

Public private leasing arrangements: An effective response to the rapid growth in rent supplement claims?

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Abstract

In 2004 a public private leasing arrangement, the Rental Accommodation Scheme, was introduced into the housing system of the Republic of Ireland. Lauded as a more structured, accommodation-based approach to the use of the private rented sector to meet long-term housing need, the Scheme was designed as a means of eliminating dependence on temporary income support payments. However over the last ten years expenditure on the rent supplement scheme has increased fivefold while long term dependency on temporary income supports remains an acute housing policy concern. As a result the effectiveness of the Rental Accommodation Scheme has come in for robust criticism. Yet while the Scheme has encountered a number of operational difficulties the Irish Government remains committed to hybrid leasing arrangements as a long term policy instrument. This paper considers the extent to which this hybrid leasing arrangement offers an effective and sustainable housing policy intervention, particularly in light of the onset of the economic recession. The paper begins by explaining the position the Rental Accommodation Scheme within the broader Irish housing system before describing the Scheme's design and structure. The paper goes on to examine the various difficulties which the scheme has encountered to date before considering the role which regulatory oversight of the hybrid scheme as set out in the Residential Tenancies Act 2004 may play in the coming years.

Introduction

During the last fifteen years the number of private rented households in long term receipt of rent supplement, a temporary income support, has increased considerably.¹ Much of the recent growth can be attributed to the economic recession of the late 2000s however this problem predates the onset of the recession. Indeed the major policy response to the growth of the rent supplement scheme, the Rental Accommodation Scheme, was devised during the early 2000s in response to the consistent growth in long term claimants beginning in the 1990s. The Scheme was designed as a means of eliminating dependence on temporary income support by providing an eligible tenant with private rented housing at below market rents. Under the scheme accommodation is made available through a series of arrangements made between a local authority and a private landlord. However the scheme has encountered a range of difficulties since implementation in 2006 which have put pressure on the schemes operation. These difficulties have been exacerbated by the onset of the economic recession in the late 2000s which has led to a substantial increase in the number of households in the private rented sector who are struggling to afford their accommodation. The Government remains committed to the Rental Accommodation Scheme and in recent years there has been a heightened focus on increasing the transfer of eligible households to the scheme. However the manner in which the scheme is regulated may present difficulties in the operation of the Rental Accommodation Scheme in the medium to long term and in particular the way in which the scheme for termination operates may exacerbate property availability issues as landlords may elect to wash their hands of the scheme in a rising property market. In order to cater for this possibility this paper considers alternatives measures, including the use of fixed term contracts of 4-5 years which do not allow for termination on any of the grounds of section 34 and the use of long term contracts of over 35 years. This paper begins by framing the Rental Accommodation Scheme within the Irish housing market before going on to describe its design and principal characteristics. The paper then goes on to discuss the schemes operation while highlighting some of the difficulties which the scheme has encountered. The Paper concludes with a discussion of regulatory oversight of the Scheme, placing particular focus on security of tenure and termination procedures, in an effort to examine the long term sustainability of the scheme.

¹ However the economic recession of the late 2000s has been attended with a particularly 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 €14 million to €503 million.

Framing the Rental Accommodation Scheme within the Irish Housing System

This section briefly describes the tenure breakdown in Ireland before explaining the various supports available to households who are struggling to meet their accommodation costs. Particular attention is placed on the rent supplement scheme and the challenges which ultimately led to the introduction of the Rental Accommodation Scheme.

In the last fifty years 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. In 2011 70% of households were homeowners, 19% of households were private renters and 7% of households rented from a local authority. In the residential sector Ireland has traditionally had a dualist rented sector, with the private rented generally associated with profit renting while the social rented sector, mainly local authority housing, fulfils a not for profit broader social function.² 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.³ 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”.⁴ In 1999 the Commission on the Private Rented Residential Sector was set up to consider reform of the private rented sector.⁵ 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 Residential Tenancies Act 2004. This Act has substantially reformed the law regulating the relationship of landlord and tenant with respect to residential tenancies. 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 which was empowered to provide alternative dispute resolution⁶ mechanisms, including mediation and arbitration while an appeal could be made first to a tenancy tribunal and from there through the courts.⁷ The Board is also empowered, upon application, to review rents to ensure that they reflect genuine market conditions.⁸ The reforms of 2004 have

² See Wylie, J *Landlord and Tenant Law*, (Dublin, Butterworths, 1998) 2nd edn and Cassidy, U & Ring, J *Housing Landlord and Tenant law the residential sector* (Dublin, Round Hall 2010).

