



A Secure Tenancy Model for the Rental Sector

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Irish Congress of Trade Unions





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Ireland's home ownership and rental profile has changed dramatically in the last decade. Figures from both the CSO and Eurostat, in December 2020, reveal a home ownership rate of some 69%, its lowest level ever and marginally below the EU average (70%).¹

In tandem with this, rentals now account for over 31% of the housing sector, up from 20% in 2006.

House prices in Ireland are now some 77% above the EU average.

This arises from changing demographics, more people renting, coupled with a massive failure of official housing policy over the last decade.

This failure has meant a collapse in investment in public housing, a sharp decline in public housing provision and a severe shortage of affordable housing.

Perhaps the most significant pressure results from the decision to effectively outsource public housing provision to the private rented sector.

In the past, the State and local authorities built new homes.

But now official policy dictates that the housing needs are to be met primarily by private landlords, with the cost subsidised by the taxpayer.

That cost now runs into several hundred million annually and has even exceeded the spend allocated for building new homes.

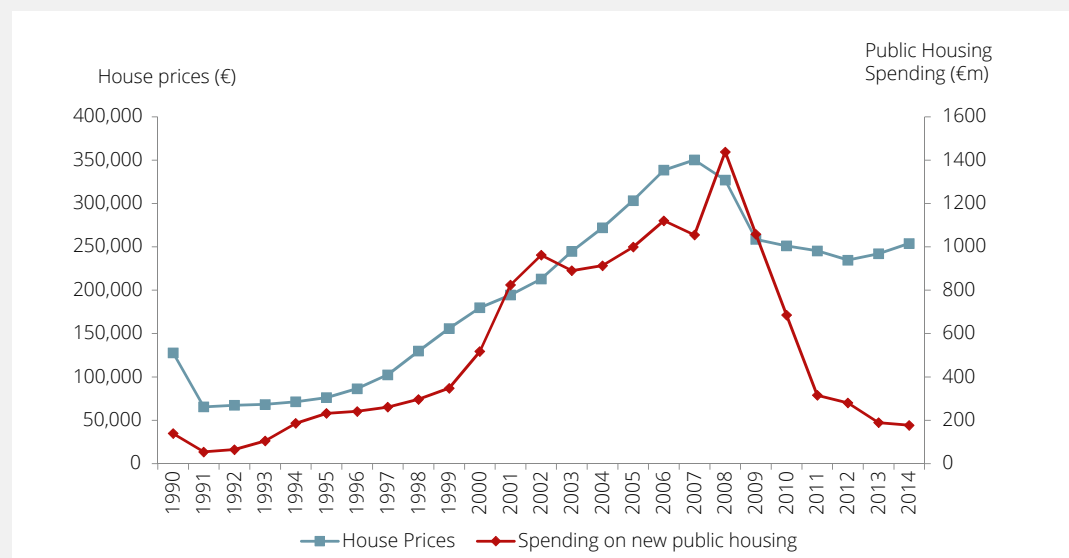
This is an inefficient and expensive waste of taxpayer's money. It is a bad deal for the State and for many of those who are housed in this manner.

The State gains no asset (in comparison to building new homes), national public housing stock continues to decline and tenants have no guarantee of either secure tenancies or decent quality accommodation.

Waiting lists and housing need continue to grow; more people are forced into the private rental sector and are forced to stay for longer; there is downward pressure on accommodation standards and upward pressure on rents.

According to the European Commission, rents here have risen by 23.4% since 2015, the highest increase in the EU in that timeframe.

Investment in Public Housing Collapses



¹ <https://www.independent.ie/irish-news/ireland-has-eus-highest-housing-cost-after-ten-years-of-surge-prices-39850377.html>



Public Provision Goes Private

In fact the main beneficiaries of this newly privatised form of public housing are landlords in the private rental sector and investors.

