 2012.

¹¹⁶ 'Building for the Future - A Voluntary Regulation Code for Approved Housing Bodies in Ireland' (Dublin: Stationery Office, 2013).

1.5 Other general aspects

- **Are there lobby groups or umbrella groups active in any of the tenure types? If so, what are they called, how many members, etc.?**

The Irish Property Owners Association is the national association representing the providers of private rented accommodation. It provide a range of services to private landlords including providing guidelines to assist members in dealing with matters relating to Tenants; registration with the Private Residential Tenancies Board and representation; Taxation; Waste Management and any other issues affecting property owners in the private, residential rental sector. In addition to directly assisting landlords the Association has been highly active in representing private landlord interests in legislative proposals concerning many aspects of landlord and tenant law.¹¹⁷

With regard to organisations representing tenants the position is very different, since there is no national association to represent the interests of private rental tenants in the legislative process. Nor is there a national association to represent local authority tenants.¹¹⁸ This is particularly unusual in a European context and sets Ireland out as having perhaps the least developed tenant representation framework in Western Europe. There has not been a detailed analysis of the reasons for the failure of national tenant groups to develop however a part of the reason for this failure could be attributed to the historical neglect of the rented sector in housing policy until the 1990s.

- **Number (and percentage) of vacant dwellings**

From 1991 to 1996 the number of vacant houses or apartments remained stable at just over 105,000. However, between 1996 and 2002 the number of vacant houses or apartments rose to over 140,000 units. This increasing trend accelerated sharply over the next four years and by 2006 there were over 260,000 vacant houses or apartments of which 49,789 were recorded as holiday homes. This corresponded to a vacancy rate in 2006, of 15% of total housing units. Since the onset of the economic crises the level of vacant houses or apartments has reduced sharply as housing supply has slowed dramatically. In 2011 there were just over 230,000 vacant houses or apartments of which almost 60,000 housing units were recorded as holiday homes. Overall in 2011 the vacancy rate, including holiday homes, was recorded as 14.5% of total housing units. If holiday homes are excluded then the vacancy rate dropped to 11.5%.¹¹⁹ Part of the high vacancy rate can be attributed to 'ghost estates'. In 2010 almost 3,000 developments, comprising an estimated 180,000 dwellings were inspected of which only 15% were active. The Government have set addressing the 'ghost estate' issue a high priority and have through the National Assets Management Agency and in conjunction with local authorities engaged with developers in order to bring completed vacant houses into use. There were almost 23,000 dwellings in ghost estates which were complete and vacant. Over the following two years there has been slow but steady progress made in bringing complete vacant properties in ghost estates into use. By 2012 there were

¹¹⁷ <http://www.ipoa.ie/>

¹¹⁸ Kenna, *Housing Law Rights and Policy*, pp. 833-834.

¹¹⁹ Central Statistics Office, *Census 2011: Profile 4 The Roof over our Heads - Housing in Ireland* (Dublin: Stationery Office, 2011), p. 7.

16,881 completed vacant houses which represented a steady improvement on the 2010 figure.¹²⁰

- **Are there important black market or otherwise irregular phenomena and practices on the housing market (especially the rental market)?**

It is difficult to provide a definitive picture on the presence of informal economies in the Irish rental market. This is because there has not been detailed academic consideration of the role of informal economies in the Irish rental market. While this is most likely due to the absence of acute black market phenomena, it also derives from an absence of meaningful statistics which would allow for a more detailed examination of real market activity. However there have been a number of reports which suggest that various informal economy activities take place in the Irish rental market. These have included the payment of “supplementary rent payments” by private tenants in receipt of rent supplement,¹²¹ the letting of substandard accommodation and the letting of “bedsits”.¹²²

In rental markets a classic indicator of black market activity is the avoidance of rent controls. Since deregulation of the private rented sector in the late 1980s, market rents have prevailed in Ireland however there have been reports of an irregular rent payment practice which developed as a result of caps set on rent supplement levels. Tenants on rent supplement have been asked to make extra top up payments to their landlords to avoid losing their home.¹²³ Recent reforms to the rent supplement scheme whereby landlords would be paid directly may go some way towards reducing this activity however it is unlikely to completely eradicate such practice. Another black market area concerns the letting of substandard accommodation. There is no annual survey of housing conditions in Ireland however local authorities undertake over twenty thousand inspections a year. These inspections have found that several hundred houses, which are below the minimum legal standard, have been let to tenants. Without further statistics it is not possible to state the prevalence of this activity. Finally, the practice of letting bedsits, i.e. a self-contained one bedroom flat, has been rendered illegal since the 2013.¹²⁴ However given that there were several thousand households living in such accommodation in 2011, it is doubtful that the practice of letting such accommodation ended in 2013.

¹²⁰ Department of the Environment, *Resolving Unfinished Housing Developments: Progress Report on Actions to Address Unfinished Housing Developments* (Dublin: Stationery Office, 2012).

¹²¹ Threshold, *Annual Report 2012*, (Dublin, Threshold, 2012), p. 22.

¹²² *Ibid.*, p. 28.

¹²³ *Ibid.*, p. 22.

¹²⁴ Housing (Standards for Rented Houses) Regulations 2008 (S.I. No. 534/2008) and Amendment Regulations 2009 (S.I. No. 462/2009).

Summary table 1 Tenure structure in Ireland 2011¹²⁵

Home ownership	Renting			Interme- diate tenure	Other	Total
		Rented from a private landlord	Housing with a public task (Rented from a Local Authority, voluntary housing or occupied rent free)	Shared Ownership Scheme		
69.7%		18.5%	10.3% ¹²⁶	-	1.5%	100%

¹²⁵ *Census 2011: Profile 4 The Roof over our Heads*, p.12.

¹²⁶ Of this figure, 7.82% rent from a local authority, .91% rent from a voluntary body and 1.54% occupy their housing rent free.

2 Economic Factors

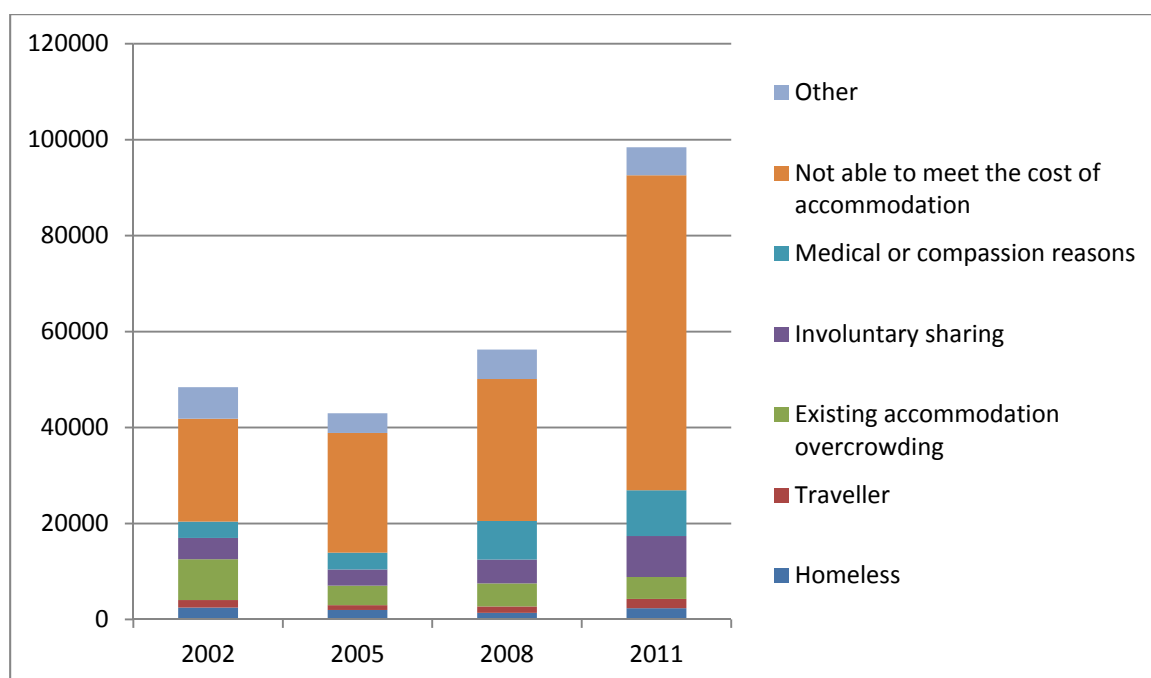
2.1 Situation of the housing market

- **What is the current situation of the housing market? Is the supply of housing sufficient/ insufficient and where is this the case (possibly in terms of areas of scarcity of dwellings in growth areas versus shrinkage areas)?**

Sufficiency of present market supply of rental housing

Housing authorities are required to carry out a housing needs assessment every three years in order to determine the likely need for the of suitable accommodation for persons whom are likely to require, accommodation from the authority, and are unable to provide it from their own resources.¹²⁷ Special regard must be paid to a range of particular housing need including; homeless persons, members of the Traveller community, persons whose existing accommodation is unfit, persons whose existing accommodation is overcrowded, persons who are sharing involuntarily, young persons' leaving institutional care, persons who are in need of accommodation for medical or compassionate reasons, older persons, persons with a disability and finally persons who are unable to meet the cost of their accommodation.

Figure 20: Housing Need Assessment from 2002 - 2011¹²⁸



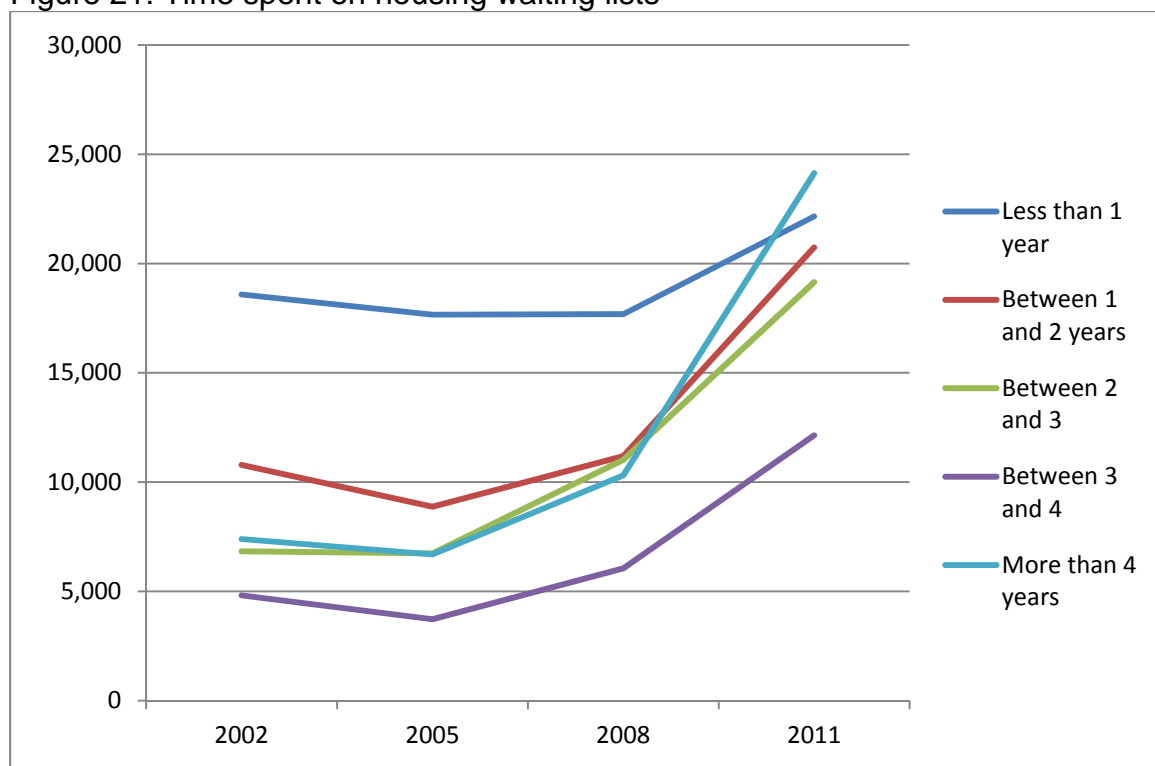
The National Assessment 2011 revealed almost 100,000 households waiting for social housing support. Of this figure, two thirds were not able to meet the cost of their existing accommodation. This represents a sharp increase since 2008 when

¹²⁷ The Housing (Miscellaneous Provision) Act 2009 provides for a new process of housing assessment with effect from 1st April, 2011, previously the housing needs assessment was carried out under of the Housing Act 1988 s. 9.

¹²⁸ Department of the Environment, *Housing Needs Assessment 2011* (Dublin: Stationery Office, 2011), p. 1.

only 30,000 households were in this situation. This steep increase indicates a serious affordability challenge within the Irish housing sector.

Figure 21: Time spent on housing waiting lists¹²⁹



In line with this increased need the average time spent on the Housing Waiting List has increased consistently in the last six years; in 2011 over a third of households (36.9%) had been waiting for social housing for over three years. While demand for housing is growing at a very strong rate, Local Authority activity in supply is contracting.¹³⁰

Time spent on waiting list as a percentage of total (2011)

Demand for social housing cannot be met by existing social housing stock and the result is that housing waiting lists have grown rapidly. In 2011 almost a quarter of all those assessed as being in need of housing were on housing waiting lists for more than four years while almost sixty per cent of all those assessed as being in housing need had been on waiting lists for over two years. The recent high level of new applications is also represented strongly with just over a fifth of all those assessed as being in need having spent less than a year on housing waiting lists.¹³¹ The inability of the social housing sector to provide suitable accommodation has contributed in part to the recent increases in the size of the private rented sector as households who are unable to access social housing increasingly turn the private rented sector as an alternative means of sourcing accommodation. This has contributed to an increase in the number of rent supplement claimants and has placed additional strain on the rent

¹²⁹ Department of the Environment, *Housing Needs Assessment 2011* (Dublin: Stationery Office, 2011), p. 1.

¹³⁰ Department of the Environment, *Housing Needs Assessment 2011* (Dublin: Stationery Office, 2011), p. 3.

¹³¹ *Ibid.*

supplement scheme as such households are likely to be in need of long term housing support rather than the type of short term need which the rent supplement scheme was designed to meet. The Government response to the rapid increase in the size of the rent supplement scheme has been to transfer long term recipients of rent supplement on to the Rental Accommodation Scheme and to introduce the Housing Assistance Payment.¹³²

The supply of new dwellings has slowed dramatically since the onset of the economic, falling from a peak of 80,000 units a year in 2006 to just over 10,000 units in 2012. For much of this period prices have also been falling however from 2013 onwards there have been signs of increases in prices and rents in certain urban areas, particularly Dublin. It has been reported that the price of homes across the State climbed by over 6 per cent last year with prices in Dublin recording price increases of nearly 16 per cent.¹³³ However these figures reflect a low volume of transactions. With regard to rents it has been reported that rents for Dublin apartments rose by 8 per cent in 2013, while rents on houses rose by 6.4 per cent over the same period.¹³⁴ Both indicators have been taken to suggest that the current supply of housing may not be sufficient to meet existing demand.¹³⁵ Indeed there have been calls for a threefold increase in the supply of housing to meet the high demand for housing.¹³⁶

¹³² See section 1.4 above.

¹³³ Central Statistics Office, 'CSO Residential Property Price Index December 2013' (Dublin: Stationery Office 2014).

¹³⁴ *The Private Residential Tenancy Board Rent Index 2013*, (Dublin: Stationery office, 2013)

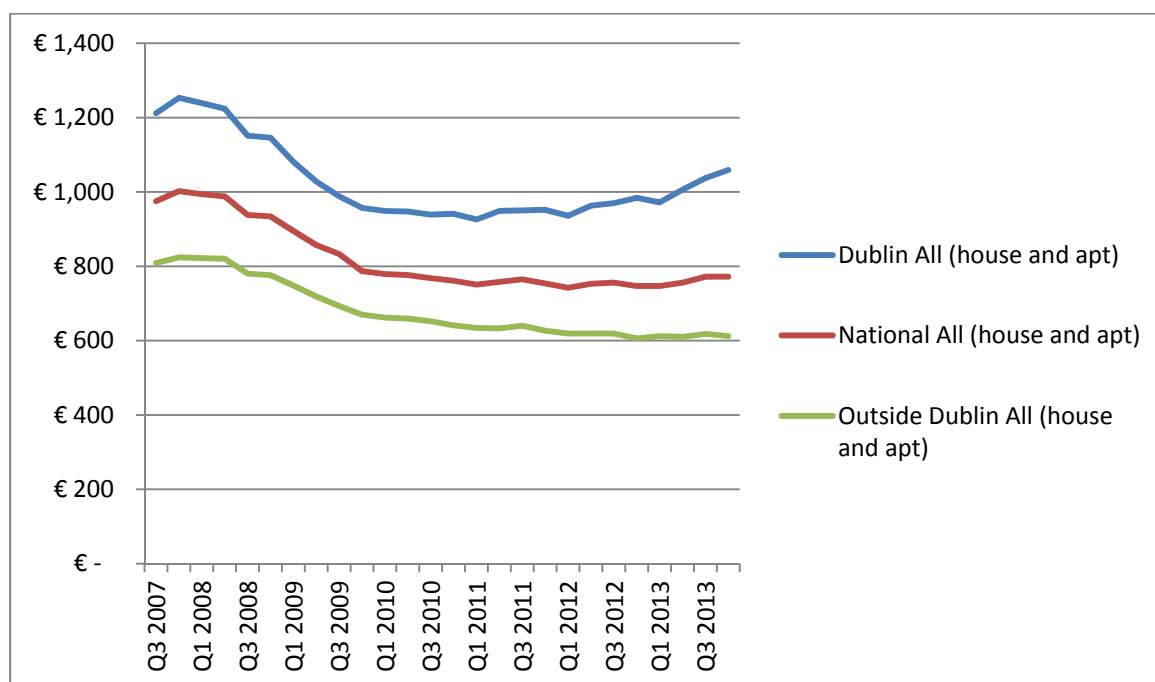
¹³⁵ Economic and Social Research Institute, 'Quarterly Economic Commentary – Winter 2013' (Dublin: Stationery Office, 2013, p. 8.

¹³⁶ Economic and Social Research Institute research professor John FitzGerald called for a return to construction of 25,000 houses per year at the Trinity Economic Forum in February 2014.

2.2 Prices and Affordability

- What is the typical cost of rents and its relation to average disposable income (rent-income ratio per household)?

Figure 22: Average Monthly Rent Private Rented Sector Q3 2007 - Q4 2013 (Nationwide & Dublin)¹³⁷



After the onset of the economic recession rents nationally fell by about a quarter until early 2011 when rents began to stabilise. From then on rents were relatively flat until late 2013 when rents began to increase again, albeit at a low level. The average monthly rent paid by a private renter nationally in the fourth quarter of 2013 was €772.¹³⁸ There is a marked difference in rents between Dublin and the rest of the country. In particular, rents have been consistently higher in Dublin than rents in the rest of the country and indeed rents in Dublin have recovered much quicker than rents in the rest of the country. The average monthly rent paid by a private renter in Dublin in the fourth quarter of 2013 was €1059 while the comparative figure for the rest of the country was €612.¹³⁹

In 2011, the average net disposable income per person in Ireland was €21,440.¹⁴⁰ This equated to an average monthly net disposable income in Ireland of €1,786, on which basis the private rent-to-income ratio in 2011 was approximately 42%.¹⁴¹

¹³⁷ Private Residential Tenancies Board/ESRI, *Rent Index 2013 Q4* (Dublin: Stationery Office, 2014), p. 6. These are PRTB Standardised Rents which are based on PRTB Rent Index figures.

¹³⁸ *The Private Residential Tenancy Board Rent Index 2013*, (Dublin: Stationery office, 2013) p. 12.

¹³⁹ Private Residential Tenancies Board/ESRI, *Rent Index 2013 Q4* (Dublin: Stationery Office, 2014), p. 6.

¹⁴⁰ Central Statistics Office, *Survey on Income and Living Conditions 2011* (Dublin, CSO, 2013), p. 1.

¹⁴¹ The average monthly rent nationally in 2011, as indicated on the graph above, was €757.

To what extent is home ownership attractive as an alternative to rental housing

Historically homeownership offered greater economic benefits, greater security of tenure and more freedom to the occupier than could be generally secured in the private residential rented sector. However, the reforms of the early 2000s have improved regulation and governance within the private rented sector and the reforms of the Irish taxation system after the onset of the recession, in particular, the introduction of the local property tax on owner occupiers, have operated to reduce the comparative advantages.

Approximately half of all homeowners in Ireland own their homes with the aid of a loan or mortgage. The Irish credit market is distinguished internationally by the relative preponderance of variable rate mortgages over fixed rate mortgages. Indeed, variable rate mortgages accounted for 83.9 per cent of the outstanding amount of loans for principal dwelling house purchase at end-March 2011 (32 per cent standard variable, 50.2 per cent trackers, 1.6 per cent up to 1 year fixed).¹⁴² At present interest rates are at historically low levels and as such many Irish households are benefiting from the low interest rates presently attaching to tracker mortgages linked to ECB rates. As such, homeownership in Ireland with a loan or mortgage can be more affordable than private renting.

○ What have been the effects of the current crisis since 2007?

The economic crisis has had a profound impact across all tenures of the Irish housing system. One of the most readily identifiable effects has been the rapid inflation and subsequent rapid deflation of the property market. Between 1997 and 2007 residential and commercial property prices increased almost four-fold.¹⁴³ Since 2007 the Irish economy has declined sharply and nationally property prices fell by 49% from 2007 to 2012.¹⁴⁴ Prices have not fallen uniformly; rather there have been greater falls in Dublin with house prices falling by 54% and apartment prices falling by 62% between 2007 and 2012 while the fall in the price of residential properties in the Rest of Ireland during this period was 47%.¹⁴⁵ However, since 2012 property prices appear to have stabilised in some areas, with certain urban areas, particularly in Dublin, recording property price and rent increases.¹⁴⁶

¹⁴² 'Trends in the Irish Credit and Deposits Markets: A New Presentation', in *Quarterly Bulletin 2* (Dublin: Central Bank, 2011), p. 103.

¹⁴³ Central Bank of Ireland, *Address by Deputy Governor Stefan Gerlach at the Berlin Finance Lecture, Berlin, 14 January 2013, Ireland: From Crisis to Recovery* (Dublin, Stationery office, 2013), p. 3.

¹⁴⁴ Central Bank of Ireland, *Macro-Financial Review 2012* (Dublin, Stationery office, 2012), p. 16. A. Kennedy & K. McQuinn, *Why are Irish house prices still falling* (Dublin, Central Bank of Ireland, 2012), p. 8.

¹⁴⁵ Central Statistics Office, *Residential Property Price Index December 2012* (Dublin, Stationery Office, 2013), p. 1.

¹⁴⁶ Central Statistics Office, *Residential Property Price Index September 2013* (Dublin, Stationery Office, 2013), p. 1. However, property prices may not yet have stabilised in the rest of the country. See Daft.ie, *The Daft.ie House Price Report 2013 in review* (Dublin, Daft.ie, 2013), p. 6. Also see Private Residential Tenancies Board/ESRI, *Rent Index 2013 Q4* (Dublin: Stationery Office, 2014).

2.3 Tenancy contracts and investment

- **The return (or Return on Investment (RoI)) for rental dwellings for landlords-investors and effects of the crisis since 2007**

Residential investment seeks both capital appreciation and, rental yields. With the strong house price inflation recorded during the late 1990s and early 2000s, rental dwellings proved to be a highly attractive investment, but with the onset of the economic crises the potential for capital appreciation was severely curtailed. The property price and construction booms ended with stark falls in property prices eroding much of the value gained in the last 10 years. The potential of raising revenue from rent returns is also generally limited at present in Ireland. Rapid growth in the size of the private rented sector this has not been attended by a proportionate rise in rents.

- **To what extent are tenancy contracts relevant to professional and institutional investors?**

Bundles of tenancy contracts are not be included in real estate investment trusts or similar instruments. Furthermore, the securitization system is not related to tenancies in Ireland.

- **In particular: may a bundle of tenancy contracts be included in Real Estate Investment Trusts (REITS) or similar instruments?**

A real estate investment trust is a company that owns and manages income-producing property assets, allowing individual investors to earn a share of the income produced through commercial real estate ownership without the problems of holding a portfolio of land directly. Since the Finance Act 2013 it is perfectly feasible to include the rental output of a bundle of tenancy contracts as an asset within a real estate investment trust.

- **Is the securitization system related to tenancies in your country? Are commercial (or other) landlords allowed to securitize their rental incomes? If yes: Is this usual and frequent?**

This is theoretically possible, but thought to be extremely rare.

2.4 Other economic factors

- **What kind of insurances play a role in respect to the dwelling (e.g. insurance of the building, the furniture by the landlord; third party liability insurance of the tenant?)**

Generally landlords are responsible for insuring the property and this will usually extend to fixtures and fittings and other contents belonging to the landlord however the landlord will not generally provide contents insurance for the tenant's property. Instead the tenant is at liberty to acquire a tenant's contents insurance policy independently.

- **What is the role of estate agents? Are their performance and fees regarded as fair and efficient?**

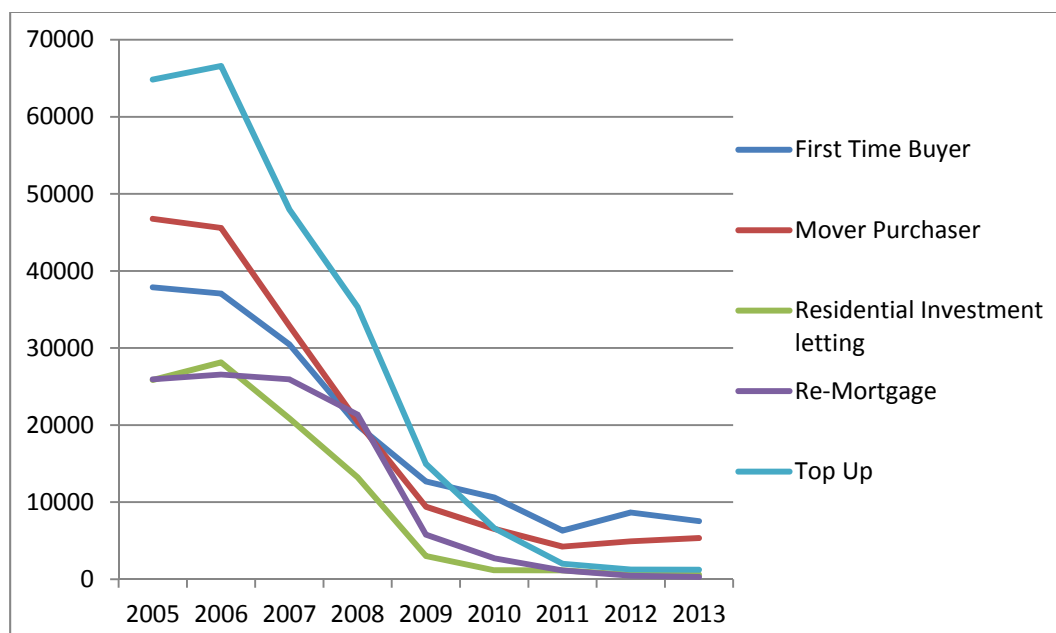
The Property Services Regulatory Authority was set up in April 2012,¹⁴⁷ to regulate, control and supervise auctioneers, estate agents, letting agents and management agents and to enforce standards within the property industry. In the private rented sector estate agents offer a range of services to landlords and tenants beyond matching landlord properties to prospective tenants, services which include a property management and tenancy agreement drafting and advising as to an estimate of rental value for the landlord.

¹⁴⁷ By order under the Property Services (Regulation) Act 2011.

2.5 Effects of the current crises

- Has mortgage credit been restricted? What are the effects for renting?

Figure 23: Number of Residential Mortgage Loans 2005 – 2012



The credit market has been characterised since the late 1990s by low and declining mortgage interest rates. In 1995 the average first-time buyer took out a mortgage equal to three years' average industrial earnings, and the average house cost four years' earnings. By the bubble peak in late 2006, the average first-time buyer mortgage had risen to eight times average earnings, and the average new house now cost ten times average earnings but the multiple was seventeen in Dublin.¹⁴⁸ A dramatic reduction in mortgage lending has taken place in Ireland since the onset of the economic crises. According to the Irish Banking Federation mortgage lending in Ireland has fallen from a peak of in excess of 200,000 residential loans in 2008 to less than 15,000 in 2011 though one feature is the increasing proportion of first time borrowers. In 2013, over half of all mortgages were to first time buyers, with almost a third made to mover purchasers with less than ten per cent of mortgages were top up mortgages, less than five per cent were residential investment letting and the remainder were re-mortgages.¹⁴⁹

¹⁴⁸ M. Kelly *The Irish Credit Bubble* (Dublin: University College Dublin, 2009), p. 2. Indeed, the number of mortgages of over 250,000 increased from 2.6% of total in 2000 to 41% of the total in 2007. 100% mortgages became available in 2004 and accounted for 4% of all mortgages granted in that year, while in 2008 such 100% mortgages accounted for 12% of all mortgages granted. A huge amount of financial product innovation took place among mainstream lenders during this period see M. Norris and N. Winston, "Transforming Irish Home Ownership Through Credit Deregulation, Boom and Crunch", *International Journal of Housing Policy*, 11(1), (2011): 1-21.

¹⁴⁹ 'Mortgage Market Profile - Data Series 2005-2012' (Dublin: IBF/PwC, 2012). Data for 2013 was taken from 'IBF PwC Mortgage Market Profile Q4 2013' (Dublin: IBF/PwC, 2014), p. 2.

One consequence of the recession has been a dramatic increase in mortgage arrears. At end-September 2013, there were a total of 768,000 private residential mortgage accounts for principal dwellings held in the Republic of Ireland, to a value of €108.5 billion.¹⁵⁰ At end-September 2013, some 12.9% of residential mortgage accounts were in arrears of more than ninety days and there was a large number 180 days in arrears.¹⁵¹ It is no surprise to find that since the economic crisis, beginning in 2007, the groups most likely to be in greatest debt are first time buyers who bought at the top of the market (2005-2007) and particularly first time buyers living in Dublin.¹⁵² Many first time buyers in Dublin took on 100% mortgages so that the subsequent collapse of house prices led to negative equity, with increased risk of default.

Many investors in the residential letting sector are currently (2013) at risk of default. At the end of September 2012 there were almost 150,000 residential mortgage accounts for buy-to-let properties held in the Republic of Ireland, to a value of €30.3 billion. Of the total stock of accounts, 27.4%, were in arrears.¹⁵³ There is a relatively limited amount of research profiling landlords within the private rented sector, and the role of residential investment letting or buy to let within the residential letting market has not received detailed consideration in Irish housing discourse. The IMF and the OECD considered ten years back that the rental market in Ireland was dominated by small mostly inexperienced individual investors who own one to three properties¹⁵⁴ and who might attempt to sell if interest rates rose and/or house price increases stalled.¹⁵⁵ The rise in buy-to-let activity was identified in the first 'Bacon Report' as a driver of house price inflation and from 2003 to 2006 buy to let mortgages as a share of residential mortgage lending increased from 16.7% in December 2003 to 24.6% in December 2006.¹⁵⁶

¹⁵⁰ Central Bank of Ireland, *Residential Mortgage Arrears and Repossessions Statistics: Q3 2013* (Dublin: Stationery Office, 2013) p. 2.

¹⁵¹ *Residential Mortgage Arrears and Repossessions Statistics: Q3 2013*, p. 5. Some 82,509 accounts were in arrears of more than 180 days at the end of September 2013.

¹⁵² In 2006, 74% of this group borrowed over €250,000 compared to 38% of first time buyers in the country as a whole, and 64% of repeat homebuyers and property investors in Dublin: Norris and Winston, "Transforming Irish Home Ownership" *International Journal of Housing Policy*, 11(1) (2011): p. 13.

¹⁵³ *Mortgage Arrears and Repossessions Statistics: Q3 2013*, p. 5;

¹⁵⁴ D. Rae & P. Van den Noord, "Ireland's Housing Boom: What has Driven it and Have Prices Overshot?" (OCED: OECD Publishing, Economics Department Working Papers, 2006) para. 492.

¹⁵⁵ 'Mortgage Market Profile - Data Series 2005-2012' (Dublin, IBF/PwC, 2012); J.Kelly and A. Menton, "Residential Mortgages: Borrowing for Investment", *Quarterly Bulletin, CBFSAI*, (2007), No. 2, pp. 129-145.

¹⁵⁶ For an overview of the policy concerns see Bacon & Assocs, *An Economic Assessment of Recent House Price Developments* (Dublin: The Stationery Office, 1998); Bacon and Assocs, *The Housing Market: An Economic Review and Assessment* (Dublin: Stationery Office, 1999); Bacon & Assocs, *Medium Term Projections of the Supply and Demand for Apartments in Dublin City Centre* (Wexford: Peter Bacon & Assocs, 2003) and Bacon & F. McCabe, *The Housing Market in Ireland: An Economic Evaluation of Trends and Prospects* (Dublin: The Stationery Office, 2000).

- **Indicate the current figures on repossession (seizures of houses in case of mortgage credit default of the buyer)? Have repossessions affected the rental market?**

While there has been a sharp increase in the mortgage arrears there has not been a comparable increase in repossessions. Instead, many non-performing mortgages have been restructured by private agreement between lender and borrower.¹⁵⁷ This is largely due to combination of legal and policy measures. In the first place the Land and Conveyancing Law Reform Act 2009 played a significant role in reducing the amount of repossessions in Ireland. By inadvertently repealing certain legislation the Act made it more difficult for a lender to secure a court order for possession. In addition to this measure a one year moratorium on possession on primary residences was introduced in 2010. Further mortgage instruments were introduced including the Mortgage Arrears Resolution Process which imposed standards of behaviour on lenders and borrowers further encumbering the ability of the lender to take possession. Finally, it is also important to draw attention to the state of the Irish property market which experienced dramatic house price falls during the economic crisis and thereby reduced the incentive to repossess properties.¹⁵⁸ Overall repossessions have been rare, but the appointment of a receiver to collect rent on behalf of the lender has been a more common practice.¹⁵⁹

- **Has new housing or housing related legislation been introduced in response to the crisis?**

There has been a raft of legal measures introduced in response to the crises. With regard to homeownership perhaps the most far reaching reforms relating to housing have related to mortgage law and personal insolvency. Following the work of the Inter-Departmental Mortgage Arrears Working Group 2011¹⁶⁰ a number of measures were introduced including the mortgage to rent scheme¹⁶¹ and the Personal Insolvency Act 2012.¹⁶² The Personal Insolvency Act 2012 introduced three new debt-resolution mechanisms and has reformed the law relating to bankruptcy. With regard the private rented sector the introduction of the Housing Assistance Payment has reformed income support for private tenants experiencing difficulty paying rent and allows for tenants in need of long term income support to take on employment while retaining a portion of their income support.¹⁶³

¹⁵⁷ *Mortgage Arrears and Repossessions Statistics: Q3 2013*, p 8; at end September 2013 there 21,607 BTL mortgage accounts that were categorised as having been 'restructured'.

¹⁵⁸ See R. Waldron & D. Redmond, 'The Extent of the Mortgage Crisis in Ireland and Policy Responses' 29(1) (2014): 149-165.

¹⁵⁹ 'Macro Financial Review, 2012' (Dublin, Central Bank, 2012), p. 13. Interest only arrangements and reduced payment arrangements (interest plus some capital) accounted for the majority of all restructure types (approximately 76 per cent). Lenders were in possession of 516 BTL properties at end-September 2013: *Mortgage Arrears and Repossessions Statistics: Q3 2013*, p. 5.

¹⁶⁰ Referred to as the Keane report see *Inter-Departmental Mortgage Arrears Working Group* (Dublin: Stationery Office, 2011).

¹⁶¹ See section 1.4 above.

¹⁶² See section 6.4 below.

¹⁶³ See section 3.3 above.

Summary table 2: Effects of the economic crises since 2007 on rented tenures

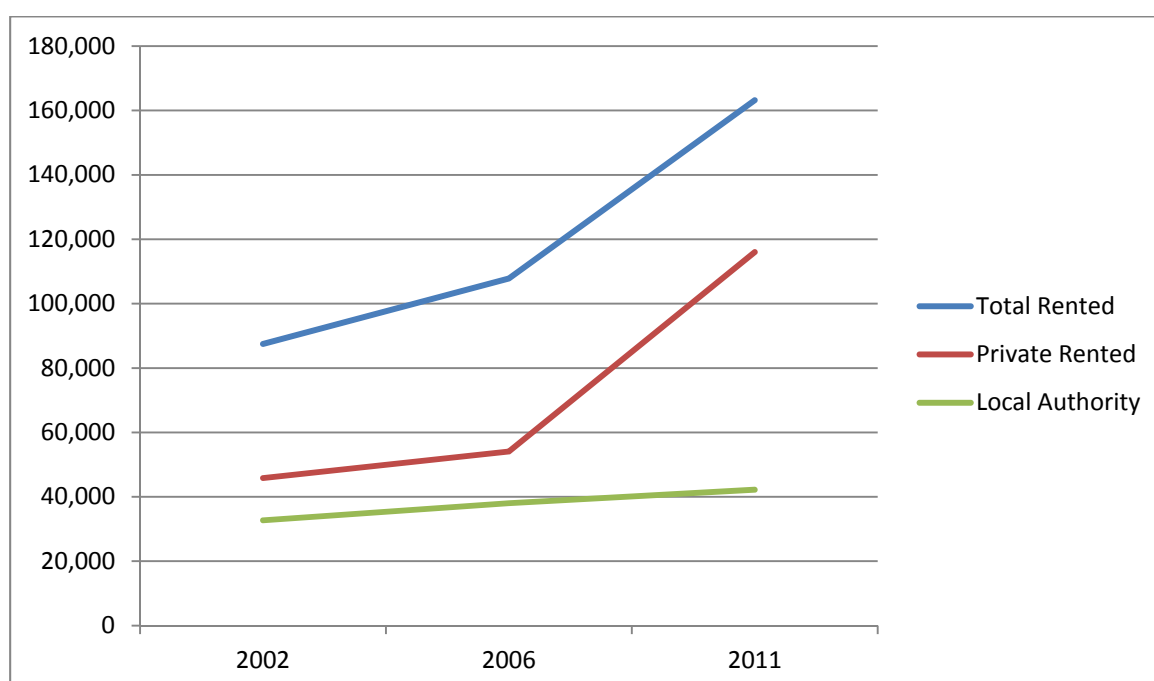
	Social renting		Private renting	
	Landlord	Tenant	Landlord	Tenant
A. Demand and supply	Insufficient stock	Increased demand for social housing supports	Local market divergence, signs of undersupply, particularly in Dublin	High demand for private rented housing particularly in urban areas
B. Affordability	Rents have increased since the crises	Differential rents related to income rather than market prices	Rents have fallen since the crises but sharp rent increases since late 2013 early 2014	Affordability challenges persistent - over a third of private tenants rely on welfare supports to pay rent
C. Return on Investment	-	-	Capital falls as well as rental falls generally but signs of price and rent growth since 2014	-
D. Insurances	-	-	Landlord insurance over dwelling except contents	Contents insurance
E. Crisis effects	Waiting lists and waiting times have increased substantially	Rapid increase in applications for social housing supports	Loss in capital value and rental value, some reposessions (particularly BTL), greater role in meeting social housing need (e.g. RAS scheme)	Renters are a highly diverse group, recent increases in rent in urban areas have placed particular pressure on lower income households

2.6 Urban aspects of the housing situation

- **What is the distribution of housing types in the city scale (e.g.: are rented houses mainly in the city centres and owner occupied in the suburbs?) vs. the region scale (e.g.: more rented houses in the big cities, less in the villages?)**

As set out above, in rural areas the rate of owner occupation has remained consistent over the last forty years, however urban areas have experienced considerable variations in the home ownership rate, growing from 38 % in 1961 to a peak of 73% in 1991, since then there has been a continuous decline, so that the owner occupier rate among urban households is now only 61%.¹⁶⁴ This decline can be attributed to the consistent increase in the number of private renters during the last 20 years.

Figure 24: Developments in the Private Rental Market, Dublin 2002-2011



One of the effects of the high rate of house price inflation, particularly in Dublin, has been to direct households into the rented sector. As the population of Dublin accounts for about 28% of the total population of Ireland, trends in Dublin tend to direct national trends. Census 2011 has revealed that there were a total of 163,200 rented homes in Dublin, of which over 70% were rented privately and fewer than 30% were rented from the local authority¹⁶⁵ This marked a major increase from 2002.¹⁶⁶ The shift towards the private rented sector in Dublin was reflected nationwide,

¹⁶⁴ Central Statistics Office, *Census 2011: Profile 4 The Roof over our Heads - Housing in Ireland* (Dublin: Stationery Office, 2011), p. 13.

¹⁶⁵ This includes 116,012 private rented households and 42,199 local authority households.

¹⁶⁶ When there were a total of 87,510 rented households in Dublin with 54,831 private rented households (46,530 furnished and 8,301 unfurnished) in Dublin and 32,679 local authority renters in Dublin. Overall, there was an 86.49% increase in the number of rented households in Dublin from 2002-2011, with most of this increase deriving from the private rented sector growing by over 150% during this period while contemporaneously the number of local authority households rose by 29.13%.

though on a smaller scale. Overall in the twenty years from 1991 to 2011, the percentage of private renters as a proportion of total renters rose from less than half to more than two thirds across the country.¹⁶⁷

- **Are the different types of housing regarded as contributing to specific, mostly critical, 'socio-urban' phenomena, in particular ghettoization and gentrification**

The local authority rented sector underwent dramatic changes in the last fifty years. For much of this period the size of the sector decreased consistently due to the introduction of the tenant purchase scheme in 1966. As a result of this scheme the number of higher income households living in local authority housing reduced consistently and local authority housing became increasingly residualised and segregated.¹⁶⁸ Local authority households are among the poorest in Irish society and are disproportionately affected by unemployment, with this sector experiencing higher levels of unemployment.¹⁶⁹ The role which management of local authority estates has played in contributing to residualisation of local authority has been considered in a number of studies.¹⁷⁰ In particular, it has suggested that changes to management of local authority housing during the 2000s resulted in stronger relationships with tenants and a fall in anti-social behaviour on estates.¹⁷¹ Kenna notes that State housing policy within local authority housing is moving towards a marketization approach where controlling risk is the prime consideration however ultimately the local authority sector remains a tenure of last resort.¹⁷²

- **Do phenomena of squatting exist? What are their – legal and real world – consequences?**

In Ireland an estate or interest in land may be extinguished under the doctrine of 'adverse possession'.¹⁷³ This concept is often referred to in common parlance as 'squatter's rights' and in essence the doctrine reflects the fundamental possessory characteristic of Irish property law and the ultimate relativity of title that follows that notion. Where a person goes into possession of property which is adverse to the paper owner's title for 12 years¹⁷⁴ the interest of the paper title owner is extinguished and the adverse possessor gains a title good against anyone other than a person with a better title to the land. In order for the doctrine to take effect a number of qualities must be present. The possession must be inconsistent with the title of the true owner¹⁷⁵ and time does not begin to run against the owner of the land until a right of action accrues to him. Thus, there must be both a dispossession of the true owner or discontinuance of possession by him and adverse possession by some

¹⁶⁷ *Ibid.*

¹⁶⁸ On the residualisation of local authority housing see: National Economic and Social Council *Housing in Ireland, Background Analysis, Paper 6: The Provisions of Social and Affordable Housing* (Dublin: National Economic and Social Council, 2004), Box 6.3.

¹⁶⁹ *Ibid.*

¹⁷⁰ M. Norris & C. O'Connell, 'Social Housing Management, Governance and Delivery in Ireland: Ten Years of Reform on Seven Estates' *Housing Studies*, 25(3) 2010, 317-334; Kenna, *Housing Law Rights and Policy*, pp 792-798.

¹⁷¹ Norris & O'Connell, p. 318.

¹⁷² Kenna, *Housing Law Rights and Policy*, pp. 798.

¹⁷³ Wylie, *Irish Land Law*, p. 1151; Law Reform Commission, *Title by Adverse Possession of Land* (Dublin: LRC 74, 2005).

¹⁷⁴ The Statute of Limitations Act 1957 sets the general period at 12 years.

¹⁷⁵ The possession must be *nec vi, nec clam, nec precario*, i.e. the possession must not be brought about by force or through stealth and the doctrine cannot operate where there is consent present.

other person. Occasionally the doctrine arises in highly publicised prince and pauper cases, i.e. where a poor person squats in a highly valuable property; however these are far from representative of the general role the doctrine has played over the years and in particular the doctrine has played an important role in regularising informal transfers of ownership, e.g. where a farmer dies but no representation is taken out of his estate and subsequent disputes arise between the beneficiaries under his will or where there are poor maps, adverse possession can settle boundary disputes.

With regard to local authority property, the Housing (Miscellaneous Provisions) Act 1997 made illegal occupation of local authority housing a criminal offence.¹⁷⁶ Under this provision a house which is occupied whether continuously or otherwise, by a person (other than the tenant or a person who has failed to vacate a house on termination of a tenancy) and a member of the Garda Síochána has received notification from the housing authority that the authority believe that the person is or has been engaged in anti-social behaviour and that it is necessary in the interest of good estate management that the occupier be required to leave the house then a Garda may direct the occupier to leave immediately. Should the occupier fail to leave he will be guilty of a criminal offence and may be arrested without warrant.¹⁷⁷ Under this provision a Garda may enter the house by using reasonable force to arrest the occupier.¹⁷⁸

In addition the Housing Act 2002,¹⁷⁹ in amending the Criminal Justice (Public Order) Act, 1994, introduced criminal liability for trespass on public land in certain circumstances. Under this provision where a person enters another's land without consent or brings or places an object onto that land which is likely to interfere with the land in a substantial way that person will be guilty of a criminal offence.¹⁸⁰ While of general scope this provision restricts unauthorised encampments of members of the Traveller Community on public land and as a result the provision has drawn criticism from a number of sources.¹⁸¹

¹⁷⁶ Housing (Miscellaneous Provisions) Act 1997 s. 20.

¹⁷⁷ *Ibid.*, s. 20 (2)(3).

¹⁷⁸ *Ibid.*, s. 20 (4).

¹⁷⁹ Criminal Justice (Public Order) Act 1994 s. 19C, inserted by Housing (Miscellaneous Provisions) (No. 2) Act 2002 s. 24.

¹⁸⁰ Criminal Justice (Public Order) Act, 1994 s. 19C(1)(b).

¹⁸¹ *Progressing the Provision of Accommodation to Facilitate Nomadism*, (Dublin: Irish Traveller Movement, 2007) p. 4; P. Watt & K. Charles, *Housing Conditions of Roma and Travellers*, (Dublin, European Union Agency for Fundamental Rights, 2009) p. 18.

2.7 Social aspects of the housing situation

- **What is (are) the dominant public opinion(s) towards certain forms of rental types or tenure forms? (e.g. is renting considered as socially inferior or economically unsound in the sense of a “rental trap”?) In particular: Is only home ownership regarded as a safe protection after retirement?**

Over the past hundred years home ownership was held up as the tenure of choice for Irish households and this was reflected in the high rates of owner occupation, peaking at 80% during the 1980s. The reasons for the prioritisation of this tenure choice have been discussed above,¹⁸² however suffice to say that when compared against the rented sectors home ownership continues to offer the strongest security to households provided they can meet mortgage payments. The property market remains weak and properties which were purchased during the 2000s are in negative equity.¹⁸³ While repossessions remain relatively rare, the high number of distressed residential mortgages indicates that the dysfunction in the property market following the recession remains acute.