³ Census, various years.

⁴ Dillion, B & O'Brien, L 'Private Rented Accommodation: The Forgotten Sector of Irish Housing' (Dublin, Threshold, 1982).

⁵ 'Report of the Commission on the Private Rented Residential Sector' (Dublin, Stationary Office, 2000).

⁶ To date the majority of Boards caseload has concerned disputes concerning deposit retention.

⁷ The Residential Tenancies Act 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. (s134 (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 (135(1)(b)) however where a further part 4 tenancy comes into operation there is an obligation to register due to RTA 135(1)(c).

⁸ *Ibid.* s. 19, Under the Residential Tenancy Act 2004 rent levels in the private rented residential sector are regulated to the extent that they must conform to market levels. 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 concerned tenant may apply to the Private Residential Tenancy Board who are empowered to carry out a rent review 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

marked out the private rented sector in Ireland as having perhaps the most advanced private rented regulatory body in the British and Irish Isles.⁹

The Residential Tenancies Act 2004 applies to “every dwelling, the subject of a tenancy” including a tenancies created before the passing of the Residential Tenancies Act¹⁰ and therefore it is not possible to contract out of the provisions of the Act with the result that the vast majority of private tenancies are caught by the provisions of the Act, however there are a number of other tenancy relationships which are excluded from the Act. These include business tenancies as well as tenancies relating to rent controlled dwellings. Although the rental market in Ireland was deregulated in the early 1980s this did not have retroactive effect and therefore after deregulation a number of households continued to hold under regulated tenancies although this group has declined to the extent that at present it is rare to encounter such a tenancy in practice.¹¹ Also excluded are public authorities¹² and approved bodies as well as voluntary and co-operative housing bodies.¹³

Prior to the introduction of the Residential Tenancies Act 2004 the rights and obligations of both parties to a residential tenancy relationship largely depended on the terms of the tenancy agreement.¹⁴ However, the Act has introduced a range of rights and obligations which represent a minimum standard in all residential private tenancy arrangements which must be complied with.¹⁵ Obligations included under the Act include the duty to pay rent, to ensure their behaviour does not cause the landlord to breach his statutory obligations,¹⁶ to allow the landlord reasonable access to the dwelling and to notify the landlord of any defect in the dwelling. Detailed provisions concerning repairs are also set out; these include a ‘normal wear and tear’ test for determining whether a tenant has breached his obligations.¹⁷ Landlords are affixed with a range of statutory obligations including an obligation to register the

in question. However, in practice the Private Residential Tenancy Board tend to rely on rent level data collected as part of the general registration of tenancies.

⁹England and Wales do 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 PRTB, most notably with regard to resolving rent and repair disputes; it does not offer the same range of alternative dispute resolution services.

¹⁰ Residential Tenancies Act 2004, s. 3.

¹¹ Part II of the Housing (Private Rented Dwellings) Act 1982. Formerly controlled under the rent restriction acts 1960 and 1967 to determine whether the dwelling was a controlled dwelling under the RRAs when the 1982 Act came into operation

¹² 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

¹³ Also excluded are leases arising under Ground Rents are also excluded, these include ‘building leases’ and are rare in practice. Shared ownership leases and holiday homes are also excluded. In addition the Act does not apply to a dwelling within which the landlord also resides or is occupied by a spouse, parent or child of the landlord. However this has to be contrasted with the situation where the dwelling in question is self-contained, in such circumstances the dwelling will be caught by the Act. The Act also has no application to business, long occupation and improvements equity leases and these are also quite rare. Finally the Act has no application to a tenancy of dwelling with a term of more than 35 years, Housing Act 2009, s. 100(2)(b).