A study by Michelle Norris and Michael Byrne of UCD (see chart) found that: "Government funding for new social housing provision fell by **88.4%** between 2008 and 2014 and.... output of dwellings in this tenure declined by **91.5%** concurrently."²

By 2019, the consequences of this choice were clear. That year, all local authorities combined built just 1088 new homes. The four Dublin local authorities built just 228 (less than 2018).³

Dublin City Council - with an estimated social and affordable housing need of some 20,000 - built just 45 new homes, but 24 of these were Priory Hall rebuilds, according to analyst Mel Reynolds. Dublin City Council owns some 112 hectares of zoned land, enough for 10,000 new homes.⁴

The inevitable longer-term impact of these policies were neatly summarised in the European Commission's 2019 country report on Ireland: *"Rapidly rising rents, insufficient residential construction activity and a lack of affordable and social housing have driven up homelessness especially in Dublin"*⁵

And despite repeated claims of major progress in tackling the housing crisis under the Rebuilding Ireland programme, overall housing need and waiting lists remained stubbornly high at between 70,000-100,000 since 2016.

Over recent years, faced with growing demand and low housing output - due to official policy - Government and local authorities turned increasingly to the private rented sector for a solution.

But what may have begun as an emergency response to escalating housing need quickly became entrenched as policy and, in turn, set in train the steady and expensive privatisation of public housing provision.

The Housing Assistance Payment (HAP) was established in 2014, with a limited initial roll out to seven local authorities. It was extended nationwide in 2017.

The HAP was deployed to tackle waiting lists, with tenants housed in the private rented sector and local authorities making direct payments to landlords (tenants also make contributions to the local authority and many also make 'unofficial' top up payments to landlords). The prevalence of such top up payments and the financial pressures placed on tenants as a result was confirmed by both Threshold and St Vincent de Paul, at a December 2020 hearing of the Oireachtas Housing Committee.

Crucially, households on Housing Assistance Payment (HAP) are deemed to have their housing needs met and are removed from waiting lists.

Some €400,000 was expended on HAP in 2014.

According to analysis from the Department of Public Expenditure (DPER), that spending increased almost **one thousand fold** to €382 million by

² <https://www.ucd.ie/geary/static/publications/workingpapers/gearywp201615.pdf>

³ https://issuu.com/passivehouseplus/docs/ph_ire_issue_36_digital

⁴ Mel Reynolds, forthcoming article in Passive House

⁵ https://ec.europa.eu/info/sites/info/files/file_import/2019-european-semester-country-report-ireland_en.pdf

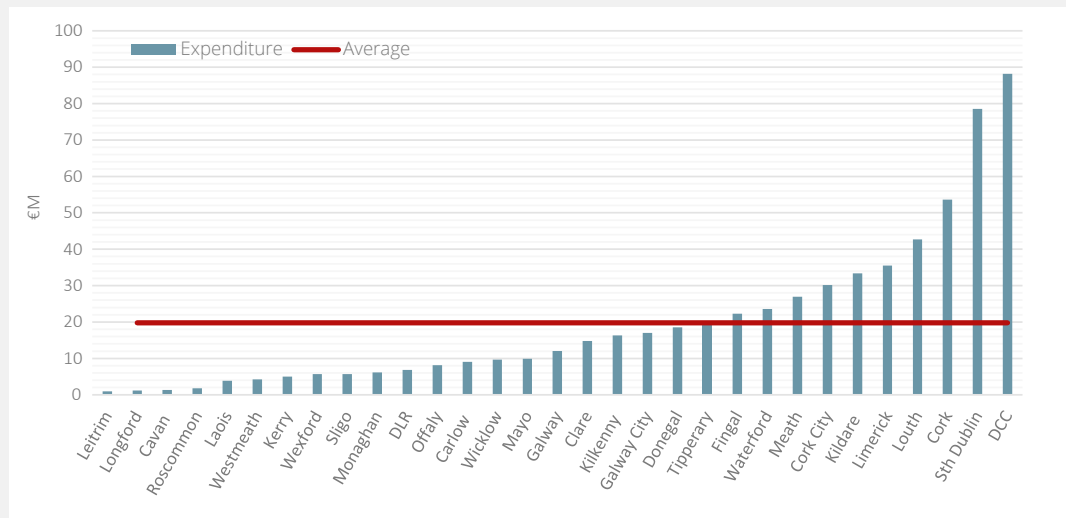


Chart 2: Cumulative HAP Expenditure by Local Authority: 2014-2018

2019. Indeed, total spending on HAP to date stands at some €612 million on HAP, a massive transfer of resources from public to private.⁶

Between 2016-2018, HAP accounted for a staggering 67% of all *new social housing* provision by the State.

