



Private Rented Housing –

Issues & Options

Conference Papers:

*Private Rented Housing –
Ireland in comparative European perspective
January 1999*

Seminar Papers:

*Private Rented Housing –
critical issues facing the sector
May 1998*

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INTRODUCTION

by Aideen Hayden, Chairperson, Threshold

Threshold's fundamental objective is to bring about a justice-based housing system. However, our experience is that tenants of the private rented sector continue to experience hardship and injustice on a daily basis. This injustice has never been greater than in recent times, as the housing affordability crisis has resulted in serious pressure on accommodation in the sector.

Threshold's objective in hosting an international conference on private rented housing was to identify possible options for the future development of the sector in Ireland by considering models of private renting in other European countries. As the private rented sector is more developed across Europe, and is currently experiencing change, we hoped to identify the factors underlying the success of the sector and also the failures which are now leading to calls for change. Perhaps the fact that Ireland is coming late to the view that reform of its comparatively unregulated market is necessary puts us in the position to learn from the mistakes of others and develop a new model encompassing the best of all systems.

As a society we have never been in a better position to implement the reform needed to ensure justice for tenants in the private rented sector. We must also consider that the implications of our failure to take action have never been more obvious for those who live at the will of others – those who depend on the private rented sector for a home. We must be aware that our society places the security of a home beyond the reach of a considerable proportion of its citizens. Such a society can never feel secure in any prosperity, no matter how great. We therefore call for serious consideration of the adoption of new models of tenure in the private rented sector which reflect the essential rights of security of tenure which our European partners enjoy as an intrinsic element of their housing policy. It is Threshold's intention to develop proposals for reform, based on our experience in the sector spanning 21 years and on the experiences of other regulatory systems, both those considered in this publication and elsewhere.

This publication brings together the papers from two Threshold-organised events which focused on the future development of the private rented sector. The papers from the international comparative conference held in January 1999 are by Dr Dragana Avramov (*Private rented housing in Europe*), Dick Schuiling (*Private rented housing in the Netherlands*) and by Dr Jens Lunde (*The private rented sector in Denmark – a critical overview*). The papers from a seminar held in May 1998 looked at the private rented sector in Ireland. They included presentations by Áine Ryall (Review of housing legislation since 1992); by Dáithí Downey & Ivan Devilly (*Changing circumstances, latest consequences – new data on rents, conditions and attitudes in the private rented sector, 1998*); and by Dr Yvonne Galligan (*Social partnership – the way ahead in housing policy*).

We thank all those who attended the January conference for their contributions and welcome further debate and discussion with all those interested in the future of private rented housing. In particular, we would like to thank both the Department of Environment and Local Government and the Minister with Responsibility for Housing, Mr Robert Molloy TD, for generous funding of the conference.

Private rented housing in Europe

by Dr Dragana Avramov, Population and Social Policy Consultant,
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1. AFFORDABILITY AND SUPPLY OF HOUSING

1.1. The cost of housing

Difficulties which low-income people encounter in accessing and maintaining a dwelling are associated with high costs for rent, maintenance, water, fuel and power charges which leave them with a very low disposable income for other basic needs. High costs, amplified by the mismatch between the demand which exceeds the supply of affordable housing, keep people in poverty – particularly the elderly and single parents – and prove to be a serious obstacle for young adults to access their first independent dwelling.

In most European Union countries, housing costs account for the second largest share of consumption in an average household. Housing as a basic need engulfs on average 22% of the family budget, while food takes up 23%. Expenditure on food is generally the most important household budget item in southern European countries, followed immediately by housing-related costs (gross rent, fuel, electricity and construction), while in the northern countries housing tends to be the biggest expenditure for an average household. Over the past two decades the overall trend has been that of an increase in the share of housing costs and this rise in prices has been sharper than for other basic needs (Avramov, 1998).

For low-income families, more particularly single-parent families, single persons and the elderly, housing is not only the largest expenditure but they are obliged to spend proportionately more on housing than better-off families. By way of example, in Italy the lowest-income households spend as much as 26% of their income on housing while the highest income groups spend only 16%. Families and single people who have no work-related income but are living on minimum welfare allowances, in Belgium for example, may have to spend as much as one half of their income on rented accommodation in old housing in run-down neighbourhoods. In the European Union, retired people spend proportionally more on housing than any other socio-economic category.