¹⁴ Landlord and Tenant (Amendment) Act 1980, part II, in some circumstances the tenant could apply for a new tenancy, for instance where the tenant had been in occupation for twenty years or had carried out substantial improvement works the tenant would be entitled to apply for a new lease. However in practice both were far from straightforward for the tenant and the balance was largely tipped towards the landlord.

¹⁵ Residential Tenancies Act 2004, s. 18(1).

¹⁶ For example causing the landlord to breach his obligations under section 18 of the Housing Act 1992.

¹⁷ Residential Tenancies Act 2004, s. 16.

tenancy with the Private Residential Tenancy Board,¹⁸ allowing the tenant to enjoy peaceful and exclusive occupation of the dwelling,¹⁹ the duty to carry out repairs both structurally and internally,²⁰ the duty to repay a deposit²¹ as well as the duty to insure the structure of a dwelling.²² However, by far one of the most dramatic reforms of the Act relates to security of tenure of private residential tenancies.²³ These reforms are implied into every residential tenancy and cannot be contracted out of, or modified. In the private residential sector in Ireland fixed term tenancies are the most common tenancy arrangement. Prior to the Residential Tenancies Act 2004 the rights and duties of the parties to this arrangement depended largely upon the terms of the tenancy agreement so security of tenure could be set for a fixed period, often yearly, after which the tenancy would expire. A fixed term tenancy can only be terminated during a fixed term period in three limited circumstances; where there had been a breach of the terms, where the landlord refuses an assignment or where the lease provides for specific grounds for termination. However the Residential Tenancies Act 2004 has substantially changed the legal operation of a fixed term tenancy by implying a range of rights and duties into all residential tenancies. These provisions complement and in places overlap the rights and duties privately negotiated between the parties. This is especially the case with regard to security of tenure. Previously, security of tenure was limited to the term set in the tenancy agreement, however the Act has altered this position by granting any residential tenant who has been in occupation for six months the right to continue in occupation for a further three and a half years, notwithstanding the fact that the original tenancy may have been for a fixed term for less than that period.

This is termed a 'Part 4 tenancy' and so in the case of a one year fixed tenancy, the tenant will, after six months occupation and provided a valid notice of termination has not been served; acquire the right to continue in occupation for a further three and a half years.²⁴ This will be subject to a landlord's limited statutory termination rights. It is not possible to contract out of, or modify, the provisions of the Residential Tenancies Act 2004; however there is no restriction on the introduction of provisions which are more beneficial to the tenant. Therefore, for instance a tenancy for a five year fixed term may be granted which would allow the tenant a period of security longer than that which is available under the Part 4 tenancy, furthermore the tenant would benefit from the fact that a fixed term tenancy can only be terminated in one of the three situations set out above and in this respect it offers greater security than a Part 4 tenancy which may be terminated by the landlord on one of six grounds, provided that appropriate notice of termination giving the required period of notice is served by the landlord. These grounds are where the tenant has breached an obligation under the

¹⁸ Residential Tenancies Act 2004, part 7. The tenancy must be registered in order for a landlord to have recourse to dispute resolution facilities of the Private Residential Tenancies Board; however a tenant may apply to the Board regardless of whether or not the tenancy has been registered with the Board.

¹⁹ Residential Tenancies Act 2004, s. 12(1)(a).

²⁰ *Ibid.* s. 12(1)(b).

²¹ *Ibid.* s. 12(1)(d). There is no independent deposit retention scheme in Ireland at present however recently (2013) there are proposals on the issue.

²² Residential Tenancies Act 2004, s. 12(1)(c).

²³ Residential Tenancy Act 2004, s. 28.

²⁴ *Ibid.* s. 41, 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 the cycle continues.

tenancy, where the dwelling is no longer suitable to the accommodation needs of the tenant's household, where the landlord intends to sell the property within 3 months of termination, the landlord requires the property for himself or a family member, where the landlord intends to substantially refurbish the property and finally where the landlord intends to change the use of the dwelling. Under the Act both landlords and tenants are both bound by a set notice period when seeking to bring about a termination of the tenancy and generally, the notice period is longer depending on the duration of the tenancy.²⁵

Households in the private rented sector who are having difficulty in meeting the cost of their accommodation can apply for Rent Supplement. In the Republic of Ireland social housing policy has shifted focus from the traditional approach of constructing and acquiring houses to leasing property as a means of meeting social housing need. The Rental Accommodation Scheme is a key aspect of this policy along with the leasing initiative and the general scheme of rent supplement.