Indeed, the money expended on rental subsidies to landlords consistently exceeded the 'build targets' set under official policy.⁷

The DPER analysis concludes says this unsustainable and new social housing must be increased to meet housing needs. In fact it is cheaper for local authorities to build new homes that channel money to private landlords.

As far back as 2017, architect Mel Reynolds noted that finance for a direct build in Dublin through state

borrowing "would cost approximately €800 per month." This contrasted with the monthly cost of €1,244 for a HAP unit - with the State gaining no asset for the outlay.

Budget 2020 saw this policy reached its apogee, with some €806 million to local authorities for HAP and similar expenditure but just €789m allocated for the building and acquisition of new homes.

Budget 2021 saw this rise to over €1 billion (€1057m) for private rental/leasing subsidies.

Overall, some 30% of the total national housing budget for 2021 is accounted for by direct subsidies to landlords and the leasing of private properties.⁸

⁶ <https://www.irishtimes.com/news/social-affairs/state-has-paid-landlords-612m-under-hap-tenant-scheme-1.4044451>

⁷ (<https://www.socialjustice.ie/content/policy-issues/time-set-new-social-housing-target>)

⁸ <https://www.irishtimes.com/news/politics/no-proper-explanation-given-for-almost-1bn-going-to-landlords-in-budget-green-td-says-1.4382310>)



Remarkably, despite the vast amounts of money flowing into the rental sector, the State and local authorities make few demands on private landlords under HAP and have failed to even enforce the basic minimum standards that do apply.

For example, landlords who provide 'social housing' under HAP can continue to utilise provisions of the Residential Tenancies Act to evict tenants on the grounds that the property is to be sold, or is needed for a family member, amongst other reasons.⁹

This is in stark contrast to the protections enjoyed by tenants in local authority public housing and is indicative of a wider failure in respect of regulating the private rented sector.

The question arises as to why the State has consistently failed to ensure and enforce higher standards in the private rented sector, perhaps the one possible upside of the considerable financial leverage it now possesses.

This failure was captured in a 2018 Threshold Tenant Survey which showed a sector that appeared almost Dickensian in its underdevelopment.

It was updated in November 2020 and revealed that conditions had actually worsened in the intervening years, with:

- 85% could not afford to buy a home or access public housing;
- 15% were renting 'by choice';
- 57% were were paying more than 30% of take home pay in rent;
- 19% were paying over half take home pay in rent;
- 80% lived in the same home for less than six years.¹⁰

Lack

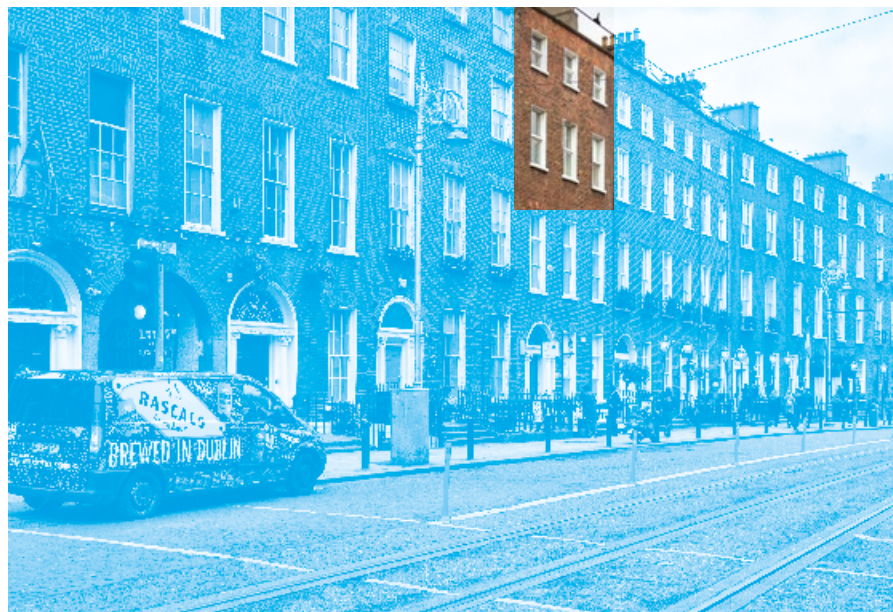
of

Equality

Meanwhile, research consistently shows that evictions are the single biggest cause of homelessness over recent years.