For much of the twentieth century the rented sector was in a constant decline and it was not until 1991 that the sector began to record small but consistent growth. This more recent growth was primarily driven by growth in the private rented sector. At present the private rented sector is the fastest growing sector by a considerable margin. While this may be taken to suggest that public opinion towards the sector is extremely favourable, the reality is that many households have turned towards the sector out of necessity. For instance, many first time buyers have been unable to access credit to purchase a dwelling and as such have become renters. In addition, the shortage of housing with a public task has channelled many households towards the private rented sector, as indicated by the fact that approximately 40% of private renters are in receipt of a supplementary income support in order to meet their rent. While the reforms of the last ten years have strengthened regulatory oversight of the private rented sector and this has improved the reputation of the sector however it is far from apparent that dominant public opinion regards the private rented sector as a socially superior tenure.

From its earliest origins the local authority housing sector represented a means of providing housing to the poorest households in Ireland. From the introduction of the tenant purchase scheme in the 1960s the local authority rented sector has become increasingly residualised, and as such would be regarded at present as a socially inferior tenure.

¹⁸² See section 1.4 above.

¹⁸³ Property prices have stabilised, and even increased, in certain urban areas..

Summary table 3: Social aspects and policies

	Home ownership	Renting with a public task	Renting without a public task
Dominant public opinion	Preference for home ownership		
Tenant opinion	Preference for private over social rented		
Contribution to gentrification?	Urban policies aim for socially integration of new developments however certain policies have contributed to gentrification ¹⁸⁴		
Contribution to ghettoization (segregation)	<p>Urban policies aim for socially integration of new developments¹⁸⁵</p> <p>In existing social housing stock, prioritisation of homeownership led to residualisation</p>		
Squatting?	Illegal in public land, legal in private land		

¹⁸⁴ See section 3.4 below.

¹⁸⁵ See section 3.4 below.

3 Housing Policy and related policies

3.1 Introduction

- **How is housing policy related to the structure and concept of the (national) welfare state, to other welfare policies and the tax system?**

Irish welfare policy is deeply embedded in the structure of the Irish housing system. Following independence, Irelands housing was split into public and private spheres. For much of the 20th century taxation and subsidy policy was heavily geared towards increasing homeownership rates. In addition the various local authority tenant purchase schemes which operated throughout the last century added to homeownership rate and also created a wide range of homeowners across a broad spectrum of socio-economic backgrounds and these schemes formed a key part of State housing policy and fed into the State promoted hierarchy of tenure. Fahey argued that the rationale underpinning the various tenant purchase schemes revolves about a policy of 'asset based welfare'.¹⁸⁶ In effect this involved the prioritisation of the capital value of home ownership, as a means of meeting the future welfare needs of the homeowners, over commonplace centralised social security policies. The *Ninth Progress Report: Private Property* considered the role of housing provision within Ireland and set out that:

Housing is a special case. Property markets will not of themselves supply everyone with a home which they can own. Where there is an overall shortage of housing, those at the bottom end of the market will be priced out because the market rations the available accommodation among competing bidders. On the other hand if property prices are low, supplying those at the bottom end of the market may not be sufficiently profitable to encourage development. It follows that direct, non-market provision of accommodation will be necessary at all stages of the cycle. An approach to housing economics, therefore, which is more in tune with societal requirements than with pure market requirements is needed to deal with the challenge of providing housing for people at the lower end of the market.¹⁸⁷

During the 1990s and 2000s, taxation and subsidy policy with respect to housing was reformatted towards providing indirect housing supports geared towards facilitating homeownership while new housing policies were directed at addressing perceived supply side constraints in the housing market. The rapid house market inflation of the 2000s skewed homeownership rates towards higher income households and away from the broader homeownership rates evident amongst older households. In this manner the Irish housing situation has increasingly come to resemble other Anglo-phone countries. In the wake of the economic crises, the numbers on housing waiting lists have grown dramatically. With regard to welfare policy, the rent supplement scheme and mortgage interest allowance continue to provide the main welfare supports for struggling households. However, as noted above, such emergency or short run supports are increasingly being placed under stress as the number of long term recipients availing of these schemes has increased considerably in recent years. The Government response, as least with regard to the rent supplement scheme, has been to transfer long term recipients to

¹⁸⁶ T. Fahey, B. Nolan & B. Maitre, 'Housing Expenditures and Income Poverty in EU Countries' *Journal of International Social Policy*, 33(3), (2004). 437–454.

¹⁸⁷ *Ninth Progress Report: Private Property*, pp. 72-73.

new long term leasing arrangements aimed at meeting long term housing need. With regard to struggling mortgagees the Government has introduced a number of new schemes¹⁸⁸ including the mortgage-to-rent scheme which allows for persons experiencing difficulty in paying their mortgage to private lenders to stay in their home by forging ownership of the dwelling to the local authority while continuing to occupy that dwelling as a social renter this scheme has been extended to former local authority tenants who have taken up a tenant purchase scheme but are struggling to meet repayments on their mortgage. This scheme allows such households to revert back to being social renters. Further measures introduced include the local property tax which is payable by the owner of the property rather than the occupier.

○ **What is the role of the constitutional framework of housing? (in particular: does a fundamental right to housing exist?)**

The Irish Constitution, *Bunreacht na hÉireann*, does not contain any express right to housing and as such it is not possible to state that a fundamental legal right to housing exists in Ireland.¹⁸⁹ Traditional civic and political rights are accorded primacy over socio-economic rights so that the right to property is protected twice in the constitution in contrast to the absence of a right to housing. The Constitution was drafted during the 1930s and became law in 1937, indeed the provisions of the Constitution as originally drafted reflect the era in which it was drafted. In particular, the double protection of property may have come about as a response to the rise of totalitarian ideologies on the continent and in particular the rise of communism in Russia. Property is protected as a personal right but it is also protected as an institution. Under Article 40.3 the state is bound to protect 'the personal rights of the citizen', and in particular to defend 'the life, person, good name, and property rights of every citizen' while article 43 sets out that the right to own and transfer private property is guaranteed by article 43, subject to 'the principles of social justice', and in accordance with laws passed reconciling the right 'with the exigencies of the common good'.

The role of the courts has been set out as follows:

Until relatively recently, the most controversial aspect of the current debate about the inclusion of socio-economic rights within the Constitution was whether the courts should play any role in recognising such rights. That issue was decisively resolved by the Supreme Court in 2001 when the court held in two cases, *Sinnott v. Minister for Education*¹⁹⁰ and *TD v. Minister for Education*,¹⁹¹ that judges are precluded by the doctrine of separation of powers from becoming involved in issues of distributive justice, i.e. issues involving the allocation of public resources. The court also expressed concern about the spectre of an unelected judiciary usurping the function of a democratically accountable parliament and executive; about the lack of expertise that judges have when it comes to socio-economic issues; and

¹⁸⁸ This was based on the Keane report see *Inter-Departmental Mortgage Arrears Working Group* (Dublin: Stationery Office, 2011).

¹⁸⁹ J.M. Kelly, *The Irish Constitution* (Dublin: Tottel Publishing, 4th edn, 2006); G. Hogan, *Origins of the Irish Constitution 1928-41* (Dublin: Royal Irish Academy, 2012); P. Kenna, *Housing Law Rights and Policy*, ch. 8.

¹⁹⁰ [2001] IESC 63.

¹⁹¹ [2001] IESC 101.

about the unsuitability of existing court practices and procedures for dealing with issues of policy.¹⁹²

The Housing Act 1966 and the Housing Act 1988 come closest to providing statutory rights to housing in Irish law. Under the Housing Act 1966 local authorities are under a duty to make inspections and to assess adequacy of supply and condition of housing in their operational area however, technically speaking there is no imperative duty obliging housing authorities to provide housing. Rather the legislation is drafted in elective rather than imperative terminology. However, in reality those experiencing housing need will be supported by the State operating through administrative local authorities under the provisions of the Housing Act 1966 (as amended). In the case of those experience extreme levels of housing need there is a distinct legal scheme included in the Housing Act 1988 which introduced the first legal definition of homelessness into Irish law.¹⁹³ This Act placed an obligation on local authorities to carry out regular assessments of housing requirements in their area. In doing so they were obliged to have regard to the extent to which there are persons who are homeless or living in temporary or moveable accommodation.¹⁹⁴ However, the Housing Act 1988 did not place an obligation on local authorities or State agencies to provide accommodation and instead most provision is undertaken by voluntary and charitable bodies.¹⁹⁵

¹⁹² 'The Ninth Progress Report: Private Property', pp 18-19.

¹⁹³ Housing Act 1988, ss 2 and 3.

¹⁹⁴ Housing Act 1988, ss 8 and 9 have been replaced by the Housing (Miscellaneous Provisions) Act 2009 s. 20.

¹⁹⁵ Kenna, *Housing Law Rights and Policy*, pp. 262-264.

3.2 Government Actors

- **Which levels of government are involved in housing policy (national, regional, local); what are they called; how many are there of each?**
- **Which level(s) of government is/are responsible for designing which housing policy (instruments)?**
- **Which level(s) of government is/are responsible for which housing laws and policies?**

The Department of the Environment, Community and Local Government, is responsible for national housing policy but implementation and administration of housing policy is passed to local authorities. Local government in Ireland exercises a narrower range of functions and somewhat less discretion and devolved power than in many European countries.

3.3 Housing Policies

- **What are the main functions and objectives of housing policies pursued at different levels of governance?**

Housing policy is in transition and this is evident across policies relating to all tenures. Firstly, housing policy with regard to owner occupation has been overhauled in recent years with the Government's *Housing Policy Statement* (2011) laying bare the role which previous housing policy which promoted homeownership has had in contributing to the economic crises.¹⁹⁶ The policy document promotes tenure neutrality. In order to move to a more equitable tenure balance various policies concerning taxation, subsidisation and regulatory change have been introduced. Amongst the major policy changes, all affordable housing schemes have been stood down, while tenant purchase has been restrained. In addition, the local property tax has been introduced on owner occupiers.

Secondly, Government policy with regard to the private rented sector has been dramatically reform in the last decade. The RTA 2004 fundamentally reformed regulation of the private rented sector by implying standard terms relating to key matters such as security of tenure and rent levels into all relevant tenancies. Furthermore the Act created the Private Residential Tenancies Board which is responsible for regulation of the sector. Amongst their functions, the Board provides alternative dispute resolution services to landlords and tenants and as such the parties are saved the cost, delay and uncertainty which attended disputes in conventional courts. In recent years the Government have sought to streamline the operation of the RTA 2004 and the role of the Board by proposing the introduction of a deposit protection scheme. These reforms are taking place at a time when the sector has grown considerably. However, a large part of the growth in this sector has been supported by Government welfare schemes including Rent Supplement, soon to be replaced by the Housing Assistance Payment as well as more direct government leasing arrangements such as the Rental Accommodation Scheme. Government housing policy and legislation continues to regard the private rented sector as a key means by which to provide housing to those experiencing housing need. Indeed, amongst the main features of the Housing (Miscellaneous Provisions) Act 2009 was the introduction of Chapter 4 tenancies as well as Rental Accommodation Availability Agreements.¹⁹⁷

Thirdly, Government policy with regard to local authority housing has been reformatted in the Housing (Miscellaneous Provisions) Act 2009 from the traditional provision of housing to the provision of social housing supports.¹⁹⁸ This shift is readily identifiable from the emphasis placed in the 2009 Act on the use of public

¹⁹⁶ In detailing the role which housing has played during the economic crises, the Statement sets out that 'over-stimulation of the housing market is accepted as a key causal factor in the scale of the economic downturn': Department of the Environment, *Housing Policy Statement (2011)* (Dublin: Stationery Office, 2011), p. 1. The Statement goes on (at p. 1) to address housing policy in the pre-bust economic environment: In a climate of low interest rates and rising incomes, a series of disastrous pro-cyclical policies led to a model that provided unprecedented growth, but it was a growth based not on foreign demand for our goods and services – as should be the case in a small open economy – or the productive use of investment capital to create sustainable employment. It was based on a mirage and a false assumption that the normal rules of supply and demand somehow did not apply in Ireland.

¹⁹⁷ See section 4.1 below.

¹⁹⁸ Social housing supports are supported financially by the State.

private leasing arrangements to provide housing support to those in need. With regard to existing local authority housing, Government policy has had to respond to the residualisation of the sector arising from the tenant purchase schemes and the persistent incentivisation of owner occupation. This has led to a broadening of the housing management function of local authorities, who since the 1990s have been increasingly directed towards addressing anti-social behaviour through the use of exclusion orders.

Fourthly, Government policy with regard to the voluntary and co-operative housing sector has developed substantially in recent years. In particular the Housing policy statement 2011 places particular emphasis on the role which voluntary and co-operative housing associations may play in meeting traditional social housing need. Indeed, the introduction of a voluntary regulatory code ahead of a proposed statutory code indicates the levity with which the sector is regarded in current Government housing policy.

▪ **In particular:**

- **Does the national policy favour certain types of tenure (e.g. rented housing or home ownership (owner-occupation))?**

The *Housing Policy Statement (2011)* eschews any reference to a particular tenure in favour of equity across tenures. In practice this involves developing and expanding housing choice, with the overall strategic objective being to enable all households' to gain access good quality housing appropriate to circumstances. Obviously housing policy framed against a pervasive economic crises is thoroughly constrained, with greatest attention to prioritising need while creating efficiencies in the provision of housing supports.¹⁹⁹

- **Are there measures against vacancies (e.g. fines or forced assignments of vacant houses)?**

The taxation system has been reformed since the onset of the economic recession. One of the changes has been the introduction of the local property tax which is payable by the owner rather than the occupier and as such this tax indirectly penalise second home ownership. Particularly where the dwelling is vacant as there is no rental income arising from the dwelling.

- **Are there special housing policies targeted at certain groups of the population (e.g. elderly people, migrants, Sinti and Roma etc)?**

The Irish Traveller community has faced considerable disadvantage and discrimination since the foundation of the State. The first statutory reference to the Irish Traveller Community was in the Housing Act 1988 and since then housing policy with regard to Irish Travellers has developed significantly, leading in particular to the Housing (Traveller Accommodation) Act 1998. Travellers within the Act are

¹⁹⁹ 'Housing supports should be better aligned with broader supports for the physical, social and economic renewal and rebirth of these areas. Market conditions do not support the PPP model at present and so there is a greater reliance than ever on the Exchequer to support both large scale regeneration projects and smaller estate-wide remediation projects. Despite adverse economic conditions we will prioritise the improvement of the quality of existing social housing stock through regeneration and improvement works programmes, and the return of vacant stock to effective use within the shortest timeframes possible': *Housing Policy Statement (2011)*, p. 2.

those belonging to the class of persons who traditionally pursue or have pursued a nomadic way of life. The Act required local authorities to carry out a process of consultation, and then to prepare and adopt accommodation programmes to meet the existing and projected accommodation needs of Travellers in their areas. These plans form the basis of the Government response to the housing needs of the Traveller community.

3.4 Urban Policies

- **Are there any measures/ incentives to prevent segregation, in particular**
 - **mixed tenure type estates**²⁰⁰
 - **“pepper potting”**²⁰¹
 - **“tenure blind”**²⁰²
 - **public authorities “seizing” apartments to be rented to certain social groups**

It is only in the last fifty years that Ireland has become a predominantly urban society and even so the urban population is quite small by European standards; Dublin city is by far the largest urban settlement in Ireland it has a population of over 1.1 million persons.²⁰³ As such Government housing policy did not incorporate sophisticated urban policies concerning mixed tenure²⁰⁴, pepper potting²⁰⁵, tenure blind²⁰⁶, ghettoization²⁰⁷ or gentrification²⁰⁸ until relatively recently and indeed efforts to implement some of these policies have at times fallen short.²⁰⁹ There are mixed tenure and pepper potting urban policies operating in the Irish housing system however there are not tenure blind policies. While the various tenant purchase scheme since the 1960s have resulted in tenure mix these schemes were directed towards promoting homeownership rather than encouraging a tenure mix. Furthermore, current tenure mix policy is largely concerned with pepper potting new developments, rather than changing the tenure of the existing stock and as such compulsory purchase orders are not used to “seize” apartments to be rented to

²⁰⁰ Mixed tenure means that flats of different tenure types: rented, owner-occupied, social, etc. are mixed in one estate, it is the simplest way of avoiding homogenized communities, and to strengthen diversification of housing supply.

²⁰¹ This mechanism is locating social housing flats among open market ones, so as not to gather lowest income families in one place. The concept is quite controversial, however in English affordable housing system was used for a long time to minimize the modern city ghettos problem.

²⁰² This is a mechanism for providing social housing in a way that the financial status of the inhabitants is not readily identifiable from outside. It is used to avoid/minimize stigmatization and social exclusion which could be caused by living in a (openly identifiable) social stock.

²⁰³ Central Statistics Office, county profiles.

²⁰⁴ Mixed tenure means that flats of different tenure types: rented, owner-occupied, social, etc. are mixed in one estate, it is the simplest way of avoiding homogenized communities, and to strengthen diversification of housing supply.

²⁰⁵ This is where social housing is located among open market housing, to avoid concentrating low income families in one place. The concept is quite controversial, but was part of the English affordable housing system for a long time in an attempt to minimize the problem of city ghettoization.

²⁰⁶ This is a mechanism for providing social housing in a way that the financial status of the inhabitants is not readily identifiable from outside. It is used to avoid/minimize stigmatization and social exclusion which could be caused by living in a (openly identifiable) social stock.

²⁰⁷ A ghetto is a part of a city predominantly occupied by a particular group, especially because of social or economic issues, or because they have been forced to live there.

²⁰⁸ The restoration and upgrading of a deteriorating or aging urban neighbourhood by middle-class or affluent persons, resulting in increased property values and often displacement of lower-income residents.

²⁰⁹ Brady Shipman Martin, *Review of Part V of the Planning and Development Act 2000* (Dublin: Housing Agency, 2012) p. 26.

certain social groups.²¹⁰ Rather under tenure mix schemes a certain amount of development land may be acquired for social and affordable housing purposes regardless of the intentions of the developer.²¹¹ While the policies set out above, in tandem with the planning system and local development plans of the region may restrict the extent to which ghettoization may occur, there is no co-ordinated national housing policy concerning ghettoization. This is also the case with regard to gentrification, which has taken place in inner city areas, in some cases as a result of urban renewal schemes.²¹² The Urban Renewal Scheme was introduced in 1985 and was designed to encourage development of derelict inner city areas through the use of tax incentives. Some of these schemes led to the development of substantial amounts of rental property in inner city areas.²¹³ Integrated Area Plans were the basis for extending these renewal schemes in the 1990s²¹⁴ to a total of forty three towns nationwide. A review of the Scheme carried out in 2006 found that the scheme resulted in economic benefits such as reducing dereliction however the scheme was “less successful in delivering social and community benefits: the heavy involvement of investors as distinct from owner-occupiers has led to concerns about negative effects on social integration.”²¹⁵ Indeed, it has been shown that urban renewal has resulted in gentrification of inner city areas.²¹⁶ As such while gentrification may well be restrained through the planning system and local development plans of the region there is not a co-ordinated national policy on gentrification.

The most significant piece of legislation concerning pepper potting and tenure mix is the Planning and Development Act 2000 which, in Part V, provides a scheme designed to encouraging planning of housing in a way that avoids undue social segregation.²¹⁷ The planning authority, *An Bord Pleanála*, is empowered to require as a condition of the grant of planning permission²¹⁸ that the applicant enter into an agreement with the planning authority concerning the development of land in accordance with the social inclusion provisions.²¹⁹ Differential targets can be set for

²¹⁰ Compulsory purchase orders were introduced by the Housing (Miscellaneous Provisions) Act 1931 to enable local authorities to purchase property for e.g. demolition and repair.

²¹¹ As set out below, the Planning and Development (Amendment) Act 2002 has allowed for a developer to make a compensation payment in lieu of housing units and this had undermined the scope of the scheme.

²¹² Department of Community, Rural and Gaeltacht Affairs, *Value for Money Review of the Local Development Social Inclusion Programme 2000-06* (Dublin: Stationery Office, 2007), p 22; T. Haase, and J. Pratschke, *Deprivation and Its Spatial Articulation in the Republic of Ireland*, (Dublin: Pobal, 2005).

²¹³ Government of Ireland, *Study on the Urban Renewal Schemes* (Dublin, Stationary Office, 1997). Between 1986 and 1995 some £480 million was invested in the creation of rental properties under these schemes.

²¹⁴ Finance Act 1986 and Urban Renewal Act 1986.

²¹⁵ Department of Finance, *Summary of 2006 Budget Measures – Policy Changes* (Dublin, Department of Finance, 2006).

²¹⁶ Department of Community, Rural and Gaeltacht Affairs, *Value for Money Review of the Local Development Social Inclusion Programme 2000-06* (Dublin, Stationery Office, 2007), p 22. Also see Haase, T and Pratschke, J., *Deprivation and Its Spatial Articulation in the Republic of Ireland*, Pobal, 2005.

²¹⁷ Three key objectives were: to promote more socially integrated communities, to ensure adequate housing supply to meet the demand from all sectors of the market; and to accommodate those unable to purchase a home due to affordability constraints in the face of rising house prices. See Brady Shipman Martin, *Review of Part V of the Planning and Development Act 2000* (Dublin, Housing Agency, 2012), p. ii.

²¹⁸ *Ibid*, s. 96(2).

²¹⁹ *Ibid*, s. 95(1)(b).

social housing in its area in order to rebalance the location of social housing. Housing may be acquired for below market price and provided to households who would not be able to afford to pay market prices or rents.²²⁰

A 2012 Government review concluded that Part V 'delivered below its potential and only began to make a real contribution around the time the property market crash commenced.'²²¹ In 2011 Government stopped all affordable housing schemes.²²² Part of the reason for the poor performance of Part V agreements can be attributed to Planning and Development Act (Amendment) 2002²²³ which facilitated developers making a compensation payment in lieu of transfers of sites and thereby reduced the promotion of social integration.

Incremental Purchase Scheme is an example of a mixed tenure housing policy approach and by its design and operation the scheme encourages a tenure mix.²²⁴ This scheme allows persons who qualify for social housing to buy designated newly built houses from a local authority or an approved housing body at a discount. The Incremental Purchase Scheme is the successor to the 1995 Tenant Purchase Scheme and allows for a discount scheme based on household income that enables the State to share in the profits from resale during the twenty to thirty year period for which the house is subject to an incremental purchase charge. The scheme will make it possible for households in receipt of or eligible for social housing support to purchase designated new local authority and approved housing body houses. The scheme works by transferring full title to the new house to the purchaser on the payment of between 40% and 60% of the all-in-cost of the house, depending on the applicant's income. A charge is placed on the property in respect of the discounted, amount which declines in annual increments of 2% of the total equity until the charge is eliminated. The buyer takes out a mortgage to meet the remaining cost of the house and accepts full responsibility for the maintenance, repair and insurance.²²⁵

The *Housing Policy Statement 2011* sought to break away from past policies which prioritised homeownership by instead putting emphasis on the importance of pursuing tenure neutral housing policies.

Housing in Ireland has been characterised by a persistently hierarchical structure for several decades. This paradigm of housing has private home ownership at the top, with supported home-ownership (tenant purchase of local authority housing, affordable housing) next, self-financed private rented accommodation further down, and State supported rental accommodation at the bottom (rent supplement/social housing tenancies).

²²⁰ Affordable housing is housing that is made available for purchase at a discount to the market price. By Planning and Development Act 2000, s. 93, 'affordable housing' means houses or land made available, in accordance with section 96 (9) or (10), for eligible persons.

²²¹ 'Part V delivered 15,114 units in the period 2002-2011 (62.1% affordable and 37.9% social). This total represented just 3.8% of all dwellings excluding one-offs delivered over the period 2002-2011 which was a relatively small contribution. However over the entire period 2002-2011 it delivered below its potential and only began to make a real contribution around the time the property market crash commenced. An estimated 44,654 social housing units were constructed in the period 2002-2011 of which Part V contributed around 13% (5,721 units),' Brady Shipman Martin, *Review of Part V of the Planning and Development Act 2000* p. 26.

²²² See section 3.5 below.

²²³ Gore-Grimes, 'Change of Plan', *Law Society Gazette*, Jan/Feb 2003, pp. 18-23.

²²⁴ See section 1.4 above for an overview of intermediate tenure in Ireland.

²²⁵ Department of the Environment, Incremental Purchase Scheme.

This structure and the value judgement that underlies it – which implicitly holds that the tenure which must ultimately be aspired to is homeownership – has had a considerable role in leading the Irish housing sector, Irish economy, and the wider Irish society to where they are today.²²⁶

This “hierarchical structure” however continues to influence major urban housing policies and schemes and it is likely that major schemes in this area; in particular Part V of the Planning and Development Act 2000-2009, will be reformed in the near future. The incremental purchase scheme has been identified as a means by which the voluntary and co-operative housing sector could promote the evolution of mixed tenure communities through the provision of housing for market sale and rent as well as social renting.²²⁷

Regional housing policy

The Planning and Development Act, 2000 requires local authorities to develop Housing Strategies to provide for the proper planning and sustainable development of the area and to provide housing for the existing and future population of the area.²²⁸ Each Housing Strategy must include an estimate of the amount of persons on the housing waiting list as well as the amount of affordable housing required in the area.²²⁹ The Housing Strategy is geared towards the housing supply provisions of Part V, and its key objective to ensure that up to 20% of the land zoned for residential use in each local authority area is reserved for the provision of social and affordable housing.

A common feature of regional housing policies²³⁰ in Ireland is the striking of a balance between regional developments and supporting sustainable rural settlements.²³¹ Only in the last fifty years has Ireland become a predominantly urban society, so that by 2011 some 38% of the population were living in rural areas.²³² The vast majority of housing in rural areas are one-off detached houses.²³³ Since the 1990s there have been efforts to curtail the proliferation of one off housing construction in rural areas. In 2005 *Guidelines for Planning Authorities – Sustainable Rural Housing*²³⁴ were introduced which set out the way in which Government policies were to be implemented by planning authorities in making development plans.²³⁵ Under this scheme there was a presumption in favour of quality one off housing while planning applications for holiday homes and second homes required

²²⁶ *Housing Policy Statement (2011)*, p. 2.

²²⁷ *Ibid.*, p. 2.

²²⁸ Planning and Development Act 2000 s. 94.

²²⁹ *Ibid.*, s. 94(4)(a). The method of calculating the level of need for social and affordable among those excluded from the housing market was based on house price inflation. As set out in Department of the Environment and Local Government, *Housing Supply, A Model Housing Strategy and Step by Step Guide* (Dublin: The Stationary Office, 2000). Since the house price crash affordable housing schemes have been put on hold.

²³⁰ These in turn are guided by the National Spatial Strategy: Department of the Environment, *National Spatial Strategy 2002-2020 People, Places Potential* (Dublin: The Stationary Office, 2002).

²³¹ *National Spatial Strategy 2002-2020*, p. 77; Kenna, *Housing Law Rights and Policy*, pp. 989-995.

²³² The census defines an urban area as a. towns with a population of 1,500 or more.

²³³ One-off houses are defined as detached houses with individual septic treatment systems. See Central Statistics Office, *Census 2011: This is Ireland – Highlights from Census 2011 Part 1* (Dublin, Stationery Office, 2012), p 47.

²³⁴ Department of the Environment, *Guidelines for Planning Authorities – Sustainable Rural Housing* (Dublin: Stationery Office, 2005).

²³⁵ Planning and Development Act 2000 s. 10(2).

extra consideration, particularly where located in sensitive or scenic areas.²³⁶ In many areas the high number of vacant residential properties is playing a role in determining the extent to which planning applications are successful. In particular certain areas require as part of the planning application that the applicant make a statement indicating that existing vacant properties for sale in the area were examined and giving reasons for their unsuitability.²³⁷ In rural areas in order to obtain planning permission an applicant must show that there are no suitable vacant properties available in the area for his/her needs while in rural areas under strong urban influence an applicant must demonstrate that their proposal constitutes a genuine rural generated housing need based on their own roots in or links to a particular rural area.²³⁸

²³⁶ *Ibid.*, pp. 21-23.

²³⁷ Mayo County Council, *Draft Mayo County Development Plan 2014-2020* (March 2013).

²³⁸ *Ibid.*, p 7.

3.5 Energy policy

Energy policies form part of the national housing policy and are embedded into various housing regulatory systems. In the first place energy policies are ingrained in the national building control system in Ireland.²³⁹ This system was introduced by the Building Control Act 1990 and provides for a scheme of regulation to control matters relating to the construction of buildings, including standards, workmanship, design, materials, and health and safety matters of those involved in construction. Certain technical specifications include harmonised European Standards.²⁴⁰ These matters are governed by Building Regulations which are prescribed by the Minister of the Environment after consultation with the Building Regulation Advisory Body. Building control regulations are enforced by the Building Control Authorities.²⁴¹

Energy policies are embedded into national housing standards. The Building Energy Rating Scheme was established under the Energy Performance of Buildings Directive (in its original form).²⁴² From 1 January 2009, a Building Energy Rating certificate became compulsory for all homes being sold or offered for rent and a seller or landlord is required provide a Building Energy Rating certificate to prospective buyers or tenants when a home is constructed, sold or rented. The certificate describes the energy efficacy of the dwelling against a number of measures, and in particular the characteristics of major components of the dwelling (wall, roof and floor dimensions, window and door sizes and orientations) as well as the construction type and levels of insulation, ventilation and air tightness features, the systems for heat supply (including renewable energy), distribution and control, and the type of lighting. It covers annual energy use for space heating, water heating, ventilation, lighting and associated pumps and fans, calculated on the basis of a notional standard family with a standard pattern of occupancy. The energy performance of the dwelling is expressed as: (a) primary energy use per unit floor area per year represented on an A to G scale; and (b) associated Carbon Dioxide (CO₂) emissions.²⁴³ Sustainable Energy Ireland has been designated as the Issuing Authority with responsibility for the registration of assessors, logging of assessments and on-going management of the Building Energy Rating Scheme.

²³⁹ This was established by the Building Control Act 1990.

²⁴⁰ Construction Products Directive, Directive 89/106, as amended by Construction Products Directive, Directive 93/68 of 22 July 1993; these are transposed by European Communities (Construction Products) Regulations 1992, SI No. 198/1992 as amended by SI No. 210/1994.

²⁴¹ Established under the Building Control Act 1990.

²⁴² Directive 2002/91/EC, implemented into Irish law by the European Communities (Energy Performance of Buildings) Regulations 2006 (SI No 666 of 2006) and Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings (recast), implemented into Irish law by the European Union (Energy Performance of Buildings) Regulations 2012 (SI No 243 of 2012).

²⁴³ A Building Energy Rating certificate is only an indication of the energy performance of a house and actual energy usage will depend on how the occupants live in the house.

Summary table 4: Summary of Irish housing laws in terms of aims and actors

	National laws	Aim	Actors: government, landlord and tenant	
Policy aims		Tenure equity Response to Housing crisis	Government Government	
Laws	Constitution	Socio economic rights are not expressly include in the constitution	Government	
	Housing legislation	No statutory right to housing	Government	Local authorities

3.6 Subsidisation

There has been widespread subsidization of the owner occupier sector for the greater part of the 20th century.²⁴⁴ The effect of various housing subsidies and taxation schemes operating in the past has been to create a very high proportion of homeownership in Ireland by international standards. One of the main drivers of the rate of home ownership have been the local authority tenant purchase schemes which reached their zenith in the 1960s and 1970s however the scope of these supports was substantially scaled back and replaced by targeted supports for low income households. However, since the onset of the economic recession housing policy has been substantially redirected towards a tenure neutrality policy.

Subsidisation of home ownership

Affordable housing scheme	One of the main subsidies for home ownership was the affordable housing scheme which provided a range of subsidies to first time buyers. However, in 2011 all affordable housing schemes were stood down.
Shared ownership scheme/ incremental purchase scheme	The shared ownership scheme allowed low income social renters to purchase a share of the dwelling with the ultimate goal of purchasing the dwelling outright. The scheme has been replaced by the incremental purchase scheme.
Low cost housing sites	Local authorities in Ireland may provide housing sites at low cost to help people in need of housing, to provide their own housing.
Local authority mortgages	Where a prospective first time buyer is unable to get a loan from a commercial lender they may be eligible for a mortgage from a local authority. In order to qualify the applicant must be a first time buyer and must also satisfy an income test.
Mortgage Allowance Scheme	This scheme allows social housing tenants, purchasing or building a private house to receive an allowance which can reduce repayments,
Home choice loan	This scheme was designed to support first time buyers acquire a mortgage.
Supports for borrowers	Where borrowers were struggling to make repayments the main support available was the Mortgage Interest Supplement scheme. This scheme was designed to provide a short term financial support to help the struggling borrower to meet mortgage interest payments.

²⁴⁴ M. Norris & N. Winston, 'Transforming Irish Home Ownership through Credit Deregulation, Boom and Crunch' , *International Journal of Housing Policy* 11(1) (2011): 1-22.

Many of these schemes have not been popular and their impact has generally been quite muted.²⁴⁵ Indeed in the wake of the economic recession many of these schemes are being scaled back. For instance all affordable housing schemes have been stood down since 2011 while the Mortgage Interest Supplement Scheme has been scaled back from 2014 and will be abolished entirely in 2017.

The private rented sector has been neglected in State housing policy. During the greater part of the twentieth century the only State subsidy for the private rented sector was expressed through the legal controls set out in the Rent Restrictions Acts capping rent levels in the controlled sector. No direct subsidies were available to tenants in the uncontrolled rented sector where rent was determined by market forces. The rent control system was declared unconstitutional by the Supreme Court in 1982 on the grounds that it constituted an unjust attack on the constitutional property rights of the landlord²⁴⁶ so that, at present, market forces dictate rent levels across the whole of the private rented sector. The main subsidies available to private tenants are the rent supplement and housing assistance payments.

Subsidisation of the private rented sector

Rent supplement	Income support which was designed to be a short term or emergency support for private renters. In the wake of the economic crises there have been stark increases in the numbers relying on rent supplement to meet the cost of their rent. As noted above in 2011 approximately 40% of private rented households were in receipt of rent supplement. ²⁴⁷
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Housing assistance payment	Introduced in 2013 to provide support to private renters in need of long term financial support to meet the cost of their accommodation.
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Subsidisation of the social rented sector

In the social rented sector the main subsidy available to tenants has been the below market rents available to social renters. In local authority housing rents are set according to the tenant's ability to pay and this is below market level.

²⁴⁵ M. Norris, D. Coates & F. Kane 'Breaching the Limits of Owner Occupation? Supporting Low Income Buyers in the inflated Irish Housing Market' , *International Journal of Housing Policy* 7(3) (2007): 337-355. Here a study of the tenant purchase scheme, mortgage allowance, local authority loan, share ownership and affordable housing schemes found that these schemes enabled over 40,000 households to buy a dwelling between 1991 and 2002.

²⁴⁶ See section on Rented sector.

²⁴⁷ Department of Social Protection, *Annual SWS Statistical Information Report 2012* (Dublin: Stationery Office, 2012), Section G.

Summary table 5: subsidisation of landlord in Ireland

	Private rented	Social rented
Subsidy before start of contract	No	Local authority housing public funded Voluntary and co-operative housing subsidies through the CAS and CLSS schemes ²⁴⁸
Subsidy at start of contract	No	No
Subsidy during tenancy (e.g. lower-than market interest rate for investment loan, subsidized loan guarantee)	No	No

Summary table 6: subsidisation of tenant in Ireland

	Private rented	Social rented
Subsidy before start of contract (e.g. voucher allocated before find a rental dwelling)	No	No
Subsidy at start of contract (e.g. subsidy to move)	No	No
Subsidy during tenancy (in e.g. housing allowances, rent regulation)	Rent supplement/housing assistance payment may be available to tenant experiencing affordability issues	Differential rents linked to tenants ability to pay rather than market rental value of the property

²⁴⁸ See section 1.4 above.

Summary table 7: Subsidization of owner-occupier

Subsidy before start of contract (e.g. savings scheme)	Low cost housing sites may be provided by local authorities (low uptake)
Subsidy at start of contract (e.g. grant)	Incremental purchase scheme available to social renters (low uptake) All affordable housing schemes have been stood down
Subsidy during occupancy	Mortgage Allowance Scheme provides allowance for social renters towards meeting mortgage costs for first 5 years of the mortgage Home choice loan provides support to first time buyers unable to obtain a mortgage (very low uptake) Mortgage interest supplement provides financial support towards payment of interest for struggling homeowners (scaled back from 2014 and will be abolished in 2017)

3.7 Taxation

Housing occupies a prominent position in Ireland's taxation system and is a major contributor to national revenue. Housing taxation has a large remit which draws from a range of distinct tax models including income tax, corporation tax, capital gains tax, inheritance tax, value added tax, stamp duty land tax and, the recently reformed, local property tax. Since the onset of the economic recession Irish housing taxation policy has been substantially reformed. In particular, the re-introduction of a local property tax in 2012, after a thirty five year absence of such a form of tenure specific taxation, will have profound implications for the tenure balance in Ireland.²⁴⁹

Rental income

Rental income of individual landlords is chargeable to the income tax scheme. Income here means the net income from a property that is let so that various expenses incurred in letting the property may be deducted from the income derived from rent received.²⁵⁰ These expense deductions include management fees, repairs, insurance, ground rent, wear & tear allowance, professional fees, and loan interest. Landlords are required to declare this rental income on a self-assessment tax return. If the landlord is a company it will pay corporation tax instead.²⁵¹ Landlords which are companies are required to pay tax on profits in the form of corporation tax. This form of taxation does not apply to owner occupiers; there is no income tax charge on a principal private dwelling or any secondary dwelling. Landlords are required to pay the full rate of VAT (20%) for all goods and services. Owner-occupiers are also required to pay the full rate of VAT (20%) on repairs, renovations, extensions and professional fees

Capital value

Capital Gains Tax is a tax on the profit or gain made upon sale or disposal of an asset. For landlords the sale of a property which has been held for investment is liable for Capital Gains Tax at 33%.²⁵² This tax applies only to the gain in value of the property (i.e. the rise in the property's price). Owner-occupier are not liable for pay Capital Gains Tax when they sell the dwelling forming their principal home.²⁵³

Stamp Duty Tax is a tax charged on the conveyancing documents that transfer ownership of property. The tax applies to property owners including owner occupiers and landlords when they sell/buy/transfer property.²⁵⁴ Certain transfers of property are exempt including certain property transfers between spouses etc. At present Stamp Duty Tax applies at a rate of 1% on properties with a value up to €1,000,000 while transfers of properties with a value above this threshold are taxed at 2%.²⁵⁵

²⁴⁹ *Irish Tax Guide 2015*, part 9.

²⁵⁰ Income is taxable whether derived from a lease or a licence or any other occupation arrangement.

²⁵¹ *Irish Tax Guide 2015*, part 2.

²⁵² Taxes Consolidation Act 1997, chapter 3. The rates of Capital Acquisitions Tax and Capital Gains Tax increased to 33% from 30% as from 5 December 2012.

²⁵³ The Office of the Revenue Commissioners.

²⁵⁴ For people buying their homes under local authority tenant purchase and similar schemes, a maximum amount of €100 is charged.

²⁵⁵ *Irish Tax Guide 2015*, part 6.

Local Property Tax

The local property tax (LPT) is annual self-assessed tax charged on the market value of all residential properties in Ireland.²⁵⁶ The new tax came into effect from 1 July 2013 and it will be administered by Revenue with a half-year charge applying in 2013.²⁵⁷ In practice the owner of a residential property will be liable to pay the tax and this includes the landlord of property which is rented on a normal short term period. Lessees are only liable if they hold long term leases for a term of more than twenty years. Those liable to pay will be required to complete a self-assessment form and return it to the Revenue. This self-assessment form will include a valuation of the property by Revenue. However, this valuation is not conclusive and may be contested.²⁵⁸

²⁵⁶ See Finance (Local Property Tax) Act 2012, s. 17 for the scheme of valuation to be applied. The rate of taxation in the first year the LPT was introduced was 0.18% of the estimated value of the property.

²⁵⁷ Finance (Local Property Tax) Act 2012.

²⁵⁸ *Ibid.*

Summary table 8

Taxation			
Taxpayer	Owner occupier	Landlord	Tenant
Taxation at point of acquisition	Stamp Duty Land Tax	Stamp Duty Land Tax	-
Taxation during occupancy	Council tax	Local property tax, Income Tax or Corporation Tax and possibly VAT	-
Taxation on sale	Capital gains tax (if not principal residence)	Capital gains tax	-
Taxation on death	Inheritance Tax (but capital gain written off)	Inheritance Tax (any capital gain written off)	

4. Regulatory types of rental tenures²⁵⁹

4.1 Classifications of different types of regulatory tenures

There are a variety of tenancy relationships which operate across the private rented sector in Ireland with the law relating to landlord and tenant representing a blend of judicially developed principles and, more recently, statute. There are no regulatory differences between professional/commercial and private landlords. The private rental market in Ireland was deregulated during the 1980s with the result that the statutory system of rent control which had defined the sector for over fifty years was replaced with a market rent system. During the 2000s regulation of the private rented sector was overhauled with the introduction of a new regulatory body, the Private Residential Tenancy Board, as well as the introduction of new security of tenure provisions and a range of implied rights and obligations. In the not for profit sector, local authorities tenancies are by far the most common social tenancy with voluntary and co-operative tenancies having a much lesser role. Both tenancies are excluded from the scope of the RTA 2004. The law governing local authority tenancies is primarily located in the Housing Acts 1966-2009 and various secondary legislative instruments as supplemented by the general law of landlord and tenant. This statutory framework provides for various fundamental matters to the tenancy such as allocation of housing, the rent scheme, termination and orders of possession etc. The law governing voluntary and co-operative tenancies is found in the general law of landlord and tenant as well as general pieces of statute.²⁶⁰

²⁵⁹ All types of tenure apart from full and unconditional ownership.

²⁶⁰ That is housing legislation which applies to all tenancies. It has been proposed to include voluntary and co-operative tenancies within the remit of the RTA 2004 however as of March 2014 this has not been implemented.

4.2 Regulatory types of tenures without a public task

- **Are there regulatory differences between professional/commercial and private landlords?**

The description which follows takes account of the residential rental market, excluding

business tenancies;

agricultural holdings; and

long leases: building leases subject to a ground rent, long occupation and improvements equity leases, shared ownership leases, and any tenancy of dwelling with a term of more than 35 years.²⁶¹

The residential rental market in Ireland displays a strong division between:

a private rented market generally associated with profit renting while the social rented sector; and

a social sector consisting of lettings by local authorities and a housing associations and certain other voluntary and co-operative housing bodies fulfilling a broader not for profit social function.²⁶²

Throughout this report reference is made to the following types of tenancies:

RTA tenancy	A private sector residential tenancy protected by the RTA 2004;
Part 4 tenancy	A continuation of an RTA tenancy for which extended periods of notice to quit are required;
RTA excluded agreement	Residential tenancies and occupation agreements outside the protection of the 2004 Act; and
Social tenancy	A tenancy granted by a local authority or housing association and outside the 2004 Act.

- **Please describe the regulatory types in the rental sector in your country that do not have a public task. This category may be called private or market rental housing.**

- **Tenancies under the RTA 2004**

The RTA 2004 applies to 'every dwelling, the subject of a tenancy' including tenancies created before the passing of the RTA 2004 except those tenancies which are expressly excluded.²⁶³ Essentially the RTA 2004 applies where:

²⁶¹ Housing Act 2009 s. 100(2)(b).

²⁶² J. Kemeny, *Housing and Social Theory* (London: Routledge, 1991); Kenna, *Housing Law Rights and Policy*; Wylie, *Landlord and Tenant Law*; U. Cassidy & J. Ring, *Landlord and Tenant Law: The Residential Sector*.

a separate dwelling²⁶⁴

is let

under a tenancy

for rent or valuable consideration²⁶⁵

and there is no exclusion²⁶⁶

It is not possible to contract out of the provisions of the Act so its provisions are implied into the vast majority of private tenancies.²⁶⁷

Security of tenure

RTA 2004 tenants have security of tenure because they will become entitled to a 'Part IV tenancy' with the right to an extended period of notice as explained below.

Rent levels

Rent levels in the private rented residential sector are regulated under the RTA 2004 to the extent that they must conform to market levels. This essentially means the rent which a willing tenant not already in occupation would be willing to pay and a willing landlord would accept in respect of the dwelling.²⁶⁸ In practice a landlord is prohibited from setting the rent higher than an open market level and can only raise the rent rate once a year. A tenant may apply to the Private Residential Tenancy Board for a review of the rent which may result in a reduction or increase in the rent level. In considering a market rent the Private Residential Tenancy Board carry out an assessment of what similarly placed landlords and tenants would agree with regard to the dwelling in question.

Dispute resolution

The Private Residential Tenancy Board is responsible for dispute resolution in the private rented sector. The Board provides alternative dispute resolution mechanisms, including mediation and arbitration. Appeals could be made to a tenancy tribunal from which further appeal may be made through the courts.²⁶⁹ To date the majority of Boards caseload has concerned disputes concerning deposit retention.²⁷⁰

²⁶³ RTA 2004 s. 3.

²⁶⁴ A dwelling is defined at s.4(1) of the RTA 2004.

²⁶⁵ RTA 2004, s.4(1).

²⁶⁶ RTA 2004, s. 3(1) sets out a range of occupancy arrangements which are excluded. The main exception being local authority tenancies. See Part 2.1 below.

²⁶⁷ The rental accommodation scheme however is caught by the Act as the tenancy relationship in that case is between the tenant and the private landlord.

²⁶⁸ Market rent is defined in s. 24 of the RTA 2004.

²⁶⁹ The RTA 2004 set in place a new registration system for private residential tenancies in Ireland. Under Part 7 of the RTA 2004 landlords are required to apply to register a tenancy let by them within three months of the start of the tenancy. (s. 134(2)). The landlord must register each new tenancy created in respect of a dwelling (RTA s. 135(1)(a))1. However, where a tenancy becomes a Part 4 tenancy there is a no requirement to register the Part 4 tenancy (s. 135(1)(b)) but if this is replaced by a further Part 4 tenancy there is an obligation to register under s. 135(1)(c).

²⁷⁰ This has prompted proposals for the introduction of an independent tenant deposit scheme. See Indecon International Economic Consultants, 'Indecon's Assessment of the Feasibility of a Tenancy

- **Part 4 tenancies under the RTA 2004**

The RTA 2004 substantially overhauled security of tenure in the private rented sector by basing security upon four year cycles so where a tenancy has lasted a minimum period of six continuous months, without notice of termination having been served, then the tenant will be entitled to a 'Part 4 tenancy'.²⁷¹ A Part 4 tenancy is subject to the general provisions of the RTA 2004 as outlined above however the tenant enjoys extended security of tenure i.e. the tenant is entitled to remain in the dwelling for another three and a half years subject to the landlord's right to end the tenancy in certain limited circumstances e.g. where the landlord intends to renovate the property etc.²⁷² This security of tenure provision is implied into every tenancy and cannot be contracted out. When the four year period ends the tenancy will automatically renew granting the tenant a right to remain in occupation for a further four year period and upon completion of the extended four year period the cycle continues to extend security in four year cycles.²⁷³

- **Regulated or Controlled Tenancies (some pre-1982 tenancies)**

In *Blake v. Attorney-General*²⁷⁴ the Supreme Courts held that key elements of the rent control system²⁷⁵ constituted an unjust attack on the property rights of the plaintiffs. The artificial level at which rents were frozen was unusually oppressive economically to a landlord who had a statutory obligation to repair and maintain the controlled premises. The only opportunity for review had expired by 1971 after which rents were effectively frozen permanently by the rent control. The Court held that this control scheme restricted the property rights of one group of citizens for the benefit of another group. The interference with the property rights of landlords of controlled dwellings was unfair and ultimately amounted to an unjust attack on their constitutional rights.