The Rent Supplement Scheme is part of the Supplementary Welfare Allowance scheme which was introduced in 1977 in order to provide temporary financial assistance on the basis of need to those with no other recourse. Rent supplement is paid to people living in private rented accommodation who cannot provide for the cost of their accommodation from their own resources. The objective of rent supplement 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.²⁶

Successful applicants must fulfil various income and housing requirements. Applicants must not be in full time employment or in full time education²⁷, and applications are means tested and also subject to a habitual residence test. The accommodation must be suitable for the applicant's needs and the rent is capped to a maximum set by the local authority.²⁸ 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 employment to retain a portion of their payments with the exact amount depending on a person's ability to pay. The reforms will also transfer responsibility for the payment from the Department of Social Protection to local authorities. The new housing assistance payment will be made directly to landlords as opposed to the case under rent supplement which was paid to the tenants.

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 over the last twenty years. During the 1990s and 2000s the number of long term, greater than eighteen months, claimants increased consistently and this combined with the spiralling costs of the scheme provided the impetus for reform in this area which led to reform of the scheme

²⁵ *Ibid.* s. 66.

²⁶ Review of the Supplementary Welfare Allowance Phase II' (Dublin, Stationary Office, 2006), page 80.

²⁷ i.e. 30 hours or more in a week

²⁸ Review of the Supplementary Welfare Allowance Phase II' (Dublin, Stationary Office, 2006).

and the introduction of the Rental Accommodation Scheme in 2004.²⁹ The growth in the number of households in long term dependence on rent supplement meant that the cost of the scheme increased substantially. There was further concern that many households in the private rented sector experienced sub optimal standards of accommodation. These two factors influenced the design of the Rental Accommodation Scheme.

The Rental Accommodation Scheme

This section builds on the previous section, which explained the various problems with the rent supplement scheme, by describing the design and operation of the Rental Accommodation Scheme. Particular focus is placed on the challenges which have impacted upon the scheme.

The Rental Accommodation Scheme is a public private leasing arrangement which provides private rented housing to households which are in need of long term housing support. This meant that an 18 month threshold was devised in order to ensure that those in need of a temporary income support due to temporary unemployment would continue to receive a payment while those in need of long term social housing support would receive more targeted support, i.e. through the Rental Accommodation Scheme. The two main objectives of the Scheme were the elimination of dependence on rent supplement by persons assessed as needing housing assistance on a long-term basis and the enhancement of the capacity of local authorities to respond to long-term housing need. The Scheme involves a three way relationship between the local authority and the landlord, the tenant and the local authority and finally the landlord and the tenant.³⁰ In the first place local authorities enter into contractual arrangements with private landlords to secure the medium to long term availability of suitable privately rented accommodation for the Scheme.

The terms of this contract are negotiated between the two parties, with the local authority guaranteeing the below market rent agreed on behalf of the tenant and undertaking to make the full payment directly to the landlord. The local authority will then nominate a tenant to take up the accommodation. The nominee may be an existing tenant of the property who currently receives rent supplement, and is eligible for the scheme. The nominee will then enter a residential tenancy agreement with the landlord.³¹

The tenancy agreement between the landlord and the tenant is governed by the Residential Tenancies Act 2004. In order for a landlord to qualify for the Scheme he must be tax compliant³² and he must have registered, or agree to register the tenancy with the Private Rented Tenancies Board. The property put forward must meet a number of standards, in particular the property must meet minimum standards including fire standards for private

²⁹ Department of Social Protection. The Rental Accommodation Scheme did not become operational until 2006.

³⁰ Moneys are provided on an Exchequer neutral basis to meet the cost of persons transferring from the SWA scheme to the rental accommodation scheme, the total budget for which in the 2012 was €25 million.

³¹ Under the scheme the local authority will pay the rent directly to the landlord on behalf of the tenant, who is required to pay a differential rent to the local authority.