Housing costs are permanent costs for a basic necessity and they leave little or no place for substitution. The standard of living and the quality of life of all Europe's citizens is largely determined by their housing conditions and their disposable income left after the payment of housing. For the less well-off, the impact is two-fold: they are confined to sub-standard housing and/or after paying housing related costs are exposed to deprivation regarding other basic needs. High rents keep many in forced cohabitation in cramped apartments, in old housing with poor amenities. The less well-off families and single persons dependent on market rents are forced to make big savings on food, health care, medication, transportation, communication, education, household amenities, clothing and leisure.

1.2 Supply of Housing

In the European Union, there is no physical shortage of housing units on the general housing market. The structure of the housing stock in terms of size of dwellings, quality and equipment clearly shows marked improvements in housing conditions in northern, western and southern Europe in recent decades. Housing statistics which report on the features of the housing stock in terms of quantity and quality indicate that there is no absolute shortage of dwellings and that there has been a shift towards emphasis on quality and growth of the owner-occupied sector (European Commission, 1998; Avramov, 1998).

On average, there is no housing shortage in the European Union. The crude indicator of availability of housing, expressed as the ratio between the number of households and the number of conventional dwellings, shows an excess of close to 10 million dwellings in the Union. In the early 1990s, there were 107 dwellings per 100 households. Latest available data, which date back to the 1991 round of population and household censuses, show that there was a severe shortage of conventional dwellings only in Germany (Table 1). Southern countries, Spain, France, Greece, Italy and Portugal account for the highest proportion of 'surplus' housing.

The majority of citizens live in spacious, well-equipped dwellings. The average number of occupants per dwelling is 2.7 and the average number of occupants per room is 0.6. Data imply that each resident of the Union has more than one room for his/her personal use. At the upper end of the scale, in Belgium people have on average two rooms per person. At the bottom of the scale, in Portugal each person makes use of 1.3 rooms. Persons living alone have twice as much space as multiple person households. The most striking difference in space available according to the household composition is between single persons above the age of 65 and couples with two children. One person households make use of three to four rooms per person while four person households composed of parents and children have, as a rule, one room per person (Table 2).

In terms of amenities, housing conditions have been improving at an accelerated pace throughout the 1980s. By 1988 almost all households had the basic amenities, toilet, bath or shower and hot running water. Central heating and telephone became standard amenities accessible to the majority of households. The problem of access to housing occurs primarily for the poor who have too little income to afford housing that is available. There is a mismatch between the structure of the housing stock and the household dynamics. The housing market adapted swiftly to households wanting large high-quality housing. It did not address the need for small moderately priced housing, particularly an ever growing number of one-person households.

Table 1: population, households and dwellings, 1990-1991

Country	Population	Private Households	Conventional dwellings	Dwellings per 100 households
Austria	7,791,000	3,013,000	3,393,300	113
Belgium	9,987,000	3,953,000	3,949,700	100
Denmark	5,145,400	2,274,000	2,375,000	104
Germany	79,753,600	35,256,000	26,279,500	75
Spain	38,993,800	11,836,000	17,206,400	145
Finland	4,998,600	2,037,000	2,209,600	108
France	56,893,200	21,542,000	25,751,900	119
Greece	10,112,700	3,204,000	4,651,900	145
Ireland	3,518,800	1,029,000	1,006,000	98
Italy	57,746,200	19,909,000	25,028,000	126
Luxembourg	384,400	145,000	149,900	103
Netherlands	15,010,400	6,162,000	6,052,000	98
Portugal	9,858,600	3,146,000	4,153,100	132
Sweden	8,590,600	3,830,000	3,989,600	104
UK	57,511,000	22,422,000	23,528,600	105
Total	366,295,300	139,758,000	149,724,000	107

Source: Avramov, 1998

Table 2: number of rooms per person, 1988

Country	All households	Single persons above 65	Couples with two children
Belgium	2.04	3.85	1.39
Germany	1.79	3.13	1.15
France	1.43	2.63	1.12
Italy	1.35	2.86	0.97
Luxembourg	1.85	4.55	1.41
Netherlands	1.79	3.57	1.27
Portugal	1.32	3.23	1.04
UK	2.00	4.00	1.37

Source: EUROSTAT, 1996

1.3. Home-Ownership

Two average or one high income from stable employment are necessary to access home ownership. The majority of Europe's citizens are able to fulfil this requirement at some stage in their life. Indeed, on average six out of 10 households own the accommodation they live in. The proportion of owner-occupied dwellings ranges between 38% in Germany and 80% in Ireland (Table 3).

However, a significant proportion of the unemployed, people with casual work, the quasi-employed and under-employed, single persons and one-parent families are not able to secure sufficient resources to buy or provide the necessary guarantees to access mortgage loans. The less well-off are dependent on the rental market, rather than on the general housing market. For some people, rental accommodation is a transitional choice or a temporary necessity, while others may depend all their life on the rental market, be it social or private.