Restrictions of a landlord's right to obtain possession of rented premises were not in themselves unconstitutional provided the restriction is not unfair or oppressive and provided that due regard was had to the personal property rights of the landlord and to the rights which should be accorded to tenants having regard to the common good. Part IV²⁷⁶ of the Act was not justified in this way and hence it was unconstitutional:

As a result of the decision major changes were made by the Housing (Private Rented Dwellings) Act 1982 which had the effect of decontrolling the vast majority of dwellings which had been controlled under the previous scheme. However, a significant minority of dwellings remained practically 'controlled' post 1982, though these absolute statutory protections were to be phased out over time. In 2002 the Government estimated that 1,700 'regulated' dwellings remained and approximately 1,300 remained occupied by the original tenant or spouse.²⁷⁷ Such tenancies

Deposit Protection Scheme in Ireland' (Dublin: Indecon, 2012). An independent tenant deposit scheme has been proposed in the Residential Tenancies (Amendment)(No. 2) Bill 2012. However, as of March 2014 the scheme has not been introduced.

²⁷¹ RTA 2004, s. 28.

²⁷² RTA 2004 s. 34.

²⁷³ RTA 2004 s. 41. See section 6.6 below.

²⁷⁴ [1982] IR 117.

²⁷⁵ Rent Act 1960 Parts II and IV.

²⁷⁶ This does not relate to Part 4 tenancies discussed above.

²⁷⁷ Department of the Environment, Community and Local Government.

continue to be regulated by the provision of the 1982 Act.²⁷⁸ The tenants of formerly controlled dwellings have the right to remain in the dwelling for life and any spouse living in the dwelling at the date of the tenant's death may also remain there for life. Any family member residing in the dwelling at the date of death of the tenant was entitled to remain in the dwelling until 26 July 2002 or for a period of five years from the date of death of the tenant or his spouse. Part II of the Housing (Private Rented Dwellings) Act 1982 regulates any remaining dwellings which would have been controlled under the Rent Restriction Acts. Although such controlled tenancies are very few, and decreasing in number, they continue to enjoy guaranteed security of tenure while availing of a lower 'controlled' rent.

- **Tenancies and agreements excluded from the RTA 2004**

Although the RTA 2004 covers almost all the private residential sector in Ireland there are some tenancies and occupation agreements outside it. These are called here 'RTA excluded agreements'.²⁷⁹ These include:

(1) holiday lets;

(2) resident landlord tenancies;

where a residential occupier shares accommodation with his landlord, or also with a spouse, parent or child of the landlord; however this is to be contrasted with the situation where the landlord and tenant occupy separate self-contained dwellings in the same building when the tenancy will be a normal RTA tenancy.

(3) occupation connected to employment.

Where a worker enters a letting agreement as part of a contract of employment they will generally go into occupation as a licensee and not as a tenant. The legal principles regulating licenced accommodation are primarily found in the law of contract and while various statutory instruments regulate certain forms of the licensee-licensor relationship²⁸⁰ the arrangement is not attended by general landlord and tenant principles or statutes. However, there are situations where it may not be clear whether the occupancy agreement is in substance a licence or a lease. In such a fundamental dispute the Courts will examine the totality of the arrangement, and in particular whether exclusive possession has been granted.²⁸¹ Where the occupancy agreement is connected to a contract of employment the task of the courts is somewhat more complex as this area of the law of landlord and tenant has received limited academic and statutory attention in Ireland.

Wylie has set out that:

A servant or employee permitted to occupy his employer's property is usually a licence only, and not a tenant, though, as in the case of a caretaker, his status depends ultimately upon the agreement entered

²⁷⁸ In order for a rent control tenancy to operate that tenancy must have been a controlled dwelling under the Rent Restrictions Acts when the 1982 Act came into operation: Housing (Private Rented Dwellings) Act 1982 Part II.

²⁷⁹ RTA 2004, s. 3(2).

²⁸⁰ Regulations regarding Hotels etc.

²⁸¹ *Moore v. Doherty* (1843) 5 Ir. LR 449, *Great Southern Railways v. Bergin* (1937) 71 ILTR 276. Also see Landlord and Tenant (Amendment) (Ireland) Act 1860.

into. The traditional theory is that the occupation by the servant or employee is in law possession retained by the employer, especially where the occupation is required as part of the servant's or employee's contract of service.²⁸²

The Law Reform Commission have set out that this stems from the distinction between exclusive possession as a legal right and exclusive occupation as a fact:

Thus while many occupiers of property may have what looks like exclusive use or occupation of premises, albeit often for a limited period, if the owner retains control of the premises they will not be tenants.²⁸³

In *Great Southern Railways v. Bergin*²⁸⁴ the Circuit Court Judge held that, where a railway company allowed the widow of an employee to remain in occupation after her husband died for about two months before she signed an agreement for letting for its temporary convenience, until it required possession, no new tenancy should be inferred from the fact that, during the two months, she paid a weekly "rent" for her occupation.²⁸⁵ The presence of a rent in Ireland is set out as a characteristic of a tenancy by Deasy's Act. However, while demonstrative of a tenancy the presence of rent is clearly not conclusive of one.

A tenancy connected with employment is expressly excluded from Part 4 of the RTA 2004.²⁸⁶ In justifying this exclusion, Cassidy and Ring set out that:

This exception to Pt 4 prevents the unworkable situation that could arise of the employee (as a tenant) acquired Part 4 tenancy rights, however, the contract of employment under which the employee was provided with accommodation was later terminated.²⁸⁷

In the event that a worker, who had been granted a tenancy in connection with his employment, subsequently leaves that employment, whether by reason of retirement or otherwise, but is allowed to remain in occupation of the dwelling and continues to pay rent in the same manner as before the cessation of his employment the issue arises as to whether this occupier may avail of a Part 4 tenancy or whether an implied periodic tenancy arises.²⁸⁸ The consequences for the occupier and owner differ vastly depending upon the outcome. Should a Part 4 tenancy come into operation then both parties will be caught by the comprehensive and wide ranging provisions of the RTA

²⁸² Wylie, *Landlord and Tenant Law*, p. 59, citing *Moore v. Doherty* (1843) 5 Ir LR 449.

²⁸³ Consultation Paper on *General Law of Landlord and Tenant* (Dublin: Law Reform Commission CP 28, 2003), p. 19.

²⁸⁴ (1937) 71 ILTR 276.

²⁸⁵ Wylie, *Landlord and Tenant Law*, p. 59.

²⁸⁶ RTA 2004 s. 25(4)(b).

²⁸⁷ Cassidy & Ring, *Landlord and Tenant Law: The Residential Sector*, pp. 134-135.

²⁸⁸ 'Where payment of rent tends to lead the court to conclude that the tenancy is a periodic tenancy, the category (weekly, monthly, etc) depending on how the rent is calculated: see *Fahy v. O'Donnell* (1870) IR 4 CL 332 (per Keogh J.): *General Law of Landlord and Tenant* (LRC CP 28, 2003), p. 44. See Part 2 for a detailed consideration of the various forms of tenancies.

2004 relating to security of tenure, market rent, registration, dispute resolution and so on.

However, should an implied periodic tenancy be found then the protection afforded the tenant is much weaker. The tenancy may be terminated by serving a notice to quit in accordance with the Housing (Miscellaneous Provisions) Act 1992 i.e. it must be in writing. In addition a periodic tenancy can be terminated without reason. The period of notice required with an implied periodic tenancy generally varies according to the terms of the tenancy so where rent is paid monthly then a month notice is required. In a situation where the occupancy arrangement has been on-going for a number of years one months' notice would appear to be harsh indeed. On balance it would be arguable to suggest that the occupancy arrangement, after continuing for the required six month period post cessation of employment, should come within the remit of the RTA 2004 and the provision of the Part 4 tenancy should become active. In such a situation a landlord should be alert to the fact that he may find himself governed by provisions of the RTA 2004.

(4) Rent – a – room occupiers

Where a property owner rents out a room (or rooms) in their home to a private tenant that occupancy agreement will be regarded as a licence and not as a tenancy. Therefore the agreement will be governed primarily by contract and not by landlord and tenant law. This arrangement is promoted by the rent a room scheme. Under this scheme the rental income earned from this arrangement will be exempt from income tax, provided that it is under €10,000.

(5) Business, Long occupation and Improvements Equity Leases

The RTA 2004 does not apply to a dwelling the subject of a tenancy granted under Pt II of the Landlord and Tenant Act 1980 or under Part III of the Landlord and Tenant Act 1931 or which is the subject of an application made under section 21 of the Landlord and Tenant (Amendment) Act 1980 and the court has yet to make its determination in the matter. The RTA 2004 also does not apply to a lease that was granted under Pt III of the Landlord and Tenant Act 1931. These essentially concern long term tenancies with a statutory right to a new tenancy.²⁸⁹ However this group is small in practice.

(6) Exclusion of long leases

The RTA 2004 does not apply to a tenancy of a dwelling with a term of more than 35 years.²⁹⁰

(7) Share ownership leases

The RTA 2004 does not apply to a dwelling occupied under a shared ownership lease. This is a lease granted for a term of between 20 and 100 years, on payment to the lessor of a sum of money between 25% and 75% of

²⁸⁹ RTA 2004, s. 3(2).

²⁹⁰ RTA 2004, s. 3(3) as inserted by s. 100(2)(b) of the Housing Act 2009.

the market value of the house. The lease must also provide for the right of the lease to purchase the interest of the lessor in the demised house.²⁹¹

(8) Ground rents

The RTA 2004 does not apply to a dwelling where the occupier is entitled to purchase the dwelling outright under Part II of the Landlord and Tenant (Ground Rents) (No. 2) Act 1978.

²⁹¹ Housing (Miscellaneous Provisions) Act 1992, s. 2.

4.2 Regulatory types of tenures with a public task

- **Please describe the regulatory types of rental and intermediary tenures with public task (typically non-profit or social housing allocated to need)**

By far the most significant exclusions from the RTA 2004 relate to dwellings let by or to a public authority or approved body. In effect this means that social tenancies are not regulated by the provisions of the RTA 2004. The vast majority of social tenancies are local authority tenancies. However voluntary and co-operative tenancies are also excluded.²⁹²

- **Local authority tenancies**

The law regulating the public rented residential sector in Ireland consists of a range of primary and secondary statutory instruments spanning over fifty years. As such the law regulating this sector is exceedingly complex to navigate. Traditionally, the local authority has been the dominant provider of social housing in Ireland. In practice, after a tenant is allocated a dwelling in accordance with social housing legislation, the local authority specifies the terms and conditions of a letting agreement between itself and a tenant with weekly tenancies common.²⁹³

However, the occupancy agreement must have all the essential characteristics of a tenancy. Essentially a tenancy will arise where;

- a separate dwelling

- is let

- under a tenancy

- for rent or valuable consideration²⁹⁴

Most local authority tenancy agreements contain a raft of provisions restricting the tenant's actions with regard to the dwelling. However in general minor restrictions are not vigorously enforced and often more substantial clauses such as provisions concerning sub-letting may be ignored in practice. However, legally the local authority may seek a court order for possession on foot of almost any breach of the tenancy agreement,²⁹⁵ and while in practice the local authority only employ such powers as a last resort, security of tenure for local authority tenants must be viewed,

²⁹² The Residential Tenancies (Amendment)(No. 2) Bill 2012 aims to extend the scope of the RTA 2004 to include voluntary and co-operative tenancies. As of March 2014 this has not been implemented. However see D. Silke & C. Farrell, 'Study to examine the implications of including the voluntary and co-operative sector under the PRTB registration and dispute resolution services' (Housing and sustainable communities agency: Stationery Office, 2011) for an overview of the implications of this proposal.

²⁹³ See section 6.3 below.

²⁹⁴ See section 6.3 below.

²⁹⁵ Housing Act 1966 s. 62; Kenna, *Housing Law Rights and Policy*, pp. 764-768.

in light of this power, as being weak.²⁹⁶ However, as the local authority is an organ of state it is bound by s.3 of the European Convention on Human Rights Act 2003. Therefore, the authority must act in accordance with the Convention and in particular as the local authority tenancy will be a home Article 8 of the ECHR comes into operation.²⁹⁷

The powers of eviction constitute one aspect of the housing management function of local authority. Since the 1990s the housing management function of local authorities increasingly came to be directed towards addressing anti-social behaviour. This was defined by the Housing (Miscellaneous Provisions) Act 1997 to include personal acts against persons or property.²⁹⁸ The Act also introduced excluding orders into Irish law. These orders were designed to exclude persons who have been identified, under the Act, as engaging in anti-social behaviour.²⁹⁹ When considering whether to grant an excluding order, a court can examine the evidence presented.³⁰⁰ Where the court is satisfied that there are reasonable grounds for a belief that the person in question is engaging in anti-social behaviour then the court may accept a statement from a Garda as evidence of anti-social behaviour. Where a person contravenes an excluding order or an interim excluding order then they shall be guilty of an offence and shall be liable on summary conviction to a fine or at the discretion of the court... to imprisonment for a term not exceeding 12 months or both.³⁰¹

- **Chapter 4 tenancies**

The Housing (Miscellaneous Provisions) Act 2009 introduced the Chapter 4 tenancy to the social rented sector. This is special type of tenancy which is to be used where local authorities enter long leases with landlords/developers to provide social housing. In this arrangement the local authority would lease the dwelling from a private property owner³⁰² and then provide the dwelling to a qualified household.³⁰³ The Chapter 4 tenancy is between the tenant and the property owner. The Housing

²⁹⁶ Kenna, *Housing Law Rights and Policy*, pp 764-768; Fahey, *Social Housing: Success, Failure, and Lessons Learned*; T.J. Baker & L.M. O'Brien, *The Irish Housing System A Critical Overview* (Dublin, Economic and Social Research Institute, 1979), ch. 4.

²⁹⁷ In *Donegan & Gallagher -v- Dublin City Council* [2012] IESC 18 the Supreme Court made a declaration of incompatibility with regard to the local authority power of eviction set out in section 62 of the Housing Act 1966. This was only the second declaration of incompatibility. Essentially section 62 allowed for a process of eviction which did not allow the District Court discretion to examine the underlying merits of the case prior to granting the order for possession.

²⁹⁸ Housing (Miscellaneous Provisions) Act 1997 s. 1.

²⁹⁹ *Ibid.*, s. 3.

³⁰⁰ *Ibid.*, s. 11. as amended by of the Housing (Traveller Accommodation) Act 1997 s. 36 provides that 'in any proceedings under s. 62 of the Housing Act 1966, or s 3 (3A), 4 or 9, a member of the *Garda Síochána* or an officer of a housing authority or a health board states that he or she believes that a person is or has been engaged in anti-social behaviour then if court is satisfied that there are reasonable grounds for such belief and that person would be deterred or prevented by violence, threat or fear from provided evidence the statement shall be evidence of such behaviour'.

³⁰¹ Housing (Miscellaneous Provisions) Act 1997 s. 5. Part 11 of the Criminal Justice Act 2006 introduced Anti-Social Behaviour Orders into Irish law though they have not been widely used: Kenna, *Housing Law Rights and Policy*, p. 784.

³⁰² The housing authority enters a rental accommodation availability agreement with a private property owner under which the dwelling would be made available for the purposes of letting to a qualified tenant. Housing (Miscellaneous Provisions) Act 2011 s. 23.

³⁰³ Housing (Miscellaneous Provisions) Act 2011 s. 20, a qualified household means a household assessed under of the Housing (Miscellaneous Provisions) Act 2009 s.20 as being entitled to social housing support.

(Miscellaneous Provisions) Act 2009 contains provisions directed towards regulating local authority tenancy agreements by introducing standard terms and conditions.³⁰⁴ In particular, section 29 of the Housing (Miscellaneous Provisions) Act 2009 sets out a range of terms which must be incorporated into local authority tenancy agreements including provisions regarding termination conditions, payment of rent and arrears, repair obligations, restriction on use, housing authority access rights, avoid nuisance, and provisions regarding anti-social behaviour and exclusion orders.³⁰⁵ A Chapter 4 tenancy shall also be bound by the obligations imposed under Part 2 of the RTA 2004.³⁰⁶ Where a Chapter 4 tenant breaches any of the specified tenancy obligations then a notice to quit may be issued.³⁰⁷ Where the reason for termination relates to anti-social behaviour or behaviour which threatens the condition of the dwelling then 7 days' notice is required. Where the tenancy is being terminated for non-payment of rent then 14 days' notice is required after notification of rent. Where the tenancy is terminated for any other reason the notice period is 28 days.³⁰⁸ This section has not been commenced as yet however it is anticipated that Chapter 4 tenancies will eventually become the main tenancy in the social rented sector.³⁰⁹ The Chapter 4 tenancy forms part of the Government social housing policy shift from traditional provision of social housing towards the provision of social housing supports.³¹⁰

- **Voluntary and co-operative tenancies and licences**

The most common tenancy agreement in the voluntary and co-operative housing sector is the monthly periodic tenancy which is automatically renewed until it is brought to an end by either party.³¹¹ The rights and duties of both parties are largely determined by the provisions of the agreement with certain limited protections arising from general landlord and tenant law.³¹² As of March 2014 voluntary and co-operative tenancies remain excluded from the scope of the RTA 2004 however there are legislative proposals for their inclusion.³¹³

In addition to granting tenancies, the voluntary and co-operative sector often use licence agreements to provide housing to certain households, particularly homeless persons in hostel and emergency-short stay accommodation.³¹⁴ In such situations the length of stay varies significantly and in some cases may be for as short as a

³⁰⁴ Housing (Miscellaneous Provisions) Act 2009 s. 25(4).

³⁰⁵ *Ibid.*, s. 29.

³⁰⁶ *Ibid.*, s. 25(5).

³⁰⁷ RTA 2004 s. 67.

³⁰⁸ *Ibid.*

³⁰⁹ Kenna, *Housing Law Rights and Policy*, p. 729

³¹⁰ *Ibid.*

³¹¹ D. Silke & C. Farrell, 'Study to examine the implications of including the voluntary and co-operative sector under the PRTB registration and dispute resolution services' (Housing and sustainable communities agency: Stationery Office, 2011), p. 14. For more detail on the law governing periodic tenancies see Part 2.1 below.

³¹² For instance the statutory minimum notice period set out in the Housing (Miscellaneous Provisions) Act 1992 s.16(1) applies to all tenancies.

³¹³ See Residential Tenancies (Amendment)(No. 2) Bill 2012.

³¹⁴ Approximately 2,000 voluntary units are provided within the sector on the basis of license arrangements. See D. Silke & C. Farrell, 'Study to examine the implications of including the voluntary and co-operative sector under the PRTB registration and dispute resolution services' (Housing and sustainable communities agency: Stationery Office, 2011), p. 14.

single night. In return for occupancy the licensee pays an occupancy charge to the housing association. This may be provided with assistance from the community welfare officer. The licensee is not granted exclusive possession of the dwelling and therefore no tenancy arises. As such agreements are not tenancies they are excluded from the scope of the RTA 2004.³¹⁵

³¹⁵ For more see section 5 below.

- **Specify for tenures with a public task:**
 - **selection procedure and criteria of eligibility for tenants**
 - **typical contractual arrangements, and regulatory interventions into rental contracts**
 - **opportunities of subsidization (if clarification is needed based on the text before)**
 - **from the perspective of prospective tenants: how do I proceed in order to get “housing with a public task”?**

This is considered in section 5 below.

Table 9: Summary of tenure types

Rental housing without a public task	
Landlords	<ul style="list-style-type: none"> • private sector • mainly small investors
Tenants	<ul style="list-style-type: none"> • highly diverse backgrounds • 18.5% of households rent privately • consistent growth
RTA 2004	<ul style="list-style-type: none"> • comprehensively covers private sector • security based on agreement however once exceeds 6 months then a Part 4 tenancy operates • termination notice required • market rents • mechanism to keep rent increases to market levels
Part 4 tenancies	<ul style="list-style-type: none"> • Any tenancy or consecutive tenancies lasting 6 months or more are Part 4 tenancies • Provided 6 months has passed and no valid notice of termination has been served then tenant will acquire security for further three and a half years which itself is open to further renewal • succession rights • market rents • mechanism to keep rent increases to market levels
Exclusions	<ul style="list-style-type: none"> • business tenancies • rent controlled dwellings • local authorities • housing associations • ground rents • shared ownership leases • holiday homes • landlords residence • occupation by spouse, parent, child of landlord • business, long occupation and improvement equity leases • leases with a term of over 35 years
Rental housing for which a public task has been defined	
Landlords	<ul style="list-style-type: none"> • local authorities (7.8% of total households) • Housing associations and co-operatives (1% of total households)
Tenants	<ul style="list-style-type: none"> • chosen by allocation procedure • some previously homeless

Local authority tenancies	<ul style="list-style-type: none"> • vast majority of social sector tenants • security is limited to the term agreed i.e. weekly/monthly periodic • differential rents based on ability to pay • limited Right to Buy
Housing association tenancies	<ul style="list-style-type: none"> • uncommon • security is limited to the term agreed i.e. weekly/monthly periodic

5. Origins and development of tenancy law

What was the origin of national tenancy law and where was and is it laid down (civil code, special statute, case law)?

According to Wylie:

Landlord and tenant relations lay at the heart of the social and political upheavals during the 17th, 18th and 19th centuries, with constant tension existing between absentee English landowners, who had acquired substantial tracts of land in Ireland as a result of large-scale confiscations and resettlements, their land agents in Ireland (the notorious “middlemen”) and their Irish tenants.³¹⁶

Irish tenancy law traces its origin to the feudal system of landholding which was introduced into Ireland by the Norman invasion of the twelfth century and eventually took hold in the seventeenth century. Originally this system only recognised grants of land for freehold estates, i.e. for an indefinite period, and grants of land for a fixed term of years were regarded as purely contractual and as such the grantee held no estate and consequently there was no tenure. Among the major consequences for the grantee were that his interest could not pass to a successor and furthermore he could not avail of a range of possessory remedies in order to protect his possession. In spite of this, the practice of making a grant for a term of years proved highly popular and overtime began to attract a *sui-generis* collection of legal features which reflected a piecemeal, yet imperfect, legal transition from the 11th century onwards. Over this period tenancy law developed from a purely contractual arrangement to a contractual arrangement which exhibited many indicia peculiar to proprietary law, for instance by the 17th century a tenant had acquired the right to protect his possession by an action of ejectment, a right that was originally exclusive to a grantee holding an estate in land.

From the 18th century onwards the development of tenancy law was profoundly, and increasingly, influenced by statute. For much of the 18th and 19th centuries legislative intervention was primarily tailored towards increasing the extent to which a landlord could control his property and this, by and large, operated to the detriment of the tenant, giving rise to constant tension between those groups. For much of this period tension between landlord and tenant was acute and at times boiled over into open conflict and civil disobedience. This situation eventually forced policy makers in Westminster to introduce legislation more favourable to the tenant. Some of the statutes introduced during this period continue to form the basis for modern tenancy law.³¹⁷ One of the best examples of the dominant role which statutory intervention has played in the development of tenancy law is the system of rent control, now confined to the history books, which operated from 1914 to 1982. During this period the rented sector in Ireland was characterised by rent caps and extensive security of tenure provisions above and beyond what would be available under the common law. The increasing importance of statute in the development of landlord and tenancy is also illustrated by one of the most important developments in tenancy law; the creation of a distinct body of law for tenancies with a public task.³¹⁸ Not for profit housing developed from various philanthropic, industrial and charitable responses to the poor housing which attended the industrialisation and urbanisation of Britain

³¹⁶ Wylie, *Landlord and Tenant Law* p. 4.

³¹⁷ Most notable is Landlord and Tenant (Amendment) (Ireland) Act 1860, known as Deasy's Act.

³¹⁸ Housing Acts 1966-2009.

during the 18th and 19th centuries. However, it was concern for the public health risks arising from poor housing which ultimately brought the State to become involved in the provision of housing for the working classes. Philanthropic and other efforts failed to reduce the acute housing difficulties faced by the poorest households, so over time the State increasingly became the dominant provider of such housing. Substantial pieces of legislation were introduced which set out the structure and mechanics of the sector,³¹⁹ but all these were consolidated into the Housing Act 1966. Since then considerable primary and secondary legislation has been introduced which has created a complex tapestry of rules and regulations governing the sector. This has created a division between the private and the social rental sectors each with its own scheme of regulation. In recent years this division has been reinforced by the introduction of a highly advanced scheme of regulation for the private rented sector by the RTA 2004.

These developments have resulted in a number of types of tenancies operating in the Irish rented sector with differing rules setting out the rights and obligations of the parties. These tenancies include non-residential tenancies governed primarily by the common law, private residential tenancies governed by the RTA 2004, local authority tenancies governed by the Housing Acts 1966-2009, part governed by the Housing (Miscellaneous Provisions) Act 2009, and housing association tenancies which are governed primarily by the common law. In the private rented sector the vast majority of residential tenancies are RTA 2004 tenancies while in the social rented sector the vast majority of tenancies are local authority tenancies. Statute plays a key role in the legal regulation of both tenancies however principles developed at common law remain of importance in a number of key areas.

What was the political driving force? Was it based on a particular legal philosophy (e.g. socialism)? Is there a particular philosophy behind the rules?

During the early feudal era grants of land for a fixed term of years developed primarily as a more flexible means of dealing with property. Until the industrial era land was the principle source of economic wealth and the legal mechanisms through which land was controlled had an incredibly direct impact on the development of society. For instance, complex legal arrangements, e.g. the fee tail estate, ensured that land could not be sold and as such would remain within a family for generations, with the result that access to the fundamental wealth in society was restricted and as a result social mobility was restrained. Given the important value of land during this era and the various political and societal tensions in Ireland it is perhaps unsurprising that land law became a tool of political oppression during the land confiscation and resettlements which took place during the sixteenth and seventeenth centuries. The campaigns of Cromwell had a fundamental impact on the course of Irish history as it resulted in the confiscation of land from Royalists and Catholics and the redistribution of that land to Parliamentarians and Protestants, resulting in mass population displacement and a major change in the holders of wealth in Ireland.

³¹⁹ The Housing of the Working Classes Act 1890 introduced the first subsidy towards urban housing in Ireland. The UK Housing and Planning Act of 1918 set out arrangements for subsidies to local authorities and a similar scheme was introduced into Ireland by the Housing (Ireland) Act 1919. The Housing (Building Facilities) Act 1924 provided subsidies for new build housing. The Housing (Miscellaneous Provisions) Act 1931 introduced the compulsory purchase order which facilitated slum clearance and also expanded the financing of private building through subsidies. Tenant purchase schemes were expanded by the Labourers Act 1936.

Subsequently, the Penal laws were passed to restrict the civic rights of Catholics, with Catholics disbarred from owning property. By the eighteenth century the vast majority of Irish households held their property under agricultural tenancies. Property ownership was confined to a small section of the populace. This group of landed gentry represented about 2,000 persons, and combined they owned the vast majority of land in Ireland.

However, mismanagement and neglect were constant features of this system during the nineteenth century and as conditions worsened for tenants, there was constant tension between landlords, their agents and tenants. Government intervention to assuage the burgeoning tensions was initially limited as the prevailing economic theory during this era was decidedly *laissez faire* and indeed up until the late 19th century statutory intervention in the leasehold sector was targeted at strengthening the landlord's ability to control his property and this was, without exception, detrimental to the tenant's interests. However, such conditions prompted significant social unrest and at times outright rebellion; as a result the Westminster Parliament increasingly began to see resolution of the 'land question' as a means by which Ireland could be placated. Successive pieces of legislation were introduced which granted tenants basic protections and led to substantial improvements in the tenants legal standing. Ultimately however, the impacts of these reforms were muted by the scheme of land purchase introduced during the late nineteenth and early twentieth century which substantially reduced the number of agricultural tenancies in Ireland, replacing those households with landowners. While the majority of households lived in the countryside during this period, there were substantial numbers of households living in urban areas. From 1800 to 1900 most Dubliners lived as tenants³²⁰ but it was only late in the nineteenth century that specialist legislation was introduced concerning urban housing. Indeed, some of this legislation was in direct response to the politicisation of the working class over poor housing conditions.³²¹ The prospect of housing conditions giving rise to socialism spurred policy makers to introduce legislation directed toward improving housing conditions.³²² For much of the twentieth century after the foundation of the State tenure policy was characterised by constant support for owner occupation. During this period tenancy law in the private sector did not reflect a clear politically guided structure. Towards the end of the twentieth century the private rented sector began to record small but consistent growth, this development was directly related to developments in the property market which underwent a rapid house price and construction boom. Increases in the size of the rented sector led the Government to reconsider the role of the sector as part of the wider housing system. As part of this there had been a dramatic reform of the regulation of the sector.³²³

³²⁰ *Report of the Departmental Committee into the Housing Conditions of the Working Classes in the City of Dublin* (CD 7273), Parliamentary Papers, Vol. 19 (1914). This report found that 45% of the working population of Dublin lived in tenement houses.

³²¹ M. Fraser, *John Bull's Other Homes. State Housing and British Policy in Ireland, 1883-1922* (Liverpool: Liverpool University Press, 1996), pp. 103-107.

³²² The Housing (Ireland) Act 1919, extended the war time pledge of 'Homes fit for heroes to live in' to Ireland.

³²³ RTA 2004.

What were the principal reforms and their guiding ideas up to the present date?

Early statutory intervention, particularly during the 18th and 19th centuries, was primarily concerned with expanding the landlord's capacity to freely control his property and this was nearly always detrimental to the tenant's interests. Statutory remedies for the landlord developed during this period included distress and ejectment for non-payment of rent. The Landlord and Tenant Law Amendment Act Ireland 1860 (Deasy's Act) which consolidated the various landlord remedies and to an extent reformed the basis of tenancy law, remains the basic statute governing landlord and tenant relations in Ireland. Section 3 of Deasy's Act proclaimed the law of landlord and tenant to be founded on contract rather than tenure:

The relation of landlord and tenant shall be deemed to be founded on the express or implied contract of the parties, and not upon tenure or service, and a reversion shall not be necessary to such relation, which shall be deemed to subsist in all cases in which there shall be an agreement by one party to hold land from or under another in consideration of any rent.³²⁴

This apparently revolutionary section introduced a definition of a tenancy into Irish tenancy law, and although the courts have been reluctant to view this definition as being conclusive the provision contains a number of indicia which a court will have regard to when considering whether an occupancy agreement constitutes a tenancy or not. Establishing whether an occupancy agreement is a lease remains absolutely fundamental in determining whether the rules and principles pertaining to tenancy law apply. In this role the definition contained in Deasy's Act continues to be of importance.³²⁵

During the 19th century, and particularly in the wake of the famine, the Westminster Parliament became increasingly concerned to assuage the persistent tension, often boiling over into open conflict, between landlord and tenant in Ireland. In response to persistent lobbying from the Irish Land League statutory intervention in the area of landlord and tenant began to expand the rights of the tenants at the expense of the landlord's freedom to control his property. The Landlord and Tenant (Ireland) Act 1870 marked the beginning of this development by introducing various rights of compensation for disturbance and improvements while the Land Law (Ireland) Act 1881 introduced the so called 'three F's', granting tenants free sale of the lease, a fair rent and fixity of tenure and the reforms elevated the security of the tenants. Subsequent schemes introduced tenant purchase which greatly reduced the number of tenancies in Ireland, as households purchased their freeholds, and much agricultural land became freehold with registered titles.³²⁶

Housing Act 1966 – a crystallisation of the public-private dichotomy

The Housing Acts 1966 – 2009 set out the legal framework governing local authority housing. This framework traces its origins to various pieces of statute introduced during the late 19th and early 20th century. During this period the various philanthropic,

³²⁴ Landlord and Tenant (Amendment) (Ireland) Act 1860, s. 3.

³²⁵ The Law Reform Commission considered in 2003 that this provision had 'been beneficial and so should be retained as part of the law in Ireland.' *General Law of Landlord and Tenant* (Dublin: Law Reform Committee Consultation Paper, CP 28, 2003), p. 14.

³²⁶ Purchase of Land (Ireland) Act 1885, (Balfour's) Irish Land Act 1887, and (Wyndham's) Land Purchase (Ireland) Act 1903.

charitable and industrial efforts to improve housing conditions in cities had failed to bring about general improvement and gradually the public health consequences attending unfit housing caused the State to become active in providing housing to working classes. As Ireland was a predominantly rural nation during this period housing legislation was often directed towards rural housing matters, indeed the provision of social housing in rural Ireland, under the Labourers Acts up to 1914,³²⁷ predated the provision of social housing in urban Ireland. It was the Housing of the Working Classes Act 1908 which introduced the first subsidy towards urban housing in Ireland.³²⁸ However, the provision of housing by local authorities did not have a substantial impact until after World War I when a major building programme implemented in the United Kingdom,³²⁹ and a similar scheme was proposed for Ireland with subsidies to local authorities for house building; this, however, was not implemented due to the War of Independence.³³⁰ After independence in 1922, the Housing (Miscellaneous Provisions) Act 1931 expanded the powers of local authorities by introducing Compulsory Purchase Orders along with powers of inspection and repair. The Housing (Miscellaneous Provisions) Act 1932 increased the level of subsidies available to local authorities. As a result, local authority activity in construction stepped up considerably³³¹ while tenant purchase schemes for agricultural labourers were also extended during this period.³³² The Housing (Amendment) Act 1950 further expanded the provision of housing by local authorities to all classes of the community. The gradual development of housing with a public task was crystallised by the Housing Act 1966. This Act clarified the division between private rented housing and public housing by setting out the role of the State in the provision of housing to those in need. Since the Housing Act 1966 there have been vast amounts of primary and secondary legislation relating to housing with a public task; however the 1966 remains the principle consolidating Act.

The RTA 2004 – A new regulatory model

For much of the twentieth century in Ireland the private rented sector was largely absent from general housing discourse. As a result the sector was characterised as the forgotten sector in the early 1980s.³³³ After the sector was deregulated in 1982 the sector declined consistently until the early 1990s when the sector began to record small but consistent growth. It was during the 1990s that Ireland's property market underwent a period of accelerated growth as house price and house construction boomed. A number of reports were commissioned by the Irish Government in the 1990s aimed at examining the position of security of tenure in the private rented sector. The *Commission on the Private Rented Sector* reported in 2000 after a broad examination of the whole sector,³³⁴ and its recommendations

³²⁷ Dwellings for the Labouring Classes (Ireland) Act 1860.

³²⁸ Social housing in rural Ireland under the Labourers Acts predated such provision in urban Ireland.

³²⁹ The (United Kingdom) Housing and Planning Act of 1918.

³³⁰ The Housing (Ireland) Act 1919 required local authorities to prepare a housing plan which took account of the housing needs of the district with respect to the provision of houses for the working class. This was not implemented in 1919, but is remarkably similar to the duty imposed on local authorities by the Housing Act 1966.

³³¹ By 1940 over 40% of Irish housing stock had been built by local authorities: *Census of Population 1936, Vol. IV, Housing*, p. 111; Kenna, *Housing Law Rights and Policy*, p. 38.

³³² Labourers Act 1936.

³³³ Dillion & O'Brien, *Private Rented Accommodation: The Forgotten Sector of Irish Housing*, p. 28.

³³⁴ Government of Ireland, *Commission on the Private Rented Residential Sector* (Dublin, Stationary Office, 2000).

were largely implemented in the RTA 2004. This Act reformed security of tenure as well as overhauling regulation of the Private Rented Sector. The reforms are some of the most dramatic in the history of tenancy law in Ireland and reinforce the distinct regulatory approach in the two rented sectors. The RTA 2004 was drafted to have very wide application and as a result the vast majority of private rented tenancies³³⁵ are governed by the provisions of the RTA 2004.³³⁶ In determining whether a dwelling is governed by the RTA 2004, the usual characteristics of a lease are required, i.e. exclusive occupation, rent etc,³³⁷ however in addition a number of statutory definitions are of paramount concern. These include the statutory definition of a dwelling, landlord, tenant, tenancy, contract of tenancy, lease and tenancy agreement. A dwelling for the purposes of the RTA 2004 is a property let for rent or valuable consideration as a self-contained residential unit³³⁸ and is a structure which is permanently attached to the ground.³³⁹ A landlord is defined as the person entitled to receive the rent paid in respect of a dwelling by the tenant and includes a person who has ceased to be so entitled by reason of the termination of the tenancy.³⁴⁰ A tenant is defined as the person for the time being entitled to the occupation of a dwelling under a tenancy and includes a person who has ceased to be entitled to that occupation by reason of the termination of his or her tenancy.³⁴¹ The RTA 2004 applies to every dwelling the subject of a tenancy.³⁴² However, this is subject to a number of a number of categories of dwellings which are expressly excluded from the RTA 2004.³⁴³ Amongst the main excluded dwellings are dwellings let by public authorities and approved bodies, dwellings let by voluntary housing bodies, holiday homes and where the dwelling is the landlord's residence or where the dwelling is occupied by the spouse, parent or child of the landlord.³⁴⁴ As a result tenancies in the private rented sector are almost without exception governed by the provisions of the RTA 2004, while those excluded are governed by the general landlord and tenant law as well as specialist statutes.

³³⁵ Oral tenancies are included under s. 4(1).

³³⁶ RTA 2004, ss 4 & 5.

³³⁷ See below.

³³⁸ While this is defined broadly, since February 1st 2013 it is no longer legally permissible to let a bedsit and therefore such accommodation can no longer form the basis of a tenancy governed by the RTA 2004. See Housing (Standards for Rented Houses) Regulations 2008 (SI No 543/2008) as amended by the Housing (Standards For Rented Houses)(Amendment) Regulations 2009 (SI No. 462/2009), s.2.

³³⁹ *Ibid.* s. 4(1). This would imply that a mobile home or house boat would not be capable of forming the basis for a tenancy governed by the RTA 2004. However, this may not be the case where the structure becomes permanently attached and part and parcel of the land. It is likely that the UK case law would be followed in Ireland. See *Elitestone v Morris* [1997] 1 WLR 687.

³⁴⁰ RTA 2004, s. 5.

³⁴¹ *Ibid.*

³⁴² *Ibid.* s. 3(1).

³⁴³ The Act was drafted to apply to private residential tenancies

³⁴⁴ The full list of excluded dwellings is set out in section 3(2) of the RTA 2004 and includes business premises, rent controlled dwellings, public authorities and approved bodies, accommodation of voluntary bodies and co-operative sector, ground rents, shared ownership leases, holiday homes, landlord's residence, occupation by spouse, parent or child of the landlord and business, long occupation and improvement equity leases. See U. Cassidy & J. Ring, *Landlord and Tenant Law The Residential Sector* (Dublin, Round Hall, 2010), chapter 3.

Do other forms of “lawful possession” of a premise for housing purposes (e.g. usufruct, licence etc) play a role?

There are numerous other forms of lawful possession of a dwelling for housing purposes in Ireland. These include a licence arrangement, occupation tied to employment, accommodation for a caretaker and lodging arrangements and guest accommodation. The licence arrangement is perhaps the most common form of lawful possession other than a tenancy in Ireland. There are numerous variations of the licence arrangement ranging from mere permission to enter land through to contractual licences which grant a right to use or occupy land. Contractual licences form the basis for occupancy in Bed and Breakfasts, hotels and hostels across the country. Another area of lawful possession of a premise for housing purposes outside of a tenancy concerns accommodation for servants or employees. In this situation the worker will be permitted to occupy his employer's property under a licence agreement. While the relationship may exhibit many indicia of a tenancy the employer is considered to retain control of the property.³⁴⁵

Human Rights: To what extent was tenancy law since its origins influenced by fundamental rights enshrined in the national constitution and/or international instruments, in particular the ECHR? Is there a constitutional (or similar) right to housing (droit au logement)?

During the period 1914-1982 Ireland's private rented sector was largely characterised by a rent control system. Under this system, properties with a low rateable value had rents set at an artificially low level while tenants of such properties had guaranteed security of tenure. The sector was deregulated in 1982 after a Supreme Court ruling declared the system of rent control to be unconstitutional. The journey from rent control to deregulation begins and ends in two different States and illustrates the important role which the Irish Constitution, *Bunreacht na hÉireann*, has played in the development of Irish tenancy law. When the first shots of the Great War were fired Ireland was still a part of the United Kingdom and was governed directly from Westminster. The war efforts led to a rapid increase in industrial activity and one of the consequences of the great demand for labour was an acute shortage of housing in urban areas. In response to a pressing social need for cheap housing the Westminster Parliament introduced the Rent Act 1914 which capped rents at artificially low levels and granted extensive security of tenure to tenants. The system, originally designed as a short term measure, was renewed at the end of the war and, in one form or another, the rent control system continued to operate until the early 1980s when it was abolished after the Supreme Court declared it unconstitutional. Deregulation of the private rented sector was brought about in a State which was fundamentally different from the one in which it was first introduced. From a legal perspective, the Irish Constitution represented perhaps the single most important legal distinction between the two jurisdictions. The Constitution sets out the fundamental law of the State and with regard to the development of tenancy law, the provisions relating to property rights have had the most influence. The right to property is protected as an institution and separately as a personal right. It was the *Blake*³⁴⁶ decision, leading to the abolition of rent control, which allowed the court to

³⁴⁵ Wylie, *Irish Landlord and Tenant Law*, p. 59; see section 6.3 below.

³⁴⁶ *Blake v. Attorney General* [1982] IR 117.

determine the scope and nature of the differing property rights in the Irish constitution.

There exists, therefore, a double protection for the property rights of a citizen. As far as he is concerned, the State cannot abolish or attempt to abolish the right of private ownership as an institution or the general right to transfer, bequeath and inherit property. In addition he has the further protection under Article 40 as to the exercise by him of his own property rights in particular items of property.³⁴⁷

When drafting legislation which impacts on a person's property rights, the Government must be cognisant of the provisions of the Constitution. In particular any interference with the property rights of an individual must not constitute an unjust attack on that person's rights. In effect the Constitution requires a balancing act between the target of the legislation and the means used to achieve that end. Ultimately, the Constitution permits interference with property rights so long as that interference is proportionate and is not arbitrary.³⁴⁸ As such legislation concerning tenancy law, which by its nature almost always interferes with a number of property rights, must adhere to the balancing process required by the property rights set out in the Constitution.³⁴⁹

With the passing of the European Convention on Human Rights Act 2003, the provisions of the European Convention on Human Rights have been incorporated into Irish domestic law. Although many of the rights were already expressed in the substance of the Irish Constitution the incorporation of the ECHR and the appurtenant case law of the European Court of Human Rights into Irish Constitutional law has expanded the role which fundamental rights play within Irish tenancy law. For instance the local authority, as a public landlord, is an organ of state bound by section 3 of the 2003 Act and therefore must act in accordance with the Convention. Furthermore, where a dwelling is a home Article 8 of the ECHR comes into operation. In *Donegan & Gallagher v. Dublin City Council*³⁵⁰ the Supreme Court made a rare declaration of incompatibility with regard to the local authority power of eviction set out in section 62 of the Housing Act 1966. Essentially section 62 allowed for a process of eviction which did not afford the District Court any opportunity to examine the underlying merits of the case prior to granting the order for possession.

³⁴⁷ [1982] IR 117, 129-130, O'Higgins CJ.

³⁴⁸ *Ninth Progress Report: Private Property*, p. 360.

³⁴⁹ This is well illustrated with respect to the provisions of the RTA 2004 which curtail the landlords private property rights in several ways, for instance by requiring him to give a valid notice of termination before taking possession, however this interference could be justified as a legitimate and proportionate interference which upholds a valid social goal i.e. allowing the tenant adequate time to find alternative accommodation.

³⁵⁰ [2012] IESC 18.

6. Tenancy regulation and its context

6.1 General introduction

- **As an introduction to your system, give a short overview over core principles and rules governing the field (e.g. basic requirements for conclusion, conditions for termination of contracts by the landlord, for rent increase etc.; social orientation of tenancy law in force; habitability (i.e. the dwellings legally capable of being leased)).**

Statute has overlaid the common law of leases so effectively in the field of residential tenancies that it is necessary at the outset to differentiate the key types of tenancy, Irish law being sectoral.³⁵¹ The discussion which follows only discusses new leases granted under current law

- **RTA 2004 tenancies and Part 4 tenancies – private sector**

The vast majority of tenancies in the private rented sector are governed by the provisions of the RTA 2004 which implies a range of statutory rights and duties into all tenancies within its remit which cannot be contracted out of. Detailed conditions will be explained later,³⁵² but in essence an RTA tenancy is a lease of a separate dwelling, which includes flats as well as separate buildings, to an individual who occupies the dwelling and pays a rent in return for occupation.³⁵³

The tenancy may be for a fixed term or it may be periodic e.g. recurring monthly until ended by either party. This tenancy will be governed by contractual rules for its duration. However, once a tenant has remained in occupation of a dwelling for a period of 6 months and valid notice of termination has not been served then he or she acquires the benefit of a Part 4 tenancy under the RTA 2004. This entitles the tenant to remain in occupation for a period of four years in total unless a valid notice of termination is served on him or her. A landlord's ability to terminate the tenancy is more limited where a Part 4 tenancy comes into operation.³⁵⁴ The Act sets out a basic framework for termination of residential tenancies which is implied by statute into every tenancy caught by the Act. This framework may be supplemented through the parties reaching their own agreement by, e.g. agreeing a longer notice period than under the Act, but it is not open to the parties to denigrate/reduce or deduct from the termination procedures. In order for a landlord or a tenant to bring about a termination of a tenancy they must serve a valid notice of termination, give a sufficient period of notice, the length of which varies according to the duration of the tenancy.³⁵⁵ However, a statutory minimum notice period of twenty eight days applies regardless of the duration of the tenancy.³⁵⁶ Where a landlord fails to serve a valid notice of termination then the tenant is not under an obligation to vacate the dwelling and may in certain periods invalid termination will fail to prevent a part 4 tenancy

³⁵¹ 'Lease' and 'tenancy' are interchangeable terms, but 'tenancy' tends to be used for shorter and less formal arrangements.

³⁵² See section 6.3 below.

³⁵³ RTA 2004, s. 3(1). The RTA 2004 does not apply where there is an agreement to enter a tenancy in the future.

³⁵⁴ See section 6.6.

³⁵⁵ Notice of 112 days is required where the tenancy has lasted for four or more years: RTA 2004, s. 66.

³⁵⁶ Housing (Miscellaneous Provisions) Act 1992 s.16(1).

coming into operation. On the other hand where a tenant fails to serve a valid notice of termination then this may result in the tenant forfeiting his deposit.

The rent is a matter for free market negotiation but if rent supplement or housing assistance payment is used to cover any of the rent payment, there will be limits on the rent level accepted for such claims. The RTA 2004 provides a framework for ensuring that rents adhere to market levels and also provides for a scheme of rent review which can allow the landlord to increase the rent once per annum, provided that the increase adheres to market levels. Residential property must be habitable³⁵⁷ and the landlord must carry out major repairs and in this respect the tenant may apply to the Private Residential Tenancies Board (PRTB) to ensure the landlord carries out repairs. Finally, the PRTB are charged with regulating private residential tenancies agreements under the RTA 2004 and in this respect they may receive complaints, provide alternative dispute resolution services and make binding decisions settling disputes. The landlord must provide the tenant with a rent book³⁵⁸ and the landlord is also responsible for registering the tenancy with the Private Residential Tenancies Board.³⁵⁹

- **Local authority tenancies and voluntary and co-operative tenancies – social sector**

An alternative to the private sector is the social sector consisting of local authority landlords and approved housing bodies.³⁶⁰ The normal means of access to this sector (housing with a public task) would be by registration on a housing waiting list, though the wait may be substantial given the under investment in social housing stock over the years, though it may be shortened considerably by scoring highly in the points allocation process. When a person reaches the top of the waiting list, an offer of accommodation will be made by a social landlord either directly by a local authority or they may be nominated to an approved housing association etc. The scope for negotiation is limited to the extent that it is permitted to reject offers and the extent to which the accommodation offered is unsuitable. In the social rented sector differential rents are used which take into account the tenant's ability to pay.