³² The Tax clearance certificate must be renewed annually and contracts are produced in the name that appears on the cert. The landlord must provide evidence of payment of local property tax.

rental accommodation as determined by the local authority and the property have a Building Energy Rating cert, with higher ratings prioritised.

There are two distinct types of arrangement entered into under the Rental Accommodation Scheme. The first is an availability type arrangement between landlords and local authorities to secure medium to long-term availability of accommodation (with local authority having nomination rights to accommodation) and the second is a tenancy by tenancy arrangements with landlords to meet short term accommodation requirements (local authority guarantees rent payment only for the time that a specified tenancy is in existence).

Standard forms of contract form the contractual basis for arrangements between landlords, tenants and local authorities. The form of contract entered into sets out the general responsibilities of the three parties subject to the operation of the Residential Tenancies Act 2004. Within certain parameters local authorities will be able to negotiate the particular conditions under which accommodation providers make their properties available for the Scheme.

Under the scheme the landlord and tenant relationship is between the property owner and the former rent supplement recipient while the role of the local authority is to act as agent or broker for the tenant. Although it depends on the agreement reached between local authority and landlord, generally the landlord will retain responsibility for insuring the property³³ as well as managing the property. In this respect the landlord is responsible for carrying out routine repairs and maintenance and also dealing with anti-social behaviour and any other breaches of the tenancy.

Under the scheme the rent rate is negotiated between the landlord and the local authority in line with local market conditions. However because the Scheme was introduced to make savings, rent levels are set below market rates. Generally speaking rent rates under the Rental Accommodation Scheme are about 8% below local market rents, however in some local authority areas a discount may range as high as 20% where the local authority takes on management responsibilities with regard to the property.³⁴

At inception of the Scheme it was envisioned that a number of benefits would compensate the landlord for taking a below market rate. In particular under the scheme the landlord would not have to collect rents for the duration of the contract rather he would be guaranteed prompt payment by a state agency. Furthermore, another advantage of participating on the scheme arises from the fact that the average yield across the private rented sector is less than a full year's rent due to vacancies/tenant turnover. Under the scheme a landlord would also be saved advertising costs and going through a tenant interview process as he would not have to fill vacancies. Another benefit of the scheme is the very bankable asset that a guaranteed fixed-term Rental Accommodation Scheme rent payment represents.

³³ This extends to landlords contents and public liability. Tenants are at liberty to acquire personal contents insurance.

³⁴ In respect of social leasing Carlow county council have offered landlords either 92% of market rent with the landlord remaining responsible for all management and maintenance of the property or 80% of market rent with the Council is taking responsibility for maintenance of the property.

The Scheme also confers numerous benefits on the tenant, in particular as responsibility for finding alternative accommodation at the end of tenure lies with the local authority and therefore the tenant has stronger security of tenure than on they would have on the rent supplement scheme. Furthermore the Scheme encourages tenants to take up work by allowing a differential rent scheme related to employment status. Prior to the introduction of the Scheme any such action would have disqualified a household from receiving rent supplement.³⁵

Under the Scheme there are two main types of RAS contract options available; a tenancy specific contract and a fixed period contract.

The tenancy specific contract is used where the Landlord has selected the tenant themselves, they are deemed eligible for Scheme, and a contract is agreed. The period of the contract will be for the period that the tenant remains living in house or period of 4 years whichever is the lesser.³⁶ If the tenant leaves/is relocated during the 4 year period, the Council stops paying the RAS agreed rent from the date they leave/relocate. The tenancy can be terminated during this period for six reasons which are discussed below.

In the alternative a Fixed Period contract is set for a pre-agreed fixed period, usually 4 years or more.³⁷ During the period of the contract, the Local Authority appoints the tenants and in the case of a tenant being in occupation of the property at date of signing the contract, they will continue in occupation for the fixed period of the contract or until they leave (whichever is the earlier). When/if they leave or are relocated by the Council during the fixed period of the contract, the Council appoints the next tenant to the property for the remaining period of the contract. Any further vacancies during the period of the contract are filled in the same manner. The termination rights of the landlord in this case generally depend on the terms of the tenancy.