A 2019 Focus Ireland survey revealed that 58% of tenants had left or vacated their previous accommodation due to the property being removed from the market by the landlord, or issues directly related to security of tenure.¹¹

As we move towards an exit from the Covid 19 crisis and emergency measures governing rent and evictions are ended, it is likely that we will see problems and pressures within the sector re-emerge on a far greater scale.



⁹ https://www.threshold.ie/assets/files/pdf/00881_hap_survey_report_2019_-_web.pdf

¹⁰ <https://www.irishtimes.com/news/social-affairs/co-living-developments-may-be-the-slums-of-the-next-decade-housing-seminar-told-1.4406675>

¹¹ <https://www.focusireland.ie/wp-content/uploads/2019/06/Long-et-al-2019-Insights-Vol-2-No-1-Family-Homelessness-in-Dublin---Exec-Summ.pdf>



Low
Standards,
Poor
Compliance

The only demand local authorities place on HAP landlords is to meet 'minimum standards' of accommodation (as set out in Statutory Instrument 137/2019).

Thus, covers inspections by local authorities of all new tenancies within the first eight months of being enacted.

But housing agencies report that tenants have had a poor experience to date with the regulatory regime: inspections happening much later in the tenancy or not at all; landlords failing to carry out remedial works and local authorities failing to follow up.

These tally with the shockingly low levels of inspections actually carried out by local authorities over recent years.

In 2017, just 4.5% (16,261) of all rental properties registered with the Residential Tenancies Board (RTB) were inspected. A staggering 79% failed to meet the minimum regulatory requirements.

Yet just 1712 notices "for improvements to be carried out" were issued to landlords by way of follow up and just five legal actions initiated.

The picture was worse in 2019. The number of dwellings inspected rose to 32,199 - still less than 10% of registered properties - but a full 93.07% of dwellings failed to meet minimum standards.¹²

Some 17,415 'improvement letters' were issued and just 56 legal cases were initiated.



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¹² <https://noac.ie/wp-content/uploads/2020/12/NOAC-LAPIR-2019.pdf>

The key legislation governing the sector - the 2004 Residential Tenancies Act - has been significantly amended on four occasions since its inception: in 2015, 2016, 2019 and 2020.

The succession of changes were an attempt to deal with the growing impact of the burgeoning housing crisis, as policy played catch up with a rapidly changing situation.

Ultimately, the changes were piecemeal and tackled individual symptoms of the crisis rather than the deeper problem.

To date, there has been no attempt to fashion an overall, holistic solution to the problems in the sector, in keeping with the Secure Occupancy Model advocated by NESF in 2015.

In essence, the failure of regulation and of the overarching legal framework appears to be rooted in the simplistic and wholly inaccurate casting of the landlord-tenant relationship as that of a contract between equal parties.

In reality, it is an imbalanced and highly asymmetric relationship.

Thus, the cornerstone of any legislative overhaul should be on a rebalancing of that relationship, in favour of the tenant.

Failure of Regulation

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"Clearly, good regulation should benefit both landlords and tenants, providing a more secure investment for landlords and investors and offering greater security and better- quality housing to tenants."¹⁰

Building a Secure Tenancy Model

It took a global pandemic to enact and create adequate security for tenants in the rental sector.

The emergency measures introduced in response to Covid 19 tackled - albeit on a temporary basis - the two key issues that cause the greatest hardship: security of tenure and rent certainty.

These issues must now be tackled over the longer term. There can be no going back to how things were. As a first step in the reform of the sector, the Government must immediately:

- **extend these measures for the full duration of the pandemic.**
- **commit to a complete overhaul of regulation of the rental sector within the lifetime of this Government.**

Ultimately, the aim is to raise standards here so that we can, as NERI points out, "converge on

European standards for tenant rights to ensure the private rental sector represents a viable housing option for renters."¹³

Legal 'reforms' to date have been piecemeal and often caused more problems than they sought to rectify.