2. RENTED HOUSING IN EUROPE

Housing options for the poor regarding access and stable residence in standard accommodation are largely determined by the supply of affordable rented accommodation and income supplement to cover rent and housing related costs. Access to publicly funded housing with protected rents, access to housing benefits and the degree of regulation of the private rented sector play a pivotal role in housing socially deprived individuals and groups. The level of financial commitment and types of state intervention in the housing system provide the background for access to housing for all.

In the European Union, the levels of state intervention into housing ranges between 3% to 4% of GDP at the upper end of the scale (e.g. Sweden, the UK and the Netherlands) and less than 1% of GDP (e.g. Portugal, Spain and Greece) at the lower end of the scale. Similarly, forms of state intervention in the housing sector vary remarkably. They may be illustrated by differences in the ownership structure of the housing stock (Table 3).

Table 3: owner-occupied, social and private rented sectors, 1990
(% of the total housing stock)

Country	Owner-occupied	Social or not-for-profit	Private rented
Austria	41	23	22
Belgium	65	7	28
Denmark	50	18	24
Germany	38	26	36
Spain	76	2	16
Finland	72	14	11
France	54	17	21
Greece	70	0	26
Ireland	80	11	9
Italy	67	6	8
Luxembourg	67	2	31
Netherlands	47	36	17
Portugal	65	4	28
Sweden	43	22	16
UK	66	24	10

Source: Avramov, 1998.

Note: the figures do not always add up to 100% because other minor categories may be excluded.

2.1. Housing Allowances

Housing allowances are an important social corrective which allows low income people to access and maintain a home. Since the early 1980s, a growing proportion of households has been receiving housing allowance (Table 4). The vast majority of beneficiaries in Denmark, France and Finland, for example, are households living in rental accommodation.

Table 4: households receiving housing allowance
(% of total households)

Country	1980	1985	1990	1995
Denmark	12.7	15.2	18.5	22.0
France	10.5	21.7	21.3	26.7
Netherlands	8.0	13.0	16.0	14.1
Finland	15.8	13.7	12.6	18.1
United Kingdom	16.0	22.0	17.0	20.0

Source: European Commission, 1998

Housing allowances are the most effective means of lowering the housing costs of low and middle-income households in Finland, for example. This allowance can be granted to all low-income households, irrespective of family composition and type of tenure. Students are also eligible for housing allowance and indeed, they account for 20% of beneficiaries of the scheme.

Rent allowances, subsidies, housing improvement and urban renewal grants for low-income households, disabled, the elderly, foreign residents, refugees, ethnic minorities are features of social legislation of several European Union countries. However, some social rights are of discretionary nature. Social legislation includes sets of principles and rules of procedure for protection of economically weak groups. But social welfare assistance laws leave much room for interpretation. Levels of benefits may vary greatly within the same system due to different criteria used by authorities to assess needs. A survey of 100 welfare services in Sweden showed a high degree of variation in the way they estimated the degree of need and determined the level of entitlements of their clients. This leads some jurists to affirm that needs-based rights are not real rights.

2.2. Social Housing

The social goal of publicly funded non-profit or limited profit housing is to assist lower income groups to access and maintain affordable accommodation. Most European countries have determined income thresholds which exclude people considered eligible to enter other housing sectors from accessing social housing. Groups catered by social housing are as a rule low-income people who cannot afford market rents.

The Netherlands has the largest publicly funded housing for rent – the social or not-for-profit sector accounts for 36% of the housing stock. In Germany, the UK, Sweden and Austria, one in four dwellings are social housing for rent. Only in the minority of advanced market economies the supply of publicly funded housing with rents accessible to low-income people stands at below 10% of the total housing stock. Belgium and Luxembourg are the two western European countries with the smallest supply of social housing. Southern European countries Spain, Portugal and Italy have traditionally had a marginal publicly funded housing sector. Greece stands out as the only market economy without a social housing stock. In these countries, fiscal benefits and advantageous loans targeted at first-time home-owners are the main or even sole form of state allocation of resources.

A generalisation may be made for several European countries: the system of allocation of social housing has been compromised on several grounds. A survey in Belgium has shown that only one third of social dwellings are allocated in accordance with the adopted social criteria. The tendency in France has been that of a rise of income thresholds which gives access to social housing. The effect of the enlargement of the number of eligible households is that the allocation system tends to favour more meritorious groups while the least advantaged with multiple problems are pushed out of standard housing protection and are shifted towards emergency temporary accommodation and crisis intervention.