The collection of rent and the management of rent arrears is a matter for the housing authority concerned in accordance with their general management and maintenance responsibilities. RAS involves a three way contractual relationship between landlord, tenant and the housing authority. The housing authority are responsible for payment of the rent to the landlord, and the landlord is contractually obliged to maintain the property in good condition and deal with any repair issues in a timely manner. The tenant also has a contract with the housing authority, whereby they agree to pay a rental contribution to the authority based on the differential rent scheme. In the event that the tenant does not make the rental contribution to the authority, under the terms of the three way agreement the authority may direct that the landlord serve notice to quit on the tenant. If the landlord fails to serve such a notice to quit then this may be a breach of the agreement between the authority and the landlord.

For the purposes of regulation the fundamental contract is between the landlord and the tenant. This is a residential tenancy agreement and is caught by the provisions of the

³⁵ The new Housing Assistance Payment will allow claimants to take up employment without losing entitlement under the scheme. Instead the amount they receive will be related to their employment.

³⁶ 4 year period is in accordance with Residential Tenancies Act, 2004.

³⁷ *Ibid.*

Residential Tenancies Act 2004. Where a dispute arises between a landlord and a tenant, resolution of that dispute depends in the first instance on the contract between both parties. In the vast majority of cases the provisions of the Residential Tenancies act 2004 are superimposed onto the tenancy agreement and these provide for a range of alternative dispute resolution facilities. This remains the case where the tenant is a recipient of rent supplement and in the case of a dispute the landlord or tenant can approach the Private Residential Tenancies Board, the Garda Síochána and the community welfare officer. Ultimately the landlord can seek termination of the tenancy and the rent supplement would cease.

Challenges Faced

The Rental Accommodation Scheme has divided opinion amongst policy makers and housing actors alike. Much of the criticism of the scheme arises from the fact that long term reliance on rent supplement has continued to grow despite its introduction. However such criticism often unfairly overlooks the fact that the scheme was devised and implemented prior to the onset of the economic recession. The recession has shifted the parameters of the Irish housing situation to such an extent that the targets set in the early 2000s no longer bear any relation to current level of demand on the rent supplement scheme. This makes the task of assessing the impact of the Rental Accommodation Scheme particularly difficult. At the outset the scheme had as its aim the transfer of all long term recipients of rent supplement, approximately 19,000 households in 2004, to the Rental Accommodation Scheme within a period of three to four years. By 2010 this targeted group had been largely transferred to the Scheme however during this period the number of claimants of Rent Supplement increased by over 60%.³⁸ The substantial increase in claimants has put pressure on the administration of the Scheme and has exacerbated many of the difficulties faced by the Scheme during its operation.

One of the main challenges which the Scheme has faced relates to the availability of property. Even though there are approximately 230,000 vacant properties in Ireland,³⁹ finding appropriate property has been far from straightforward. Part of the reason for this is that the process to ensure appropriate property is acquired, vetted and made available to eligible households is far more complex than under the rent supplement scheme and indeed the strict requirements of the Rental Accommodation Scheme mean that property must be of high quality, meeting all legal requirements, before it is deemed appropriate. This means a prospective landlord may be required to carry out repairs or installations in order to meet the scheme's requirements and for some landlords the prospect of incurring expense may lead them to decide to let the property, which does not meet the basic standards, privately to undiscerning households.

Part of the difficulty in sourcing suitable properties derives from the state of the Irish property and rental market. From peak values in 2007 property prices have fallen by approximately 50% nationwide with rents falling by about 25% nationwide during the same period.⁴⁰ As a result many landlords may consider that the present value of property is significantly undervalued therefore they are reluctant to enter medium to long term arrangements which under the Rental Accommodation Scheme are necessarily below current market prices. It was anticipated that over time there would be greater realism as to the long-term value of property and an acceptance that there will not be a sudden rebound in prices or rental yields however this acceptance was slow to materialise. However, in the last year there has been a small but consistent increase in rent rates in many urban areas and it is likely that this will put further pressure on landlord uptake of the scheme who may be more reluctant to accept below market rents.

³⁸ Department of Social Protection

³⁹ Census 2011.

⁴⁰ Private Residential Tenancies Board, annual reports, various years.