Absent has been a clear strategic sense of a sustainable, secure and affordable sector as a key component of a stable housing system that serves the needs of society over those of the market.

This would be in stark contrast to the current dysfunctional system that has become divorced from its core social purpose with the consequences visible daily on our streets.

This can be achieved through the implementation of a **Secure Tenancy Model** in the rental sector, which could be established by way of a single piece of new legislation such as a **Secure Tenancy Bill**.

¹³ <https://www.nerinstitute.net/blog/time-tackle-private-rental-sector>



Creating Security of Tenure

In order to create tenancies of indefinite duration and provide tenants with long-term security, it would be necessary to remove the existing grounds for eviction of a tenant, as set out in Section 34 and 34b of the RTA. These include: eviction on grounds of a substantial refurbishment, sale of the property, or use of the property by landlord or family member.

This would mean that tenants could not be evicted while they were fully in compliance with their legal obligations and could only be removed for failure to pay rent, engaging in anti-social behaviour etc.

This can be achieved either by way of amendment or by wholesale replacement of the RTA with a new piece of legislation tailored to the creation of a secure occupancy model in the rental sector.

Such provisions would fully align with the proposals set out by NESC in 2015.

Tackling poor quality accommodation could happen by way of a new legally enforceable **National Framework of Accommodation Standards**, in tandem with resources for local authorities to carry out inspections and a clear regime of penalties for non-compliance.

Creating Rent Certainty

Support for rent regulation was voiced recently by a senior figure in a real estate investment company, who singled out the German model for praise.¹⁴

As tenants in Germany enjoyed “more clarity over the rent that they will be paying.....this means that price changes tend to be gradual, clearly signalled and therefore manageable.”

This encouraged stability and longer tenancies and attracted institutional investors, such as “our pension fund and insurance clients.”

The regulatory framework in Germany is known as the Mietspiegel (or ‘rental mirror’).

This sees local authorities gather rental data over a four year period and this then becomes the reference that governs rents in the relevant area.

Additional measures - known as the rental price brake, or cap - were introduced in major urban areas in 2020, but only came fully into force in November of that year and, in some instances, these saw landlords forced to reduce rents that were considered excessive.

¹⁴ <https://www.ft.com/content/efe1f74c-3c1d-11e9-9988-28303f70fcff>



Further measures were introduced in 2015 - the Mietpreisbremse or 'rental price brake' - which limits rent increases in major urban areas, with reference to inflation.

The introduction of the Rent Pressure Zones (RPZs) in Ireland means the authorities have already conceded that rent regulation is a necessary requirement of a functioning rental sector and that tenants are entitled to rent certainty.

However, the RPZ model as constructed has been shown to be flawed and its effectiveness and also undermined by high levels of non-compliance, as the ESRI has shown.

Ideology aside, there is no compelling reason why the existing RPZ model could not be repurposed to create a **National Rent Regulation** framework, which would see rents set with reference to the rates that apply in each local or regional setting and inflation.

The data required to carry out such an exercise already exists and is updated regularly, as part of the Residential Tenancies' Board Rent Index, which exhaustively sets out rent levels by country, local electoral area and region.¹⁵

This data can be utilised to establish a reference framework, for each region or city.

The detailed data compiled by the RTB would allow for the creation of a sophisticated, regionally-sensitive and responsive framework, as compared to the existing RPZ.

Given the high rates of rent increase seen in recent years such a reference framework could not be based solely on local data, but *also* take account of the **Consumer Price Index (CPI)**.

This would help tackle soaring rents and deliver greater stability for tenants and landlords alike.

Rent Reviews would also take place on an agreed, periodic basis with possible increases limited to a set, agreed percentage and with reference to both the CPI and data on rent levels, in any given area.

A further crucial component of rent certainty measures would be a **National Rent Register** - similar to the property price register - to provide full transparency on rent levels across the country and aid compliance with a regulatory framework.



¹⁵ <https://www.rtb.ie/research/ar>



Key Measures Needed for A Secure Tenancy Model

An End to 'no fault' Evictions

Create Tenancies of Indefinite Duration

**Establish National Framework of
Accommodation Standards**

Introduce National Rent Regulation

Create a National Rents Register



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