Table 5: rental dwellings: social, private and other in 1990
(% of the total rental stock)

Country	Social or not-for-profit	Private dwellings for rent	Other
Austria	48	44	8
Belgium	19	81	0
Denmark	40	44	16
Germany	26	74	0
Spain	8	92	0
Finland	56	44	0
France	37	60	3
Greece	0	100	0
Ireland	55	45	0
Italy	23	70	7
Netherlands	71	29	0
Portugal	10	87	3
Sweden	50	50	0
UK	73	27	0

Source: European Commission, 1998. Luxembourg not available.

2.3. Private Lettings

Groups catered by the private rental market are socially very heterogeneous. The private rental market tends to polarise: on the one side is an abundant offer of high-quality, spacious, high-price private lettings, on the other a scarcity of standard quality affordable housing for rent. Groups catered for by the top segment of the private rental market are 'foot-loose', better-off people who due to a life-style option do not want to buy and are not interested in the long-term security of tenancy contracts. In the lower segment are young people on training or in their first employment (who are eventually expected to become home-owners) and on the bottom are individuals or families too poor to access home-ownership and too marginalised to obtain access to social housing.

Low-income people who gain access to social housing, as a rule, benefit from a stable public assistance through protected rents or housing allowances and have a high security of tenure. The housing inclusion of the less fortunate who may be on waiting lists for social housing for years or who are socially disqualified from public support depends on the 'invisible hand' of the private rental market. Housing options of the poor are restricted by a discrepancy between the supply of affordable private lettings and the preference which private landlords give to short-term tenancy contracts.

Throughout Europe there is a shortage of affordable private rental dwellings and more particularly of small housing units. It is this part of the housing market that traditionally caters to the needs of young people in their early stages of independence and family formation. There is also a widespread shortage of housing for students. In Sweden, a country with a generous housing policy, there is a shortage of student housing in 13 out of 30 university towns. Throughout Europe young adults are also increasingly dependent on their parents for access to their first independent household.

Difficulties which young people encounter in Europe in accessing regular employment imply that for many, private lettings are a necessary temporary solution. In the face of insecurity in the labour market, young people seem to be more cautious and tend to postpone making long term financial commitments associated with mortgages. The first home is increasingly a rented one. In Finland, for example, in 1991 three in 10 people who moved to their first home were first-time home buyers, but by 1995 only two out of 10 ventured into purchasing their first accommodation.

There is a general shortage of single-occupancy rooms for students, for the unemployed and those with casual or low-paid jobs. The discrepancy between demand and supply implies that there is severe competition between low-income people at the bottom segment of the private rental market.

3. AFFORDABILITY AND SECURITY OF TENANTS IN PRIVATE RENTED HOUSING

In all countries, but particularly in those in which the rental sector consists predominantly of private lettings (Table 5), regulations regarding rent control and protection of tenants from arbitrary notice to quit are an important part of the housing safety-net.

Routes to balanced protection of both tenants and landlords differ sharply between European countries. The dilemma about rent control and security of tenure is often addressed in terms of advocacy for no public regulation, on the one hand, and calls for heavy regulation on the other hand. But, this seems to be a false dilemma. There is no such thing as an unregulated market in any other domain, be it financial, commercial or labour. The question is: what type of public control is most effective?

In fact the situation across Europe confirms that regulations in private rented housing may be set for one or more areas, may be targeted at specific types of lettings in terms of age, or may be seen as transitional rather than long-term measures. What will be regulated will depend on the specific situation in each country and mainstream values and norms regarding public solidarity.

3.1. Private Sector Rent Control

Over the past three decades, experience has shown that too much interference by governments in the private rental sector affects the supply side. Strong rent control which protects tenants to the detriment of landlords' interests may induce low-profitability in private rental housing which in turn results in a lowering of production. Owners who feel insufficiently legally protected may be reluctant to put their vacant property on the rental market. The ultimate losers in such a system are young adults who want to form a family or a new household but cannot access rented accommodation. Those seeking a first-time tenancy find themselves excluded from private rented accommodation because legal regulations and administrative practice are targeted at preserving the *status quo* rather than increasing supply.

Indeed, rent freeze and life-long tenancy in the private rental sector which were used as instruments of social policy in southern member states have been abandoned. After years of rent control, deregulation was completed in Spain in 1985, in Portugal in the 1990s and in Italy in 1992. The system of rent regulations applicable to apartments of less than 90m² has largely been eroded in Greece.