- **Local authority tenancies**

The social sector is dominated by the local authority tenancy which is in essence a lease granted by a local authority of a separate dwelling to an individual who occupies the dwelling and pays a rent in return for that occupation. The tenancy can either be a fixed term tenancy or a periodic tenancy with weekly tenancies common. Under the common law termination of a fixed term tenancy depends primarily on the terms of the contract and where the lease expires according to the term, notice of termination is not required while unilateral termination prior to expiry of the term will

³⁵⁷ Housing (Standards for Rented Houses) Regulations 2008 (SI No 543/2008) as amended by the Housing (Standards For Rented Houses)(Amendment) Regulations 2009 (SI No. 462/2009). These standards have largely replaced those in SI No. 147/1993). See: M. Jordan, M. 'The Rented Accommodation Sector in Ireland: Increased Demand amid Regulatory Transition - Housing Standards in Focus' (2012) 17(3) *Conveyancing and Property Law Journal* 42.

³⁵⁸ Housing (Rent Book) Regulations 1993 (SI No 146/1993) as amended by Housing (Rent Books) Regulations 1993 (Amendment) Regulations 2004 (SI No 751/2004) and by Housing (Rent Books) Amendment) Regulations 2010 (SI No 357/2010).

³⁵⁹ RTA 2004, chapter 2.

³⁶⁰ It is worth reiterating that both tenancies are excluded from the scope of the RTA 2004.

result in a breach of contract. With regard to a periodic tenancy, the common law rule is that the period of notice required varies according to the duration of the tenancy. Therefore where there is a weekly tenancy, one weeks' notice is required and where there is a monthly tenancy, one month's tenancy is required.³⁶¹ However, this rule no longer applies to local authority tenancies on which statute has imposed a minimum notice period of 28 days applies regardless of the duration of the tenancy.³⁶²

The rights and duties of both parties will be set out in the tenancy agreement and the tenancy will be governed by these contractual rules for its duration. However the rights and duties of both parties are also affected by the Housing Acts 1966-2009 and various related secondary pieces of legislation. These legislative instruments provide for a range of fundamental matters concerning the tenancy including the setting of rent, termination procedures etc and many of these provisions apply exclusively to local authority tenancies. Most local authority tenancy agreements contain a raft of provisions restricting the tenant's actions with regard to the dwelling and the local authority may seek a court order for possession on foot of almost any breach of the tenancy agreement.³⁶³ The landlord will be obliged to carry out the major structural repairs.

In the coming years it is likely that the requirement that the lease must be in writing will become increasingly regulated, particularly in the social rented sector. The Housing (Miscellaneous Provisions) Act 2009 requires that a tenancy agreement must be in writing and must include a number of specified terms.³⁶⁴ This requirement applies in the case of local authority owned housing and in the case of property which is the subject of a contract or lease, other than a rental accommodation availability agreement, between the authority and its owner. Schedule 3 sets out the terms and conditions that must be included in such tenancy agreements, including specific provisions in relation to anti-social behaviour, and section 29(2)(b) enables a housing authority to include other necessary and appropriate terms and conditions in such agreements. Any terms and conditions are subject to the terms of any contract or lease between the housing authority and dwelling owner.³⁶⁵ The Minister may regulate matters in relation to tenancy agreements, including their form and the procedures for termination of the tenancy by either the housing authority or the tenant.³⁶⁶ This schedule has not yet been commenced.

- **Voluntary and co-operative tenancies**

Voluntary and co-operative tenancies account for less than 5% of total rental housing.³⁶⁷ In this case there must be a lease granted by a voluntary or co-operative housing body of a separate dwelling to an individual who occupies the dwelling and pays a rent in return for that occupation. The tenancy can either be a fixed term tenancy or a periodic tenancy with weekly tenancies common. Under the common law termination of a fixed term tenancy depends primarily on the terms of the

³⁶¹ This does remain the case in periodic tenancies of longer duration, see section 6.6 below.

³⁶² Housing (Miscellaneous Provisions) Act 1992 s.16(1).

³⁶³ Housing Act 1966 s. 62; Kenna, *Housing Law Rights and Policy*, pp. 764-768.

³⁶⁴ Housing (Miscellaneous Provisions) Act 2009 sch. 3.

³⁶⁵ *Ibid.*, s. 29(3).

³⁶⁶ *Ibid.*, s. 29(4).

³⁶⁷ 'PRTB 3-Year Corporate Plan to June 2015' (Dublin: Stationery Office, 2012), p. 4.

contract and where the lease expires according to the term, notice of termination is not required while unilateral termination prior to expiry of the term will result in a breach of contract. With regard to a periodic tenancy, the common law rule is that the period of notice required varies according to the duration of the tenancy. Therefore where there is a weekly tenancy, one weeks' notice is required and where there is a monthly tenancy, one month's tenancy is required.³⁶⁸ However, this rule no longer applies to voluntary and co-operative tenancies on which statute has imposed a minimum notice period of 28 days applies regardless of the duration of the tenancy.³⁶⁹ The rights and duties of both parties will be set out in the tenancy agreement and the tenancy will be governed by these contractual rules for its duration. Only certain parts of the Housing Acts 1966-2009 and related secondary legislation will apply to voluntary and co-operative tenancies. It has been proposed to extend the scope of the RTA 2004 to include voluntary and co-operative tenancies. This would have the effect of introducing the framework of rights and duties continued in the RTA 2004 into the voluntary and co-operative sector.³⁷⁰

³⁶⁸ This does remain the case in periodic tenancies of longer duration, see section 6.6 below.

³⁶⁹ Housing (Miscellaneous Provisions) Act 1992 s.16(1).

³⁷⁰ D. Silke & C. Farrell, 'Study to examine the implications of including the voluntary and co-operative sector under the PRTB registration and dispute resolution services' (Housing and sustainable communities agency: Stationery Office, 2011), p. 3. Also see Residential Tenancies (Amendment)(No. 2) Bill 2012.

- **Is the position of the tenant also considered as a real property right (and therefore also governed by property law) or (only) as a personal (obligatory) right?**

Current landlord and tenant law recognises the tenant as having a real property right. Originally grants of land for a fixed term of years were regarded as purely contractual, but a transition occurred in the sixteenth century leading to an arrangement that was essentially proprietary in character. By the seventeenth century a tenant had acquired the right to protect his possession by an action of ejectment, a right originally exclusive to a grantee holding a freehold estate. The Landlord and Tenant (Amendment) (Ireland) Act 1860 (Deasy's Act) is the starting point for distinguishing a tenancy from other forms of occupancy agreement, with its peculiar statutory definition of a tenancy:

The relation of landlord and tenant shall be deemed to be founded on the express or implied contract of the parties and not upon tenure or service, and a reversion shall not be necessary to such relation, which shall be deemed to subsist in all cases in which there shall be an agreement by one party to hold land from or under another in consideration of any rent.³⁷¹

The definition is peculiar and noteworthy for several reasons but its peculiarity arises primarily because of its presence in statute at all. Indeed, as common law jurisdictions go, the reduction of the indicia of a tenancy agreement into a statutory definition as evinced in Deasy's Act is almost without parallel.³⁷² If taken literally the provision would seem to indicate that the relation of landlord and tenant is purely contractual however the courts have not interpreted the provision in this way. Instead the position of the tenant is considered as a real property right.

- **To what extent is the legislation divided up into general private law and special statutes? To what extent are these rules mandatory and dispositive? Does the relationship between general and special rules work properly so as to create legal certainty?**

Irish housing law is strictly sectoral. Legislation intervened in each sector of the leasehold and rental market with a specific, tailor made, regime, a situation which leads to a very complex legislative structure. The scheme introduced to the private rented sector excludes leases falling within the social sector. The main categories (concentrating on the current law) are:

RTA 2004 tenancies: the private residential sector where a separate dwelling is let to an individual who occupies the dwelling and pays rent; governed by the RTA 2004, where more than 6 months duration a Part 4 tenancy comes into operation with increased security for the tenant

Local authority tenancies: where a separate dwelling is let by a local authority to an individual to occupy the dwelling in return for a rent, primarily governed by Housing Acts 1966-2009, such tenancies are usually weekly periodic tenancies and security is limited

³⁷¹ Landlord and Tenant (Amendment) (Ireland) Act 1860 s. 3.

³⁷² A similar provision exists in Ontario, Canada.

Voluntary and co-operative tenancies: where a separate dwelling is let by a approved housing body (e.g. housing association) to an individual to occupy the dwelling in return for a rent, primarily governed by general law of landlord and tenant (i.e. common law, general aspects of the Housing Acts 1966-2009 etc), such tenancies are usually weekly periodic tenancies and security is limited

On the whole the sectoral legislative scheme is imbalanced in favour of private tenancies which enjoy a more sophisticated regulatory model than social tenancies

- **What is the court structure of tenancy law? Is there a special jurisdiction or is the ordinary one competent? What are the possibilities of appeal?**

The court structure differs for housing with a public task and housing without a public task. The courts remain the main regulatory body for housing with a public task, the role of the courts has been significantly reduced for private rented tenancies since the institution of the Private Residential Tenancies Board which is now the court of first instance for housing.

- **RTA 2004 tenancies**

The RTA 2004 had a profound impact on the court structure in tenancy law. Part 8 established the Private Residential Tenancies Board which assumed responsibility for resolving disputes³⁷³ arising in the private rented sector and as such operated as a court of first instance. The vast amount of disputes arising in the private rented sector are now resolved by the dispute resolution structure of the Private Residential Tenancies Board with many of these disputes being resolved by alternative dispute resolution mechanisms provided by the Board. While parties may appeal to the circuit court on a point of law, the reforms in 2004 have largely absolved the traditional court system from dealing with landlord and tenant disputes in the private rented sector. Under the RTA 2004 the Private Residential Tenancies Board form Dispute Resolution Committees to assist in the dispute resolution process.³⁷⁴ This section also governs the appointment of mediators and adjudicators.³⁷⁵ The dispute resolution process involves two stages. Firstly parties to a dispute have the option of either mediation or adjudication in private, the secondly stage two involves a public hearing by the tenancy tribunal. The tribunal comprises three persons drawn from the board's dispute resolution committee. A mediation agreement or determination made by an adjudicator or a tribunal will result in a determination order of the Private Residential Tenancies Board which may only be appealed to the High Court on a point of law.³⁷⁶ Where a determination order is not complied with the Circuit Court has authority to enforce that order.³⁷⁷

- **Non-RTA tenancies**

In the public sector disputes between landlord and tenant which cannot be resolved by local means are dealt with by the traditional courts system, with the dispute resolution system of the Private Residential Tenancies Board not available to public

³⁷³ RTA 2004 s. 151.

³⁷⁴ *Ibid.*, s. 103(2).

³⁷⁵ *Ibid.*, Part 6 generally and in particular, s.164(1) and (2).

³⁷⁶ *Ibid.*, s.123(3). With scope for further appeal to the Supreme Court.

³⁷⁷ *Ibid.*, s.124.

tenants. The courts system is often associated with delays, high costs and uncertainty and as such many tenants who may have a legitimate grievance may be put off from pursuing the issue through the courts system. This is compounded by the fact that legal aid is not generally available for property disputes. Another avenue open to local authority tenants, but not to private rented tenants, is to appeal to the European Court of Human Rights.

- **Are there regulatory law requirements influencing tenancy contracts E.g. a duty to register contracts; personal registration of tenants in Eastern European states (left over of soviet system)**

The Housing (Miscellaneous Provisions) Act 1992³⁷⁸ the Ministers for Environment was empowered to make regulations requiring the landlord of a house let for rent or other valuable consideration, to register any residential tenancy of that house with the local housing authority. In order to facilitate this process, various regulations were enacted³⁷⁹ however the scheme of regulation failed to operate effectively and large number of tenancies went unregistered. With regard to the private rented sector the RTA 2004 revoked these regulations and created a new registration system, charging the Private Residential Tenancy Board with responsibility for the new registration system.³⁸⁰ Currently landlords are obliged to register any tenancy of a dwelling rented by them with the Board, who have the power to actively pursue landlords who fail to register tenancies.³⁸¹ The landlord must register the tenancy within one month of commencement. In order to register the landlord must submit an application along with €90 fee.³⁸² Although a significant number of tenancies have not been registered, the system is a vast improvement on the previous one. The Private Residential Tenancies Board has powers to enter and inspect a dwelling for the purposes of determining whether any particular specified in the application for registration is correct.³⁸³ Where a landlord fails to register the tenancy then she will be unable to avail of the dispute resolution services of the Board³⁸⁴ and, in addition, the errant landlord may face prosecution by the Board for failing to register after being warned.³⁸⁵

- **Regulatory law requirements on - new and/or old - habitable dwellings capable of being rented - e.g. on minimum size, number of bathrooms, other mandatory fittings etc.**

The Housing Act 1966 introduced a legal definition of overcrowding.³⁸⁶ This is based on the number of bedrooms in a dwelling and the people in a household who can share a bedroom. This standard sets out that certain groups or individuals require a

³⁷⁸ Housing (Miscellaneous Provisions) Act 1992 s. 20.

³⁷⁹ In addition local authorities are required to maintain a register of all tenancies and are charged with enforcement of regulations. Under the Housing act 1966 s. 116(1) local authorities have the power to prosecute.

³⁸⁰ RTA 2004 Part 7.

³⁸¹ *Ibid.*, s. 134(1).

³⁸² *Ibid.*, s. 137(1)(b).

³⁸³ *Ibid.*, s.145(1).

³⁸⁴ *Ibid.*, s. 83(2).

³⁸⁵ For the consequences of a failure to register see section 6.3 below.

³⁸⁶ Housing Act 1966, s. 63.

separate bedroom. Overcrowding occurs where any two persons, being persons of ten years of age or more of opposite sexes and not being persons living together as husband and wife, must sleep in the same room or where the free air space in any room used as a sleeping apartment, for any person is less than four hundred cubic feet.³⁸⁷ The local authority is responsible for enforcement of housing standards and is empowered to serve a notice requiring owners to desist from allowing overcrowding to take place.

- **Regulation on energy saving**

See section 3.5 above.

³⁸⁷ The height of the room, if it exceeds eight feet, being taken to be eight feet, for the purpose of calculating free air space.

6.2 The preparation and negotiation of tenancy contracts

- **Freedom of contract**

- **Are there cases in which there is an obligation for a landlord to enter in to a rental contract?**

RTA 2004 tenancies

The private residential sector consists of an open market in lettings and private landlords are not obliged to enter into a rental contract. However where a Part 4 tenancy arises under the RTA 2004 a landlord may be obliged to extend his obligations under a tenancy beyond the original term of the lease. Although the operation of a Part 4 tenancy has been dealt with elsewhere³⁸⁸ it is worth reiterating that where a private residential tenancy has been in operation for six months and a valid notice of termination has not been served then a part 4 tenancy will come into operation automatically, allowing the tenant a further 3 and a half years security of tenure³⁸⁹ on the same terms and during this period the landlord's rights of termination are reduced.³⁹⁰ A Part 4 tenancy has the capacity to renew automatically every four years. Therefore, if neither party has served a valid notice of termination after four years have passed then a further Part 4 tenancy will come into operation which will provide the tenant with a further 4 years security of tenure on the same terms, and this process will continue to operate in four year cycles. In this manner a Part 4 tenancy may continue to operate for many years. Therefore even where a lease has a fixed term, termination will not automatically occur at the expiry of that term unless one of parties serves a valid notice to quit.

Non RTA 2004 tenancies

Outside the private rented sector, to a certain extent it could be said that a local authority has an obligation to enter a rental contract with a person experiencing housing need arising however this process is strictly regulated by statute and will be examined in detail in following sections.

- **Matching the parties**

- **How does the landlord normally proceed to find a tenant?**

RTA tenancies

In the private rented sector there are a variety of ways by which parties to a tenancy may be matched. Generally, where the landlord wishes to fill a vacancy the usual practice is for the landlord to advertise the vacancy through one or more media outlets. Traditionally, local print media provided the most effective means of finding a tenant, with local papers containing sections dedicated to advertising accommodation vacancies. Another traditional means of finding a tenancy was through advertising the vacancy via a letting agent or estate agent or in the local papers classified sections. While such means of finding a tenant remain in use, the vast majority of landlords now find tenants through dedicated online tenancy

³⁸⁸ See section 4.2 below.

³⁸⁹ RTA 2004, s. 28.

³⁹⁰ *Ibid.*, s. 34; see section 6.6 below.

advertising websites such as daft.ie, let.ie, rent.ie and myhome.ie as well as gumtree.ie. Such websites allow the landlord to post a vacancy along with pictures and a short description. Prospective tenants then have the opportunity to contact the landlord and arrange a viewing.

Local authority tenancies

Local authorities are the main providers of housing with a public task in the Ireland. This is rented accommodation provided to eligible households experiencing housing need by the council which is cheaper than in the private rented sector.³⁹¹ Matching of landlord and tenant does not take place through a market, as is the case in the private rented sector. Instead, local authorities provide social housing supports to households based on need. The local authority is under a statutory duty to carry out a housing need assessment within its functional area at regular intervals, (triennially).³⁹² However, it is only when a local authority receives an application for social housing support from an eligible household that the matching process will begin. Any person over the age of 18 can apply for local authority housing in Ireland and where their application is successful they may be housed in a house or flat, or in supported or sheltered accommodation. Where the applicant has special needs the authority may be able to match that person with suitable accommodation.³⁹³ There are a number of stages to the application process. In order to qualify the applicant must have a legal right to remain in the State on a long term basis, be eligible for social housing and in need of social housing. sets out the legal residency rights³⁹⁴ of a range of groups including:

- naturalised citizens;
- non-EEA nationals married to/in civil partnership with an Irish citizen may be considered as part of a joint application for that household, provided he/she holds a valid Stamp 4 and in this case no specific length of prior residence is required;
- UK nationals, again no specific length of prior residence or employment is required;
- European Economic Area nationals³⁹⁵ apply for social housing support from housing authorities provided that they are employed or self-employed in the State. EEA nationals who are unemployed may apply so long as their lack of employment is due to illness or accident or they are recorded as involuntarily unemployed after having been employed for longer than a year, and they are registered as a job-seeker with Department of Social Protection and FÁS,³⁹⁶

³⁹¹ Local authority rents are based on the individual's ability to pay and general income thresholds are set out in the Social Housing Assessment (Amendment) Regulations 2011, SI No. 136/2011.

³⁹² Originally under the Housing Act 1988 s. 9, but now under Housing (Miscellaneous Provisions) Act 2009 s. 21; Social Housing Assessments (Summary) Regulations 2013, S.I. No. 26/2013.

³⁹³ For instance where the applicant is elderly or infirm, has mental health issues, has a disability, has learning difficulties, is a young person who needs support living independently, is a refugee or asylum seeker, is an ex-offender, or has an alcohol or drug related problem.

³⁹⁴ A residency qualification was introduced by the Housing (Miscellaneous Provisions) Act 2009 s. 22(6); Housing Circular 41/2012.

³⁹⁵ Government Decision S180/20/10/0642A of 17 July 2012 includes Bulgarian and Romanian nationals.

³⁹⁶ This paragraph is guided by the provisions of European Communities (Free Movement of Persons) (No. 2) Regulations 2006 (SI No. 656/2006) which gives effect in Irish law to the Directive on the

- Non EEA nationals married to or in civil partnership with a non-Irish EEA national will be accorded the same rights and entitlements as their EEA national spouse or civil partner with regard to social housing supports;
- Non-EEA nationals with an Irish citizen spouse/civil partner or EEA spouse/civil partner;
- Asylum seekers are not eligible to be considered for social housing support;
- A non-EEA national who has been granted Refugee, Programme Refugee, or Subsidiary Protection status is eligible to be considered for social housing support;
- Non-EEA nationals with an Irish citizen child may apply for social housing support provided that the child is emotionally and financially dependent on them, and that he/she has been granted a Stamp 4 by Department of Justice on that basis and currently continues to hold that valid Stamp 4.

Once a household has a legal right to reside in the country, that household may submit an application form to the local authority. Upon receipt of the application the housing authority will assess whether the applicant is eligible for social housing. In order to be eligible an applicant will have to satisfy an income test³⁹⁷ and will have to show that they do not have suitable alternative accommodation. A household will be regarded as having suitable alternative accommodation where a member of the household has property that the household could reasonably be expected to live in. However a property will not be regarded as alternative accommodation where it is occupied by someone who is divorced or legally separated from a member of the household, or whose civil partnership with a household member has been dissolved, it would be overcrowded if the household lived in it, it is unfit for human habitation or it would not adequately meet the accommodation requirements of a household member with a disability.

Once the applicant has been determined eligible for social housing support the authority will then assess whether the housing is in need of social housing. This involves the authority assessing the current accommodation of the applicant. Where such accommodation is temporary,³⁹⁸ overcrowded, unfit for human habitation, is not suited to the accommodation requirements of a household member with a disability, is shared with another household or is unsuitable for the household in another material way, or where the current accommodation's mortgage has been classified as unsustainable as part of the Mortgage Arrears Resolution Process (MARP) laid down by the Central Bank,³⁹⁹ then the applicant will demonstrate a need for social housing and the household will be accepted by the authority as being eligible for and in need of social housing supports and placed on a housing waiting list. These lists vary in length greatly from area to area as each housing authority draws up its own rules for deciding order of priority on the waiting list.⁴⁰⁰ However these lists generally

rights of citizens of the European Union and their family members to move and reside freely within the territory of the Member States.

³⁹⁷ There are three maximum income thresholds that apply in different areas.

³⁹⁸ An institution, emergency accommodation or hostel.

³⁹⁹ This final requirement was introduced by the Social Housing Assessment (Amendment) (No. 2) Regulations 2011 (SI No. 321/2011).

⁴⁰⁰ Housing Act 1988 s. 11. Guidelines were issued in 1998 there is no uniform scheme of letting priorities for all local authorities. However, the relevant Minister may make regulations in relation to

include people who are homeless, people with special housing needs as well as people seeking a transfer to another Council property. The allocation of local authority housing is subject to equality legislation prohibiting discrimination on 9 grounds.⁴⁰¹

In Ireland, the majority of housing waiting lists are processed in a manner which is geared towards prioritising certain groups over others according to housing need.⁴⁰² Housing authorities in urban areas often use a points based system with households apportioned points based on a number of criteria including length of time on housing waiting list.⁴⁰³ However in some regions housing authorities are introducing choice based housing allocation systems.⁴⁰⁴

When housing becomes available it is allocated to households at the top of the waiting list. While a household is free to refuse a certain allocation the local authority may reduce that household's priority on the waiting list where the authority considers that there is not a good reason for refusing the offer, and this is more likely where the household has refused more than one offer. Where an application for housing has been refused or where a household on a housing list considers that the local authority has treated them unfairly by not allocating them a house the household may apply to the Office of the Ombudsman where the issue may be reviewed.⁴⁰⁵

Homelessness

Under the Housing Act 1988 a person will be considered homeless if:

there is no accommodation available which, in the opinion of the authority, he, together with any other person who normally resides with him or who might reasonably be expected to reside with him, can reasonably occupy or remain in occupation of, or

he is living in a hospital, county home, night shelter or other such institution, and is so living because he has no accommodation of the kind referred to above, or and he is, in the opinion of the authority, unable to provide accommodation from his own resources.⁴⁰⁶

Providing housing support to homeless persons forms a major aspect of local authorities housing functions. While the Housing Act 1988 did not place a duty on housing authorities to provide housing to people who are homeless, it placed responsibility on the local authority to consider the needs of homeless persons and respond accordingly. Under that Act local authorities are empowered to provide funding to voluntary bodies for the provision of emergency accommodation and long

the maximum number of occupants for dwellings let, terms and conditions to be included in any tenancy agreement, rent etc.

⁴⁰¹ Equal Status Act 2000 s. 6, Equality Act 2004 s. 49, these grounds are nationality, gender, family size, family status, marital status, disability, age or membership of the Traveller community.

⁴⁰² In practice, priority is generally given to families and older people rather than single people or couples without children.

⁴⁰³ Office of the Ombudsman, *The Ombudsman and Local Authorities* (Dublin, The Stationery Office, 2013), p. 12.

⁴⁰⁴ Dublin City Council commenced a pilot Choice Based Lettings Scheme which came into operation in November 2011 as part of its Housing Allocation Scheme.

⁴⁰⁵ Office of the Ombudsman, *Office of the Ombudsman Annual Report 2012* (Dublin, The Stationery Office, 2013).

⁴⁰⁶ Housing Act 1988 s. 2.

term housing for people who are homeless. Furthermore, the authority is required to carry out assessments every three years of the number of people who are homeless in their administrative area as part of the housing needs assessment. Homeless persons may apply for social housing supports in the same way as any other household and they will be assessed in the framework set out above. However, they are given overall priority for housing.

- **What checks on the personal and financial status are lawful and usual? In particular: May the landlord ask for a salary statement? May he resort to a credit info agency and is doing so usual?**

There are a number of checks which the landlord can perform on the personal and financial status of the tenant. Prior to letting a dwelling the landlord will often be concerned as to whether or not the tenant will be able to honour the tenancy agreement. In order to reduce some of the risk arising from this interaction the landlord or letting agency will often seek to carry out a range of checks on the tenant. These checks usually include credit referencing, bank referencing, employment referencing, and landlord referencing as well as personal referencing. There is nothing in law to prevent a landlord from asking for a salary statement but she cannot compel the prospective tenant to produce one. However, such a refusal may adversely affect the tenants standing. In addition to direct enquiries from the tenant the landlord may resort to a credit information agency, however such practice would not be usual. With regard to housing with a public task, housing is allocated after a household satisfies an income requirement with documented proof of income required.

- **How can information on the potential tenant be gathered lawfully? In particular: Are there blacklists of “bad tenants”? If yes, by whom are they compiled? Are they subject to legal limitations e.g. on data protections grounds?**

The extent to which such checks are lawful depends on the manner in which they are carried out. In some cases the landlord may simply ask the tenant for certain information, for instance a letter from her employer stating her current employment status or for a certificate from a credit agency stating her credit worthiness. While the prospective tenant is at liberty to refuse the request, negative inferences would most likely be drawn from such a refusal. However, providing the landlord with such information involves time and expense burdens for the tenant and often it is the case that the landlord or estate agent will prefer to use a dedicated tenant referencing service. The private rented market in Ireland has not developed a sophisticated tenant referencing industry and generally operates on an informal basis.

- **What checks may and does the tenant carry out on the landlord (e.g. to avoid being trapped by a swindler landlord)**

There are a limited number of checks which a tenant may carry out on the landlord in order to ensure that all aspects of their agreement are in good faith. The main check which the tenant may carry out is to consult the online database of landlords held by

the Private Residential Tenancies Board in order to see whether she has registered the privately rented property.

- **Services of estate agents (*please note that this section has been shifted here*)**

- **What services are usually provided by estate agents?**

Estate agents provide a number of services in the Irish residential sector ranging from providing basic advice and information through to agency and complete property management services. Amongst the main services provided are; a property appraisal service during which the letting agent will advise on the current rental value of the property as well as a range of insurance services for landlords. In addition, letting agents provide a means of marketing a rental property either through in store advertisement or via online mediums such as sherryfitzgerald.ie, daft.ie etc.

- **To what extent are estate agents regulated? In particular: are there rules on how an agent should present a house, i.e. on the kind of information which needs to be given?**

The Property Services Regulatory Authority was established in 2012 with the task of controlling and regulating Property Services Providers (i.e. Auctioneers/Estate Agents, Letting Agents and management Agents) in Ireland. This includes the licensing of all such services providers, the establishment of a complaints investigation and redress system for consumers, the setting and enforcement of standards in the provision of property services, the administration of client accounts, the establishment and maintenance of a compensation fund and the creation of three Public Registers.⁴⁰⁷ The Authority published three registers namely, the 'Register of Licensed Property Services Providers', the 'Residential Property Price Register' and the 'Commercial Leases Register'. These Registers may be accessed through the Authorities website.

The Property Services (Regulation) Act 2011 applies to all Property Services Providers. These include corporate bodies, partnerships, sole traders or employees which are involved in the purchase or sale, by whatever means, of any estate or interest in land (including buildings) wherever situated; the auction of private property other than land; the letting of any estate or interest in land wherever situated and the provision of property management services. All Auctioneers, Estate Agents, Letting Agents and Property Management Agents must be licensed and regulated by the Authority. This applies to property located in the Republic of Ireland and to transactions in Ireland which relate to property located abroad. The Act provides for a licensing system covering all Property Services Providers, the investigation and adjudication of complaints made against Providers, the audit/inspection of Providers operations and the establishment of minimum qualification standards. The Authority has wide ranging powers which include the power to sanction a licensee up to and including the revocation of a licence and may also impose fines of up to €250,000 where a Property Services Provider is found to have engaged in 'improper conduct'. The Authority may bring a prosecution against a Provider for failing to comply with his or her statutory obligations or against any person providing a property service

⁴⁰⁷ Property Services (Regulation) Act 2011.

without a licence which may result in either a large fine or imprisonment or both. Under the new regulatory regime all Providers are required to contribute to the 'Property Services Compensation Fund'. Where a person suffers a loss due to the dishonesty of a Provider the Authority may award compensation from this Fund.

When presenting a house an estate agent will give information to the tenant. This will relate to the landlord or agent, the rent, any deposit, the Building Energy Rating, the provision of services i.e. how utilities are arranged, amenities in the area etc.

- **Ancillary duties of both parties in the phase of contract preparation and negotiation ('*culpa in contrahendo*' kind of situations)**

In contrast to the requirement in civilian countries to negotiate with care, common law systems do not recognise a duty to negotiate a contract in good faith.

Table for 6.2 Preparation and negotiation of tenancy contracts

	Main characteristics of RTA 2004 tenancies	Main characteristics of Local authority tenancies
Sector	Private	Social
Choice of tenant	Landlord's choice	(1) Homelessness duty (2) Allocation
Method	Advertisement/letting agent	Application to local authority
Ancillary duties	Avoid misrepresentation	Checks on statements in application

6.3 Conclusion of tenancy contracts

Tenancy contracts

- distinguished from functionally similar arrangements (e.g. licence; real right of habitation; Leihe, commodato)

It is important to draw out the distinction between a tenancy and licence agreement. In many cases the distinction may be far from straightforward. For instance in both a tenancy and a licence arrangement there may be possession of a dwelling for a period of time and in exchange for a payment or fee akin to a rent. However, the legal treatment of a tenancy and a licence agreement is vastly different as, crucially, a tenancy agreement attracts a range of statutory rights and obligations while a licence agreement is merely governed by the principles of contract law. The courts when faced with a dispute as to the legal status of an occupancy agreement do not have a hard and fast rule of convenience for resolving the issue; rather the court will examine the totality of the arrangement in an effort to establish the agreements legal status.⁴⁰⁸ In this task the court will draw upon a range of legal sources including statute and precedent.

(1) Basic requirements for residential security

As noted above Deasy's Act is the starting point for distinguishing a tenancy from other forms of occupancy agreement as it includes the following definition of a tenancy:

The relation of landlord and tenant shall be deemed to be founded on the express or implied contract of the parties and not upon tenure or service, and a reversion shall not be necessary to such relation, which shall be deemed to subsist in all cases in which there shall be an agreement by one party to hold land from or under another in consideration of any rent.⁴⁰⁹

The definition is peculiar and noteworthy for several reasons but its peculiarity arises primarily because of its presence in statute at all, and the courts regard this provision as instructive rather than conclusive. In addition to examining the construction of the agreement and the intention of the parties the courts have isolated a number of characteristics which distinguish a tenancy.

In order for the relation of landlord and tenant to exist there must be a rent⁴¹⁰ or other return in the nature of rent. Deasy's Act defines rent as "any sum or return in the nature of rent payable or given by way of compensation for the holding of any land."⁴¹¹ Furthermore, there must be a term though it is not necessary for the term to be of certain duration.⁴¹²

⁴⁰⁸ In *Gatien Motor Co. v. Continental Oil Co. of Ireland* [1979] IR 406 where the court emphasised the need to 'look at the transaction as a whole'.

⁴⁰⁹ Landlord and Tenant (Amendment) (Ireland) Act 1860, s. 3.

⁴¹⁰ Landlord and Tenant (Amendment) (Ireland) Act 1860, s. 3.

⁴¹¹ *Ibid*, s. 1.

⁴¹² *Wood v Davis* (1880) 6 LR Ir. 50.

A number of decisions have isolated exclusive possession as a definitional characteristic of a tenancy in Irish law. While cases vary on their treatment of the notion of possession, it has been established that the distinction between legal possession and the fact of possession is a key consideration, with control of the dwelling being regarded as the best indicator of exclusive possession. In a tenancy, the tenant will have exclusive possession of the dwelling, while in a licence agreement, a licensee will not have the same ability to control the dwelling, something which will be reserved by the licensor.⁴¹³

(2) Shared accommodation

A tenant must have exclusive occupation of some (“separate”) accommodation – usually a bedroom at least. If so, he may share the use of other accommodation with other tenants (but not the landlord); this “shared accommodation” would commonly be a bathroom or kitchen. The whole is effectively treated as a single unit and the tenancy of the shared accommodation cannot be terminated apart from the tenancy of the separate accommodation.

Under the RTA 2004 tenants who are joint tenants, tenants in common or in any other form of co-ownership may enter a tenancy agreement and may acquire Part 4 status with the time starting from the occupation of the first tenant allowing further tenants who have not completed the six months to gain Part 4 status as a result of the first tenants occupancy.⁴¹⁴

(3) Avoidance of security by granting a licence

Security in both the private and the public sectors attaches only to a tenancy and only where a house is let. Thus a licence will not confer security except under s 50(7) of the RTA 2004. Here where a licensee is lawfully in occupation of a dwelling with a tenant who has gained a Part 4 tenancy that licensee may request the landlord to allow him or her to become a joint tenant of the dwelling.⁴¹⁵ A landlord cannot unreasonably refuse such a request, where a licensee is aggrieved by a refusal he or she may make an application to the PRTB for dispute resolution services.⁴¹⁶

More generally, a tenant must be given exclusive possession of property, and this requires that the tenant is able to exclude the landlord and all others from the property for the duration of the lease.⁴¹⁷ A guest in a hotel lacks exclusive possession because the hotel management has access to the room to service it. A tenant must have exclusive control.

(4) Exclusions from private sector security

⁴¹³⁴¹⁴ It is likely that the Irish courts will follow the English authority in this area, *Street v. Mountford* [1985] AC 809. For instance, in a hotel an occupancy agreement will allow for possession of a room, however the occupier will not be granted exclusive possession of the room. Rather the proprietor of the hotel retains control over the room. In this context an occupier is a licensee and not a tenant. See *Gatien Motor Co Ltd v Continental Oil Co. of Ireland Ltd* [1979] I.R. 406.

⁴¹⁴ RTA 2004, s. 49.

⁴¹⁵ RTA 2004, s. 50(7).

⁴¹⁶ RTA 2004, s. 50(8).

⁴¹⁷ It is perfectly permissible for the landlord to have limited rights of access e.g. to inspect the state of repair.

Various exclusions exist from the scope of the RTA 2004.⁴¹⁸

- **specific tenancy contracts, e.g. contracts on furnished apartments; student apartments; contracts over room(s) only (e.g. student rooms); contracts over rooms or apartments located in the house in which the landlord lives himself as well. Please describe the legal specificities in these cases.**

Contracts on furnished apartments

Prior to deregulation of the private rented sector the distinction between the letting of furnished and unfurnished accommodation was of fundamental importance in determining the scheme of regulation which applied to the tenancy contract. Since deregulation of the private rented sector in the early 1980s the distinction has ceased to be of importance from a legal or regulatory standpoint with residential tenancies attracting the same level of protection regardless of whether the flat is furnished or unfurnished. In the private rented sector contracts for furnished apartments are RTA tenancies in the same way as contracts for unfurnished apartments. However, local authorities generally provide dwellings unfurnished.⁴¹⁹

Student apartments

The same rules which operate in the private rented sector apply to student letting, except that a student is not entitled to the extended security of the Part 4 tenancy.⁴²⁰

‘Rent A Room’ Scheme

Where a tenant rents a room in their landlord's house their tenant rights differ and are considerably more limited as the RTA 2004 does not apply to such tenancies. Instead the agreement will form the basis of regulation of the relationship as supplemented by principles of common law and statute. In this situation the occupier will be a licensee and not a tenant.

- **Requirements for a valid conclusion of the contract**
 - i. **formal requirements**

These can be classified into general formality requirements, requirements to create a private sector RTA 2004 tenancy, and information requirements in the social sector (housing with a public task).

The central rules governing the conclusion of a tenancy agreement vary depending on whether the arrangement agreed upon is a contract for the grant of a tenancy at a future date or where there is the immediate grant of a tenancy.

⁴¹⁸ See section 4 below.

⁴¹⁹ However, the tenant may make an application to the Department of Welfare to furnish the apartment.

⁴²⁰ Residential Tenancy Act 2004 s. 25(4)(b).

While 'future arrangements' are rare in the context of residential tenancies, and are not covered by the RTA 2004⁴²¹, where such an agreement is present the consequences are significant. Where there is a contract⁴²² for the creation of a tenancy at a future date, this arrangement, which concerns a property interest in land, is subject to the legal formalities required by the Statute of Frauds (Ireland) 1695, in particular section 2 which requires a contract to grant a new tenancy to be evidenced in writing.⁴²³

The much more common arrangement of an immediate grant of a tenancy is governed by section 4 of Deasy's Act which sets out that:

Every lease or contract with respect to lands whereby the relation of landlord and tenant is intended to be created for any freehold estate or interest, or for any definite period of time not being from year to year or any lesser period, shall be by deed executed, or note in writing signed by the landlord or his agent thereunto authorised in writing.

It is therefore possible to create a tenancy orally but a tenancy with a term longer than a year must be created in writing. Upon creation of a tenancy there are a number of formalities required by statute. In particular, a landlord is responsible for registering the tenancy with the Private Residential Tenancies Board⁴²⁴ and, more importantly in this context, the landlord, whether private or social, must provide the tenant with a rent book.⁴²⁵ The rent book must include the address of the rented dwelling, the name and address of the landlord and his agent, the name of the tenant, the terms of the tenancy, the amount of rent, when and how it is to be paid, (e.g. cash, cheque, standing order), details of other payments (e.g., telephone, TV) and the amount and purpose of any deposit paid and the conditions under which it will be returned to the tenant as well as a statement of information on basic rights and duties of landlords and tenants. If the landlord fails to provide a rent book, he will be guilty of an offence.⁴²⁶ Therefore although it is possible to create an oral tenancy the effect of the rent book requirements is that the landlord will invariably provide the tenant with written documents.

The agreement, whether oral or written, must exhibit a number of features idiosyncratic to a tenancy in order for the agreement to be regarded as a tenancy in law. Although this is dealt with elsewhere it is worth reiterating that the consequence in this regard are vast, should the agreement equate to a tenancy then the rather substantial statutory provisions relating to landlord and tenant law will come into effect with dramatic consequences for both parties. In the private rented sector, the

⁴²¹ RTA 2004, s. 3(1).

⁴²² Creation of a tenancy depends upon basic contract requirements such as offer and acceptance, consideration, intention to create legal relations, capacity, etc.

⁴²³ It is important to point out that s. 2 does not require that the full agreement be reduced into writing rather it merely requires that some documentary evidence of the arrangement is required.

⁴²⁴ RTA 2004 Chapter 2.

⁴²⁵ Housing (Rent Book) Regulations 1993, SI No. 146/ 1993.

⁴²⁶ Housing (Rent Book) Regulations 1993 (SI No. 146/1993) as amended by Housing (Rent Books) Regulations 1993 (Amendment) Regulations 2004 (SI No. 751/2004) and by Housing (Rent Books) Amendment) Regulations 2010 (SI No. 357/2010).

residential tenancies act applies to every dwelling which is the subject of a tenancy.⁴²⁷

ii. is there a fee for the conclusion and how does it have to be paid? (e.g. “fee stamp” on the contract etc)

In general the letting process in the private rented sector is characterised by informal discussions between landlord/agent and tenant which, when successful lead to the immediate grant of a lease for a relatively short fixed period or term⁴²⁸ The agreement will generally be reduced into writing and the tenancy agreement will, subject to statute, set out the various rights and duties of the various parties. In many cases landlords will use standard form contracts with some variation depending on the negotiations of the parties. Prior to entering such a contract it is unusual for the tenant to receive legal advice and in the case of a standard form contract, where the landlord may have the contract drawn up with the aid of legal advice it is unusually for the landlord to pass this expense on to the tenant and as such there is no fee for the conclusion of the contract.

iii. registration requirements; legal consequences in the absence of registration

The RTA 2004 created a new registration system, under which the Private Residential Tenancy Board has responsibility for maintaining a register of private rented tenancies.⁴²⁹ Under the new systems landlords are obliged to register any tenancy of a dwelling rented by them with the Board, who have the power to actively pursue landlords who fail to register tenancies.⁴³⁰ The landlord must register the tenancy within one month of commencement. In order to register the landlord must submit an application along with €90 fee.⁴³¹ Although a significant number of tenancies have not been registered the system is a vast improvement on the previous one. The Board has the power to authorise a person to enter and inspect a dwelling for the purposes of determining whether any particular specified in the application for registration is correct.⁴³² Where a landlord fails to register the tenancy then he will be unable to avail of the dispute resolution services of the Board.⁴³³ In addition, the errant landlord may face prosecution by the Board for failing to register after having been notified and not taking appropriate steps to register the tenancy.⁴³⁴

⁴²⁷ RTA 2004 s. 3; see section 4.1 below.

⁴²⁸ It is worth reiterating that fixed term tenancies are caught by the provisions of the Residential Tenancy Act 2004 and in particular the application of Part 4 tenancies, which reduces the importance of setting a short fixed term, see section 4.1 below.

⁴²⁹ RTA 2004, Pt. 7.

⁴³⁰ *Ibid.*, s. 134(1).

⁴³¹ *Ibid.*, s. 137(1)(b).

⁴³² *Ibid.*, s. 145(1).

⁴³³ *Ibid.*, s. 83(2).

⁴³⁴ Where a landlord fails to register then he will not have recourse to the dispute resolution services of the Private Residential Tenancies Board, however his inability to register will not restrict the tenant's rights under the RTA 2004. Where the Board is of opinion that a tenancy has not been

- **Restrictions on choice of tenant - antidiscrimination issues**
 - i. EU directives (see enclosed list) and national law on antidiscrimination**

Antidiscrimination provisions apply to landlords in both the private and social rented sectors. In Ireland discrimination happens when a person is treated less favourably than another person is, has been or would be treated because of their, gender, civil status, family status, religion, sexual orientation, age, disability, race (including colour, nationality, ethnic or national origins) or membership of the Traveller community. There are two EU equality Directives establishing a framework for equal treatment in employment and occupation⁴³⁵, implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.⁴³⁶ With regard to antidiscrimination in national legislation the Employment Equality Acts 1998 - 2011 outlaw discrimination at work including recruitment and promotion; equal pay; working conditions; training or experience; dismissal and harassment including sexual harassment while the Equal Status Acts 2000 - 2011 outlaw discrimination outside the workplace, in particular in the provision of goods and services, selling renting or leasing property and certain aspects of education.

There are two statutory bodies charged with defending equality in Ireland, these are the Equality Authority and the Equality Tribunal, these bodies will be merged with the Irish Human Rights Commission to form the Irish Human Rights and Equality Commission.⁴³⁷ The Equality Authority is a statutory body set up to work towards the elimination of unlawful discrimination, to promote equality of opportunity and to provide information to the public on the equality legislation. The Equality Authority also provides advice and support to persons taking claims before the Equality Tribunal. The Equality Tribunal investigates or mediates claims of unlawful discrimination under the equality legislation. A Tribunal mediator will facilitate parties to reach a mediated agreement which is legally binding. Where parties object to mediation, a case will be heard by a Tribunal Equality Officer, who will hear evidence from both parties before issuing a legally binding Decision. In the social rented sector each local authority has discretion over the administration of housing allocations. While guidelines have been issued the local authority remains responsible for forming their own scheme of priorities, as such there is no nationwide scheme of letting priorities. Nevertheless, all allocation decisions are subject to equality legislation which prohibits discrimination on a number of grounds including age, disability, family status, gender, civil status, membership of the Traveller Community, race, religion, and sexual orientation.⁴³⁸

registered it shall serve a notice under s. 144(1) allowing a landlord a period of time to explain their failure. Failure to register without good reason may lead to prosecution by the Board. It is also in the landlords economic interests to register as under the RTA 2004, s.145(5) registration is necessary for tax deductions under s. 97(2)(e) of the Taxes Consolidation Act 1997.

⁴³⁵ Council Directive 2000/78/EC of 27 November 2000.

⁴³⁶ Council Directive 2000/43/EC of 29 June 2000.

⁴³⁷ Equality Authority, *The Equality Authority Annual Report 2012* (Dublin, The Stationery Office, 2013).

⁴³⁸ Equal Status Act 2000 s. 6, Equality Act 2004 s. 49 which have transposed Council Directive 2004/113/EC of 13 December 2004 (OJEU L 373, 21.12.2004, p. 37) implementing the principle of equal treatment between men and women in the access to and supply of goods and services (OJEU

- **Limitations on freedom of contract through regulation**
 - i. **mandatory provisions in rental contracts, in particular: mandatory minimum requirements of what needs to be stated in a tenancy contract**

In non RTA 2004 tenancies the rights and duties of the parties are largely determined by the terms agreed between the parties and there are few mandatory provisions in rental contracts aside from basic particulars which must be set out in the rent book of the dwelling. As set out above, the landlord is required to provide the tenant with a rent book in all residential tenancies. The rent book should contain the: the address of the flat or house, the landlord's name and address and the landlord's agent (if any), the date the tenancy started, the length of the tenancy, the amount of deposit paid, the amount of rent and how it is to be paid, details of any other payments for services, such as heating or cable television, a statement on the basic rights and duties of landlords and tenants and a list of furnishings and appliances supplied by the landlord.⁴³⁹ The local authority is responsible for enforcement of the rent book Regulations. In addition all residential landlords are under further duties to provide a habitable dwelling as well as facilities in the dwelling (heating appliances, white goods etc) which are of a certain standard.⁴⁴⁰

RTA 2004 tenancies

While the rent book requirements also apply to RTA 2004 tenancies, the situation is dramatically different with regards to limitations on freedom of contract. Through the operation of the RTA 2004 parties are obliged to abide by various provisions which are implied into the agreement. These statutory provisions are mandatory and set out a framework of rights and duties which operate as a minimum standard which parties may not derogate from except where the terms in question are more advantageous to the tenant.

Rights and duties implied under the RTA 2004

The tenant's duties implied by the RTA 2004 into every RTA 2004 tenancies include the duty:

- to pay rent when it falls due⁴⁴¹
- to ensure that their actions do not result in the landlord breaching any of his/her obligations under the tenancy⁴⁴²

21.12.2004 N° L373/37) and Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJEC 19.07.2000 N° L180/22).

⁴³⁹ Housing (Rent Book) Regulations 1993 (SI No. 146/1993) as amended by Housing (Rent Books) (Amendment) Regulations 2004 (SI No. 751/2004) and by Housing (Rent Books) Amendment Regulations 2010 (SI No. 357/2010). RTA 2004 s. 201 increases the penalties for failure to comply with the Rent Books Regulations into line with those applying to convictions for other offences under the 2004 Act; this means an increase from €1,270 to €3,000 in the maximum fine on conviction and/or a term of imprisonment of up to 6 months and an increase from €127 to €250 in the maximum daily fine applying to convictions for continuing offences.

⁴⁴⁰ See section 1.3 above.

⁴⁴¹ RTA 2004, s. 16(a).

⁴⁴² RTA 2004, s. 16(b).