Further challenges which the Scheme has encountered relate to the quality of property presented. In some cases there may be a willing landlord and tenant but accommodation which does not meet appropriate standards. Such properties would require improvements in order to meet the quality requirements of the scheme; this is particularly the case where property may have been vacant for some time. When dealing with a vacant property complex administrators of the Rental Accommodation Scheme operate in accordance with the principle of sustainable communities, this is essentially “pepper-potting”.⁴¹ This means that Scheme officials ensure that there is not a mass concentration of deprived families in one area and as such a vacant property complex may be refused on such grounds. As such this policy may present further availability challenges by reducing the number of properties open to the scheme.

The scheme has also encountered significant refusals by tenants to move from the rent supplement scheme to the Rental Accommodation Scheme. Often this may be due to an fear of losing their entitlement to further social housing or a fear of losing priority for local authority housing. While such tenants will not lose entitlement to further social housing they may indeed lose priority where they are well accommodated and another applicant has a greater need. Other tenants only be interested in ultimately purchasing a property. In order to reduce tenant refusal the present policy is to allow two refusals of property after which they are no longer considered on the Scheme and will be disbarred from rent supplement for one year.

In response to the dramatic increase in the number of private rented households claiming rent supplement administrators of the Rental Accommodation Scheme have introduced a number of changes. Firstly, provision under the scheme has been subsumed under, and become a component of, the broader social housing leasing initiative, allowing local authorities the opportunity to source accommodation from a wider number of private sectors providers, including those who possess new unoccupied units. Furthermore, local authorities and community welfare officers have placed increasing focus upon identifying and supporting priority cases under the scheme.⁴² Another measure which has been introduced by local authorities was to allow applicants for the Scheme to find suitable properties themselves which may then be taken into the leasing scheme.⁴³ While these measures have led to some improvements in the operation of the scheme the challenges outlined above continue to influence its operation.

⁴¹ Building Sustainable Communities (2005) the overall policy concerns tenure mix i.e. people in social housing intermixed in developments in communities with other tenures. This policy may present availability challenges. For instance where the property owner intends to sell property in what may become a “pepper-potted” area they may be concerned that the presence of social housing may reduce the value of the property and as such may be reluctant to put forward a property to the Scheme.

⁴² Essentially, the longer a household has been in receipt of Rent Supplement the higher priority they are accorded.

⁴³ Of course this is subject to the property complying with the normal conditions, i.e. housing standards etc, and the agreement of the landlord. Approved housing bodies under the leasing initiative have also been advised that they can seek applicants for social housing support directly from households in long-term receipt of rent supplement as part of a choice-based lettings approach to allocations.

Conclusion - Going Forward

This section considers how regulation of the private rented sector in Ireland may present difficulties for the Rental Accommodation Scheme in the medium to long term. Particular focus is placed on the way in which the scheme for termination may exacerbate property availability issues. Alternatives are considered, including the use of fixed term contracts of 4-5 years which do not allow for termination on any of the grounds of section 34, the use of long term contracts, over 35 years and finally the use of Part V long term leasing arrangements.

The Rental Accommodation Scheme continues to form a major part of Government housing policy and⁴⁴ in response to the rapid growth in rent supplement claimants there has been an increased focus on accelerating the rate of transfers of eligible households to the Scheme while overcoming the obstacles noted above. While it is understandable in the present economic climate that much of the focus is on the short term operation of the scheme, it is perhaps salient to consider how the scheme may operate in the medium to long term. In particular, this paper considers how regulatory oversight of the scheme may present operational difficulties in the future. For regulatory purposes the fundamental contract of the Rental Accommodation Scheme lies between the landlord and the tenant. While many of the key terms of this tenancy agreement, for instance rent due, term etc., will have been negotiated between the local authority and the landlord, other important terms, e.g. security of tenure, notice periods for termination, will be implied into the tenancy through the operation of the Residential Tenancies Act 2004. In a Rental Accommodation Scheme arrangement the landlord may elect for a tenancy specific arrangement. In such an arrangement there are two main contracts used; a complete fixed term contract or a partial fixed term contract rolling into a Part 4 tenancy. Since inception the main challenge faced by the Rental Accommodation Scheme has been the availability of properties. However, a key aspect of achieving a suitable stock of properties is maintaining current landlords on the scheme. In 2010 the first significant tranche of RAS contract reviews arose. The majority of landlords choose to renew their contracts and remain with the scheme even though this meant a reduction in rent payments upon review. While this has resulted in cost savings it is a concern that landlords are choosing to leave the scheme. Often the landlords decision to leave the scheme is due to dissatisfaction with the below market rent rate paid and the belief that they could get a higher rent payment in the private rented market while other landlords may be unable to afford to maintain the properties to required standards.