- to allow the landlord reasonable access to the dwelling i.e. carry out repairs etc⁴⁴³
- to notify the landlord of any defect in the dwelling⁴⁴⁴
- not to cause damage to the property, beyond normal wear and tear⁴⁴⁵
- not to engage in anti-social behaviour⁴⁴⁶
- not act in a way which invalidates the insurance policy for the dwelling⁴⁴⁷
- not to sub-let a tenancy without the written consent of the landlord⁴⁴⁸
- not to alter or improve the dwelling without the written consent of the landlord⁴⁴⁹
- not to use the dwelling for any purpose other than as a dwelling without the written consent of the landlord⁴⁵⁰
- to notify the landlord of the names of all persons ordinarily residing in the dwelling, other than a multiple tenant⁴⁵¹

The landlord's duties implied by the RTA 2004 into every RTA 2004 tenancies include the duty:

- to allow the tenant to enjoy peaceful and exclusive occupation of the dwelling⁴⁵²
- to carry out general repair and maintenance of the structure and interior of the dwelling⁴⁵³
- to provide refuse facilities⁴⁵⁴
- to reimburse the tenant for expense incurred in carrying out qualifying repairs i.e. the tenant may make a claim from the landlord where the landlord has refused to carry out repairs, in spite of requests to do so, and the postponement of the repairs would be unreasonable⁴⁵⁵
- to take out and maintain a policy of insurance for the structure of the dwelling⁴⁵⁶
- to promptly repay any deposit to the tenant⁴⁵⁷
- to provide adequate contact details to the tenant⁴⁵⁸
- to not penalise tenants for raising a dispute with the PRTB⁴⁵⁹
- to enforce the obligations of the tenancy so as to ensure that third parties are not adversely affected by the tenant's breach⁴⁶⁰

⁴⁴³ RTA 2004, s. 16(c).

⁴⁴⁴ RTA 2004, s. 16(d).

⁴⁴⁵ RTA 2004, s. 16(f).

⁴⁴⁶ RTA 2004, s. 16(h). Anti-social behaviour is defined by s. 17 RTA 2004.

⁴⁴⁷ RTA 2004, s. 16(i). As will be discussed the general obligation to repair the dwelling is on the landlord.

⁴⁴⁸ RTA 2004, s. 16(k).

⁴⁴⁹ RTA 2004, s. 16(l).

⁴⁵⁰ RTA 2004, s. 16(m).

⁴⁵¹ RTA 2004, s. 16(n).

⁴⁵² RTA 2004, s. 12(1)(a).

⁴⁵³ RTA 2004, s. 12(1)(b).

⁴⁵⁴ RTA 2004, s. 12(a)(ba) as inserted by s. 100(3) of the Housing Act 2009.

⁴⁵⁵ RTA 2004, s. 12(1)(g).

⁴⁵⁶ RTA 2004, s. 12(1)(c).

⁴⁵⁷ RTA 2004, s. 12(1)(d).

⁴⁵⁸ RTA 2004, s. 12(1)(e).

⁴⁵⁹ RTA 2004, s. 14.

These duties are implied regardless of the parties' intention and therefore they represent a significant limitation on the freedom of contract. In addition to these duties the tenant has the right to be informed of increases to their rent. A rent increase can only occur once a year and according to the current market rate after 28 days' written notice,⁴⁶¹ the tenant also has the right to be given proper notice before the termination of the tenancy agreement⁴⁶² and at all times the right to refer disputes to the PRTB.⁴⁶³

The landlord also has various rights which arise by the operation of the RTA 2004 including the right to set the rent, once a year, according to the current market rent, the right to receive rent, the right to pay any charges related to the property e.g. taxes etc, the right to end the tenancy without reason within the first six months of the lease agreement,⁴⁶⁴ to be informed of who is living in the property, to decide whether to allow sub-letting by the tenant, be informed of any repairs needed and be granted reasonable access to fix them, to refer disputes to the Private Residential Tenancies Board (PRTB) once the tenancy is registered.

ii. control of contractual terms (EU directive and national law); consequences of invalidity of contractual terms

Consumers have legislative protection from unfair terms in consumer contracts under the European Communities (Unfair Terms in Consumer Contracts) Regulations, 1995.⁴⁶⁵ In the UK the Office of Fair Trading, the body responsible for the oversight and implementation of Unfair Terms in Consumer Contracts regulations has issued guidance⁴⁶⁶ on what it regards as unfair terms in tenancy agreements. It draws attention to Schedule 2, paragraph 1(d), which states that terms may be unfair if they have the object or effect of:

(d) permitting the seller or supplier to retain sums paid by the consumer where the latter decides not to conclude or perform the contract, without providing for the consumer to receive compensation of an equivalent amount from the seller or supplier where the latter is the party cancelling the contract.⁴⁶⁷

The extent to which this applies to tenancy agreements has not received detailed consideration in Ireland however it is likely that UK cases, and guidance from the Office of Fair Trading, would be followed in Ireland.

iii. statutory pre-emption rights of the tenant

Statutory pre-emption rights do not operate in Ireland.

⁴⁶⁰ RTA 2004, s. 15. This would most commonly arise where a neighbour is affected by a tenants anti-social behaviour.

⁴⁶¹ RTA 2004, s. 22

⁴⁶² RTA 2004, s. 62.

⁴⁶³ RTA 2004, s. 76.

⁴⁶⁴ However, special care should be taken when dealing with fixed term tenancies as a reason will always have to be given. See section 6.6 below.

⁴⁶⁵ S.I. No. 27/1995.

⁴⁶⁶ OFT, *Guidance on Unfair Terms in Tenancy Agreements* (London: OFT, 2001) para. 4.4.

⁴⁶⁷ This is the same in the UK: SI 1999/2083.

iv. are there provisions to the effect that a mortgagor is not allowed to lease the dwelling (charged by the mortgage) or similar restrictions?

There are no provisions to the effect that a mortgagor is not allowed to lease the dwelling. Rather such matters may be decided by agreement between the mortgagee and mortgagor.

Table for 6.3 Conclusion of tenancy contracts

	RTA 2004 tenancies	Social tenancies
Requirements for valid conclusion	Registration of landlord Written agreement	Allocation Written agreement
Regulations limiting freedom of contract	All fundamental matters are governed by implied statutory duties	Limited to what must be present in rent book, also implied duties i.e. dwelling must be of habitable quality

6.4 Contents of tenancy contracts

- **Description of dwelling; indication of the habitable surface (and consequences in case of the provision of wrong data)**

As set out above there is a legal requirement that a tenancy agreement must contain a description of the dwelling and the vast majority of residential tenancy agreements will contain a description of the dwelling and its contents. Generally speaking the description of the dwelling will briefly indicate the number of rooms in the dwelling by size and function. The rent book will usually make reference to the contents of the dwelling, such as furniture and appliances, and their physical condition. At the end of the term of the tenancy the condition of the property and its contents will be judged against the description set out in the tenancy agreement. Should there be deterioration beyond normal wear and tear then the tenants deposit may be withheld. It is unusual for a tenant to enter a residential tenancy without first viewing the dwelling. Where the landlord has provided the tenant with inaccurate data about the dwelling there are a number of outcomes depending on the nature of the error, but the misdescription may be so serious as to amount to a material breach of contract which could lead to rescission of the lease and/or a claim of damages.

- **Allowed uses of the rented dwelling and their limits**

- i. **In particular: to what extent are mixed (residence/commercial) contracts lawful and usual (e.g. having a shop, a legal office or a doctor's studio in the dwelling)**

The extent to which the rented dwelling may be used for non-residential purposes depends both on the type of tenancy and on the nature and extent of the non-residential purpose in question. Generally speaking the parties are free to agree the terms of a tenancy and as such they may agree that part of the dwelling will be used as a business premises. In all residential tenancies the landlord will specify the use to which the dwelling is put and will often include a provision prohibiting any use beyond the stated use without first getting consent.⁴⁶⁸ Where the tenant changes the use of the dwelling without consent then this will be a breach of the tenancy and the landlord may seek termination of the tenancy as well as an order that the dwelling be returned to its original use.

It is important to note that under the RTA 2004 a tenancy which allows for mixed use is expressly excluded from the scope of the RTA 2004.⁴⁶⁹ As such the various rights and obligations set out in the Act would not apply to the arrangement. Instead the arrangement would be governed by general landlord and tenant law.

⁴⁶⁸ This will invariably be the case in local authority tenancies.

⁴⁶⁹ RTA 2004 s. 3(2) this Act does not apply to a dwelling that is used wholly or partly for the purpose of carrying on a business, such that the occupier could, after the tenancy has lasted 5 years, make an application in respect of it under the Landlord and Tenant (Amendment) Act 1980 s. 13(1)(a).

- **Parties to a tenancy contract**

- **Landlord: who can lawfully be a landlord?**

A landlord may be a natural person or a legal person. In order to be a landlord a person must have capacity, therefore he must be over 18 and have legal capacity to enter contracts. As Ireland is a member of the EU, there are no restrictions on EU citizens purchasing and letting property in Ireland. Legal persons may also be landlords; therefore companies as well as partnerships may be landlords.

- **does a change of the landlord through inheritance, sale or public auction affect the position of the tenant?**

Where there is a change of the landlord through inheritance, sale or public auction the impact on the position of the tenant will vary. In the first instance the successor is bound by the terms of lease and as such they cannot terminate the tenancy without a good reason. In the case of inheritance, the successor may wish to keep the tenant and therefore the position of the tenant would be unaffected, however the successor may elect to sell the dwelling and they may seek to bring about termination of the tenancy (see section on termination). Where the landlord sells the property either privately or through public auction, they may elect to terminate the tenancy prior to sale. This would be common practice as in general a property with vacant possession will fetch a higher price and the provisions concerning termination of assured tenancy facilitate such action (see section on termination). When selling the property the landlord may need to access the property in order to show estate agents, surveyors and prospective buyers around the property. In doing so the landlord must give the tenant reasonable notice (usually 24 hours) and the access must be reasonable (within suitable hours). Should the landlord sell the property without terminating the lease then the new owner will not be able to terminate the lease without good reason and may not increase the rent without following the statutory procedure (see section on rent increase).

- **Tenant:**

- i. **Who can lawfully be a tenant?**

A tenant must have capacity; therefore he must be over 18 and have legal capacity to enter contracts. As Ireland is a member of the EU there are no restrictions on EU citizens renting property in Ireland.

- ii. **Which persons are allowed to move in an apartment together with the tenant (spouse, children etc)?**

Today it is generally assumed that a tenant may live with a spouse, civil partner or cohabitee (of whatever gender), but it is usual for a couple to take a tenancy as joint tenants to make occupation rights clear. It is usual also for children to live with their parents and for the tenant to share with other family members, but this should be negotiated with the landlord. In the social rented sector family members will have been identified during the allocation process. In addition a local authority tenant may

seek a transfer on the ground that the dwelling is no longer suitable for their needs. Occupancy of the dwelling will be limited to a certain number of people. The limit will usually be set by the overcrowding rules

In RTA 2004 tenancies a landlord may terminate a tenancy on the ground that the dwelling is no longer suitable to the accommodation needs of the tenant and of any persons residing with him or her having regard to the number of bed spaces contained in the dwelling and the size and composition of the occupying household.⁴⁷⁰

iii. Changes of parties: in case of divorce (and equivalents such as separation of non-married and same sex couples); apartments shared among students (in particular: may a student moving out be replaced by motion of the other students); death of tenant

Where rented accommodation provides a home for a married couple, civil partners or co-habitants certain statutory protections may be placed on that living arrangement. However, the legislative framework in this context is almost exclusively geared towards owner occupation and case law in this area centres on ownership and occupation disputes following relationship breakdown. In the event of a relationship breakdown the relationship status of the parties will determine the legal remedies available. Where a marriage has broken down the parties may seek a separation agreement, a judicial separation or a divorce. It is only upon obtaining a divorce that a couple will be legally separated.⁴⁷¹ In much the same way a civil partnership may be dissolved on application to the courts.⁴⁷² Where domestic violence occurs in a marriage or a civil partnership, a party can get a safety order or a barring order against the offender where they can show the court that the spouse/civil partner is violent in any way towards them or the children.⁴⁷³ A barring order requires the violent person to leave the family home.⁴⁷⁴

- joint tenants

Two or more individuals renting together will be joint tenants. Where a rented dwelling is a home to a married couple or civil partnership and there is a relationship breakdown then one party is prevented from unilaterally surrendering the lease without the consent of the other. Should a tenant fail to make payments on the lease there is provision for the court to allow other party to make payments where they are able and are willing to do so.⁴⁷⁵ The court may also make property adjustment orders and exclusion orders where appropriate.

Apartments shared among students

⁴⁷⁰ RTA 2004 s. 34. This will allow the landlord to ensure that the dwelling does not become overcrowded in line with the statutory definition. See section 1.3 above.

⁴⁷¹ Family Law (Divorce) Act 1996.

⁴⁷² Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 part 12.

⁴⁷³ Domestic Violence Act 1996, as amended.

⁴⁷⁴ These orders are also open to co-habiting couples.

⁴⁷⁵ Family Home Protection Act 1976 (as amended), s.7.

A student moving out may be replaced by motion of the other students. Under the RTA 2004, tenants can take in licensees who then later may become a tenant.⁴⁷⁶

Death

Private rental housing

Generally speaking a tenant has a property interest in the land which can be dealt with by the tenant, i.e., it can be assigned to someone else and, upon the tenant's death, can be succeeded to by the tenant's successors in title. However, the effect of the death of a tenant on a tenancy will vary according to the nature of the tenancy and the agreement between the parties. A Part 4 tenancy will generally end on the death of a tenant. However, where the dwelling, at the time of the death of the tenant concerned, was occupied by the partner of the tenant, a child of the tenant or a parent of the tenant then that family member may choose to become a tenant or tenants of the dwelling on the same terms of the original tenant (now deceased).⁴⁷⁷

Local authority housing

Practice about succession to tenancies varies from authority to authority. Where a person wishes to succeed to a tenancy they must apply for a transfer of tenancy, but the applicant has no automatic right to succeed to the tenancy. Instead, the tenancy may or may not be transferred to the tenant's spouse or to a member of the tenant's immediate family normally resident in the dwelling at the date of the tenant's death as the awarding of tenancies is at the discretion of the Council. In reaching a decision the council will usually have regard include the number of years which the relative lived in the house. Failure to allow a spouse or civil partner to succeed may raise human rights concerns under Article 14 – freedom from discrimination - and Article 8 – respect for a family home.⁴⁷⁸

iv. Subletting: Under what conditions is subletting allowed? Is subletting being abused e.g. with the aim of circumventing the legal protection of tenants (when the tenant is offered not an ordinary lease contract but a sublease contract only)?

In order for the creation of a sub tenancy in the private rented or social rented sectors prior consent from the landlord is an essential requirement as is usually set out in the tenancy agreement. Under the RTA 2004 a tenant may not sublet without the written consent of the landlord.⁴⁷⁹ In the event that the landlord consents to the sub-letting then the tenant will become a landlord upon letting a sub-tenancy. As such they will be regulated with all of the obligations set out above which relate to the landlord under the RTA 2004.

⁴⁷⁶ RTA 2004 Part 4 Chapter 6.

⁴⁷⁷ RTA 2004 s. 39 (3) (a) the dwelling, at the time of the death of the tenant concerned, was occupied by—(i) a spouse of the tenant, (ii) a person who was not a spouse of the tenant but who cohabited with the tenant as husband and wife in the dwelling for a period of at least 6 months ending on the date of the tenant's death, (iii) a child, stepchild or foster child of the tenant, or a person adopted by the tenant under the Adoption Acts 1952 to 1998, being in each case aged 18 years or more, or (iv) a parent of the tenant, And (b) one or more than one of the foregoing persons elects in writing to become a tenant or tenants of the dwelling.

⁴⁷⁸ *Karner v. Austria* (2003) Application No. 40016/98; *Mendoza v. Ghaidan* [2002] EWCA Civ 1533.

⁴⁷⁹ RTA 2004 s 16(k).

v. Is it possible, and if yes under what conditions, to conclude a contract with a multiplicity of tenants (e.g. group of students)?

It is possible for a landlord to conclude a contract with a multiplicity of tenants and indeed such contracts are very common in the residential sector in Ireland. Generally speaking, where a landlord enters a contract with multiple tenants, those tenants are joint tenants.

Depending on the nature of the tenancy differing schemes of regulation will govern the arrangement. For instance the RTA 2004 provides the regulatory framework for all residential tenancies in Ireland except those explicitly excluded from its aegis. With regard to tenancies with multiple tenants, the provisions of the 2004 Act vary. For instance, the security of tenure provisions of Part 4 (extended notice periods) do not apply to student lets,⁴⁸⁰ which by their nature often involve contracts with multiple tenants. However, leaving student lets to one side, it is also apparent that the RTA 2004 generally extends the operation of a Part 4 tenancy to tenancies with 'multiple tenants', meaning, in the context of the Act, a dwelling with two or more persons as tenants (whether as joint tenants, tenants-in-common or under any other form of co-ownership⁴⁸¹) and 'multiple tenant' means any one of them.⁴⁸² The 2004 Act recognises the possibility that not all occupants entered into occupation at the same time by allowing a late coming tenant who may not have acquired Part 4 tenancy rights to benefit from the Part 4 tenancy rights of another tenant⁴⁸³ and so long as one tenant has been in occupation for six months then a Part 4 tenancy will come into existence; similarly, the death of one tenant does not deprive the other multiple tenant(s) of Part 4 protection. Finally, it is provided that acts of one tenant cannot prejudice the rights of another tenant, for which purpose a tenant will have to demonstrate to the landlord that the act of the other tenant was done without his consent.⁴⁸⁴

- **Duration of contract**

- i. **Open-ended vs. limited in time contracts**

- **for limited in time contracts: is there a mandatory minimum or maximum duration?**

See following answer.

- ii. **Other agreements and legal regulations on duration and their validity: periodic tenancies ("chain contracts", i.e. several contracts limited in time among the same parties concluded one after the other); prolongation options; contracts for life etc.**

There are a variety of tenancies which operate in the residential rented sector. These include, RTA tenancies, local authority tenancies and Chapter 4 tenancies and housing association tenancies. In the first place the duration of the tenancy depends

⁴⁸⁰ *Ibid.*, s. 25.

⁴⁸¹ This is different from English law which apparently requires a joint rental to be as joint tenants.

⁴⁸² *Ibid.*, s. 48.

⁴⁸³ *Ibid.*, s. 49(2).

⁴⁸⁴ *Ibid.*, s. 51(1). Again, this is different from English law where one joint tenant can terminate a periodic tenancy against the wishes of the other joint tenants.

on the nature of the tenancy, as in some cases the term may be subsequently altered by statute. This is particularly the case in the private rented sector. In all cases the tenancy can either be a fixed term tenancy or a periodic tenancy. A fixed term tenancy may be created for any fixed term and there is no legal maximum or minimum duration. Periodic tenancies, on the other hand, run for successive periods and include yearly tenancies, i.e. tenancies which run from year to year and tenancies for lesser periods which run for successive periods i.e. monthly and weekly. Wylie defines a yearly tenancy as:

A tenancy from year to year, though initially for a term of one year, will, therefore, continue thereafter from year to year indefinitely, until ended by either party, or their respective successors, giving notice of determination.⁴⁸⁵

The differences between the periodic and fixed term tenancy, have become less important in the private rented sector since the introduction of the Part 4 tenancy in 2004. All residential tenancies are RTA tenancies unless expressly excluded. A framework of rights and obligations has been statutorily imposed into all residential tenancies whether they are fixed term tenancies or periodic tenancies. As such, the provisions concerning the Part 4 tenancy come into operation. Where a tenancy has been in existence for 6 months, and during this time the landlord has not served a valid notice of termination, a Part 4 tenancy will automatically come into operation. The tenant will be allowed to remain in occupation for a further three and a half years which *inter alia* will renew every four years provided valid notice of termination has not been served.⁴⁸⁶ In summary although the RTA 2004 has not imposed a maximum or minimum term on residential tenancies, the operation of the Part 4 tenancy has reformed security of tenure in the sector and as a result has eroded the importance of the term set by the parties in the tenancy.⁴⁸⁷

With regard to tenancies held from local authorities and housing associations, the tenancy can either be a fixed term tenancy or a periodic tenancy. Many local authority tenancies are weekly tenancies which operate from week to week until ended by either party giving notice of determination. Often such tenancies operate over very long periods. Chapter 4 protection was extended to social tenants by the Housing (Miscellaneous Provisions) Act 2009 and it is likely that Chapter 4 tenancies will form the main tenancy in the social rented sector in the coming years. A Chapter 4 tenancy must set out the term of the tenancy, which may be fixed term or periodic.

Rent payment

- In general: freedom of contract vs. rent control

Again this needs to be considered sectorally as market rents prevail in the private rented sector while differential rents, related to tenant's income, apply in local authority tenancies.

⁴⁸⁵ Wylie, *Irish Land Law*, pp. 90-91.

⁴⁸⁶ RTA 2004, s. 28, subject to the termination procedures set out in s. 34.

⁴⁸⁷ The RTA 2004 does not apply to tenancies which are for a term exceeding 35 years: Housing (Miscellaneous Provisions) Act 2009 s. 100(2)(b). Also see *S & L Management v. Mallon and Private Residential Tenancies Board* Unreported, Circuit Court, Linnane J., 3 April 2009, unreported, High Court, Budd J., 23 April 2010. Such long term contracts would be unusual in the residential sector in Ireland.

Even though the last system of rent control had been struck down as unconstitutional⁴⁸⁸ the Commission on the Private Rented Sector considered that there was nothing in law to prevent the introduction of a proportionate system of rent control. However, the Commission considered that, on balance, a rent control system would constrain housing supply in the private rented sector and reduce housing quality and standards on existing stock. Additionally the Commission considered that market rents could avoid the front loading of rent increases on future tenants while also allowing tenants to benefit from falls in rental rates.⁴⁸⁹

- Rent control: how is it legally framed; when does it apply; who carries it out; what are the consequences when the parties agree on an excessive rent

The regulated part of the private rented sector was deregulated in 1982 and since then market forces have determined the rent.⁴⁹⁰ While some rent control tenancies still exist, it is not possible to create new rent control tenancies and as such the small number of such tenancies is in decline. As such the system of rent control is of historical significance and due to consideration of space it will not be considered in detail in this report.

- Maturity (fixed payment date); consequences in case of delayed payment

This will be governed by the terms of the contract and usually in residential rented accommodation rent will be due monthly on the date on which the parties entered the agreement. Should the tenant fail to pay the rent in time this will be a breach of the tenancy agreement. Under the RTA 2004 where there consistent delayed payment the landlord may seek to terminate the tenancy and seek an order of possession on this ground and this is also a ground of possession in a local authority tenancy.

- May the tenant exercise set off and retention rights over the rent payment? (i.e. the tenant withholding the rent or parts of it as the landlord does not respect his contractual duties, e.g. does not repair a defect);

Withholding

While Irish tenancy law has been expressed to be founded exclusively on the contract between the landlord and tenant, the peculiar development of tenancy law means that the reality is more opaque and indeed the courts have been reluctant to apply contractual doctrines in tenancy agreements. For instance, the doctrine of frustration of contract and the doctrine of mitigation of loss, which have been readily applied in Scots law, have not been applied to tenancy agreements in Ireland. The practice of withholding rent where the landlord is in breach arises from the principle of mutuality in contracts. The idea being that where the landlord is in breach of an obligation under the tenancy then the tenant has a right to withhold performance until the breach is remedied. This practice has not gained traction in Ireland because in common law leasehold covenants are regarded as being independent of one another, so a breach of one covenant, the covenant to repair, does not release the

⁴⁸⁸ *Blake v. Attorney General* [1982] IR 117.

⁴⁸⁹ *Commission on the Private Rented Residential Sector*, p. 80.

⁴⁹⁰ See section 6.4 below for a discussion on market rents under the RTA 2004.

other party from their obligations, to pay rent.⁴⁹¹ The fact that non-payment of rent is a ground for termination of a tenancy under the RTA 2004 makes the practice of withholding rent impractical in the private rented sector. With regard to withholding local authority tenancies are regulated by the tenancy agreement and the common law and as such the withholding of rent is not a legitimate response to a breach by the landlord.

Set off

Set off is a defence to a claim from the landlord for recovery of rent which if successful will reduce the amount of rent due or will reject the landlords claim. Under the Landlord and Tenant (Amendment) Act 1980 a tenant who carries out repairs, which the landlord was responsible for but has failed to execute, is allowed to set off the expenditure against the rent until the value has been recouped.⁴⁹² The RTA 2004 has preserved the operation of set off and expressly incorporates a consideration of any set off in the resolution of rent arrears disputes.⁴⁹³ Under in a rent arrears dispute the Tribunal may reduce the amount of arrears in accordance with any set-off for expenditure on repairs the tenant would be entitled to make.⁴⁹⁴ Under section 87 of the 1980 Act a tenant may set off the expenditure on certain repairs of a tenement against any subsequent rent until the expenditure is recouped. This section applies to repairs to a tenement which the landlord is bound by covenant or otherwise by law to execute and has been called upon by the tenant to execute but fails to do so.

- May claims from rental agreements be assigned to third parties (i.e. may the landlord assign his rent claim to a bank?)

The extent to which claims from rental agreement may be assigned to third parties depends primarily on the nature of the agreement between the parties and the manner in which the assignment has come about. In Irish tenancy law assignment occurs where a tenant or landlord transfers his interest to a third party. Where a tenant assigns his interest, the assignee will assume all rights and responsibilities of the tenant or as long as he holds it. This will also be the case where a landlord assigns his interest. A tenant is not permitted to assign an RTA tenancy without the consent of the landlord, and any assignment must be effected by written instrument.⁴⁹⁵ Assignment can arise by actions of the parties to the agreement but may also arise by act and operation of the law. That is, assignment may be brought about by personal insolvency of one of the parties as well by the death of one of the parties and the operation of the rule of intestacy.⁴⁹⁶

⁴⁹¹ *Riordan v. Carroll* [1996] 2 ILRM 263.

⁴⁹² Landlord and Tenant (Amendment) Act 1980 s. 87.

⁴⁹³ RTA 2004 s. 119.

⁴⁹⁴ Landlord and Tenant (Amendment) Act 1980 s. 87.

⁴⁹⁵ Landlord and Tenant (Amendment) (Ireland) Act 1860 s. 9. 'The estate or interest of any tenant in any lands under any lease or other contract of tenancy shall be assigned, granted, or transmitted by deed executed, or instrument in writing signed by the party assigning or granting the same, or his agent thereto lawfully authorised in writing, or by devise, bequest, or act and operation of law, and not otherwise ...'.

⁴⁹⁶ 'An assignment "by act and operation of law" is clearly an assignment which the law itself effects in certain circumstances, as for instance, in the case of bankruptcy; marriage (at the time of the passing of the Act); intestacy and assent by personal representative': *Foley v. Galvin* [1932] IR 339, 350.

Prior to the Personal Insolvency Act 2012, where an individual was unable to pay their debts or meet their liabilities then bankruptcy was the only mechanism through which the individual could settle their debts and acquire protection from their creditors.⁴⁹⁷ In bankruptcy the individual's assets would be distributed among their creditors in as fair a manner as possible. Where a tenant becomes bankrupt the tenancy will automatically vest in the Official Assignee.⁴⁹⁸ The assignee will become liable for the rent unless he exercises his right of disclaimer.⁴⁹⁹ Should the tenant obtain an order for protection from the court under Part IV of the Bankruptcy Act 1988, the landlord will be bound by the scheme of arrangement.⁵⁰⁰ However, the new legislation has introduced new personal insolvency mechanisms including a Debt Relief Notice to allow for the write-off of debt up to €20,000, subject to a three-year supervision period, a Debt Settlement Arrangement for the agreed settlement of unsecured debt, with no limit involved, normally over five years and a Personal Insolvency Arrangement for the agreed settlement of secured debt up to €3 million and unsecured debt, with no limit involved, normally over six years. It is not yet clear just what impact on the new legislation will have on assignment arising from personal insolvency.

- **May a rent payment be replaced by a performance in kind (e.g. reparation, renovation)? Does the tenant have a statutory right to this effect? Could a lien of the 'tenant-undertaker' create problems in that case? (a lien is a statutory right of an undertaker to ensure his being paid for his performances, e.g. improvements to the house, e.g. § 648 BGB)**

In order for the relation of landlord and tenant to exist there must be a rent⁵⁰¹ or other return in the nature of rent. Deasy's Act defines rent as "any sum or return in the nature of rent payable or given by way of compensation for the holding of any land."⁵⁰² Therefore rent need not be in the form of money, however in the vast majority of residential tenancies rent takes the form of money and the tenant does not have a statutory right to replace rent payment by performance in kind.

- **Does the landlord have a lien on the tenant's (movable) property in the house (Vermieterpfandrecht as in § 562 BGB, which functions as a guarantee for the payment of the rent by the tenant)? If yes, what is the scope of this right? How is it enforced?**

Under the common law the landlord had a remedy of distress which could be exercised in the event that the tenant fails to pay the rent. However, statute has curtailed its operation and it cannot be invoked where the premises in question is let solely as a dwelling.⁵⁰³

⁴⁹⁷ Bankruptcy Act 1988.

⁴⁹⁸ *Ibid.*, s. 44.

⁴⁹⁹ *Ibid.*, s. 56.

⁵⁰⁰ *CF RA Securities v. Mercantile Credit Co.* [1995] 3 All ER 581; *Mytre Investments v. Reynolds* [1995] 3 All ER 588. Similar provisions apply to company tenants in liquidation under the Companies Act 1963 s. 290.

⁵⁰¹ Landlord and Tenant (Amendment) (Ireland) Act 1860 s. 3.

⁵⁰² *Ibid.*, s. 1.

⁵⁰³ Housing (Miscellaneous) Act 1992 s. 19.

- **Clauses on rent increase**

- i. Open-ended vs. limited in time contracts**

All households in rented accommodation must be furnished with a rent book which as well as recording the payment of rent sets out fundamental matters regarding the tenancy.⁵⁰⁴ All rent and other payments under the tenancy must be recorded in writing by the landlord in the rent book.

Although set out previously it is worth reiterating that the RTA 2004 has eroded the importance of the distinction between periodic tenancies (open ended) and fixed term tenancies (limited in time) in the private rented sector. The RTA 2004 provided that rents in the private rented sector must be at a market rate and any rent which deviated from the market rate would be illegal.⁵⁰⁵ The Act provided that once the rate was agreed upon, it was open to annual review⁵⁰⁶ with the result that it could be reviewed upward or downward once per annum in order to better reflect market rates. The Act defined rent review broadly and as such it left the method of reviewing the rent rate open to the parties who could decide their own rent review formula so long as the method chosen did not result in a rent which deviated from the market rate. Market rent is defined as the rent which a willing tenant not already in occupation would give and a willing landlord would take for the dwelling having regard to the other terms of the tenancy as well as the letting values of a similarly placed tenancies.⁵⁰⁷ The Private Residential Tenancies Board are tasked with collecting rent rate data from all RTA tenancies and this data assists where a dispute arises in the determination of the market rate.⁵⁰⁸ The Act sets out a procedure for changing rent which involves the landlord giving 28 days' notice prior to the change taking place.⁵⁰⁹ This notice must state the amount of the new rent and also the date on which it will take effect. In addition the landlord must notify the Board of the new rent.⁵¹⁰ In the event of a dispute concerning a rent review the Board will examine whether a valid notice of a review has been served. When reviewing whether the rent rate confirms to the market rate the Board are disbarred from considering the financial circumstances of either party.⁵¹¹ While the dispute is on-going the existing rent continues to be payable until the dispute has been resolved.⁵¹² There is a relatively high onus on parties in a rent dispute case to furnish the Board with sufficient evidence.⁵¹³ In addition to consulting with local values or letting agents, parties may also be required to support such representations with direct oral evidence.⁵¹⁴ Where the landlord fails to follow the correct procedures as set out in

⁵⁰⁴ Housing (Rent Books) (Amendment) Regulations 1993 (SI No. 146/1993) as amended by SI No. 357/2010.

⁵⁰⁵ RTA 2004 s. 19(1) "Market rent" is defined by the RTA 2004 s.24.

⁵⁰⁶ RTA 2004 s. 20(1), the rent rate is open to review once a year. However a further review may be allowed where there is a substantial change in the nature of the accommodation.

⁵⁰⁷ RTA 2004 s. 24 similarly placed refers to the letting values of dwellings of a similar size, type and character to the dwelling and situated in a comparable area to that in which the tenancy in question is situated.

⁵⁰⁸ RTA 2004 pt 9.

⁵⁰⁹ RTA 2004 s. 22(2).

⁵¹⁰ RTA 2004 s. 139.

⁵¹¹ RTA 2004 s. 120.

⁵¹² RTA 2004 s. 86(1).

⁵¹³ *Stern v. Morris* TR63/DR193/2006, 15 November 2006.

⁵¹⁴ *Devlin v. MacDermot-Roe* TR30/DR511/2007, 26 April 2007.

Part 3 of the RTA 2004, the rent review will have no effect and the old rent will continue.⁵¹⁵

Local authorities provide the majority of housing with a public task in Ireland. Local authority housing is excluded from the operation of the RTA 2004 and as such the legal framework governing rent rates in the private rented sector do not apply. Rather rent levels in local authority housing are set according to a statutory framework comprising a range of primary, secondary pieces of legislation as well as various administrative guidelines, decisions and directions. Under the Housing Act 1966⁵¹⁶ each housing authority is empowered to set and charge rents for dwellings which it lets as part of its social housing function and there is no nationally uniform authority housing rent scheme.⁵¹⁷ Each housing authority is required to make a rent scheme which sets out how it will set rents.⁵¹⁸ This design of this rent scheme may be influenced by Ministerial Regulations and review and once completed the scheme must be made available for public inspection.⁵¹⁹ Local authority rents are set on a differential basis and are related to the household's ability to pay, so where the household's income is low then the rent will be low and should the household's income increase then the rent will increase proportionally. Where a household falls into arrears on their rent in local authority housing the authority has the power charge interest on overdue payments.⁵²⁰ As such the tenant is legally obliged to inform the authority where their income changes. The authority is also empowered to offset any monies it owes to a household against interest due from that household.⁵²¹ The local authority may also have a minimum and/or maximum rent, which may depend on the size of the dwelling in question. Additionally, there is usually a hardship clause which gives local authorities discretion to reduce the rent if there are particular reasons to do so.

ii. Automatic increase clauses (e.g. 3% per year)

Automatic increase clauses are not prevalent in the private rented sector and indeed their operation may conflict with the market rent provisions of the RTA 2004 where they lead to any increase above the market rent as defined.

iii. Index-oriented increase clauses

The same answer applies.

⁵¹⁵ *Canty v Connelly* TR22/DR259/2006, 11 July 2006.

⁵¹⁶ As amended.

⁵¹⁷ Housing Act 1966 s. 58 subss (3A) and (3B) were inserted by Housing (Miscellaneous Provisions) Act 2002 s 14; this will be replaced by the Housing (Miscellaneous Provisions) Act 2009 s 31.

⁵¹⁸ Housing Act 2009 s. 31(5).

⁵¹⁹ Housing Act 2009 s. 31(9).

⁵²⁰ Housing Act 2009 s. 33; Housing (Miscellaneous Provisions) Act 2009 (Commencement Order) 2010 (SI No. 253/2010) set the rate at 6%.

⁵²¹ Housing Act 2009 s. 33(4).

- **Utilities**

- i. **Describe the usual kinds of utilities (e.g. basic utilities like the supply of water, gas and electricity vs. additional utilities, i.e. services such as waste collection) and their legal regulation**

Water

Water can be supplied through a number of sources including public mains systems, public group water schemes as well as private wells and bottled water. Water from public mains systems and public group water schemes goes through a treatment and testing process to ensure that it meets the EU standard.⁵²² It is the task of the local authority to ensure that there is a efficient supply of water. In this effort maintenance and improvement costs are met by direct funding from the Department of Environment, Community and Local Government. There are number of mechanisms through which the local authority ensures that water quality is maintained in both Public group water schemes and private group water schemes i.e. water treatment, water testing etc. The Environmental Health section of each Local Health Office monitors water supplies on behalf of the local authority while the Health Service Executive is also responsible for monitoring fluoride levels in public water supplies. Irish Water was established in March 2013 under the Water Services Act 2013 to take over the water and wastewater services of the thirty four local authorities and will become the single national service provider,⁵²³ accountable to two regulatory bodies – the Commission for Energy Regulation which is the economic regulator for the water industry, and the Environmental Protection Agency, the environmental regulator. A new system of water charges is being introduced for homes that are connected to a public water supply. Water meters are being installed at present and the first bills for domestic water will issue in 2015, Irish Water will administer the charges. The Environmental Protection Agency publishes an annual report on the quality of drinking water in Ireland.

Waste

Local authorities are responsible for collecting or arranging for the collection of domestic waste in their area⁵²⁴ In this task they must provide or arrange for the provision of facilities for the disposal and recovery of household waste. Many local authorities have contracted out this task to private suppliers who generally collect household waste once a week. Local authorities must also ensure that there are adequate facilities for recycling. Almost all households using a refuse collection service will have to pay waste charges which vary greatly from area to area. There is no dedicated regulatory body with responsibility for waste disposal.

⁵²² The European Communities (Drinking Water) Regulations 2007 (SI 278/2007) gives formal effect in Irish law to the EU Drinking Water Directive of 1988 (Council Directive 98/83/EC). The regulations set out strict quality standards for water used for human consumption as well as the maximum and guideline values for various different physical, bacteriological and chemical contaminants.

⁵²³ It is envisaged that this transition will take five years to be completed.

⁵²⁴ Waste Management Act 1996.

Electricity

In Ireland there has been a concerted effort to deregulate the electricity market over the last number of years.⁵²⁵ At a supply level, electricity services are provided by the Electricity Supply Board (ESB), which is a state body owned and controlled by the Government.⁵²⁶ ESB Electric Ireland is an independent business unit within ESB which operates as the Public Electricity Supplier. In this role ESB Electric Ireland is required to, amongst other things, supply all customers who are not served by another supplier. At present the Commission for Energy Regulation⁵²⁷ regulates the electricity market with all suppliers free to set their own tariffs. All suppliers are required to have codes of practice which protect customers with regard to billing, bill payment and arrears, disconnection, marketing, complaints handling, services for customers with special needs and suppliers are also required to produce Customer Charters with guaranteed service levels for their customers.

Gas

In Ireland, Bord Gáis Éireann is responsible for the natural gas pipeline infrastructure. Bord Gáis is a State body owned by the Government and has two main businesses; networks and Energy Supply. Like the Electricity market, there has been much effort in the last 10 years to deregulate the sector⁵²⁸ and also like the electricity market, the Commission for Energy Regulation is responsible for regulating the gas market. All suppliers are required to have codes of practice which protect customers with regard to billing, bill payment and arrears, disconnection, marketing, complaints handling, services for customers with special needs and suppliers are also required to produce Customer Charters with guaranteed service levels for their customers. Bord Gáis Networks install meters that measure the gas used in any premises and three times a year a Bord Gáis Networks meter reader will call to the dwelling to record the amount of gas used. When moving into a dwelling with a natural gas installation the occupier/owner should contact a gas supplier to find out the supplier's terms and conditions for supply.

⁵²⁵ In February 2000, as a result of EU Directive 96/92/EC, the electricity market in Ireland was opened to competition with the retail electricity market opened fully to competition in February 2005. In November 2007 a Single Electricity Market came into effect with the trading of wholesale electricity in Ireland and Northern Ireland on an all-island basis.

⁵²⁶ The standard electricity voltage in Ireland is 230V a.c., nominal, at 50Hz, with plugs being of the 3 pin IS411 (BS 1363) type.

⁵²⁷ Established in 1999 under the Electricity Regulation Act 1999. Since then it has had additional functions added to it under other legislation, such as under the Gas (Interim) (Regulation) Act 2002.

⁵²⁸ Since July 2004 all business users have been able to choose their own supplier. Since July 2007 residential customers have been able to choose their gas supplier.

ii. Responsibility of and distribution among the parties:

- **Does the landlord or the tenant have to conclude the contracts of supply?**
 - **Which utilities may be charged from the tenant?**
 - **What is the standing practice?**

Parties are free to apportion responsibility for arranging for utilities in the tenancy agreement. However generally speaking the landlord will usually assume responsibility for connecting certain utilities, particularly water supply, electricity, heating etc. Generally the tenant will take over responsibility for making payments in respect of utilities encountered during the term of the tenancy. For instance with regard to electricity, common practice would be for the landlord to ensure that the property is connected to the national grid before letting and upon letting the tenant would take over responsibility for paying for the electricity for the duration of their lease.

iii. How may the increase of prices for utilities be carried out lawfully?

An increase of prices for utilities may be carried out unilaterally by the service provider and generally the cost will fall on the tenant.

iv. Is a disruption of supply by the external provider or the landlord possible, in particular if the tenant does not pay the rent?

Where a tenant does not pay rent the usual course of action for the landlord is to terminate the tenancy and seek possession of the premises. Cutting off the supply of utilities in response to rent arrears may lead to a claim of illegal eviction by the tenant and the landlord may be liable in damages to the tenant. Under the RTA 2004 such action would amount to constructive termination. In *Wall v. Cullen*⁵²⁹ a landlord caused the electricity supply to be cut off in order to force the tenants to leave, the Private Residential Tenancies Board held this amounted to constructive termination and awarded the tenants €3,000 compensation.

• **Deposit:**

- i. **What is the legal concept (e.g. is the deposit an advance rent payment or a guarantee deposit to cover future claims of the landlord)?**

The function of the deposit is to provide security for the landlord in the event that the tenant fails to fulfil their obligations under the tenancy e.g. damage to the property.

ii. What is the usual and lawful amount of a deposit?

The usual and lawful amount of a deposit is equivalent to one month's rent.

⁵²⁹ TR17/DR487/DR655/2008, 29 October 2008.

iii. How does the landlord have to manage the deposit (e.g. special account; interests owed to the tenant?)

A security deposit is normally paid by a tenant to a landlord or agent at the commencement of a tenancy. The landlord or agent hold the deposit of the duration of the tenancy and at the end of a tenancy the landlord, or their agent, is under a duty to return the deposit within a reasonable timeframe.

iv. What are the allowed uses of the deposit by the landlord?

In the event that the tenant causes damage to the dwelling in excess of normal wear and tear, the landlord will be able to use part or all of the deposit to offset the cost of repair. Alternatively where there is rent outstanding at the end of the tenancy the landlord may retain some or all of the deposit to cover the arrears. Finally where the tenant owes money for utility bills at the end of the tenancy and the utility bill is in the landlords name then he may withhold some or all of the deposit to cover these costs. The majority of disputes before the Private Residential Tenancies Board concern allegations of illegal retention of the deposit. The extent of the number of claims has forced the Government to consider introducing a deposit protection scheme.⁵³⁰

- **Repairs**

- i. Who is responsible for what kinds of maintenance works and repairs? What kind of repairs or works may lawfully be assigned to the other party (especially the tenant)**

Determining responsibility for maintenance depends primarily upon the nature of the tenancy.

RTA tenancies

A detailed framework of rights and obligations applying to both parties will dictate responsibility for maintenance works and repairs. The Housing (Miscellaneous Provisions) Act 1992 and subsequent regulations set out the housing quality standard which landlords must meet to ensure that their properties were of a certain standard.⁵³¹ The RTA 2004 imposed further obligation on landlords to carry out maintenance and repairs.⁵³²

⁵³⁰ See Indecon International Economic Consultants, 'Indecon's Assessment of the Feasibility of a Tenancy Deposit Protection Scheme in Ireland' (Dublin: Indecon, 2012). An independent tenant deposit scheme has been proposed in the Residential Tenancies (Amendment)(No. 2) Bill 2012. However, as of March 2014 the scheme has not been introduced.

⁵³¹ The Housing Act 1966 s. 114 implied into every contract for letting, a condition that the house was at the commencement of the tenancy 'in all respects reasonably fit for human habitation'; s114 was repealed by Housing (Miscellaneous Provisions) Act 1992 s. 37. *Siney v. Dublin Corporation* [1980] IR 400 held that s.114 did not apply to housing authorities but that housing authorities were liable in damages for breach of contract based on the implied warranty as to fitness for human habitation. See Housing (Standards for Rented Houses) Regulations 2008 (SI No. 534/2008) as amended.

⁵³² RTA 2004 ss 12, 14, 15.

There is no obligation on an RTA tenant to carry out repairs or maintenance of the dwelling the subject of the tenancy. Instead the responsibility of the tenant is not to do any act 'that would cause a deterioration in the condition the dwelling was in at the commencement of the tenancy.'⁵³³ However, normal wear and tear due to everyday usage is expected and therefore the test is whether the deterioration in the condition of the dwelling is over and above that of normal wear and tear. In establishing this, there are a number of relevant factors which must be taken into account. Firstly, the time that has elapsed from the commencement of the tenancy, secondly, the extent of occupation of the dwelling the landlord must have reasonably foreseen would occur since the commencement of the tenancy; and finally, any other relevant matters.⁵³⁴ If the tenant causes damage in excess of normal wear and then this will amount to a breach of his tenancy obligations and he must take steps as the landlord may reasonably require to be taken for the purpose of restoring the dwelling to the condition it was at the commencement of the tenancy or to pay any costs incurred by the landlord in taking such steps 'as are reasonable' to restore the dwelling to the condition it was at the commencement of the tenancy.⁵³⁵ It is often the case that a dispute may arise as to what amounts to normal wear and tear and indeed it may be difficult to draw a line around normal wear and tear. It is quite clear that the landlord cannot expect the dwelling to be in a similar condition as it was at the commencement of the tenancy.⁵³⁶ The longer the term of the tenancy then the more likely it is that there will be a greater deterioration in the condition of the dwelling. This was recognised in *Hanley v. Foy*⁵³⁷ where the tenancy tribunal had regard to the length of the tenancy in assessing whether damage was a result of normal wear and tear.⁵³⁸ The landlord is entitled to seek compensation for any damage caused which is over and above normal wear and tear however he must be able to substantiate the claim with sufficient evidence.⁵³⁹

Finally, parties are free to agree to additional tenancy obligations than those provided by the RTA 2004 but any additional obligations imposed on a tenant must be consistent with the rights of the parties set out in the Act. In some cases a landlord has successfully imposed an obligation to maintain a garden, however he must provide the tenant with the necessary equipment.⁵⁴⁰ In the case of a sub tenancy, the letting tenant steps into the shoes of the landlord and as such takes on the statutory obligations of a landlord. The sub tenant also owes obligations to the head landlord⁵⁴¹ to not cause deterioration to the condition of the dwelling, over and above normal wear and tear and where the tenant does cause deterioration to the

⁵³³ RTA 2004 s. 16(f).

⁵³⁴ RTA 2004 s. 16(f)(i)-(iii).

⁵³⁵ RTA 2004 s. 16(g).

⁵³⁶ *Ugwunnaya v. Kane* TR27/DR788/2008, 7 October 2008 where a landlord cannot expect dwelling to be in a condition that would allow it to immediately re-let and if repairs are required, which would have been normal for the length of the tenancy, the landlord will not be able to claim for these.

⁵³⁷ TR59/DR1254/2008, 25 November 2008.

⁵³⁸ *Mooney v Miller* TR70/Dr333/2007, 29 June 2007, concerned a term of ten years; the Tenancy Tribunal Report states at pp. 8 and 9 that 'it must be expected that there would be considerable wear and tear to the dwelling over such a period and further, there is an obligation on the landlord under s. 12(1)(b) of the Act to ensure that necessary repairs and replacements are made to maintain it in the condition in which it was at the commencement of the tenancy'.

⁵³⁹ *Callely v. Cooney* TR110/DR1226/2007, 16 November 2007.

⁵⁴⁰ *Walsh v Quinn* TR14/DR365/2007, 26 March 2007.

⁵⁴¹ RTA 2004 s. 16(f) and (g).

condition of the dwelling above normal wear and tear to carry out such steps as the head-landlord may reasonably.

A landlord may be liable to reimburse a tenant for expense they incur while carrying out repairs. The tenant is under no statutory obligation to carry out repairs and indeed the landlord is not allowed to impose any repairing obligations on the tenant,⁵⁴² but if the landlord has failed to carry out pressing repairs in a reasonable time after notice to do so the tenant may carry out the repairs at their own expense and then seek payment from the landlord to reimburse them for their outlay.⁵⁴³

Non RTA tenancies

Responsibility for repairs in non RTA tenancies is determined primarily by the agreement reached by the parties, subject to various pieces of statute as well as principles developed at common law. The landlord is primarily responsible for repair and maintenance of the dwelling under various statutes, though the position at common law was quite different. At common law the parties were free to apportion responsibility for maintenance and repairs as per the terms of the tenancy agreement and in the absence of express provisions in the tenancy a landlord's obligation for carrying out repairs was limited. The principle behind this position being that the tenant took the dwelling as he found it while the landlord undertook no responsibility for the dwelling. The main exception to this was where the landlord leased furnished dwellings and in this situation the landlord took on a repairing obligation. This arose as a result of an implied warranty on the part of the landlord that the dwelling was fit for human habitation at the commencement of the dwelling.⁵⁴⁴

Parties to a non RTA tenancy are free to apportion responsibility for maintenance and repairs in the tenancy contract.⁵⁴⁵ Over time the courts have determined the obligations which flow from certain words used in this context. For instance using the term repair would be understood to summon obligations to cure material defects in the dwelling while the term improvement would indicate obligations to add to the dwelling. There is also a distinction between to repair and to keep in repair with the former requiring action to bring about repairs while the latter refers to a warranty that the premises that the premises will not fall into a state of disrepair and if so then breach of covenant.⁵⁴⁶ The freedom left to the parties to determine responsibility for repairs and maintenance often led to one side arrangements with tenants assuming onerous repairing obligations. The Supreme Court set out that "if genuine repair involves, as it often does, inevitable improvement, that does not enable the covenantor to say he will not do the repair. He is obliged in this way to give back a better house than the one he got"⁵⁴⁷

⁵⁴² *Norris v. Rice* TR23/DR347/2006, 25 July 2006.

⁵⁴³ RTA 2004 s. 12(1)(g).

⁵⁴⁴ *Coleman v. Dundalk Urban District Council*, unreported, Supreme Court, 17 July 1985.

⁵⁴⁵ Subject to any repairing obligations of the landlord which may apply under the Housing (Miscellaneous Provisions) Act 1992 s. 18 (as amended). Housing (Standards for Rented Houses) Regulations 2008 (SI No. 543/2008), as amended by S.I. No. 462/2009. These standards have largely replaced the earlier set in SI No. 147/1993. See M. Jordan, 'The Rented Accommodation Sector in Ireland: Increased Demand amid Regulatory Transition - Housing Standards in Focus' 17(3) (2012) *Conveyancing and Property Law Journal* 42.

⁵⁴⁶ *Wheelan v. Madigan* [1978] ILRM 136.

⁵⁴⁷ *Groome v. Fodhla Printing Co. Ltd* [1943] IR 380 at 414-415.

The starting point for establishing responsibility for maintenance works and repairs in non RTA residential tenancies is section 42 of the Landlord and Tenant (Amendment) (Ireland) Act 1860. This placed the tenant under an obligation to 'keep the premises in good and substantial repair and condition' and 'to give peaceable possession of the demised premises, in good and substantial repair and condition on the determination of the lease,'⁵⁴⁸ but allowed this provision to be negated by the presence of an express contract provision to the contrary; furthermore the provision does not apply to an oral tenancy. The court may have a direct role in determining repairing obligations in non RTA tenancies, in particular the Circuit Court may require an applicant for a new tenancy to carry out repairs to a dwelling.⁵⁴⁹

Enforcement

Where the landlord falls below the standard of maintenance and repair then the tenant may submit an application for dispute resolution to the Private Residential Tenancies Board. During a dispute the tenant is not allowed to withhold rent or offset the cost of repairs against the amount of rent payable. Previously, a tenant was entitled to set off the rent expenses incurred in doing repairs himself.⁵⁵⁰ Aside from the Board the tenant can also make a complaint to the housing authority where the landlord is in breach of its repairing obligations. The relevant housing authority is responsible for enforcing the Regulations. The favoured model of enforcement involves a commitment to carrying out spot check visual inspections on all rented accommodation within the housing authority's functional area in order to ensure that all private rented accommodation in the area is in compliance with the standards set out in the Regulations. Where the landlord is found to be in breach of the regulations then she may be guilty of an offence and on conviction he is liable to a fine of €5000 and or imprisonment or up to six months, in addition to a fine of €400 for each day of a continuing offence. The responsibility of the local authority to enforce the housing standard Regulations results in a unsatisfactory situation in the context of local authority tenancies where the local authority must act as both landlord and regulator.

A local authority may give an improvement notice in writing to the landlord of the house concerned where the landlord is contravening a requirement of a regulation.⁵⁵¹ This notice will direct the landlord to remedy the contravention within the period allowed. It will contain information regarding objection and appeals, but should the landlord fail to object or appeal the notice, it will be deemed to have been accepted and that the landlord has agreed to comply in the required fashion. The improvement notice may specifically detail the measures to be taken towards bringing the property into conformity with the standard in question. The landlord must promptly confirm completion of the remedial work in writing to the housing authority and supply the tenant with a copy of the confirmation. Where the landlord conforms to the notice, the housing authority shall, within twenty eight days of receiving such confirmation, give notice in writing to the landlord of compliance with the notice and shall also supply the tenant with a copy of the notice. The landlord has the right to appeal, within fourteen days after the decision, to the District Court. Finally, a tenant

⁵⁴⁸ Landlord and Tenant (Amendment) (Ireland) Act 1860, s. 42.

⁵⁴⁹ Landlord and Tenant Act (Amendment) Act 1980, s. 23.

⁵⁵⁰ Landlord and Tenant Act (Amendment) Act 1980, s. 87.

⁵⁵¹ Housing (Miscellaneous Provisions) Act 1992 ss 18A and 18B, inserted by of the Housing (Miscellaneous Provisions) Act 2009 sch.2 part 4.

may take an action in tort where the landlord fails to repair the dwelling. In particular the tenant may take an action in the tort of nuisance or negligence where the landlords failure to carry out repairs affects the tenants.

- **Connections of the contract to third parties**

- i. **Rights of tenants in relation to a mortgagee (before and after foreclosure)**

In general a property with vacant possession will achieve a higher price on the market than one that is under a lease. As such the landlord or the mortgagee will seek to terminate the tenancy and as mortgage default is a ground of possession under the RTA 2004 this is quite straightforward.⁵⁵²

⁵⁵² See section 6.6 below.

Table for 6.4 Contents of tenancy contracts

	Main characteristic(s) of RTA tenancies	Main characteristic(s) of local authority tenancies
Description of dwelling	Required in rent book, usually detailed description of dwelling in lease agreement	Required in rent book, usually detailed description of dwelling in lease agreement
Parties to the tenancy contract	Landlord and tenant	Landlord and tenant
Use	Principal residence	Principal residence
Duration	Required in rent book	Required in rent book
Rent	Market rent, this is required in rent book	Differential rent, this is required in rent book
Deposit	Required in rent book	Varies ⁵⁵³
Utilities, repairs, etc.	Required in rent book	No white goods provided ⁵⁵⁴

⁵⁵³ In some public private tenancies the local authority will pay the deposit i.e. in the Rental Accommodation Scheme.

⁵⁵⁴ Application may be made to the Department of Social Welfare for the cost of white goods.

6.5 Implementation of tenancy contracts

- **Disruptions of performance (in particular “breach of contract”) prior to the handover of the dwelling**

- **In the sphere of the landlord:**

- **Delayed completion of dwelling**

Irish tenancy law distinguishes contracts for the future grant of a tenancy and contracts which involve an immediate grant of the tenancy. If an occupancy arrangement which falls into the former group there is no tenancy in existence as of yet but rather an agreement to create a tenancy at some future date. Any such agreement of this type must adhere to the requirements of the Statute of Frauds and therefore it must be evidenced in writing.⁵⁵⁵ Any dispute will involve a contractual issue rather than a tenancy law issue because there is no tenancy in existence until the landlord carries out the agreement and makes the further grant of the tenancy. In a contractual dispute the terms and conditions of the tenancy will be of central concern.

- **Refusal of handover of the dwelling by landlord (in particular: case of “double lease” in which the landlord has concluded two valid contracts with different tenants over the same house)**

It would be unusual for a landlord to conclude two valid contracts with different tenants over the same dwelling. In particular, the registration requirements of the RTA 2004 would militate against this practice.⁵⁵⁶ In the unlikely event that the landlord does enter into two agreements with different tenants over the same property that landlord may be guilty of an offence and so liable to a fine or imprisonment. The first in time will prevail. For the sitting tenants there are a number of rights flowing from their right to possession which would ground an action against the landlord. In a RTA 2004 tenancy the landlord is under a duty to allow the tenant to enjoy peaceful and exclusive occupation of the dwelling. That is, the tenant, upon taking possession of the dwelling, has the right to be maintained in possession and the landlord must not do anything that would deprive or partially deprive him of this. The remedies available to the tenant include damages, abatement and rescission

- **Refusal of clearing and handover by previous tenant**

Where a previous tenant refuse to leave and handover the dwelling then the landlord may seek an order for possession of the dwelling. The appropriate procedure is determined by nature of the tenancy with different legal options for public and private landlords. There are a range of possessory remedies available through the courts. There are a number of different forms of proceedings which are available to the landlord, these include: the Ejectment Civil Bill on title based on forfeiture⁵⁵⁷, the

⁵⁵⁵ See the section 6.2 above.

⁵⁵⁶ See section 4.1 above.

⁵⁵⁷ This is used where the tenant will not vacate the dwelling after the tenancy has been terminated by forfeiture.

ejectment for non-payment of rent,⁵⁵⁸ the ejectment civil bill for overholding⁵⁵⁹ and finally ejectment for deserted premises.⁵⁶⁰

Where the tenant is in breach of his tenancy obligations the landlord may seek to terminate the tenancy by forfeiture. Forfeiture is an equitable remedy and therefore the courts have a discretion whether to end the lease. The landlord must follow the procedure for bringing about forfeiture carefully, since any deviation may be fatal to the action. First the landlord must serve a notice on the tenant,⁵⁶¹ setting out the breach complained of and requiring the tenant to remedy the breach. The tenant must be allowed a reasonable time to remedy the breach. Where the tenant fails, then the landlord can make a demand for possession and re-enter the property. Where re-entry cannot be achieved peacefully then the landlord will be required to issue proceedings based upon forfeiture, and this will usually be wise in any event; the landlord will have to seek an ejectment leading to a possession order.⁵⁶² There are additional legal means of securing possession available to a local authority. A local authority tenant can only be evicted from their homes on the strength of a court order for possession. Originally, section 62 of the Housing Act 1966⁵⁶³ provided a local authority with an accelerated method of recovering possession of a dwelling. While the provision has been relied on by local authorities for over forty years, its continued use⁵⁶⁴ has been called in to question by a recent Supreme Court judgement.⁵⁶⁵ The procedure of section 62 leads to summary eviction of a tenant holding over after service a notice of termination has been served, and in the event of refusal by the tenant the authority may apply to the District Court for the issue of a warrant. Upon the hearing of an application, the Court must satisfy itself that the demand has been duly made, but then must issue the warrant. In *Donegan and Gallagher* the Supreme Court made a declaration that section 62 of the Housing Act 1966 was incompatible with the European Convention on Human Rights Act.⁵⁶⁶

- Public law impediments to handover to the tenant

It would not be usual to conclude a rental arrangement until the property was ready for occupation. This stems from the landlord's common law obligation to provide subjects that are in a tenantable or habitable condition.

⁵⁵⁸ Landlord and Tenant (Amendment) (Ireland) Act 1860 s. 52; this action is only available where the tenant is in arrears for a full year. Furthermore the landlord is not entitled to eject the tenant for 6 months after the order and if the tenant makes payment during that time the order will lapse.

⁵⁵⁹ Landlord and Tenant (Amendment) (Ireland) Act 1860 s. 72; Rules of the Circuit Court 2001 Order 51; District Court Rules; this is employed where despite service of a valid notice to quit the tenant has failed to vacate the dwelling.

⁵⁶⁰ Landlord and Tenant (Amendment) (Ireland) Act 1860 s. 78, used where a dwelling has been deserted and there are rent arrears of 6 months or more due.

⁵⁶¹ Conveyancing Act 1881 s. 14. Where the issue is arrears of rent the landlord does not have to serve such a notice however given the equitable nature of the action, the landlord would be wise to serve the notice with a demand for rent regardless.

⁵⁶² Rules of the Superior Courts 1986 (SI: 15/1986) Order 51, Order 1 r.6 and Order 37 rr.1-3; Rules of the Circuit Court 2001; and District Court Rules 1948 form XXI.

⁵⁶³ These ejectment proceedings were originally developed under Landlord and Tenant Law Amendment Act Ireland 1860 (Deasy's Act) s 86.

⁵⁶⁴ This provision has provoked much litigation: *Dublin City Council v. Fennell* [2005] 1 IR 604; *Leonard v. Dublin City Council* [2008] IEHC 79; *Pullen v. Dublin City Council* [2008] IEHC 379; and *Pullen v. Dublin City Council* (No. 2) [2009] 2 ILRM 484.

⁵⁶⁵ *Donegan v. Dublin City Council and Dublin City Council v. Gallagher* [2012] IESC 18

⁵⁶⁶ *Ibid.*

- **In the sphere of the tenant:**
 - **refusal of the tenant to take possession of the house**

Where a tenant refuses to take possession of the house without some good cause this will amount to a breach of contract which would be actionable. Most tenancies in the residential sector involve contracts for an immediate grant of the tenancy. Where the tenant has committed a deposit they may run the risk of forfeiting that deposit to the landlord in compensation of time and expense lost.

Disruptions of performance (in particular “breach of contract”) after the handover of the dwelling

- **Defects of the dwelling**
 - **Notion of defects: is there a general definition?**

Housing must be fit for human habitation. This is a concept which has been developed through statute and also through a range of common law decisions.⁵⁶⁷ In 2008 the Irish Government introduced a new legal minimum standard for housing quality in the rented sector. The Housing (Standards for Rented Houses) Regulations 2008 set out a legal minimum standard for housing quality which the rented premises must not fall below. The regulations cover a range of areas including structural condition, sanitary facilities, heating facilities, food preparation and storage and laundry, ventilation, lighting, fire safety and refuse facilities. The regulations apply to all rented dwellings however some provisions apply only to social rented accommodation.⁵⁶⁸

- **Examples: Is the exposure of the house to noise from a building site in front of the house or are noisy neighbours a defect? What about damages caused by a party or third persons? Is the occupation of the house by third parties such as squatters considered as a defect in the legal terms?**

Traditionally a defect would be associated with the physical or structural condition of the dwelling. Noise from a building site or from noisy neighbours may constitute a nuisance⁵⁶⁹ for which the appropriate remedy would be an order for an injunction.

Damage caused by third parties

Occupation of the property by third parties such as squatters may prevent the operation of the tenancy. Where squatters fulfil the criteria of the statute of limitations then the tenancy would not come into existence as the dispossessed owner would not be entitled to deal with the property.

⁵⁶⁷ See section 6.4 above.

⁵⁶⁸ M. Jordan, 'The Rented Accommodation Sector in Ireland: Increased Demand amid Regulatory Transition - Housing Standards in Focus' 17(3) (2012) *Conveyancing and Property Law Journal* 42.

⁵⁶⁹ Environmental Protection Agency Act 1992 s. 108; Environmental Protection Agency Act (Noise) Regulations 1994; SI No. 179/1994; as amended.

- **Discuss the possible legal consequences: rent reduction; damages; “right to cure” (to repair the defect by the landlord); reparation of damages by tenant; possessory actions (in case of occupation by third parties) what are the relationships between different remedies; what are the prescription periods for these remedies**

As set out above the lease is a contract and therefore the usual contract law remedies are available. These include injunctions, court action for debt, rescission and damages. A number of additional remedies are available under general landlord and tenant law, for the tenant these include retention of rent and abatement. However, statute has intervened to alter the availability of these remedies. The landlord has a number of additional remedies arising under general landlord and tenant law.

RTA 2004 tenancies

The Private Residential Tenancies Board have a wide range of remedies at their disposal. These include the awarding of damages to provide compensation. With regard to a right of repair, the RTA 2004 does not provide an express right of repair rather where a landlord has failed to adhere to the repairing standard; the tenant must afford the landlord the opportunity to cure the failure in a reasonable time.⁵⁷⁰ Where the landlord fails to do so, the tenant may take an action to the Board who can order that the landlord carry out the repair.

- **Entering the premises and related issues**

- **Under what conditions may the landlord enter the premises?**

The landlord has a right of reasonable access which he may rely upon to enter the dwelling in order to inspect the condition of the dwelling, to carry out repairs or to show prospective tenants around.⁵⁷¹ In order to avail of rights of access the landlord must give the tenants at least 24 hours' notice and access must be limited to reasonable times of the day. Where the tenant refuses the landlord reasonable access then the landlord may not be liable for the repairs.

- **Is the landlord allowed to keep a set of keys to the rented apartment?**

It would not be unusual for the landlord or representative of the landlord to retain a set of keys to the rented dwelling in order to inspect the dwelling, carry out repairs or to show prospective tenants around. However, the landlord does not have a general right of access, rather, as set out above, the landlord has a right of reasonable access. This in turn is largely dependent on the landlord giving the tenant sufficient notice. In local authority housing the local authority will retain access rights in the tenancy agreement for various purposes.

- **Can the landlord legally lock a tenant out of the rented premises, e.g. for not paying rent?**

A landlord is not permitted to lock a tenant out of the rented dwelling. In the event that the landlord has given notice to quit but the tenant has refused to leave the

⁵⁷⁰ See section 6.7 below.

⁵⁷¹ RTA 2004, s. 16(c).

landlord can only remove the tenant with court possession order, during which the tenant will be allowed to lodge a defence. There are detailed provisions governing rent arrears. Any landlord who operates in breach of the RTA 2004 could be liable to pay damages in compensation to the tenant.

- **Rent regulation (in particular implementation of rent increases by the landlord)**

- **Ordinary rent increases to compensate inflation/ increase gains**
- **Rent increase after renovation or similar**

The system of rent regulation depends on the type of tenancy at issue with distinct systems applying to RTA tenancies, local authority tenancies and Chapter 4 tenancies and housing association tenancies.

- **Rent increases in “houses with public task”**
- **Procedure to be followed for rent increases**
 - **Is there some orientation at the market rent; if yes, how is the market rent measured/calculated (e.g. statistical devices such as a Mietspiegel [= rent statistics for a certain area])?**
- **Possible objections of the tenant against the rent increase**

In the private rented sector the rent charged must be market rent while in the public rented sector differential rents apply.⁵⁷²

- **Improvements/changes of the dwelling**
 - **Is the tenant allowed to make (objective) improvements on the dwelling (e.g. putting in new tiles)?**
 - **Must, and if yes under what conditions, improvements of the dwelling by the tenant be compensated by the landlord?**
 - **Is the tenant allowed to make other changes to the dwelling?**
 - **in particular changes needed to accommodate a handicap (e.g. building an elevator; ensuring access for wheelchairs etc)?**
 - **fixing antennas, including parabolic antennas.**

The issue of fixtures arises across all tenancies in Ireland and has frequently arisen in the residential sector.⁵⁷³ The extent to which the tenant is allowed to make improvements or changes to the dwelling depends primarily on the lease agreement as parties are free to include terms governing alterations of the dwelling and indeed the modern residential lease will usually contain a term restricting the tenant from carrying out improvements or alterations of the dwelling without the landlord's prior consent.

⁵⁷² See section 6.4

⁵⁷³ *Whelan v. Madigan* [1978] ILRM 136 (television aerials).

However, the RTA 2004 has had a significant impact in this area by placing the tenant under a duty to not alter or improve the dwelling without the written consent of the landlord.⁵⁷⁴ Where the alteration or improvement consists only of repairing, painting and decorating, or any of those things, the landlord may not unreasonably withhold consent.

The law of fixtures has been updated by the recent land law reforms. In particular, the Land Conveyancing and Law Reform Act 2009 provides a definition of land which sets out that land includes: any estate or interest in or over land, whether corporeal or incorporeal, mines, minerals and other substances in the substratum below the surface, whether or not owned in horizontal, vertical or other layers apart from the surface of the land, land covered by water, buildings or structures of any kind on land and any part of them, whether the division is made horizontally, vertically or in any other way, the airspace above the surface of land or above any building or structure on land which is capable of being or was previously occupied by a building or structure and any part of such airspace, whether the division is made horizontally, vertically or in any other way, any part of land.⁵⁷⁵

Under the common law where the tenant makes improvements to the dwelling they will either become a part of the property and will no longer be removable by the tenant or the improvements will remain distinct from the property and will be removable by the tenant. In order for an object to become part of the dwelling it must be sufficiently attached to the property. The courts have developed a twofold test for determining whether an object becomes part of the property or remains a chattel. The court will look to the mode of annexation and the object of annexation and increasingly the courts have regarded the latter test as the most influential one.

In directing whether a tenant is entitled to remove a fixture the determining consideration is no longer the nature or extent of the attachment to the land. These considerations or the damage which may be inflicted to the land by the removal may in some cases have little weight. The critical inquiry is as to the object of the tenant in bringing the article on to the land and annexing it. Was it to use that article for its own sake in the way of trade or as an ornament or otherwise or was it permanently to increase the value and amenity of the land⁵⁷⁶

As the property belongs to the landlord this means that any fixture added will also belong to her regardless of the fact that the tenant may have made the installation. There is one important exception to this and that is in the case of “tenants fixtures”⁵⁷⁷ which remain removable by the tenant. In determining whether an object is a tenant’s fixture the court will look to the intention of the tenant. In *Earl of Antrim v. Dobbs*, Holmes J stated ‘... it must appear from its nature and the use that the object and purpose of the annexation were not for the permanent improvement of the hereditament taken as a whole, but as accessory to some business or occupation connected therewith or conducted thereon, or for the enjoyment or profit of a person having a limited or partial interest therein’.⁵⁷⁸ The common law position with regard

⁵⁷⁴ S. 16(l).

⁵⁷⁵ Land Conveyancing and Law Reform Act 2009, s. 3.

⁵⁷⁶ *Lombard and Ulster Banking Ltd v. Kennedy* [1974] NI 20, per Gibson J.

⁵⁷⁷ ‘Arguably the very concept itself is a misnomer, which causes more confusion than enlightenment’, see Law Reform Commission *Consultation Paper on General Law of Landlord and Tenant* (LRC CP 28 – 2003), p. 76.

⁵⁷⁸ (1891) 30 LR Ir. 424.

to tenant's fixtures has been reinforced by statute. In particular section 17 of Deasy's Act sets out that:

Personal chattels, engines, and machinery, and buildings accessorial thereto, erected and affixed to the freehold by the tenant at his sole expense, for any purpose of trade, manufacture, or agriculture, or for ornament, or for the domestic convenience of the tenant in his occupation of the demised premises, and so attached to the freehold that they can be removed without substantial damage to the freehold or to the fixture itself, and which shall not have been so erected or affixed in pursuance of any obligation or in violation of any agreement in that behalf, may be removed by the tenant, or his executors or administrators, during the tenancy, or, when the tenancy determines by some uncertain event, and without the act or default of the tenant, within two calendar months after such determination, except so far as may be otherwise specifically provided by the contract of tenancy; provided that the landlord shall be entitled to reasonable compensation for any damage occasioned to the premises by such removal.⁵⁷⁹

This provision set out the 'default' provision where the parties had not made an express agreement as to the tenant's fixtures in question. The Law Reform Commission has recommended a radical overhaul of the law relating to tenants fixtures and completely replacing the common law and all existing statutory provisions in this area. The Commission have recommended that the fundamental principle of any reform should be that the ownership and other rights attaching to any items of property installed in the premises should be as set out in the lease. The statutory provision should then provide a set of "default" provisions to operate in the absence of such express provisions.

The essence of the default provisions should be:-

- '(i) they should apply to any property installed in the premises by the tenant, for whatever reason;
- (ii) the right of removal should be exercisable in all cases, subject to the landlord's right to compensation for any damage, however substantial, caused to the demised premises by the removal;
- (iii) the right of removal must be exercised before the tenancy ends, unless the determination is unexpected and not due to some act or default by the tenant; in the latter unexpected case the tenant who is not at fault should have an additional period up to two calendar months in which to remove property;
- (iv) in any event the right of removal must be exercised when the tenant vacates the demised premises; if it is not so exercised the landlord should have the right to remove the tenant's property for safekeeping and storage;
- (v) the landlord should have the right to dispose of property so removed, if not reclaimed by the tenant, or other party entitled to it, within 14 days of the tenant vacating the demised premises;
- (vi) the cost of storage should be recoverable from the tenant, and be payable before property is returned on a reclaim or deductible, together with any other

⁵⁷⁹ Landlord and Tenant (Amendment) (Ireland) Act 1860, s.17.

expenses reasonably incurred, from the proceeds of disposal before those are paid over to the tenant;

(vii) it should be made clear that in all cases the tenant's right of removal continues to apply to renewed, extended and varied tenancies.⁵⁸⁰

However the reforms have not been introduced into Irish tenancy law and as such tenant's fixtures remains governed by the principles developed by the common law and by statute. Since the RTA 2004, the central principle governing improvements or alterations by tenants in the residential sector is that the tenant must first gain the consent of the landlord before embarking on any works.

- **Renovation and alterations of the dwelling by the landlord**
 - **What does the tenant have to tolerate?**
 - **What conditions should a landlord willing to make renovations fulfil (e.g. giving notice; offer an alternative dwelling etc)?**

Generally speaking a tenant may be expected to tolerate minor works but will not be expected to tolerate substantial renovation and alteration of the dwelling by the landlord. Should the landlord wish to substantially refurbish or renovate the dwelling or the property containing the dwelling in a way which requires the dwelling to be vacated for that purpose, he may bring about a termination of the tenancy.⁵⁸¹

- **Uses of the dwelling**
 - **Discuss allowed vs. forbidden uses such as:**
 - **Keeping animals; smells; receiving guests; prostitution and commercial uses (e.g. converting one room in a medical clinic); removing an internal wall; fixing pamphlets outside.**

The lease will generally contain a clause prohibiting use of the dwelling which could result in a nuisance; this could relate keeping animals, odours, receiving guests etc. It is illegal for landlords and letting agents to discriminate against a tenant if they are disabled. This means that the landlord must not treat the tenant less favourably than a non-disabled person because of their disability. With regard to keeping animals this means that the landlord is not allowed to refuse to let the tenant keep a guide dog or other assistance dog under a 'no pets' rule. Using or allowing the house to be used for immoral or illegal purposes is a ground for recovery of possession. Also the Unfair Terms in Consumer Contracts Regulations apply here. An unfair term in a standard consumer contract is a term that is significantly weighted against the consumer. Any term found by a Court to be unfair, is ineffective.⁵⁸²

- **Is there an obligation of the tenant to live in the dwelling? Are there specificities for holiday homes?**

⁵⁸⁰ Law Reform Commission, *Consultation Paper on General Law of Landlord and Tenant* (LRC CP 28-2003), pp. 81-82.

⁵⁸¹ RTA 2004 s. 45; under this provision the tenant has first option on re-letting; see section 6.6 below.

⁵⁸² Council Directive 93/13/EEC of 5 April 1993 on Unfair Terms In Consumer Contracts, transposed into Irish law by the European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 (S.I. No. 27/1995) as amended by S.I. No. 307/2000 and S.I. No. 160/2013.

A tenancy cannot exist in law unless a tenant lives in the dwelling with exclusive possession of the dwelling.⁵⁸³

- **Video surveillance of the building:**

Is the surveillance of certain parts (e.g. corridors) of the building lawful and usual?

Security surveillance of certain parts of the building is lawful and usual. However, any security cameras should only be installed in public places like entrances, parking lots, and laundry rooms to protect tenant privacy. Most uses of CCTV will be covered by the Data Protection Act which sets out rules which CCTV operators must follow. The tenant will have a number of rights including the right to see information held about him, including CCTV images of him, or images which give away information about him. Where a tenant is concerned that CCTV is being used for harassment, anti-social behaviour or other matters dealt with under the criminal law, then these are matters for the police

Table for 6.5 Implementation of tenancy contracts

	Main characteristic(s) of RTA tenancies	Main characteristic(s) of local authority tenancies
Breaches prior to handover	Tenancy only granted when property ready	Tenancy only granted when property ready
Breaches after handover	Regulated by the PRTB	In local authority tenancies, the main dispute resolution facility is the courts system
Rent increases	Must be market rent, regulated by the PRTB	In local authorities differential rents are charged
Changes to the dwelling	Requires written consent	Requires written consent
Use of the dwelling	Residential otherwise consent required	Residential otherwise consent required

⁵⁸³ *Smith v CIE* Unreported, HC, October 9, 2002; [2002] IEHC 103, 22. Peart J “for a tenancy to exist, there is no doubt that exclusive possession of the premises is a pre-requisite... the fact that there is exclusive possession does not preclude the agreement from being a licence.

6.6 Termination of tenancy contracts

- **Mutual termination agreements**

The parties to a rental agreement are free to come to a mutual agreement which allows for termination prior to expiration of the term. Termination will also occur where the parties to an existing tenancy agree to a new tenancy on different terms, the effect of the regrant being an implied surrender of the existing tenancy.

- **Notice by the tenant**

- **Periods and deadlines to be respected**

Where the tenant wishes to terminate the tenancy they must give the landlord valid notice. Any notice of termination for tenancies of houses let for rent or other valuable consideration, whether by landlord or tenant, must be in writing and must be served not less than 4 weeks before the date on which it is to take effect.⁵⁸⁴ This minimum notice period applies to all residential tenancies regardless of whether the tenancy is a fixed term tenancy, a periodic tenancy or a Part 4 tenancy of under 6 months duration. Otherwise, where a tenancy is regulated by the RTA 2004 then the period of required notice will vary according to the duration of the tenancy in the manner set out below. Alternatively where the tenant fails to provide a valid notice of termination then he runs the risk of forfeiting some or all of his deposit. Although the notice periods set out below comprise a statutory minimum parties are free to agree to a longer notice period.

Termination by tenant under the RTA 2004	
Duration of tenancy	Notice period
Less than 6 months	28 days
6 or more months but less than 1 year	35 days
1 year or more but less than 2 years	42 days
2 or more years	56 days

For tenancies which are not regulated by the RTA 2004, the notice period is determined by the nature of the agreement, subject to the statutory minimum of twenty eight days set out above, except in the case of anti-social behaviour or where there is a damage or threat of damage to the dwelling.⁵⁸⁵ At common law the notice period required varies according to the type of tenancy. In a fixed term tenancy, the general rule is that no notice is required where the tenancy expires in accordance with its fixed term whether that is a certain date or the happening of a certain event.⁵⁸⁶ The parties are at liberty to include early termination terms in the tenancy

⁵⁸⁴ Housing (Miscellaneous Provisions) Act 1992, s.16.

⁵⁸⁵ RTA 2004 ss. 67, 68.

⁵⁸⁶ *Enright v. O'Loughlen* (1887) 20 LR Ir. 159 and 392.

agreement. Where the tenancy agreement contains such a break clause, this may allow termination to occur prior to expiry of the term and depending on the nature of the term this power may be extended to either landlord or tenant or indeed both. In a periodic tenancy the general rule is that the notice period required varies according to the duration of the tenancy and will operate to prevent renewal of the tenancy. Where there is a yearly tenancy then notice of 183 days (one half year) will be required to terminate the tenancy.⁵⁸⁷ Where there is a monthly tenancy then one months' notice is required to determine the tenancy.⁵⁸⁸ Likewise where there is a weekly tenancy the period of notice required is one week.⁵⁸⁹ However this does not apply to residential tenancies where a minimum period of twenty eight days is required. Therefore although many local authority tenancies are weekly tenancies a minimum notice period of twenty eight days applies.

- **May the tenant terminate the agreement before the agreed date of termination (in case of contracts limited in time); if yes: does the landlord then have a right to compensation (or be allowed to impose sanctions such as penalty payments)?**

Parties are free to include an early termination or break clause. In the event that parties fail to include an early termination clause, they remain free to come to a mutual agreement which allows for termination prior to expiry of the term provided that a valid notice period is given.⁵⁹⁰ Where the tenancy is a fixed term tenancy the tenant is not allowed to unilaterally terminate the tenancy and any such action may cause the tenant to be liable in damages to the landlord and he may be required to continue to pay rent for the duration of the term. However, the tenant may terminate the tenancy where the landlord has breached his obligations or has refused to consent to the tenant assigning or subletting. Where the tenant wishes to leave the tenancy upon expiry of the term, he must give notice to the landlord of at least 28 days. In the event that the tenant is seeking to bring about a termination due a landlord breach of obligation, the tenant must first notify the landlord of the failure in writing and give the landlord the opportunity to remedy the failure in a reasonable time. The landlord does not have a right to compensation where an early termination has been brought about in a manner which complies with the notice requirements of the RTA 2004. It is only when the tenant deviates from the required procedure that a landlord may claim compensation. Where the landlord is in breach of tenancy obligations the tenant may give a shorter notice period. As set out above the tenant must afford the landlord the opportunity to remedy a breach however where a landlord fails to remedy the breach then the tenant may give 28 days' notice. The main exception to this general rule is where there is imminent danger to the tenant due to the landlords breach; in this situation the tenant may give 7 days' notice.

⁵⁸⁷ *Wright v. Tracey* (1874) 1874 IR 8 CL 478 at 494.

⁵⁸⁸ *Kane v. McCabe* [1952] IR Jur. Rep. 41

⁵⁸⁹ *Harvey v. Copeland* (1892) 30 LR Ir. 412.

⁵⁹⁰ See section 6.6 below.

- **Are there preconditions such as proposing another tenant to the landlord?**

The parties are at liberty to include terms which require the tenant to propose a replacement tenant for the landlord in the tenancy agreement. However, such clauses are rare in the residential sector and in general the landlord will find a replacement tenant without the previous tenant's assistance.

- **Notice by the landlord**

- **Ordinary vs. extraordinary notice in open-ended or time-limited contracts; definition of ordinary vs. extraordinary (= normally related to fundamental breaches of the contract, e.g. in cases of massive rent arrears or strong antisocial behaviour)**

RTA tenancy

An RTA tenancy can only be terminated by one party serving a valid notice of termination upon the other in accordance with Part 5 of the Act.⁵⁹¹ The landlord seeking a termination must give a certain period of notice to the other party. The notice period will depend on the duration of the tenancy; the longer the duration of the tenancy, the longer the notice period required. However, in the case where the landlord wishes to terminate the tenancy as a result of anti-social behaviour or behaviour which threatens to damage or does actually damage the fabric of the dwelling then only a seven day notice period is required.⁵⁹² Anti-social behaviour is defined by section 17 to mean;

- engaging in behaviour that constitutes commission of an offence;
- engaging in behaviour that causes or could cause fear, danger, injury, damage or loss to any person living, working or otherwise lawfully in the dwelling concerned or its vicinity ;
- engage, persistently, in behaviour that prevents or interferes with the peaceful occupation by any person residing in that dwelling or in a neighbourhood dwelling⁵⁹³

⁵⁹¹ RTA 2004, ss 57 and 58.

⁵⁹² *Ibid.*, s. 67(2).

⁵⁹³ *Ibid.*, s. 17.

Termination by landlord of RTA tenancy	
Duration of tenancy	Notice period
Less than 6 months	28 days
6 or more months but less than 1 year	35 days
1 year or more but less than 2 years	42 days
2 years or more but less than 3 years	56 days
3 years or more but less than 4 years	84 days
4 or more years	112 days

Failure to provide the correct notice period will result in an invalid notice of termination and this will cause the tenancy to continue to operate, potentially resulting in the attraction of Part 4 tenancy status. As such where a landlord fails to provide a valid notice of termination he will run the risk of the tenancy running for a period in excess of the original term envisaged. It is an offence for a landlord to take any action in reliance on an invalid notice of termination which he knew or ought to have known was invalid.⁵⁹⁴ Parties are allowed to deviate from the general notice periods where there has been a breach of obligation on the part of the other party. Where the tenant is in breach due to anti-social behaviour on their part the landlord may only give notice of 7 days. However the landlord must produce sufficient evidence. Anti-social behaviour is defined by statute and it is important to set out that a single incident may constitute ASB. Where the breach relates to rent arrears then special rule regarding rent arrears apply as set out below. The landlord has a duty to mitigate the loss from unlawful termination of the tenancy and should make efforts to fill a vacant tenancy.⁵⁹⁵

Part 4 tenancy

As set out earlier, where a tenancy which is governed by the RTA 2004 has been in operation for six months and a valid notice of termination has not been served then a Part 4 tenancy will come into operation with an array of legal consequences for both parties. This affects the termination procedure. In particular, a landlord can only bring about a termination of a Part 4 tenancy on one of six grounds and in doing so he must adhere to the particular requirements of any one of those six grounds⁵⁹⁶ in addition to complying with the normal procedural requirements set out above.⁵⁹⁷

Breach of the tenancy: In the first instance a landlord may terminate a Part 4 tenancy where a tenant has failed to comply with his obligations. However,

⁵⁹⁴ *Ibid.*, s. 74.

⁵⁹⁵ *Kinney and Anor v O'Doherty* TR 26/DR1039/2008.

⁵⁹⁶ RTA 2004, s. 34.

⁵⁹⁷ RTA 2004, Part 5.

the mere presence of a breach is not usually⁵⁹⁸ sufficient to allow a landlord to terminate the tenancy, rather the landlord must first afford the tenant the opportunity to right the wrong complained of by notifying the tenant of the breach and allowing the tenant reasonable time⁵⁹⁹ to correct the failure. Where the tenant fails to remedy the issues within the time then the landlord is entitled to terminate the tenancy.⁶⁰⁰ Where the breach relied upon relates to rent arrears the landlord must first successfully navigate a more complex termination procedure prior to bringing the tenancy to an end. The landlord must notify the tenant of his breach and afford him a reasonable time to remedy the breach. In addition the landlord must serve the tenant with a 14 day warning letter in relation to their rent arrears.⁶⁰¹ This notice must detail the arrears and give the tenant a reasonable period of time to remedy the breach. If the tenant fails to remedy the breach then the landlord must serve a second notice informing the tenant that the rent is due and giving the tenant a further 14 days to pay. Should the tenant fail again then the landlord may terminate the tenancy by serving a notice of termination. In this scenario the landlord is only required to give 28 days' notice.⁶⁰²

Where the dwelling is no longer suitable: Aside from breach of obligation, a landlord may bring a Part 4 tenancy to an end where the dwelling is no longer suitable for its purposes. In particular, regard is to be had to the number of bed spaces as well as the composition of the household.

In contemplation of sale: The landlord may also bring a Part 4 tenancy to an end where he intends to sell the property within three months. When terminating a part 4 tenancy on this ground the landlord must intend to enter an enforceable agreement to transfer the whole of his interest in the dwelling for full consideration within three months.⁶⁰³

Dwelling required for landlords own use: The landlord may also bring a part 4 tenancy to an end where a landlord requires the dwelling for his own uses. However, where the landlord seeks to terminate on this ground he must provide an additional statement to the tenant stating the identity of the new occupants and where the landlord is not one for the occupants the statement must set out the relationship between the new occupants and the landlord, as well as setting out the expected duration of occupation. In addition, where the

⁵⁹⁸ In serious cases, particularly in the event of anti-social behaviour, the presence of the breach will be sufficient in isolation and there the landlord will not be required to give the tenant an opportunity to remedy their behaviour.

⁵⁹⁹ In *Canty v Private Residential Tenancies Board* [2007] IEHC 243 there was a failure to pay rent, and the landlord gave the errant tenant three days to remedy the issue. The court found that this period was not reasonable and instead substituted a 14 days period. As such the period of time given will depend on the nature of the breach complained of and is by nature a relative condition.

⁶⁰⁰ *Barrington-Martin and O'Neill and Anor* TR66/DR695/2007, July 9, 2007.

⁶⁰¹ RTA 2004, s. 67(3).

⁶⁰² RTA 2004 s. 67(2).

⁶⁰³ *O'Gorman v. Slattery* TR36/DR236/2007, 28 March 2007 where a landlord served a notice of termination on the basis of sale however the tenant failed vacate and arrears. In response the landlord changed locks prevent tenant from gaining access. The tenancy tribunal found that changing the locks constituted an unlawful termination of the tenancy and awarded €9,000 compensation for inconvenience. Also see *Boyne v. Hanaway* TR49/DR1262/2008.

dwelling becomes available for letting within 6 months then the landlord is obliged to offer the dwelling to the previous tenants.⁶⁰⁴

Substantial refurbishment: The landlord may also bring a Part 4 tenancy to an end where he intends to substantially refurbish or renovate the dwelling. This ground may only be relied on where the manner of renovation requires the dwelling to be vacated. When seeking to terminate a tenancy on this ground the landlord must supply the tenant with a statement detailing the nature of the reservation and should a tenancy of the dwelling become available then the landlord is obliged to offer the tenant a tenancy.⁶⁰⁵ Where the landlord wishes to terminate a Part 4 tenancy but is unable to rely on one of the 6 permitted grounds he must either serve notice on or after the end of the fourth year or serve notice during the first six months of the tenancy.

After four years, when the first cycle of a Part 4 tenancy comes to an end, the landlord has the opportunity to serve notice of termination on the tenants. However, should the landlord fail to do so and the tenants continue in occupation for six months then, what is termed, a further Part 4 tenancy will come into operation. Under a further Part 4 tenancy the tenant will enjoy all of the same rights as under a Part 4 tenancy and as such the same rules on termination apply. However, because of the duration of the tenancy should the landlord serve notice during the first 6 months of the new Part 4 tenancy the notice period required will be at the longest end of the scale at 112 days' notice.⁶⁰⁶

Should a tenant seek to terminate a further Part 4 tenancy, he may do so by serving a valid notice of termination. Unlike the landlord, the tenant does not have to give a reason for terminating a tenancy in any circumstance.⁶⁰⁷ However, the tenant must give the correct period of notice as set out in Part 5. Where the tenant seeks to terminate the tenancy due to a breach in the tenancy a shorter notice period applies. However, as set out above, the tenant must give the landlord an opportunity to remedy the breach and should the landlord, having been notified of the breach, fail to remedy the failure, the tenant may serve a shorter notice of termination.⁶⁰⁸

There are two circumstance where there will be a deemed termination of a Part 4 tenancy. Firstly, where the tenant vacates but serves a notice of termination which fails to give the required period of notice, and secondly where the tenant vacates the dwelling and fails to serve a notice of termination while being in arrears for over 28 days.⁶⁰⁹ Where the tenant leaves belongings in the dwelling the landlord must keep a list of the items and is not allowed to sell them.⁶¹⁰

⁶⁰⁴ *Barrett v. Ward* TR135/DR963/2007, 31 March 2008, landlord failed to offer the dwelling to the previous tenants and was imposed with paying compensation of €3,300 to the tenants.

⁶⁰⁵ *Hewer v. Williams* TR21/DR427&1252/2008, 30 July 2008.

⁶⁰⁶ RTA 2004, ss 42 and 47.

⁶⁰⁷ RTA 2004, s. 34 applies only to the landlord.

⁶⁰⁸ RTA 2004, s. 68(2).

⁶⁰⁹ These are subject to the provisions the provisions relating to multiple tenants in Ch 6 of Part 4 (37.5 so although one tenant may have vacated the dwelling the tenancy may continue to exist as between any other tenants and the landlord.

⁶¹⁰ Although the RTA 2004 doesn't provide for this the Private Residential Tenancies Board require the landlord to make a list of the items: *Cootte v. Arisekola* TR128/DR709/2007, 27 March 2008. Also Housing (Miscellaneous Provisions) Act 1992 s. 19 sets out that no distress may be levied, as such the landlord cannot sell the belongings.

- **Statutory restrictions on notice:**

- **for specific types of dwellings, e.g. public dwellings; rental dwellings recently converted into condominiums etc.**

Under the Housing (Miscellaneous Provisions) Act 1992 a residential tenancies, i.e. both public and private, the minimum notice period is 28 days and this applies to all tenancies. However as set out above longer notice periods apply where a tenancy has been in operation for a longer period. However, a shorter notice period may apply to local authorities tenancies by virtue of the eviction procedure set out in section 62 of the Housing Act 1966 (see below).

- **in favour of certain tenants (old, ill, in risk of homelessness)**
- **for certain periods**

Termination of tenancies which fall outside of the RTA 2004 is governed by a range of statutes and various principles developed through the common law. In general there were two primary methods for bringing a tenancy to an end; serving a notice to quit or a forfeiture notice or, if it is a fixed term, expiry. In all cases where the tenancy is a residential tenancy then termination is governed by the Housing (Miscellaneous Provision) Act 1992. Prior to the 1992 Act, termination of periodic tenancies was quite straight forward; where the tenancy was weekly/monthly then all that was required was to give one week/month notice to quit in writing.⁶¹¹ The form of the notice was not strictly proscribed, and so long as it was clear from the notice that the landlord or tenant wishes to terminate the tenancy then that would suffice. The notice should give details of the tenancy, including the term, the identity of the parties, the amount of rent payable and a description of the dwelling.⁶¹² A periodic tenancy may be terminated without giving a reason. The Housing (Miscellaneous Provision) Act 1992 introduced a minimum notice period of twenty eight days for periodic tenancies.⁶¹³ However, this period acts as a basic notice period with parties free to agree to longer notice periods.⁶¹⁴ Where there is a yearly tenancy then notice of 183 days (a half year) is required.⁶¹⁵ Under the 1992 Act notice must be served pre commencement. The Act 1992 has no application to fixed term tenancies of which the term either expires or where it is terminated early then forfeiture is the appropriate procedure.

Local authority tenancies

Local authority tenancies are subject to various specialist statutes as well as the general principles of pre-2004 tenancy law which govern the termination of tenancies. When leasing housing to households experiencing need, the housing authority is performing a critical social function. Nonetheless, at the heart of the relationship is a legal arrangement which confers on both parties a range of rights and obligations, as would be expected in any tenancy. However, legal regulation of local authority tenancies is substantially more complex than the regulatory system

⁶¹¹ *Ibid.*, s.16(1).

⁶¹² *Glory Estates Ltd v. Mooney*, unreported, HC, 13 May 1971, at pp 5-6.

⁶¹³ Housing (Miscellaneous Provisions) Act 1992, s.16(1).

⁶¹⁴ *Ibid.*, s.16(3).

⁶¹⁵ *Wright v. Tracey* (1874) IR 8 CL 478, *Kane v. McCabe* [1952] Ir. Jur. Rep. 41.

operating in the private rented sector. Much of this complexity derives from the sheer volume of legislative intervention in the area of local authority housing over the past half century. Private rented tenancies and social rented tenancies are treated in Ireland as distinct animals, regardless of their shared legal ancestry. In explaining this treatment commentators have drawn attention to the underlying social function driving local authority tenancies. Indeed, it is fair to say that in Ireland local authority housing has traditionally provided housing as a last resort. As such the tenants and their tenancies have not been regarded with the same legal consequence as those operating in the private rented sector. Rather local authority tenancies have been understood under a charitable rubric rather than one attracting serious legal consideration. As a result the standard of regulation present in the private rented sector is far more sophisticated than that operating in local authority housing.