While landlords are free to opt out of renewing their contract at the end of the term the question remains how tightly bound are landlords to the scheme during its term? In order to answer this question it is necessary to examine the provisions of the tenancy agreement which concern termination. However, as residential tenancies are subject to the Residential tenancies Act 2004 it is also necessary to analyse the system of regulation of tenancy agreements set out in the Act. In the first instance the landlord and tenant will enter an agreement for a fixed term of four or five years. At the end of this period the contract will

⁴⁴ Housing Policy Statement (2011).

come up for renewal and terms will be reviewed by the local authority as to reflect current market conditions. As noted above termination of fixed term contracts is highly constrained, however where a tenant enters a fixed term tenancy they will still acquire Part 4 tenancy rights after 6 months occupation.

It is not possible to contract out of, or modify, the provisions of Part 4. Accordingly although a landlord and tenant may agree to enter a fixed term tenancy, this will not affect the tenant acquiring Part 4 tenancy rights after 6 months of occupation. In effect the fixed term tenancy simply runs with the Part 4 tenancy. As such, the Part 4 tenancy rights will apply to the fixed term tenancy but only to the extent that they may provide further benefit to the tenant over and above the rights afforded to him or her by virtue of the fixed term tenancy agreement. Therefore where a fixed term of 5 years is agreed then the tenancy can only be terminated in the three circumstances set out above and the more liberal termination provisions set out in section 34 of the Residential Tenancies Act 2004 would not be available to the landlord unless specific provision is made in the fixed term tenancy. This is because the fixed term of 5 years provides greater benefit to the tenant than would be available under a Part 4 tenancy.

In the second instance the landlord and tenant will enter an agreement for a fixed term of six months after which the agreement will transform into a Part 4 tenancy and the agreement will be extended to a period of four years through the operation of the Residential Tenancies Act 2004. In this case the tenancy may be terminated at any period so long as the termination is based on one of the grounds set out in section 34 of the Residential Tenancies Act 2004, as set out above.

The distinction is important in theory because it determines the capacity of the landlord to terminate the tenancy prior to expiry of the term. However, in practice many local authorities include the termination options set out in section 34 in the lease regardless of the type of tenancy agreement. While the inclusion of this provision makes the possibility of premature termination of the tenancy a more likely possibility, it serves the purpose of making the scheme more attractive to prospective landlords who may be reluctant to enter an arrangement which offers below market rent for a period of four to five years with limited scope for termination.

In the short term the inclusion of this provision in Rental Accommodation Scheme tenancy agreements does not present any immediate concern, particularly given the nature of the property market in Ireland. However, in the event that growth returns to the market, there may be an increased incentive for the landlord to depart from the Rental Accommodation Scheme. The inclusion of section 34 termination options may well provide the landlord with the means of washing his hands of the below market rent scheme by selling the property. In such an event the tenancy agreement would come to an end in line with the notification period set out above. In the event of a termination the local authority is responsible for finding the tenant alternative accommodation within the scheme however this may be far from straightforward given the availability challenges which the scheme continues to encounter. In an upward market it is arguable to suggest that availability issues would become more acute as landlords would increasingly favour the high rents achievable on the

open market over the below market rate of the Rental Accommodation Scheme. However, there are a number of options available to local authorities towards ensuring the long term sustainability of the scheme. For instance the local authority may exclusively offer contracts with a fixed term of over 4 years. This would obviate the landlord's recourse to section 34 and would therefore prevent him selling the property during the currency of the lease. Alternatively the local authority could enter a long term leasing arrangement with the landlord, for a period in excess of 35 years. This would have the effect of placing the tenancy outside the scope of the Residential Tenancies Act 2004 and thereby removing the possibilities of early termination provided for in section 34 of that Act.