Many local authority tenancies are weekly tenancies. As discussed previously the nature of a periodic tenancy is that security of tenure depends on the cycle at instance, i.e. weekly/monthly/etc, subject of course to the four week minimum notice period imposed on all periodic tenancies by the Housing (Miscellaneous Provisions) Act 1992,⁶¹⁶ while in a fixed term tenancy security of tenure depends on the term agreed upon between the parties. In local authority housing, periodic tenancies are common.⁶¹⁷ This means that security of tenure for local authority tenants holding under a periodic tenancy is decidedly limited. However in practice local authorities are reluctant to terminate a tenancy and in many cases it is only as a last resort in response to a serious breach, e.g. anti-social behaviour, of the tenancy obligations. Therefore local authority tenants often enjoy practical security for as long as their need is present rather than in accordance with the technical security attaching to their tenancy. As such termination procedures are rarely invoked however when they do arise it is usually at the end of a lengthy dispute concerning a serious breach of the tenancy. However, the local authority⁶¹⁸ is an organ of state and as such is affected by various public law duties and in particular the provisions of the European Convention on Human Rights.⁶¹⁹ This has significant consequences for the parties to the tenancy as evidenced in a range of cases which concerned issues arising after termination of the tenancy.⁶²⁰ Given that local authorities provide housing as a last resort to households who are unable to access suitable alternative housing any termination action will usually result in an eviction action and in many cases may lead to the evicted tenant applying to the housing authority for housing support. While this may explain the reluctance of housing authorities to use termination procedures, it is an important fact as it means that terminations of tenancies will often invoke human rights concerns as the household in question often have no other accommodation available. This is dealt with in the following section.

⁶¹⁶ Housing (Miscellaneous Provisions) Act 1992, s. 16(1).

⁶¹⁷ See cases where dispute varies however weekly tenancy.

⁶¹⁸ Operating a section of the housing system which is meant to be guided more by a social than by commercial criteria.

⁶¹⁹ As implemented by the European Convention on Human Rights Act 2003.

⁶²⁰ *Donegan v. Dublin City Council and Dublin City Council v. Gallagher* [2012] IESC 18.

- **after sale including public auction (“emptio non tollit locatum”), or inheritance of the dwelling**

This is a ground for termination of a Part 4 tenancy.⁶²¹

- **Requirement of giving valid reasons for notice: admissible reasons**
- **Objections by the tenant**
- **Does the tenancy have “prolongation rights”, i.e. the statutory right to stay for an additional period of time (outside the execution procedure)?**

For notice of termination in private rented housing to be valid, the termination must comply with a number of formalities. The notice must be in writing, it must be signed and must state the termination date as well as the date the notice was served.⁶²² If the tenant fails to supply valid notice of termination then there will be no obligation on the landlord to bring the tenancy to an end.⁶²³ The amount of notice the tenant will be required to give depends on the kind of tenancy that they have and also on the duration of the tenancy. For all tenancies the minimum written notice period is 28 days however in general the length of notice varies according to the duration of the lease i.e. longer notice periods apply for tenancies of longer duration subject to a 28 day minimum.

The RTA 2004 sets out a number of requirements with regard to the notice of termination. Firstly the notice must be written as oral notice will not suffice.⁶²⁴ The notice must be signed by the landlord/tenant or authorised agent and must set out the date of service. The notice must state the reason for termination where the tenancy has existed for in excess of six months. In addition the tenancy must specify the termination date and state that the tenant has twenty four hours of the termination date to vacate the dwelling as well as stating that any issues as to the validity of the notice must be referred to the Private Residential Tenancies Board. Where there are multiple tenants seeking termination, only one signature on behalf of the others is required to create a valid notice of termination.⁶²⁵ The notice must be addressed to the person concerned and it must be served in one of three ways; delivered in person, left at the address or sent in the post.

- **Challenging the notice before court (or similar bodies)**

Under the RTA 2004, where either party fails to serve a valid notice when effecting a termination the Private Residential Tenancies Board is empowered to grant a range of remedies including damages for unlawful termination.⁶²⁶ The Board may also reinstate the tenant should the reason given for the notice of termination prove false.

⁶²¹ See section 6.6 above.

⁶²² RTA 2004, s. 62.

⁶²³ RTA 2004, s. 36(1) and s. 62(1)(e).

⁶²⁴ RTA 2004 s. 62(1)(a); *McKenna v. Nabeal Anor* TR52/DR651/2008, 14 November 2008.

⁶²⁵ RTA 2004 s.73, the notice must state that one tenant signs on behalf of the rest while the others must be named.

⁶²⁶ RTA 2004 s.115. Also see *Harpur v. Kelly* TR03/DR69/2007, 16 February 2007 where the landlord served a 5 day notice requesting the tenant to vacate when the tenant failed to leave the landlord changed the locks. Damages of €5,000 were awarded in recognition of the distress caused and the

With regard to local authority tenancies, as the local authority is a public body the tenant may apply to have a decision made by the local authority which affects them reviewed by the courts.⁶²⁷ The court are not concerned with outcome rather with judicial review is focused upon whether the process through which a decision was made was fair. However, judicial review has limited practical use where a local authority tenant has a grievance over the issuing of a notice. A major disadvantage is the high costs associated with taking such an action and the unavailability of legal aid for such actions.

- **in particular claims for extension of the contract or for granting of a period of grace under substantive or procedural law**

Generally speaking, where valid notice has been served by the landlord then the tenant must vacate the premises by the expiry of the notice period however parties are free to agree to an extension. Where the tenant is concerned that an illegal eviction is threatened then they may apply to court for an injunction preventing their eviction however such action is rare.

- **Termination for other reasons**
 - **Termination as a result of execution proceedings against the landlord (in particular: repossession for default of mortgage payment)**

Where a landlord defaults on a mortgage over the demised premises the creditor will exercise their rights of security over the premises in such a way as to best realise the security and usually this will involve a sale of the premises. Where the premises are the subject of a residential tenancy then the creditor may terminate the tenancy in expectation of sale in the manner set out above.

- **Termination as a result of urban renewal or expropriation of the landlord. In particular:**

Provided valid notice is served then the tenant must vacate the premise by the date required.

fact that the tenant had no alternative accommodation. Damages for illegal eviction cannot be claimed by a tenant who left a dwelling voluntarily.

⁶²⁷ Procedure governing conventional judicial review is to be found in of the Rules of the Superior Courts 1986 to 2011 Order 84, which includes amendments made by Rules of the Superior Court (Judicial Review) 2011 (SI No. 691/2011).

- What are the rights of tenants in urban renewal? In particular: What are the rules for rehousing in case of demolition of rental dwellings? Are tenants interested parties in public decision-making on real estate in case of urban renewal?

The rights of tenants in urban renewal are limited but tenant consultation is required on certain housing estate management issues.⁶²⁸

Termination of tenancy contracts

- **Mutual termination agreements**
- **Notice by the tenant**
 - **Periods and deadlines to be respected**

Prior to 2004 one year fixed tenancies terminated on expiry of the term automatically without any further action required by either party. However, this common law rule no longer applies to RTA tenancies. So while the practice of entering a one year fixed term tenancy remains popular the changes introduced in 2004 mean that after six months occupation and in the absence of a valid notice of termination the tenant will acquire Part 4 tenancies rights regardless of the one year fixed term. Parties are at liberty to agree to additional terms so long as they are not at odds with the RTA 2004. As such parties may agree to security of tenure terms which are more advantageous to the tenant than would be available in the Part 4 tenancy, that is by agreeing to a fixed term in excess of 4 years. In any event a fixed term tenancy may only be terminated in three limited circumstances; breach of the tenancy, where the landlord refuses consent to an assignment or sub-letting of the tenancy by the tenant and finally where the lease provides for it.

⁶²⁸ Housing (Miscellaneous Provisions) Act 2009, s. 54.

Table for 6.6 Termination of tenancy contracts

	Main characteristic(s) of RTA tenancies	Main characteristic(s) of local authority tenancies
Mutual termination	Subject to valid notice	Subject to valid notice
Notice by tenant	Notice period varies according to duration	Must comply with basic notice period of 4 weeks
Notice by landlord	Notice period varies according to duration of the tenancy and the reason for termination	Must comply with basic notice period of 4 weeks
Other reasons for termination	Must comply with statute	Must comply with statute

6.7 Enforcing tenancy contracts

- **Eviction procedure: conditions, competent courts, main procedural steps and objections**
- **Rules on protection (“social defences”) from eviction**
- **May rules on the bankruptcy of consumers influence the enforcement of tenancy contracts?**

Where a valid notice of termination⁶²⁹ has been served but the tenant refuses to hand over possession of the dwelling then the landlord will have to make an application for ejectment before the courts. There are a number of different forms of proceedings which are available to the landlord, these include: the Ejectment Civil Bill on title based on forfeiture, the ejectment for non-payment of rent, the ejectment civil bill for overholding, and finally ejectment for deserted premises. Where a tenant is in breach of his tenancy obligations the landlord may have recourse to forfeiture of the tenancy. In particular, forfeiture is appropriate where the tenant disclaims the landlord’s title, is in breach of a condition of the tenancy or there has been a breach of a covenant. When relying on forfeiture as a remedy the landlord must carefully follow certain statutory procedures, failure to do so will result in the landlord losing the right to forfeit the lease. This is due to the equitable nature of the remedy which devolves to the court a principled discretion to grant or withhold such relief. The landlord must serve notice on the tenant under section 14 of the Conveyancing Act 1881. After serving notice the landlord should allow a reasonable time for the tenant to remedy the breach. In the event that the tenant fails then the landlord may then make a demand for possession and re-entry. Re-entry can only occur where it can be done peaceably, where this is not possible then the landlord will be required to issue proceedings to recover possession based on forfeiture. A tenant may oppose ejectment proceedings brought by a landlord before the circuit court. This will allow the court to inquire as to whether correct procedures have been followed. The relief may be available where it is the first occasion that the tenant has been in breach of the tenancy. In such cases the court may make use of other remedies including ordering the payment of arrears etc.

A local authority can serve notice to quit and then seek an order for possession for a breach of the tenancy agreement. A local authority tenant can only be evicted from their homes on the strength of a court order for possession. Termination of the tenancy is an aspect of the management of local authority housing.⁶³⁰ Originally, section 62 of the Housing Act 1966⁶³¹ provided a local authority with an accelerated method of recovering possession of a dwelling. While the provision has been relied on by local authorities for over forty years, its continued use⁶³² has been called in to

⁶²⁹ See section 6.6 above.

⁶³⁰ Housing Act 1966 s. 58 sets out provisions regarding management and control of local authority dwellings and any ancillary works or service. This section will be replaced by Housing (Miscellaneous Provisions) Act 2009 s. 28 from a date to be announced.

⁶³¹ Ejectment proceedings were originally developed under the Landlord and Tenant Law Amendment Act Ireland 1860 (Deasy’s Act), s. 86.

⁶³² This provision has provoked much litigation see: *Dublin City Council v. Fennell* [2005] 1 I.R. 604, *Leonard v. Dublin City Council* [2008] IEHC 79; *Donegan v. Dublin City Council* [2008] IEHC 288; *Dublin City Council v. Gallagher* [2008] IEHC 354, O’Neill J.; *Pullen v. Dublin City Council* [2008] IEHC 379, Irvine J.; and *Pullen v. Dublin City Council* (No. 2) [2009] 2 ILRM 484.

question by a recent Supreme Court judgment.⁶³³ Section 62 provided a summary eviction procedure against a tenant overholding despite the service of a notice of termination . The authority could apply to the District Court for the issue of a warrant, and the court was required to issue this if satisfied that a proper demand had been made. In *Donegan and Gallagher* the Supreme Court held that this was incompatible with the tenant's trial rights under the European Convention on Human Rights.⁶³⁴ However the eviction procedure set out in section 62 is still used by local authorities in cases where the facts are undisputed, unlike the *Donegan* case.

Table for 6.7 Enforcing tenancy contracts

	Main characteristic(s) of RTA tenancies	Main characteristic(s) of local authority tenancies
Eviction procedure	Subject to statutory termination procedure and variable minimum notice requirements	Housing Act 1966, s. 62 provides for an accelerated eviction procedure subject to basic notice requirements
Protection from eviction	Strong	Weak
Effects of bankruptcy	Most likely termination of the tenancy	-

⁶³³ *Donegan v. Dublin City Council, Ireland and the Attorney General and Dublin City Council v. Gallagher* [2012] IESC 18

⁶³⁴ *Ibid.*

6.8 Tenancy law and procedure “in action”

The practical role of private rented housing can only be realistically assessed when the practical functioning of the legal system in our field (“tenancy law in action”) is taken into account:

- **What are the roles, tasks and responsibilities of associations of landlords and tenants?**

The main landlord association in Ireland is the Irish Property Owners' Association (the National Landlords Representative Association, which sets out to protect and promote the interests of private residential landlords and encourage the supply of good quality accommodation and professional standards of management. The Association lobbies on behalf of landlords and also provide information and advice services to landlords.

There is no national association which represent the interests of private rental tenants in the legislative process. Nor is there a national association to represent local authority tenants.⁶³⁵

What is the role of standard contracts prepared by association or other actors?

The contents of a tenancy agreement is not strictly regulated, indeed it is possible to create a tenancy orally. As such parties have a lot of freedom to set the terms of the agreement, subject to statute. However, standard form contracts are common in the residential sector in Ireland.

- **How are tenancy law disputes carried out? Is tenancy law often enforced before courts by landlords and tenants and/or are - voluntary or compulsory - mechanisms of conciliation, mediation or alternative dispute resolution used?**

The RTA 2004 dramatically reformed regulation of the private rented sector. Prior to 2004, the courts dealt with disputes emanating from the rented sector and with regard to tenancies which are not RTA tenancies the courts remain the main avenue for dispute resolution. However with the reforms of 2004 the Private Residential Tenancies Board is now the appropriate forum for dealing with disputes in the private rented sector. As well as providing a range of alternative dispute resolution services to parties, there are also conventional dispute resolution services available with parties at liberty to appeal to a tenancy tribunal. In order for a landlord to avail of the dispute resolution services of the Board he must have registered the tenancy in accordance with the registration requirements of the 2004 Act. However, a tenant may avail of these services regardless of whether the landlord has registered the tenancy or not. The process begins with one party making an application to the Board, including a range of details in the application concerning the tenancy and the parties concerned, and, where possible, copies of essential documents such as the tenancy agreement etc. A fee is required before the application will be processed. The jurisdiction of the Board is set out in the RTA 2004 and this extends to applications by third parties and licensees in certain limited situations

⁶³⁵ Kenna, *Housing Law Rights and Policy*, pp. 833-834. See Part 1 [1.1.] D above.

The Board, upon considering the issue to be one that is relatively straightforward, they may contact both parties, to allow them come to an agreement prior to formal action being taken.⁶³⁶ Where this fails to resolve the issue then the formal dispute resolution process comes into operation. There are three alternative forums available including mediation, adjudication and tenancy tribunal. The first stage of the process involves the parties engaging in either adjudication or mediation. Where this is unsuccessful then parties will have their dispute heard by a tenancy tribunal. After mediation the mediator will submit a report containing all matters agreed by the parties. The parties have twenty one days to confirm the agreement, upon which the Board shall issue a determination order which is final and cannot be appealed.⁶³⁷ Where no agreement is reached then the dispute will be referred to a tenancy tribunal for determination. Adjudication involves a hearing where both parties have the opportunity to represent their side of the dispute. The adjudicator may determine a dispute by adopting an agreement reached which the parties have twenty one days to confirm, upon which the Board must issue a determination order which is final and cannot be appealed.⁶³⁸ Where no agreement is reached then the adjudicator must proceed to determine the dispute. The parties may apply to the tenancy tribunal where they are unhappy with the decision. Each tenancy tribunal is composed of three individuals appointed by the Board. The parties are given at least twenty one days' notice prior to the tenancy tribunal.⁶³⁹ Tribunal hearings are conducted in public, during which parties will have the opportunity to argue their case and present evidence.⁶⁴⁰ After hearing and considering all of the evidence the tribunal will make a determination decision. The tribunal will notify the Board of its decisions after which the Board shall make a determination order, which will be binding on the parties should neither party appeal to the High Court⁶⁴¹ in the twenty one days following the decision. There are a wide range of remedies available through the dispute resolution process. Adjudicators the tenancy tribunal have flexible powers to makes directions which they deem appropriate for the purposes of determining a dispute.⁶⁴² However, they cannot make a direction concerning title to lands or property. Directions may be made awarding damages and arrears of rent or other charges. However, the amount of damages cannot exceed €20,000 unless it consists of rent or other charges, in which case, a maximum amount of €60,000 will apply.⁶⁴³ In addition an adjudicator or tenancy tribunal may direct a party to pay all or some of the costs incurred by the adjudicator or tenancy tribunal.

- **Do procedures work well and without unreasonable delays? What is the average length of procedures? Are there peculiarities for the execution of tenancy law judgments (e.g. suspensions of, or delays for, eviction)?**

In the Private Residential Tenancies Board there are delays of up to 12 months which is proving particularly damaging where rent is not paid to the landlord during

⁶³⁶ RTA 2004, s. 92(1)(b) and (2).

⁶³⁷ *Ibid*, 96(3)(a).

⁶³⁸ 97.4.a.b.

⁶³⁹ 104.5.a

⁶⁴⁰ 104.6

⁶⁴¹ RTA 2004, s. 123(3) an appeal to the High Court may only be made on a point of law.

⁶⁴² RTA 2004, s. 115(1).

⁶⁴³ *Ibid*.

this period or where a tenant needs a deposit returned.⁶⁴⁴ There were 196 Tribunals convened in 2012, a 10% increase over the previous year. On average it took six months from the date granting an appeal to the issue of a determination in 2012. Approximately 20% of all disputes referred to the Board in 2012 related to deposit retention. The number of claims in this area has led the Government to consider introducing an independent deposit retention scheme.⁶⁴⁵

- **Are there problems of fairness and justice? Are there problems of access to courts especially for tenants? What is the situation concerning legal fees, legal aid and insurance against legal costs?**

The courts system has been criticised as inappropriate for delaying with general tenancy disputes. Issues relating to costs, delays and uncertainty have meant that for many tenants and landlords the courts did not represent an efficient method of resolving general disputes. In many ways the dispute resolution reforms introduced by the Private Residential Tenancies Board have gone a long way towards providing a fair, transparent, cost-effective and relatively efficient system. For non RTA tenancies, the courts remain the primary forum for dispute resolution. Furthermore, there is no complaints procedure for local authority tenancies and access to remedies for poor housing conditions is non-existent.

- **How about legal certainty in tenancy law? (e.g.: are there contradicting statutes, is there secondary literature usually accessible to lawyers etc?)**

Residential tenancy law is exceedingly complex and difficult to navigate, the dispute resolution structures which have been put in place by the reforms operate in a manner which provides legal certainty, particular with regard to the conclusive legal status of the determination order.

- **Are there “swindler problems” on the rental market (e.g. flats not belonging to whom fraudulently advertised on the internet as rental offers by swindlers)?**

There is no evidence of a significant problem.

- **Are the areas of “non-enforcement” of tenancy law (such as legal provisions having become obsolete in practice)?**

The RTA 2004 provides a comprehensive framework for regulating tenancies in the private rented sector. There are no major areas of non-enforcement.

- **What are the 10-20 most serious problems in tenancy law and its enforcement?**

See indicative questions below.

⁶⁴⁴ PRTB, *Annual Report and Accounts* (Dublin: Stationery Office, 2012).

⁶⁴⁵ See section 6.4 above.

7 Effects of EU law and policies on national tenancy policies and law

7.1 EU policies and legislation affecting national housing policies

EU policies and legislation have had a significant impact on national housing policies and in many areas EU initiatives have become embedded into various national tenancy laws.⁶⁴⁶ Aside from the fundamental freedoms, EU law has had a significant impact on housing law and policy in Ireland in a number of areas including; consumer law and policy, competition and state aid law, regulation of construction, energy saving rules, private international law including international procedural law, anti-discrimination legislation, tax law, social policy against poverty and social exclusion, constitutional law affecting the EU and the European Convention of Human Rights and the harmonisation and unification of general contract law. EU laws and policies are also contributing to the collection of statistics on housing in Ireland.

EU law and housing provision

EU law has a significant impact on the provision of housing at a macro level, especially new build housing, simply because the provision of housing is taking place within a single market to which internal market principles apply.

Local authorities and social landlords (mainly housing associations) are mass providers of housing with a public task, and as such their activities must fall within public procurement rules. When placing construction contracts they must ensure that all contractors in Europe have an opportunity to tender for work on a fair basis. EC public procurement law coordinates procurement procedures for the award of public contracts for work, supply and service⁶⁴⁷ in line with principles of equal treatment, transparency and competition.⁶⁴⁸ This regime has a direct impact on housing, for instance procurement law regulates the construction of local authority housing⁶⁴⁹ but also regulates public private partnership construction arrangements.

Work takes place within an internal market regime. This ensures that construction companies and workers can move freely around the EU. It also ensures a single market in construction materials, standardising specifications and making products cheaper as a result of free competition across the single market.⁶⁵⁰ Two other major concerns are safety and energy efficiency. Here the EU has been very active. In terms of safety, specific rules relate to:

air-conditioners,⁶⁵¹

lifts,⁶⁵² and

⁶⁴⁶ Footnotes here give brief details of legislation; for full details refer to the table of the transposition of European legislation affecting tenancies into Irish law at the end of point 3, see section 7.3 below.

⁶⁴⁷ Directive 2004/18/EC; European Communities (Award of Public Authorities) Regulations 2006, SI No. 329/2006; previous regulations in this area have been repealed.

⁶⁴⁸ *SIAC v. Mayo County Council* [2002] 2 ILRM 401.

⁶⁴⁹ Directive 2004/18/EC, art. 34.

⁶⁵⁰ Council Directive 89/106/EEC; European Communities (Construction Products) Regulations 1992, SI No. 198/1992.

⁶⁵¹ Commission Regulation (EU) N° 626/2011; European Union (Energy Labelling) Regulations 2011, S.I. No. 366/2011.

⁶⁵² Directive 95/16/EC; European Communities (Lifts) Regulations 1998, S.I. No 246/1998 as amended by S.I. No. 406/2008.

boilers⁶⁵³.

In terms of energy efficiency the regulations just referred to on air-conditioners and boilers are significant here too, as are a whole raft of measures designed to tackle the huge crisis of global warming.

A series of directives have addressed the energy performance of new and existing buildings, including of course homes designed for rental as dwellings.⁶⁵⁴ The EU has sought to promote the use of renewable energy in buildings.⁶⁵⁵ A recent directive set energy saving targets for large buildings⁶⁵⁶ and this is due for transposition now.⁶⁵⁷ On a different tack the EU has promoted a single market in gas and electricity.⁶⁵⁸

EU social policy against poverty and exclusion

The aim of the European Union's social policy is to promote employment, improve living and working conditions, provide an appropriate level of social protection and develop measures to combat exclusion. The EU Programme for Employment and Social Solidarity (PROGRESS Programme) is directed toward supporting the development and coordination of EU policy in employment, social inclusion and social protection, working conditions, anti-discrimination and gender equality within EU States. PROGRESS is a key part of the Europe 2020 Strategy, which sets out a ten year growth strategy for the EU. Ireland's role in implementing the Europe 2020 strategy has been impacted by the economic recession. In December 2010 Irish authorities agreed an Economic Adjustment Programme with the European Commission, European Central Bank and the International Monetary Fund.

Ireland's National Reform Programme is directed towards achieving the Europe 2020 targets, however this has been influenced by the Stability/Convergence Programme, which set out Ireland's budgetary plans until 2013. Under the Economic Adjustment Programme for Ireland, the immediate objectives were strengthening and comprehensive overhaul of the banking sector; fiscal adjustment to restore fiscal sustainability, correction of excessive deficit by 2015 and growth-enhancing reforms, in particular on the labour market, to allow a return to a robust and sustainable growth. The *National Reform Programme for Ireland 2013 Update under the Europe 2020 Strategy* has set out the activities pursued by the Irish Government towards achieving the Europe 2020 targets.⁶⁵⁹

⁶⁵³ Directive 92/42/EEC amended by Directive 93/68/EEC; European Communities (Efficiency Requirements For New Hot Water Boilers Fired With Liquid Or Gaseous Fuels) Regulations 1994, SI No. 260/1994 as amended by SI No. 72/1995.

⁶⁵⁴ Directive 2010/31/EU; European Union (Energy Performance of Buildings) Regulations 2012, SI No. 243/2012. The previous directive 2002/91/EC was transposed by SI no 666/2006).

⁶⁵⁵ Directive 2009/28/EC (amending and repealing Directives 2001/77/EC and 2003/30/EC); European Communities (Renewable Energy) Regulations 2011, SI No. 147/2011; Sustainable Energy Act 2002 (Section 8(2)) (Conferral of Additional Functions – Renewable Energy) Order 2011.

⁶⁵⁶ Directive 2012/27/EU of the European Parliament and Council of 25 October 2012 on energy efficiency (OJEU 14.11.2012 N° L315/1). It amended Directives 2009/125/EC and 2010/30/EU and repealed Directives 2004/8/EC and 2006/32/EC.

⁶⁵⁷ Transposition date June 2014.

⁶⁵⁸ Directive 2009/72/EC (repealing Directive 2003/54/EC); European Communities (Internal Market in Electricity and Gas) (Consumer Protection) Regulations 2011, SI No 463/2011.

⁶⁵⁹ Government of Ireland, *National Reform Programme for Ireland 2013 Update under the Europe 2020 Strategy* (Dublin, Stationery Office, 2013), p. 32.

"Ireland's active inclusion strategy for meeting the national social target for poverty reduction is based on the 'developmental welfare state', as outlined in the *National Action Plan for Social Inclusion*. This adopts a lifecycle approach which places the individual at the centre of policy development and delivery"⁶⁶⁰

This has three main policy components:

- Adequate minimum income
- Activation and inclusive labour markets
- Access to quality services

For the purposes of the present report, attention will be focused on the aspects relating to housing. As part of the national social target for poverty reduction housing policies and laws have been introduced. With regard to tenancy law, perhaps the most wide reaching reform has been the introduction of the Housing Assistance Payment which removes the barrier to employment which was present under the Rent Supplement scheme. It is too early to assess the impact of these structural reforms as they are still being implemented. However, social housing policy is also recognised as a critical area in working against social exclusion. The *2013 Update* set out that households living in social housing continue to be disproportionately affected by poverty, particularly in spatial concentrations.⁶⁶¹ In detailing Ireland's policy on social inclusion The *National Reform Programme for Ireland 2013 Update under the Europe 2020 Strategy* makes repeated reference to the *National Action Plan for Social Inclusion*. However, this policy document was drafted prior to the onset of the economic crises and is now outdated. This is particularly evident in the provisions relating to housing policy. Indeed, in the context of addressing housing need in a socially inclusive manner, the housing policy set out in this document is predicated on the housing supply rates of the housing boom.⁶⁶² Indeed many of the commitments made in the body of this document have not been undertaken to date.

Housing statistics

Various EU laws⁶⁶³ have formed the basis for the introduction of the Residential Property Price Index in 2010 and given the important role of meaningful statistics in the development of housing policy, such initiatives are likely to inform various housing policies.

⁶⁶⁰ *Ibid.*

⁶⁶¹ *Ibid.*

⁶⁶² Office for Social Inclusion, *National Action Plan for Social Inclusion 2007-2016* (Dublin, Stationery Office, 2007), pp. 15, 61, 62, 63.

⁶⁶³ Council Regulation (EC) No 2495/95; Commission Regulation (EC) No 1920/2001; Regulation (EC) No 2214/96, as amended by Commission Regulation (EC) No 1749/1999; Council Regulation (EC) No 1687/98; and Recommendation 65/379/EEC, these have formed the basis for the introduction of the Residential Property Price Index.

7.2 EU policies and legislation affecting national tenancy laws

EU legislation has had a significant impact on peripheral aspects of national tenancy laws, but its effect is pointillistic in character as is inevitable given the Treaty provision excluding EU direct competence over property law.⁶⁶⁴ EU activity is appropriate in order to facilitate the free operation of the single internal market, and it is in this field that EU activity has a major effect on national rental markets, often as it were by a glancing blow.

Free movement of landlords

One important aspect of the Maastricht reforms was the freeing of capital to move across Europe, and one aspect of this would be the freedom for capital from other EEA nationals to move to Ireland to invest in the private rental stock.⁶⁶⁵ This freedom exists, but it is not clear to what extent investors from elsewhere in the EEA have in fact bought buy to let property. As explained in part 1 of the Report Ireland is only just recovering from the housing bubble created in the years before 2007 and at present the housing market in Ireland is probably unattractive to outside investors. If there was a significant inflow of workers seeking employment in Ireland as the economy recovers from the catastrophe that has befallen it, this might draw in investment capital which in turn might help the housing market to recover. There are important money laundering controls to prevent money with illicit sources flooding into the Irish housing market.

Free movement of tenants

More evident are the effects of free movement of workers from other EEA countries in search of employment in Ireland. All of these are potential entrants to the rental market, in the short term to the private rented sector and in the longer term to public and social housing. This is ironic given the trend for emigration out of Ireland over the centuries. In contrast to the United Kingdom, numbers of migrants are smaller and the effects of the single market largely uncontroversial. So there is no question that EEA workers will have the right of access to the Irish employment market and equal access to the rental market. They will have freedom to move money into Ireland in order to make initial payments of rent and deposits. Workers from eastern Europe may find jobs that are well paid by their standards, but also rent that are high as well.

There is no restriction on the purchase of secondary homes for EU citizens and there are no cases in which a licence to buy a house is needed. However, in certain areas of Ireland, particularly rural areas, planning applications for new one off housing constructions is restricted must demonstrate a local connection to the area. in rural areas under strong urban influence an applicant must demonstrate that their proposal constitutes a genuine rural generated housing need based on their own roots in or links to a particular rural area.⁶⁶⁶ In this regard, the applicant may be

⁶⁶⁴ Treaty on the Functioning of the EU art. 345; formerly Treaty of Rome art. 295. The form of this article suggests that “property” is defined by national rules rather than having an autonomous definition.

⁶⁶⁵ P. Sparkes, *European Land Law* (Oxford: Hart, 2007) ch. 1.

⁶⁶⁶ Mayo County Council, *Draft Mayo County Development Plan 2014-2020*, March 2013. p 7.

required to demonstrate a connection with the area. This means persons who are an intrinsic part of the local rural community due to their having spent substantial periods of their lives, living in the rural area in which they propose to build a home. Within this context a period of 5 years living in the area will satisfy the requirement. For persons moving to the area to take up full time or part time employment, that employment would also have to last for a period of over 5 years.⁶⁶⁷

Ireland has no controls on renting targeted at specific nationalities, and no controls even in the pressured areas of western Ireland.⁶⁶⁸

Choice of tenant

Irish anti-discrimination legislation draws heavily from EU law. In particular, the anti-discrimination principles of Directives issued by the Council in 2000⁶⁶⁹ and 2004⁶⁷⁰ have found their way on to the Irish statute book in three Acts, the Equal Status Act 2000, the Equality Act 2004 and the Civil Law (Miscellaneous Provisions) Act 2008. This legislation collectively prohibits discrimination on nine ground including nationality, gender, family size, family status, marital status, disability, age or membership of the Traveller community. With regard to tenancy law this means that a landlord cannot discriminate against a tenant based on one of these grounds.

Marketing controls on rentals

(1) The conceptual status of the tenant in EU law

Clearly a crucial issue in the development of EU law in its interface with tenancy agreements is the issue of EU competence, and that turns on how a tenant is perceived conceptually. A residential tenant lies somewhere between a commercial purchaser of land (largely outside the scope of EU protection) and a consumer buying goods (fully within the scope of the internal market). Just where on that scale does a residential tenant lie? If one sees a tenant as a person acquiring a legal leasehold estate in land, a purchaser of real property, the tenant will look very much like a purchaser, a person subject largely to domestic law and needing a knowledge of domestic law in order to be safe. It should be emphasised that in common law systems a tenancy agreement is seen as an estate in land and so likely to fall within the scope of the exclusion from EU competence over the 'rules of property ownership'.⁶⁷¹

However, it is also clearly possible to see a tenant a consumer, as a contracting party, a person consuming the service of the provision of accommodation by the landlord. A residential tenant can be seen as a consumer, taking a service – making accommodation available to the tenant - from a landlord in a superior bargaining position. There is thus competence for the EU to seek to address this imbalance. It can scarcely be said that the EU has adopted a coherent view of the position of consumers of land. In general land purchase is excluded from EU legislation, and seems a subject matter ideally suited to national regulation. The position of

⁶⁶⁷ These requirements are present in a number of local authority areas.

⁶⁶⁸ Sparkes, *European Land Law*, ch. 2.

⁶⁶⁹ Directive 2004/113/EC (equal treatment between men and women in e.g. access to services).

⁶⁷⁰ Directive 2000/43/EC (equal treatment irrespective of racial or ethnic origin).

⁶⁷¹ Treaty on the Functioning of the EU art. 345; formerly Treaty of Rome art. 295.

residential tenants lacks coherence. A person seeking to rent a home appears to be an archetypal consumer and someone in need to protection, and this is doubly so where a person is moving in pursuance of his freedom of movement to seek employment and needs to rent a home in a foreign country. This fits naturally with the conceptualisation of the tenancy in civilian systems as a hire contract, with little differentiation of the hire of a car and the rental of a flat.⁶⁷² It should also be observed that the problem of competence becomes much less of a problem the less that an occupier has a tenancy agreement and the more that his agreement approximates to a licence. There appears to be nothing to preclude EU competence over rent a room types of arrangements, though of course the issue of subsidiarity remains.

Assuming that a residential tenant can be seen as a consumer of accommodation services, consumer protection principles come into play. In fact however the position lacks coherence.

(2) Information rights and cooling off

The Consumer Rights Directive 2011⁶⁷³ has eschewed the opportunity to apply EU rules to rental agreements. It specifies basic information rights for consumers in sales and service contracts, controls on distance marketing (contracting over the internet) and what is colloquially and inaccurately described as ‘doorstep’ selling. It also allows ‘cooling off’ periods after contracts were concluded in the latter two ways. The Directive applies to contracts of the B2C model which are either contracts for the sale of (movable) goods or contracts for the supply of services. The second limb might include the provision of residential accommodation, but, it is expressly provided that the Directive does not apply to the provision of social housing nor to the rental of accommodation for residential purposes.⁶⁷⁴ It is noteworthy that the exclusion makes no reference to the existence or non-existence of a ‘tenancy’ and therefore the lease/licence distinction is not in play; both tenancies and licences are excluded from the scope of the directive. The relevant recital states that rental agreements are covered by domestic law, clearly therefore drawing on subsidiarity more than a lack of competence.⁶⁷⁵ The recital also states that the protections are not appropriate to rental agreements.⁶⁷⁶ The withdrawal right on contracting away from business premises never applied to rental agreements, and it would indeed be rather awkward to differentiate a contract made by a landlord at the accommodation being let and a contract made at the office of the landlord’s letting agent after the landlord had shown the tenant the property itself.⁶⁷⁷ Distance contracting for goods

⁶⁷² This division is less clear in France: *Code Civil* Book Three (Modes of Acquiring Property), Title VIII (Contracts of Rental or Hire); and clearer in Germany: *Bürgerliches Gesetzbuch* Book Two (Obligations) Section VII (Particular Obligations) Title 3 (Lease); but it must be remembered that a lease of land is quasi-property in Germany in the sense that it binds a purchaser.

⁶⁷³ Directive 2011/83/EU; European Union (Consumer Information, Cancellation and Other Rights) Regulations 2013, SI No. 484/2013.

⁶⁷⁴ Respectively art. 3(a), (f).

⁶⁷⁵ Recital (26).

⁶⁷⁶ Recital (26).

⁶⁷⁷ Former Directive 85/577/EEC (contracting away from business premises); transposed by European Communities (Cancellation of Contracts Negotiated Away From Business Premises) Regulations, 1989 (SI No. 224/1989). Its genesis was the practice of locking timeshare punters into presentations away from the timeshare block. But it would be logical to provide protection for a rental of residential accommodation when a contract is made away from the property being rented and

involves a withdrawal right, and this seems all important for things bought over the internet and therefore unseen. It would be perfectly possible to enter into a rental agreement over the internet, finding particulars online, taking a virtual tour of the accommodation and then signing an online form to take the accommodation. This may suit an eastern European moving to Ireland to take up work. The case or a cooling off period where the tenant has not seen the accommodation in person seems overwhelming. Under the previous specific rules, distance rentals were previously within the ambit of EU consumer law,⁶⁷⁸ but they have now moved outside EU protection.

The Consumer Rights Directive will apply to any contract with a letting agent and also to any contract by a landlord (private or social) to supply gas, electricity or district heating.⁶⁷⁹

(3) Unfair marketing practice

Given that the most recent EU legislation has drawn back from involvement in residential tenancy law, it is odd to find a much wider remit in the preceding legislation. The Unfair Commercial Practices Directive⁶⁸⁰ was thought to be so important that it was given effect to in Ireland by primary legislation, the Consumer Protection Act 2007. The scope of the Act covers all supplies, both of goods and of services, in a B2C format, including leases and the concept of a purchase also extends to a lease.⁶⁸¹ Various types of improper sales techniques by landlords or their agents are controlled, including:

- practices contrary to the standard of professional diligence with a materially distorting effect;
- unfair marketing techniques;
- aggression; and
- misleading advertising.

The scarcity of rental accommodation makes it unlikely that landlords will need to harass potential tenants, so in the rental market unfair practices may often be by concealment and failure of disclosure of defects.

Where EU consumer law does provide some control of bad practice by landlords, procedural laws may also help with, for example obtaining an injunction against unfair commercial practices or otherwise directed towards protecting the collective interests of consumers.⁶⁸²

therefore, very likely, at the business premises of the landlord or letting agent. See Sparkes *European Land Law* ch. 5.

⁶⁷⁸ Former Directive 97/7/EC (distance contracting); was transposed into Irish law by the EC (Protection of Consumers in Respect of Contracts Made by Means of Distance Communication) Regulations 2001 (SI No. 207/2001).

⁶⁷⁹ Directive 2011/83/EU, art. 3.

⁶⁸⁰ Directive No. 2005/29/EC; Sparkes, *European Land Law*, ch. 5. .

⁶⁸¹ Consumer Protection Act 2007 s. 2.

⁶⁸² Directive 2009/22/EC transposed into Irish law by the European Communities (Court Orders for the Protection of Consumer Interests) Regulations 2010(S.I. No. 555/2010). Earlier regulations (S.I. No. 449/2001) were revoked.

Energy saving rules

The rental market is an important arena in the battle against carbon emissions and the global warming that results. One important weapon that is available is labelling of energy efficiency so that tenants are alerted to the likely impact of the use of a flat on their energy bills. The battle so far as it is directed at landlords has already been considered. So far as tenants are concerned, the approach having three main thrusts, a choice of energy supplier, provision of information about the energy efficiency of the dwelling itself, labelling of the appliances within the dwelling and promotion of low energy light bulbs.

(1) Energy supply

Central to any market, and certainly to the European internal market, is a free market in energy. European has set the rules for the markets in electricity⁶⁸³ and gas,⁶⁸⁴ tackling also consumer choice, consideration of the position of vulnerable customers, safety issues and the energy efficiency of buildings a high priority.

(2) Energy labelling of dwellings

Attention has been directed towards improving the energy efficiency of new and the existing buildings and these changes now inform the Building Energy Rating Certificate scheme.⁶⁸⁵ Although set out above, it is worth reiterating that under this scheme all buildings for lease must have a Building Energy Rating certificate and this must be provided to any prospective tenants prior to entering a tenancy.⁶⁸⁶

(3) Labelling of appliances

EU laws have required the labelling of white goods in the kitchen and other power-hungry electrical appliances, so that tenants, like all other citizens, can make informed decisions in order to secure lower energy costs as a result of regulation of:

tumble driers;⁶⁸⁷

dishwashers;⁶⁸⁸

washing machines;⁶⁸⁹

refrigerators and freezers;⁶⁹⁰

⁶⁸³ Directive 2009/72/EC (repealing Directive 2003/54/EC) ; European Communities (Internal Market in Electricity and Gas) (Consumer Protection) Regulations 2011 (SI No 463/2011).

⁶⁸⁴ Directive 2009/73/EC (replacing Directive 2003/55/EC); transposition by European Communities (Internal Market in Electricity and Gas) (Consumer Protection) Regulations 2011, SI No 463/2011.

⁶⁸⁵ Directive 2010/30/EU; European Union (Energy Labelling) Regulations 2011 (S.I. No. 366/2011); Delegated Regulation (EU) N° 874/2012; European Union (Energy Performance of Buildings) Regulations 2012 (S.I. No. 243/2012) (old directive 2002/91/EC transposed by SI no 666 of 2006).

⁶⁸⁶ See section 1.3 above.

⁶⁸⁷ Commission Regulation (EU) N° 392/2012; European Union (Energy Labelling) Regulations 2011 (S.I. No. 366/2011).

⁶⁸⁸ Commission Regulation (EU) N° 1059/2010; European Union (Energy Labelling) Regulations 2011 (S.I. No. 366/2011) as amended (by S.I. No. 261/2013).

⁶⁸⁹ Commission Regulation (EU) N° 1061/2010; European Union (Energy Labelling) Regulations 2011 (S.I. No. 366/2011) as amended (by S.I. No. 261/2013).

electric ovens;⁶⁹¹
washer-driers;⁶⁹² and
televisions.⁶⁹³

(4) Light bulbs

Light bulbs consume a lot of energy collectively and it has been very important to move to low energy models. Earlier legislation governed labelling⁶⁹⁴ but a Directive of 2010 moved on to switching use to low energy bulbs;⁶⁹⁵ this was transposed into Irish law on the 4th May 2011⁶⁹⁶ and a more recent Directive made in 2010⁶⁹⁷ will be transposed into Irish law by June 2014.

- harmonisation and unification of general contract law (sources such as the Common European Sales Law, the Common Framework of Reference or the Principles of European Contract Law may be considered here)

Other EU measures concerning unfair terms in consumer contracts,⁶⁹⁸

EU has so far has a limited impact on contract law in Ireland. However one major contribution to contract law is the Unfair Terms in Consumer Contracts Regulations 1995 which gave effect to an EC Directive on Unfair Terms in Consumer Contracts (93/13/EEC).⁶⁹⁹ The Regulations expanded the ability of the courts to strike down unfair terms in consumer contracts which have not been individually negotiated. In other areas the EU influence is likely to grow particularly in the area of Common European Sales Law and the Common Framework of Reference. At present there is

⁶⁹⁰ Commission Directive 2003/66/EC; European Communities (Energy Labelling of Household Electric Refrigerators and Freezers) (Amendment) Regulations 2004 (SI No 483/2004).

⁶⁹¹ Commission Directive 2002/40/EC; European Communities (Energy Labelling of Household Electric Ovens) Regulations 2002 (SI 579/2002).

⁶⁹² Commission Directive 96/60/EC; European Communities (Energy Labelling of Household Combined Washer Driers) Regulations 1997 (S.I. No. 319 of 1997).

⁶⁹³ Commission Regulation (EU) N° 1062/2010; European Union (Energy Labelling) (Amendment) Regulations 2013 (SI No 261/2013).

⁶⁹⁴ Commission Directive 98/11/EC; European Communities (Energy Labelling of Household Lamps) Regulations 1999 (SI 170/99).

⁶⁹⁵ Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings (OJEU 18.06.2010 N° L153/13).

⁶⁹⁶ European Union (Eco-design Requirements for Certain Energy-related Products) Regulations 2011 (SI No 203/ 2011).

⁶⁹⁷ Directive 2012/27/EU.

⁶⁹⁸ Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJEC 21.04.1993 N° L 095) was transposed into Irish law by European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 (S.I. No. 27 of 1995), the European Communities (Unfair Terms in Consumer Contracts) (Amendment) Regulations 2000 (S.I. No. 307 of 2000) and European Communities (Unfair Terms in Consumer Contracts) (Amendment) Regulations 2013 (S.I. No. 160/2013).

⁶⁹⁹ Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts has been transposed into Irish law by the European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 (S.I. No. 27 of 1995, European Communities (Unfair Terms in Consumer Contracts) (Amendment) Regulations 2000 (S.I. No. 307 of 2000), European Communities (Unfair Terms in Consumer Contracts) (Amendment) Regulations 2013 (S.I. No. 160 2013).

a consultation taking place on the proposed EU Regulation on a Common European Sales Law.

Substantive EU tenancy law

At various times there have been proposals for the EU to adopt a common contract law, and these various proposals might have had unintended effects on contracts affecting land. The current proposal is confined to cross-border sales of goods and is therefore irrelevant to the issue of tenancy law.⁷⁰⁰ There are two pieces of EU consumer law which have a peripheral impact on the substantive law of European tenancy agreements. The first is the Unfair Terms in Consumer Contracts Directive⁷⁰¹ which is fully implemented in Irish law,⁷⁰² the impact of which has already been considered in the substantive report.⁷⁰³ The other is the Unfair Commercial Practices Directive⁷⁰⁴ implemented by primary legislation (the Consumer Protection Act 2007) which might have a marginal impact because it talks of unfair practices in relation to after-sales services, and which might therefore have an impact on such matters as carrying out repairs.⁷⁰⁵

Overall the tide has turned against the extension of EU legislation into aspects of land law.

Choice of law and forum

Tenancy law is complex and separate for each EU state, so it seems clear that the *lex situs* rule should apply to the determination of disputes, and that a site-based forum is also essential. In terms of choice of law for an Irish tenancy, the Rome I Regulation,⁷⁰⁶ as implemented in the Contractual Obligations (Applicable Law) Act 1991,⁷⁰⁷ probably does achieve the objective of ensuring that Irish law applies, since any mandatory rules in an Irish tenancy agreement will be mandatory. Since tenancy agreements are generally drawn up for landlords, it is very unlikely that a tenant would be allowed to choose a non-Irish law. The choice of law rules would make it theoretically possible to have a non-Irish contract to create an Irish tenancy, which seems very undesirable.

In terms of forum, it is obvious that tenancy disputes should be directed to Ireland, and in the private sector to the Private Residential Tenancies Board. The Brussels Regulation, however, determines that jurisdiction is to be exercised by the EU country in which the defendant is domiciled, regardless of his/her nationality. It is conceivable that a worker might rent in Ireland and yet retain a domicile in their country of origin, and so this Regulation might lead to a non-site forum for an Irish

⁷⁰⁰ *A Common European Sales Law to Facilitate Cross-Border Transactions in the Single Market*, COM(2011) 636 final.

⁷⁰¹ Directive 93/13/EEC.

⁷⁰² European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 (S.I. No. 27/1995 as amended by SI No. 307/2000). This was further amended to reflect the Consumer Rights Directive, 2011/83/EU, by SI No. 160/2013.

⁷⁰³ See section 6.4 above.

⁷⁰⁴ 2005/29/EC

⁷⁰⁵ Sparkes, *European Land Law*, para. 5.50.

⁷⁰⁶ Regulation (EC) N° 593/2008 on the law applicable to contractual obligations - Rome I; Irish.

⁷⁰⁷ Article 6.2 of the Rome Convention is now fully embodied in Article 8 of Rome I.

tenancy dispute.⁷⁰⁸ Council Regulation (EC) N° 44/2001⁷⁰⁹ has been transposed into Irish law by the European Communities (Civil and Commercial Judgments) Regulations 2002.⁷¹⁰ It is submitted that all land disputes should have a site-based forum and should use site-based law.⁷¹¹

⁷⁰⁸ It is also possible that a family dispute might arise between a tenant from another EU country in Ireland and the spouse or partner in that other EU country, possibly affecting the right to occupy the Irish home.

⁷⁰⁹ Regulation (EC) N° 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

⁷¹⁰ SI: 52/2002.

⁷¹¹ Sparkes *European Land Law*, ch. 4, pp. 97, 104.

7.3 Table: of Transposition of European Legislation

SUBJECT	EUROPEAN DIRECTIVES	IRISH TRANSPOSITION
PUBLIC PROCUREMENT		
Public procurement	<p>Directive 2004/18/EC of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts</p> <p>(OJEU 30.4.2004 N° L 134/114)</p> <p>This has repealed the previous legislation.</p>	<p>European Communities (Award of Public Authorities' Contracts) Regulations 2006</p> <p>(SI No. 329/2006).</p>
CONSTRUCTION		
Construction materials: free movement and certification	<p>Directive 89/106/EEC of 21 December 1988 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products</p> <p>(OJEC 11.02.1989 N° L40/12)</p>	<p>European Communities (Construction Products) Regulations 1992</p> <p>(SI No. 198/1992).</p>
Hazardous substances	<p>Directive 2011/65/EU of 8 June 2011 on the restriction of the use of certain hazardous substances in electrical and electronic equipment</p> <p>(OJEU 01.07.2011 N° 174/88).</p>	<p>Not transposed into Irish law though transposition was required by January 2013.</p>

Hazardous substances	Directive 2002/95/EC on the restriction of the use of certain hazardous substances in electrical and electronic equipment (OJ C 365 E, 19.12.2000)	Waste Management (Restriction of Certain Hazardous Substances in Electrical and Electronic Equipment) Regulations 2005 (S.I. No. 341 of 2005 as amended by S.I. No. 376 of 2008).
Lifts	Directive 95/16/EC of 29 June 1995 on the approximation of the laws of the Member States relating to lifts (OJEC 07.09.1995 N° L 213).	European Communities (Lifts) Regulations 1998-2008 (SI No. 246/1998 as amended by S.I. No. 406/2008).
ENERGY EFFICIENCY - BUILDINGS		
Energy saving targets/ large buildings	Directive 2012/27/EU of 25 October 2012 on energy efficiency (OJEU 14.11.2012 N° L315/1). This amended Directives 2009/125/EC and 2010/30/EU and repealed Directives 2004/8/EC and 2006/32/EC.	Transposition date June 2014
Energy efficiency of new and existing buildings	Directive 2010/31/EU of 19 May 2010 on the energy performance of buildings (OJEU 18.06.2010 N° L153/13). The previous directive 2002/91/EC was transposed by SI no 666 of 2006).	European Union (Energy Performance of Buildings) Regulations 2012 (SI No. 243/2012)

Renewable energy use in buildings.	Directive 2009/28/EC of 23 April 2009 on the promotion of the use of energy from renewable sources (OJEU 5.6.2009 N° L140/16) Amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC	European Communities (Renewable Energy) Regulations 2011 (SI No. 147/2011) Sustainable Energy Act 2002 (Section 8(2)) (Conferral of Additional Functions – renewable Energy) Order 2011 (SI No. 158/2002)
Market in gas and electricity	Directive 2009/72/EC of 13 July 2009 concerning common rules for the internal market in electricity and gas. (OJEU 14.8.2009 N° L211/55) repealing Directive 2003/54/EC	European Communities (Internal Market in Electricity and Gas) (Consumer Protection) Regulations 2011 (SI No 463 of 2011).
ENERGY EFFICIENCY – FITTINGS IN BUILDINGS		
Lighting	Delegated Regulation (EU) N° 874/2012 of 12 July 2012 supplementing Directive 2010/30/EU with regard to energy labelling of electrical lamps and luminaires (OJEU 26.9.2012 N° L 258/1).	European Union (Eco-design Requirements for Certain Energy-related Products) Regulations 2011 (SI No. 203/2011).
Lighting	Commission Directive 98/11/EC of 27 January 1998 implementing Directive 92/75/EEC with regard to energy labelling of household lamps (OJEC 10.3.1998 N° L 71/1).	European Communities (Energy Labelling of Household Lamps) Regulations 1999 (SI No. 170/99).

Natural gas.	Directive 2009/73/EC of 13 July 2009 concerning common rules for the internal market in natural gas (OJEU 14.8.2009 N° L 211/94). Repealed Directive 2003/55/EC	European Communities (Internal Market in Electricity and Gas) (Consumer Protection) Regulations 2011 (SI No. 463/2011).
Heating and hot water	Directive of 10 December 1982 on the performance of heat generators for space heating and the production of hot water in new or existing non-industrial buildings and on the insulation of heat and domestic hot-water distribution in new non-industrial buildings (OJEC 31.12.1982 N° L 378/19). Amending Directive 78/170/EEC	Original directive and amending directive were not implemented.
Boilers	Directive 92/42/EEC of 21 May 1992 on efficiency requirements for new hot-water boilers fired with liquid or gaseous fuels (OJEC 22.06.1992, N° L 167). Amended by Directive 93/68/EEC of 22 July 1993 (BOE 27.03.1995 N° 73).	European Communities (Efficiency Requirements For New Hot Water Boilers Fired With Liquid Or Gaseous Fuels) Regulations, 1994 (SI No. 260/1994 as amended by SI No. 72/1995).
ENERGY EFFICIENCY – APPLIANCES		
Energy labelling	Directive 2010/30/EU of 19 May 2010 on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products (OJEU 18.6.2010 N° L 153/1)	European Union (Energy Labelling) Regulations 2011 (S.I. No. 366/2011 as amended by S.I. Nos. 261/2013 and 261/2013).

Air conditioners	Delegated Regulation (EU) N° 626/2011 of 4 May 2011 supplementing Directive 2010/30/EU with regard to energy labelling of air conditioners (OJEU 6.7.2011 N° L178/1).	European Union (Energy Labelling) Regulations 2011 (S.I. No. 366/2011).
Refrigerators	Delegated Regulation (EU) N° 1060/2010 of 28 September 2010 supplementing Directive 2010/30/EU with regard to energy labelling of household refrigerating appliances (OJEU 30.11.2010 N° L314).	European Union (Energy Labelling) Regulations 2011 (S.I. No. 366/2011)
Tumble driers	Delegated Regulation (EU) N° 392/2012 of 1 March 2012 supplementing Directive 2010/30/EU with regard to energy labelling of household tumble driers (OJEU 9.5.2012 N° L123/1).	European Union (Energy Labelling) Regulations 2011 (S.I. No. 366/2011).
Dishwashers.	Delegated Regulation (EU) N° 1059/2010 of 28 September 2010 supplementing Directive 2010/30/EU with regard to energy labelling of household dishwashers (OJEU 30.11.2010 N° L314/1).	European Union (Energy Labelling) Regulations 2011 (S.I. No. 366/2011 as amended by S.I. No. 261/2013).
Washing machines	Commission Delegated Regulation (EU) N° 1061/2010 of 28 September 2010 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of household washing machines (OJEU 30.10.2010 N° L314/47).	European Union (Energy Labelling) (Amendment) Regulations 2013 (S.I. No. 261/2013) European Union (Energy Labelling) Regulations 2011 (S.I. No. 366/2011).

Televisions	Delegated Regulation (EU) N° 1062/2010 supplementing Directive 2010/30/EU with regard to energy labelling of televisions (OJEU 30.11.2010 N° L314/64).	European Union (Energy Labelling) (Amendment) Regulations 2013 (SI No. 261/2013).
Refrigerators and freezers.	Commission Directive 2003/66/EC amending Directive 94/2/EC implementing Council Directive 92/75/EEC with regard to energy labelling of household electric refrigerators, freezers and their combinations (OJEU 09.07.2003 N° L170/10).	European Communities (Energy Labelling of Household Electric Refrigerators and Freezers) (Amendment) Regulations 2004 (SI No. 483/2004).
Electric ovens	Commission Directive 2002/40/EC implementing Directive 92/75/EEC with regard to energy labelling of household electric ovens (OJEC 15.05.2012 N° L 128/45).	European Communities (Energy Labelling of Household Electric Ovens) Regulations 2002 (SI No. 579/2002)
Tumble driers	Commission Directive 96/60/EC implementing Directive 92/75/EEC with regard to energy labelling of household combined washer-driers (OJEC 18.10.1996 N° L266/1).	European Communities (Energy Labelling of Household Combined Washer Driers) Regulations 1997 (SI No. 319 of 1997)
CONSUMER PROTECTION		

Information and consumer rights.	<p>Directive 2011/83/EU on consumer rights (OJEU 22.11.2011 N° L 304/64).</p> <p>Amending Directives 93/13/EEC (unfair terms below) and 1999/44/EC (consumer sales guarantees) and repealing Directives 85/577/EEC (contracting away from business premises) and 97/7/EC (distance contracting).</p>	<p>European Union (Consumer Information, Cancellation and Other Rights) Regulations 2013 (SI No. 484/2013).</p> <p>Repealed. It covered 'doorstep' selling (SI No. 224/1989); distance contracts (SI No. 207/2001).</p>
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Procurement of communication services	<p>Directive 2009/136/EC on consumer protection in the procurement of communication services</p> <p>(OJEU 18.12.2009 N° L337/11).</p> <p>Amending Directives 2002/22/EC and 2002/58/EC and Regulation (EC) N° 2006/2004</p>	<p>European Communities (Electronic Communications Network and Services) (Framework) Regulations 2011 (SI No 333 of 2011) (the "Framework Regulations")</p> <p>European Communities (Electronic Communications Network and Services) (Access) Regulations 2011 (SI No 334 of 2011) (the "Access Regulations")</p> <p>European Communities (Electronic Communications Network and Services) (Authorisation) (SI No 335 of 2011) Regulations 2011 (the "Authorisation Regulations")</p> <p>European Communities (Electronic Communications Network and Services) (Privacy and Electronic Communications) Regulations 2011 (SI No 336 of 2011) (the "ePrivacy Regulations")</p> <p>European Communities (Electronic Communications Network and Services) (Universal Service and Users' Rights) 2011 (SI No 337 of 2011) (the "Universal Services Regulations")</p>
Collective injunctions	<p>Directive 2009/22/EC on injunctions for the protection of consumers' interests</p> <p>(OJEU 01.05.2009, N° L110/30).</p>	<p>European Communities (Court Orders for the Protection of Consumer Interests) Regulations 2010</p> <p>(SI No. 555/2010)</p>

Misleading advertising and unfair business-to-consumer commercial practices.	Directive 2006/114/EC concerning misleading and comparative advertising (OJEU 27.12.2006, N° L376/21).	Consumer Protection Act 2007, s. 2 European Communities (Misleading and Comparative Marketing Communications) Regulations 2007 (S.I. No. 774/2007)
Unfair commercial practices	Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market and (OJEU 01.6.2005 N° L 149/22) Amending Directives 84/450/EEC, 97/7/EC, 98/27/EC and 2002/65/EC and Regulation (EC) N° 2006/2004.	Consumer Protection Act 2007.
Unfair terms	Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJEC 21.04.1993 N° L 095). Amended by the Consumer Rights Directive 2011/83/EU	European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 (S.I. No. 27/1995 as amended by SI No. 307/2000). (Amended again by SI No. 160/2013).
HOUSING LAW		
Choice of law	Regulation (EC) N° 593/2008 on the law applicable to contractual obligations - Rome I (OJEU 04.07.2008 N° L 177/6).	Contractual Obligations (Applicable Law) Act 199144/
Jurisdiction	Regulation (EC) N° 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJEC 16.01.2001 N° L 12/1).	Jurisdiction of Courts and Enforcement of Judgments (Amendment) Act 2012

DISCRIMINATION		
Sex.	Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services (OJEU 21.12.2004 N° L 373/37).	Equality Act 2004 and the Civil Law (Miscellaneous Provisions) Act 2008.
Racial or ethnic origin.	Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJEC 19.07.2000 N° L 180/22).	Equal Status Act 2000
IMMIGRANTS OR COMMUNITY NATIONALS		
Free movement for workers	Regulation (EEC) N° 1612/68 on free movement for workers within the Community (OJEC 17.04.1964 N° L 257/2).	Irish Nationality and Citizenship Act 2004
Equality in granting housing, aids, subsidies, premiums or tax advantages to workers moving within the EU.	Recommendation 65/379/EEC by the Commission to the Member States on the housing of workers and their families moving within the Community (OJEC 27.07.1965 N° L 137/27).	Irish Nationality and Citizenship Act 2004

Free movement for European citizens and their families	<p>Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States</p> <p>(OJEU 30.04.2004 N° L 158/77)</p> <p>amending Regulation (EEC) N° 1612/68 (free movement of workers) and repealing numerous earlier Directives</p>	<p>European Communities (Free Movement of Persons) (No. 2) Regulations 2006</p> <p>(SI 656/2006)</p> <p>Amended by SI 310 of 2008 and SI 146 of 2011</p>
Family reunification	<p>Directive 2003/86/EC on the right to family reunification</p> <p>(OJEU 03.10.2003, N° L 251/12).</p>	<p>In accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community and without prejudice to Article 4 of the said Protocol Ireland did not take part in the adoption of this Directive and is not bound by or subject to its application.</p>
Third country nationals	<p>Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents</p> <p>(OJEU 23.01.2004 N° L 16/44).</p>	<p>In accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community and without prejudice to Article 4 of the said Protocol Ireland did not take part in the adoption of this Directive and is not bound by or subject to its application.</p>

Third nationals	country	<p>Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment</p> <p>(OJEU 18.06.2009 N° L 155/17).</p>	<p>In accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community and without prejudice to Article 4 of the said Protocol Ireland did not take part in the adoption of this Directive and is not bound by or subject to its application.</p>
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8 Typical national cases (with short solutions)

8.1 Entering a lease

Juliette has recently moved to Ireland from France to work as a waitress. She is currently staying on her friends couch but wants to find accommodation of her own and is keen on renting. However, she is concerned that entering a lease in Ireland may be different than in France and would like some advice on how to enter a lease in Ireland.

Many properties for rent in the private rented sector are advertised online via sites such as Daft.ie or via the classifieds on local and regional newspapers. Interested parties may contact the advertising party, usually the landlord or letting agent (the landlord's representative) and arrange a viewing of the property. Generally, this will entail a guided viewing of the property by the landlord or letting agent where the tenant may ask questions and inspect the property. It is important that the tenant makes sure that the property is in good working order e.g. that there is no damp or inadequate ventilation. etc. The rent and other important matters are often negotiable. Where the tenant is happy with the property they may make an offer to the landlord or letting agent. In the event of an agreement the landlord will often require a security deposit, generally one month's rent, be paid. Throughout the interaction each party has various legal rights and obligations which govern key aspects of the relationship. In the event of a dispute, then regard must be had to tenancy law.

In the Republic of Ireland tenancy law is a mixture of common law and statute. Different rules apply depending on whether the tenancy is in the private rented or social rented sectors. In Ireland a private rented tenancy is one which is arranged between a landlord and tenant privately and which is governed by market forces whereas a social rented tenancy is generally between a local authority and a tenant and this arrangement is made on the basis of meeting an unfulfilled housing need.

The starting point for identifying which set of rules apply is section 3 of the RTA 2004 (RTA 2004). This provision sets out that the RTA 2004 applies to every dwelling, the subject of a tenancy, except for certain excluded tenancies, the most notable excluded tenancy being local authority tenancies.⁷¹² As a result the vast majority of tenancies in the private rented sector are governed by the provisions of the RTA 2004. This Act provides both landlord and tenant with a range of legal rights by implying a framework of rights into every tenancy agreement which cannot be contracted out.⁷¹³ The RTA 2004 takes a hands off approach to the creation of a tenancy allowing parties enter agreements at their will.

⁷¹² RTA, s. 3(2).

⁷¹³ *ibid.*, s. 10.

Indeed under the RTA 2004 it is possible to have both written and oral tenancies.⁷¹⁴ Therefore, once a prospective tenant has found a suitable dwelling and arranged a viewing with the landlord and found the dwelling to be suitable then it is possible for the two parties to reach an oral agreement creating a tenancy.⁷¹⁵ However, in most cases the landlord will use a standard form rental agreement to create the tenancy. There is no mandatory form for rental agreements however they will usually state crucial information regarding the tenancy including rate of rent, manner of payment, requirement of a deposit, description of the condition of the property, commencement date as well as the tenants responsibilities, etc. It is essential that the tenant read the tenancy agreement before signing it. Once signed the agreement has binding effect on both parties and grants certain rights and responsibilities on both e.g tenant's duty to pay rent, landlord's duty to repair the property. Upon creation of the tenancy the landlord is under a legal duty to register the tenancy with the Private Residential Tenancy Board⁷¹⁶ and also to provide the tenant with a rent book.⁷¹⁷

The rent book must include the address of the rented dwelling, the name and address of the landlord and his agent, the name of the tenant, the terms of the tenancy, the amount of rent, when and how it is to be paid, (e.g. cash, cheque, standing order), details of other payments (e.g., telephone, TV) and the amount and purpose of any deposit paid and the conditions under which it will be returned to the tenant as well as a statement of information on basic rights and duties of landlords and tenants. If the landlord fails to provide a rent book, he will be guilty of an offence.⁷¹⁸ Furthermore, the dwelling must meet the minimum housing standards for rented houses.⁷¹⁹

Should a dispute arise between the landlord and the tenant during the tenancy the tenant may have recourse to the Private Residential Tenancy Board who can provide alternative dispute resolution facilities to the parties.

⁷¹⁴ *Ibid.*, s. 2.

⁷¹⁵ However where the term agreed is for more than one year then there must be a written agreement Landlord and Tenant (Amendment) (Ireland) Act 1860 s. 4.

⁷¹⁶ *Ibid.*, s. 134.

⁷¹⁷ Housing (Rent Book) Regulations 1993 (SI No 146/1993) as amended by Housing (Rent Books) Regulations 1993 (Amendment) Regulations 2004 (SI No 751/2004) and by Housing (Rent Books) Amendment) Regulations 2010 (SI No 357/2010).

⁷¹⁸ Housing (Rent Book) Regulations 1993 (SI No. 146/1993) as amended by Housing (Rent Books) Regulations 1993 (Amendment) Regulations 2004 (SI No. 751/2004) and by Housing (Rent Books) Amendment) Regulations 2010 (SI No. 357/2010).

⁷¹⁹ Housing (Standards for Rented Houses) Regulations 2008 (SI No 543/2008) as amended by the Housing (Standards For Rented Houses)(Amendment) Regulations 2009 (SI No. 462/2009). These standards have largely replaced those in SI No. 147/1993). See: M. Jordan, M. 'The Rented Accommodation Sector in Ireland: Increased Demand amid Regulatory Transition - Housing Standards in Focus' (2012) 17(3) *Conveyancing and Property Law Journal* 42.

8.2 Lease and licence distinction

Louis moved to Ireland a month ago and after a couple of days searching daft.ie for lettings he finally found a suitable apartment. However he notices that the advert states that '*the property is only available for licence, and that the RTA 2004 does not apply*'. Louis wants to what is the difference between a licence and a tenancy?

It is important to draw out the distinction between a tenancy and licence agreement. In many cases the distinction may be far from straightforward. For instance in both a tenancy and a licence arrangement there may be possession of a dwelling for a period of time and in exchange for a payment or fee akin to a rent. However, the legal treatment of a tenancy and a licence agreement is vastly different as, crucially, a tenancy agreement attracts a range of statutory rights and obligations while a licence agreement is merely governed by the principles of contract law. In particular, the wide ranging provisions of the RTA 2004 apply to every dwelling the subject of a *tenancy*, except those tenancies which are excluded.

The courts when faced with a dispute as to the legal status of an occupancy agreement do not have a hard and fast rule of convenience for resolving the issue; rather the court will examine the totality of the arrangement in an effort to establish the agreements legal status.⁷²⁰ In this task the court will draw upon a range of legal sources including statute and precedent.

The starting point for distinguishing a tenancy from other forms of occupancy agreement, which includes the following definition of a tenancy:

The relation of landlord and tenant shall be deemed to be founded on the express or implied contract of the parties and not upon tenure or service, and a reversion shall not be necessary to such relation, which shall be deemed to subsist in all cases in which there shall be an agreement by one party to hold land from or under another in consideration of any rent.⁷²¹

In order for the relation of landlord and tenant to exist there must be a rent or other return in the nature of rent. Deasy's Act defines rent as "any sum or return in the nature of rent payable or given by way of compensation for the holding of any land."⁷²² Furthermore, there must be a term though it is not necessary for the term to be of certain duration.⁷²³ A number of decisions have isolated exclusive possession as a definitional characteristic of a tenancy in Irish law. While cases vary on their treatment of the fraught notion of possession, it has been established that the distinction between legal possession and the fact of possession is a key consideration, with control of the dwelling being regarded as the best indicator of exclusive possession. In a tenancy, the tenant will have exclusive possession of the

⁷²⁰ In *Gatien Motor Co. v. Continental Oil Co. of Ireland* [1979] IR 406 where the court emphasised the need to 'look at the transaction as a whole'.

⁷²¹ Landlord and Tenant (Amendment) (Ireland) Act 1860, s. 3.

⁷²² *Ibid*, s. 1.

⁷²³ *Wood v Davis* (1880) 6 LR Ir. 50.

dwelling, while in a licence agreement, a licensee will not have the same ability to control the dwelling, something which will be reserved by the licensor.⁷²⁴

Where these factors are present the contract will be a tenancy regardless of the description of the agreement as a licence. Therefore the provisions of the RTA 2004 would apply, unless the tenancy is excluded from its remit.⁷²⁵ Furthermore, it is not possible to contract out of the RTA 2004⁷²⁶ and as such the tenant will avail of a range of rights under the RTA 2004, including the right to Part 4 security of tenure. Where the landlord purports to terminate the tenancy without following the correct termination procedure the tenant may contact the PRTB who have wide ranging powers to prevent the landlord from doing so.

⁷²⁴ It is likely that the Irish courts will follow the English authority in this area, *Street v. Mountford* [1985] AC 809. For instance, in a hotel an occupancy agreement will allow for possession of a room, however the occupier will not be granted exclusive possession of the room. Rather the proprietor of the hotel retains control over the room. In this context an occupier is a licensee and not a tenant.

⁷²⁵ RTA 2004, s. 3(1).

⁷²⁶ *Ibid.*, s. 54.

8.3 Minimum housing standards

A new tenant has recently discovered that the heating system in his apartment is faulty and that there are signs of damp in the property. The tenant is aware that recently there has been a change in the legal minimum standards for such accommodation but is unsure as to what the applicable standards for rented accommodation with regard to heating and dampness are in Ireland?

Housing which has been let to tenants in the Republic of Ireland must be of a certain quality or standard which is prescribed in law. It is illegal for a landlord to let a rented dwelling fall below this standard. However, should this occur there are a number of remedies available to the tenant which can help resolve the matter.

In the first place it is important to identify what type of tenancy the tenant has. Although a basic set of housing standards apply to all tenancies, regardless of whether they are private rented or social rented, an extra set of rights are available to tenants who have tenancies governed by the RTA 2004. Thankfully, identifying the type of tenancy which a tenant has is quite straightforward as the RTA 2004 applies to all dwellings the subject of a tenancy except those tenancies expressly excluded, the main exclusion being local authority tenancies. The practical result is that the vast majority of tenancies in the private rented sector are governed by the RTA 2004 while local authority tenancies make up most of the excluded tenancies.

It is important that the tenant is aware that it is the landlord who is responsible for ensuring that the dwelling is of a sufficient quality or standard and also that it is the landlord who bears the primary repairing obligation. There is one important exception to this rule and that is where damage is caused by the tenant which does not come about through everyday living or normal wear and tear. In this case the tenant will be responsible for repair and may even forfeit some of their deposit.

The basic legal standard for rented houses is found in the Housing (Standards for Rented Houses) Regulations 2008.⁷²⁷ These Regulations set out minimum standards for rental dwellings in matters relating to structural condition, sanitary facilities, heating facilities, ventilation, food preparation and laundry, lighting, fire safety, refuse facilities, and electricity and gas and they apply to all rented dwellings.⁷²⁸

Where the heating system is defective or where there is damp the dwelling may fall below the legal standard. Firstly, every room usable by the tenant must have a permanent fixed heating source, which can be controlled by the tenant, as well as adequate ventilation.⁷²⁹ Where the heating system is defective there is a breach of the standards. Secondly, the house must be maintained in a proper state of structural repair. This means that the house must be sound, internally and externally and must not be defective due to dampness.⁷³⁰ Where the dwelling or part of the dwelling is defective due to dampness there is a breach of the standard. Indeed, a defective heating system/ventilation system would tend to exacerbate damp.

⁷²⁷ Housing (Standards for Rented Houses) Regulations 2008 (SI No 543/2008) as amended by the Housing (Standards For Rented Houses)(Amendment) Regulations 2009 (SI No. 462/2009). These standards have largely replaced those in SI No. 147/1993).

⁷²⁸ *Ibid.*, art. 4.

⁷²⁹ *Ibid.*, art. 7.

⁷³⁰ *Ibid.*, art. 5.

8.4 Enforcement regime

A private landlord has just received notice from the local authority that they are to carry out an inspection of her property in order to find out whether the dwelling meets the minimum legal standards for rented accommodation. The landlord is concerned and is curious as to the potential outcomes from this check.

As set out in question 2 it is clear that the Regulations place a legal obligation on the landlord to make sure that the dwelling meets the standards. In the first place the local authority is responsible for enforcing the Regulations in all rented dwellings in their area. Where the tenant is concerned that their dwelling does not meet the standard they may contact the local authority who will inspect the dwelling to determine whether it meets the legal standard. In the case of local authority tenancies this places the authority in the awkward position of being both landlord and inspector of the same dwelling, a situation which is far from satisfactory. After inspecting the property and finding that the dwelling falls below the legal standard the local authority may contact the landlord in order to ensure that the dwelling is brought up to standard. The authority may issue an improvement notice explaining the reason for the failure and requiring the landlord to repair it within a certain period. Where the landlord fails to comply with the improvement notice then the authority may issue a prohibition notice restricting the landlord from letting the re-dwelling.⁷³¹

As mentioned in question 2, tenancies governed by the RTA 2004 enjoy additional rights when it comes to ensuring that their dwelling meets the minimum housing standard. Aside from the advantage of having the landlords repairing obligations set out clearly in statute, the tenant may also call upon the Private Residential Tenancies Board (PRTB) where they are concerned that the landlord has failed to bring the dwelling up to standard after allowing him or her a reasonable time to do so. The PRTB have a wide range of powers to compel the landlord to bring to housing up to standard and they can even award damages to the tenant as compensation for any loss suffered.⁷³²

⁷³¹ Section 18A and 18B of the Housing (Miscellaneous Provisions) Act 1992, as inserted by Schedule 2, Part 4 of the Housing (Miscellaneous Provisions) Act 2009.

⁷³² RTA 2004, s. 115.

8.5 Furnished and unfurnished dwelling

A former construction worker, who has been unemployed since 2010, has received notice that after three years on the housing waiting list he has been allocated a house. However, upon visiting the property he discovers that there are no white goods within the property. Previously, when he was tenant in the private rented sector, such white goods were always supplied with the property. He would like to know why such goods are not immediately available to him in the present situation and whether it would be possible to gain access to such goods via the local authority.

Local authority tenants are not legally entitled to the white goods detailed above. Instead, there are alternative discretionary procedures which govern the provision of such goods. In particular, the exceptional needs payment, governs the provision of *white goods* where the property is rented from a local authority.

In Ireland a private rented tenancy is one which is arranged between a landlord and tenant privately and which is governed by market forces whereas a social rented tenancy is generally between a local authority and a tenant and this arrangement is not governed by market forces rather it is made on the basis of meeting the housing need of the tenant. Different legal rules apply depending on whether the tenancy is in the private rented or social rented sector. The starting point for identifying which set of rules apply is section 3 of the RTA 2004 (RTA 2004). This provision sets out that the RTA 2004 applies to every dwelling, the subject of a tenancy, except for certain excluded tenancies, the most notable excluded tenancy being local authority tenancies.⁷³³ As a result the vast majority of tenancies in the private rented sector are governed by the provisions of the RTA 2004.

The basic legal standard for rented houses is found in the Housing (Standards for Rented Houses) Regulations 2008.⁷³⁴ However, the provisions do not apply equally to private rented tenancies and social rented tenancies, rather certain provisions apply only to tenancies in the private sector. This is the case with regard to the provision of white goods in rented housing. Under the Regulations the landlord must provide a range of white goods with the dwelling.⁷³⁵ These include four ring hob with oven and grill, suitable facilities for the effective and safe removal of fumes to the external air by means of a cooker hood or extractor fan, fridge and freezer or fridge-freezer, microwave oven, sink, with a piped supply of cold water taken direct from the service pipe supplying water from the public main or other source to the building containing the house and a facility for the piped supply of hot water, and an adequate draining area, suitable and adequate number of kitchen presses for food storage purposes, washing machine, or access to a communal washing machine facility within the curtilage of the building, and where the house does not contain a garden or yard for the exclusive use of that house, a dryer (vented or recirculation

⁷³³ RTA, s. 3(2).

⁷³⁴ Housing (Standards for Rented Houses) Regulations 2008 (SI No 543/2008) as amended by the Housing (Standards For Rented Houses)(Amendment) Regulations 2009 (SI No. 462/2009). These standards have largely replaced those in SI No. 147/1993).

⁷³⁵ *Ibid.*, art. 8(2).

type) or access to a communal dryer facility.⁷³⁶ However, this obligation does not apply where the house is let, or available for letting, by a housing authority under Section 56 of the Housing Act 1966 (as amended) or by a housing body approved under Section 6 of the Housing (Miscellaneous Provisions) Act 1992.⁷³⁷ As a result local authority housing may be let unfurnished to the tenant while a private tenant must be furnished with the white goods set out above.

⁷³⁶ *Ibid.*, art. 8(3) sets out that these white goods shall be maintained in good working order and good repair.

⁷³⁷ *Ibid.*, art. 8(1).

8.6 Registration

On the radio Michael, a landlord, hears that the PRTB will not assist landlords who do not register tenancies with them. Michael is concerned as he did not think it was obligatory to register an unwritten or informal tenancy. In particular, he has recently received confirmation from tenants that they would like to continue in the tenancy for a further four years. Michael wants to know how the registration system works for private rented tenancies.

Where a tenancy governed by the RTA 2004 it is the responsibility of the landlord to ensure that the tenancy is registered with the PRTB.⁷³⁸ Under Part 7 of the RTA 2004 landlords are required to apply to register a tenancy let by them within three months of the start of the tenancy. (The landlord must register each new tenancy created in respect of a dwelling.. However, where a tenancy becomes a Part 4 tenancy there is a no requirement to register the Part 4 tenancy however where a further part 4 tenancy comes into operation there is an obligation to register.⁷³⁹

The completed registration form must be submitted by the landlord to the PRTB with a fee of €90. Where there are multiple tenancies of dwellings in the same property then a flat rate of €300 applies.⁷⁴⁰ The registration form must include details of the tenancy, the particulars of the dwelling, the name and address of the landlord as well as the tenants details. Where the landlord has supplied false information either knowingly or recklessly he is guilty of an offence.⁷⁴¹

The PRTB are empowered to enter and inspect a dwelling in order to determine whether the application form is accurate. If an incomplete form has been submitted the PRTB are to inform the landlord of the error. Once registered the tenancy is assigned a unique reference number called an RT Number.⁷⁴² Where the landlord fails in his duty to register a tenancy he or she will be prohibited from availing of the dispute services of the PRTB⁷⁴³ however these services remain open to a tenant regardless of whether or not the landlord has registered the tenancy.

If the PRTB considers that a relevant tenancy has not been registered, it shall serve a notice on the person it believes to be the landlord of the particular tenancy.⁷⁴⁴ If the landlord is unable to supply satisfactory exculpatory reasons for the failure to register then the PRTB may issue a further notice which shall state the obligation upon the landlord to register and that should he fail to do so within 14 days then he is guilty of an offence.⁷⁴⁵ The PRTB may decide to prosecute the errant landlord who may be summarily convicted under section 9 of the RTA 2004 with a maximum fine of €3,000 and a maximum prison sentence of 6 months.⁷⁴⁶

⁷³⁸ RTA 2004, s. 134(2).

⁷³⁹ *Ibid.*, s. 135(1)(c).

⁷⁴⁰ *Ibid.*, s. 137(2)-(4).

⁷⁴¹ *Ibid.*, s. 143.

⁷⁴² *Ibid.*, s.135(3).

⁷⁴³ *Ibid.*, s. 83(2).

⁷⁴⁴ *Ibid.*, s. 144.

⁷⁴⁵ *Ibid.*, s. 144(3).

⁷⁴⁶ *Ibid.*, s. 9.

8.7 Rent levels

Brian, the private landlord, informs Antoinin, the tenant, that the rent is to increase from the next month. Although this is the second such rent rise in the last years the landlord says that he has little choice as the property is heavily mortgaged and interest rates have gone up. The tenants inquire with neighbours as to the going rate of rent in the area. It becomes clear that with the additional increase in rent will make the rate much more expensive than their neighbours dwelling. Antoinin wants to know whether he has to pay this rent?

The RTA 2004 provided that rents in the private rented sector must be at a market rate and any rent which deviated from the market rate would be illegal.⁷⁴⁷ The Act provided that once the rate was agreed upon, it was open to annual review⁷⁴⁸ with the result that it could be reviewed upward or downward once per annum in order to better reflect market rates. The Act defined rent review broadly and as such it left the method of reviewing the rent rate open to the parties who could decide their own rent review formula so long as the method chosen did not result in a rent which deviated from the market rate. Market rent is defined as the rent which a willing tenant not already in occupation would give and a willing landlord would take for the dwelling having regard to the other terms of the tenancy as well as the letting values of a similarly placed tenancies.⁷⁴⁹ The Private Residential Tenancies Board are tasked with collecting rent rate data from all RTA 04 tenancies and this data assists where a dispute arises in the determination of the market rate.⁷⁵⁰ The Act sets out a procedure for changing rent which involves the landlord giving 28 days' notice prior to the change taking place.⁷⁵¹ This notice must state the amount of the new rent and also the date on which it will take effect. In addition the landlord must notify the Board of the new rent.⁷⁵² In the event of a dispute concerning a rent review the Board will examine whether a valid notice of a review has been served. When reviewing whether the rent rate confirms to the market rate the Board are disbarred from considering the financial circumstances of either party.⁷⁵³ While the dispute is on-going the existing rent continues to be payable until the dispute has been resolved.⁷⁵⁴ There is a relatively high onus on parties in a rent dispute case to furnish the Board with sufficient evidence.⁷⁵⁵ In addition to consulting with local values or letting agents, parties may also be required to support such representations with direct oral evidence.⁷⁵⁶ Where the landlord fails to follow the correct procedures as

⁷⁴⁷ RTA 2004 s. 19(1) "Market rent" is defined by the RTA 2004 s.24.

⁷⁴⁸ *Ibid.*, s. 20(1), the rent rate is open to review once a year. However a further review may be allowed where there is a substantial change in the nature of the accommodation.

⁷⁴⁹ *Ibid.*, s. 24 similarly placed refers to the letting values of dwellings of a similar size, type and character to the dwelling and situated in a comparable area to that in which the tenancy in question is situated.

⁷⁵⁰ *Ibid.*, pt 9.

⁷⁵¹ *Ibid.*, s. 22(2).

⁷⁵² *Ibid.*, s. 139.

⁷⁵³ *Ibid.*, s. 120.

⁷⁵⁴ *Ibid.*, s. 86(1).

⁷⁵⁵ *Stern v. Morris* TR63/DR193/2006, 15 November 2006.

⁷⁵⁶ *Devlin v. MacDermot-Roe* TR30/DR511/2007, 26 April 2007.

set out in Part 3 of the RTA 2004, the rent review will have no effect and the old rent will continue.⁷⁵⁷

⁷⁵⁷ *Canty v Connelly* TR22/DR259/2006, 11 July 2006.

8.8 Deposit retention

After the expiration of a fixed term tenancy (1 year) the landlord has decided to withhold the deposit in order to meet repair costs which he considers are necessary given the unsatisfactory condition of the property after the tenants left. The tenants however dispute this, and claim that local flooding was responsible for damage caused to the front door and hallway. As such they want the landlord to return the deposit.

A security deposit is normally paid by a tenant to a landlord or agent at the commencement of a tenancy. The landlord or agent hold the deposit of the duration of the tenancy and at the end of a tenancy the landlord, or their agent, is under a duty to return the deposit within a reasonable timeframe.

In the event that the tenant causes damage to the dwelling in excess of normal wear and tear, the landlord will be able to use part or all of the deposit to offset the cost of repair.⁷⁵⁸ Alternatively where there is rent outstanding at the end of the tenancy the landlord may retain some or all of the deposit to cover the arrears. Finally where the tenant owes money for utility bills at the end of the tenancy and the utility bill is in the landlords name then he may withhold some or all of the deposit to cover these costs.

The parties to an existing or terminated tenancy have standing to refer a dispute to the board.⁷⁵⁹ The modes of resolution of such disputes include mediation, adjudication and a tribunal hearing. The object of mediation is to have the dispute resolved by agreement with support from the mediator. Where successful the mediator prepares a report and submits this to the board. The parties have 21 days in which to object to the finding of the report after which a determination order is issued by the board. While, it is possible that an interparty agreement can be adopted at adjudication, the process is more adversarial in nature than mediation and unlike mediation the adjudicator can adopt a decision in his own regard. Once again, parties have 21 days to object before the determination order is issued by the board. The third mode of dispute resolution is through a tribunal hearing. Access to the hearing can be direct, through appeal or where mediation or adjudication fails. Parties have the right to be heard, present evidence, call witnesses etc. The PRTB is obliged to make a determination order upon receipt of a report from mediation, adjudication or tribunal hearing. This is essentially a written record of every mediation, adjudication or tribunal determination and states all conclusions from the case. The determination order is binding on the parties. The PRTB can apply to the Circuit Court at the request of one party to a determination order to ensure enforcement of the determination order.⁷⁶⁰ Section 9 sets out that the consequence of failing to adhere to the determination order is a 3,000€ fine and imprisonment of 6 months.

The issue raised in the question will essentially depend on the evidence adduced by the landlord and the tenants during the dispute resolution scheme. Should the tenants show that the damage was not a direct result of their action then the landlord

⁷⁵⁸ RTA 2004, s. 12.

⁷⁵⁹ *Ibid.*, s. 76.

⁷⁶⁰ *Ibid.*, s. 124.

will be deemed to have illegally retained their deposit. In this event the board will make a determination order which will aim to restore the deposit to the tenants. There is also a compensatory element which may be addressed should the board deem it necessary. The majority of disputes before the Private Residential Tenancies Board concern allegations of illegal retention of the deposit. The extent of the number of claims has forced the Government to consider introducing a deposit protection scheme

8.9 Termination and illegal eviction

Last month Mary received notice from her landlord that she wanted vacant possession of the property. Mary who has been living in the property for two and a half years enquired as to the reasons for this sudden demand, her landlord replied that he didn't have to answer her and proceeded to tell Mary that she must be out in two weeks. Mary was unable to find alternative accommodation and after one week she returned to the house to find that the electricity was shut off. After another week she returned to find that the locks were changed and all of her belongings were left on the pavement outside the property.

Although a basic notice period of four weeks applies to all tenancies, regardless of whether they are private rented or social rented, an extra set of rights are available to tenants who have tenancies governed by the RTA 2004. Furthermore, where a Part 4 tenancy has come into operation under the RTA 2004 then the tenant will gain additional protections. The starting point for identifying which set of rules apply is section 3 of the RTA 2004 (RTA 2004). This provision sets out that the RTA 2004 applies to every dwelling, the subject of a tenancy, except for certain excluded tenancies, the most notable excluded tenancy being local authority tenancies.⁷⁶¹ As a result the vast majority of tenancies in the private rented sector are governed by the provisions of the RTA 2004.

Any notice of termination for tenancies of houses let for rent or other valuable consideration, whether by landlord or tenant, must be in writing and must be served not less than 4 weeks before the date on which it is to take effect.⁷⁶² This minimum notice period applies to all residential tenancies regardless of whether the tenancy is a fixed term tenancy, a periodic tenancy or a Part 4 tenancy of under 6 months duration. Otherwise, where a tenancy is regulated by the RTA 2004 then the period of required notice will vary according to the duration of the tenancy. As a general rule of thumb the longer duration of the tenancy the longer notice period required. However, where the landlord wishes to terminate the tenancy as a result of anti-social behaviour or behaviour which threatens to damage or does actually damage the fabric of the dwelling then only a seven day notice period is required.⁷⁶³

Termination by landlord of RTA tenancy	
Duration of tenancy	Notice period
Less than 6 months	28 days
6 or more months but less than 1 year	35 days
1 year or more months but less than 2 years	42 days

⁷⁶¹ RTA, s. 3(2).

⁷⁶² Housing (Miscellaneous Provisions) Act 1992 s.16.

⁷⁶³ RTA, s. 67(2).

2 years or more but less than 3 years	56 days
3 years or more but less than 4 years	84 days
4 or more years	112 days

Failure to provide the correct notice period will result in an invalid notice of termination and this will cause the tenancy to continue to operate, potentially resulting in the attraction of Part 4 tenancy status. As such where a landlord fails to provide a valid notice of termination he will run the risk of the tenancy running for a period in excess of the original term envisaged. It is an offence for a landlord to take any action in reliance on an invalid notice of termination which he knew or ought to have known was invalid.⁷⁶⁴ Parties are allowed to deviate from the general notice periods where there has been a breach of obligation on the part of the other party. Where the tenant is in breach due to anti-social behaviour on their part the landlord may only give notice of 7 days. However the landlord must produce sufficient evidence. Anti-social behaviour is defined by statute and it is important to set out that a single incident may constitute ASB. Where the breach relates to rent arrears then special rule regarding rent arrears apply as set out below. The landlord has a duty to mitigate the loss from unlawful termination of the tenancy and should make efforts to fill a vacant tenancy.⁷⁶⁵

Where a tenancy has been in operation for six months and a valid notice of termination has not been served then a Part 4 tenancy will come into operation with an array of legal consequences for both parties. This affects the termination procedure. In particular, a landlord can only bring about a termination of a Part 4 tenancy on one of six grounds and in doing so he must adhere to the particular requirements of any one of those six grounds⁷⁶⁶ in addition to complying with the normal procedural requirements set out above.⁷⁶⁷ Therefore, given that the tenancy at issue has lasted for two or more years but less than three years then a notice period of 56 days is required. However as the tenancy at issue lasted six months without a notice of termination being served the tenancy has become a Part 4 tenancy. Therefore the tenancy can only be terminated on one of the grounds set out in section 34.

Changing the locks and throwing out the tenants property may lead to a claim of illegal eviction by the tenant and the landlord may be liable in damages to the tenant. Under the RTA 2004 such action would amount to constructive termination. In *Wall v. Cullen*⁷⁶⁸ a landlord caused the electricity supply to be cut off in order to force the tenants to leave, the Private Residential Tenancies Board held this amounted to constructive termination and awarded the tenants €3,000 compensation. In previous cases concerning illegal eviction the PRTB have awarded significant sums in compensation. In this respect the PRTB under section 115 of the RTA the PRTB can make an award of damages and costs to the wronged tenant. See *Komomi v Dunne and Anor* TR64/DR322/2007 where a landlord changed locks and left all of the

⁷⁶⁴ *Ibid.*, s. 74.

⁷⁶⁵ *Kinney and Anor v O'Doherty* TR 26/DR1039/2008.

⁷⁶⁶ RTA 2004, s. 34.

⁷⁶⁷ RTA 2004, Part 5.

⁷⁶⁸ TR17/DR487/DR655/2008, 29 October 2008.

tenant's belongings outside where some were stolen. The PRTB made an award of €10,000.⁷⁶⁹

⁷⁶⁹ Komomi v Dunne and Anor TR64/DR322/2007

8.10 Housing support

Esther moved to Ireland from Madrid two years ago to train as a solicitor, however she was let go last month and has been unable to find alternative work to date. At present she is struggling to pay her rent and is very concerned as she has no other accommodation available. Esther wants to know whether she can apply for housing supports when she continues to search for work.

As the Republic of Ireland is a member of the European Union, EU or European Economic Area nationals have the right to work in Ireland. Where an EU/EEA national working in Ireland loses their job they also have the right to access certain welfare supports while they are looking for work. Where an EU/EEA national living in the private rented sector is struggling to pay their rent, while they search for work, then they may apply to the Department of Social Protection for certain temporary housing supports.

The main support in this regard is rent supplement. This is available to provide short term income support to assist with reasonable accommodation costs of eligible persons living in private rented accommodation who are unable to afford to provide for their accommodation costs and do not have alternative accommodation available to them. Where the applicant is an EEA national and can be considered to be an EU migrant worker they may be entitled to Rent Supplement. This means that once an EEA applicant was employed since coming to Ireland they may be eligible for rent supplement. At the time of application for a Rent Supplement, the claimant must: have been residing in private rented accommodation (where at the commencement of the tenancy the person could have reasonably afforded the rent and has experienced a substantial change in his or her circumstances where they are now unable to pay the rent) or accommodation for homeless persons or in an institution (or any combination of these) for a period of 183 days within the preceding 12 months of the date of claim for Rent Supplement, or have had an assessment of housing need carried out within the 12 months preceding the date of claim and have been deemed by the relevant local authority to be eligible for and in need of social housing support.

In all other cases, a person who wishes to apply for Rent Supplement will be referred, for an assessment of eligibility for social housing support by the local housing authority in the area where claim to Rent Supplement is made (and the person intends to reside). Only when the person has been assessed as being eligible for and in need of social housing support, does the person become eligible for consideration for Rent Supplement. In addition, the accommodation must be suited to the person's needs; the amount of rent being paid is within limits prescribed. An EU/EEA national is not entitled to rent supplement if they, or a spouse or partner, are working full time i.e. more than 29 hours a week unless the applicant has been deemed as eligible for the Rental Accommodation Scheme by the local authority. Additionally a person engaged in full time education, involved in a trade dispute or is living in accommodation provided by the local authority, Health Service Executive or affiliated body, voluntary housing body or is a tenant in a decontrolled rental property will not be eligible. Rent supplement is calculated so as ensure that after payment of rent a person has an income equal to the rate of Social Welfare Allowance

appropriate to their family circumstances less a minimum contribution which recipients are required to pay from their personal resources. The weekly minimum contribution is €30 for a single adult household. There will be a means assessment which takes into account any income from employment, capital value of investments, savings and value of property other than the claimant's own home, income in cash etc. Rent supplements are subject to a limit on the amount of rent that an applicant for Rent Supplement may incur. Rent supplement is not normally paid where the rent payable is in excess of the limits. In Dublin the maximum rent limit for a single person in shared accommodation is €300.

9 Tables

9.1 List of literature

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⁷⁷⁰ For a table of European legislation, see section 7.3 above.

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⁷⁷¹ Excluding Statutory Instruments implementing European legislation, for a table of which see section 7.3 of this Report above.

9.3 Abbreviations

ASB	Anti-social behaviour
BTL	Buy to let
CAS	Capital Assistance Scheme
CLSS	Capital Loan and Subsidy Scheme
CSO	Central statistics office
ECB	European Central Bank
ECHR	European Convention on Human Rights
EEA	European Economic Area
ESB	Electricity Supply Board
ESRI	Economic and Social Research Institute
EU	European Union
HC	High Court
IBF	Irish Banking Federation
IMF	International Monetary Fund
LA	Local authority
LPT	Local property tax
MARP	Mortgage arrears resolution process
OECD	Organisation for Economic Co-operation and Development
PRS	Private rented sector
PRTB	Private Residential Tenancies Board
RSL	Residential investment letting
REIT	Real Estate Investment Trusts
RT	Registered tenancy
RTA	Residential Tenancies Act (2004)
SC	Supreme Court
SI	Statutory Instrument
SWA	Supplementary welfare allowance
UK	United Kingdom
VAT	Value added tax