Rent legislation reforms in southern Europe aimed at increasing the availability of private rented housing by increasing profitability for owners were not accompanied by efficient social protection of groups most affected by reforms. In southern member states, only transitional measures were used to protect the minority of tenants who rented under the old régime. New households receive little or no social assistance. Rent subsidies are not granted to tenants in the private rental market or are not cost-related and are limited in duration.

Conditions in the private rental market in Italy are unique. The government's role in the domain of housing has traditionally been regulatory and lacked a coherent supply policy. In order to correct distortions created on the private rental market by 14 years of rent control, new rent legislation was introduced in 1992. This reform was, however, carried out without efficient social protection. The supply of housing for rent remained small and the nature of government assistance to tenants is still marginal (Avramov, 1996).

When rent-freeze was lifted and tenure security reduced, eviction proceedings on grounds of end of contract increased. More than 800,000 eviction rulings are awaiting execution in Italy. Delaying the execution of evictions has been the main tool used by public authorities to prevent a housing 'earthquake'. The legislators originally planned that all evictions would be carried out by the end of 1993. The deadline has since been prolonged every year. The setting up of rehousing programmes and of a social fund for the less well-off tenants has also been postponed.

In Portugal nine out of 10 dwellings for rent are owned by private landlords. In order to increase profitability for owners and to revitalise the rental market, the government carried out rent legislation reform. The new market conditions brought about sharp rent increase and enabled owners to opt for short-term tenancies. Some transitional measures have been put in place to protect old tenants who rented under the former régime, but very few measures are implemented to facilitate access to housing to new households. There are no efficient measures to alleviate the rent burden of low-income tenants dependent on the new unregulated segment of the rental market. Although rent subsidies were introduced in 1985, they are allocated to a marginal number of tenants. Less than 1% of tenants benefit from a rent allocation.

Private sector rent control has been declining throughout the European Union since the 1960s. However, some form of rent control in the private renting sector exists in many countries (e.g. Belgium, Denmark, Spain, France, the Netherlands, Austria, Portugal and Sweden).

The problem for socially vulnerable groups is that protective rents are applied to only a small part of the private rental stock. Control is usually limited to old buildings which are progressively disappearing from the market. In Luxembourg, rent controls apply to buildings constructed before 1944, while only a minor number of houses constructed after World War II are subject to such regulations. In Austria, a form of rent-control implemented through a guiding figure scheme suggests that tenants can take legal steps if landlords overcharge. But cheap, sub-standard flats are vanishing from the market. The segment of the private housing market to which rent-control applied in the lowest quality category D housing in Austria fell to 3% of the housing stock by 1994. In Denmark municipalities can opt for housing regulations which set criteria for reasonable rent. In buildings completed after 1992, however, rents may be freely negotiated.

In Germany, France and the Netherlands, there is no rent control but the system reserves some regulatory power. Neighbourhood comparison and quality criteria are typical indicators used to ensure reasonable rent levels. In Finland, rent control in private rental housing will be gradually lifted in accordance with the tenancy law passed in 1995. In Belgium and in the United Kingdom, there is free determination of rent in private rental housing. While there is no rent ceiling, or reasonable rent for a new tenant, there is a restriction regarding rent increases during a tenancy contract.

Innovative approaches to housing the poor which have been shown to be effective can be found in the Nordic countries. Sweden, for example, pursues a comprehensive approach to rented accommodation, both public and private. Thus, rents in the private sector have to follow rents in the public sector and are not allowed to deviate from a 'reasonable level'. This means that private landlords are not allowed to set rents at levels which are much higher than rents for public dwellings of comparable size, age, condition and location.

3.2. Duration of Rental Contracts and Eviction

There has been a general tendency towards reforms which increased the rights of landlords to opt for short-term contracts. Many countries plan for longer-term protection of tenants from frequent rent increases by means of fixed-term tenancies. By way of example in Belgium, the standard formula for tenancy contracts in private lettings is 3-6-9 years. In practice, however, half of rental agreements are made for one or two years or else there is no written contract. The problem which tenants encounter in Belgium is not the lack of good laws but the weak negotiating position of tenants due to a shortage of affordable lettings and the fact that the system of monitoring landlord compliance with the existing legislation is weak or non-existent.

However, it must be explicitly said that in the European Union the private rental market is not a free unregulated market. Owners and landlords cannot evict a tenant because they find another one willing to pay more. A landlord can terminate a tenancy by a notice to quit based on terms stated in the rental agreement and in tenancy law or may seek an extraordinary termination if a tenant does not meet his obligations. Legally defined reasons for termination of tenancies include: end of contract, demolition or refurbishing,

owners' need for personal use of a dwelling, arrears of rent, tenants' unacceptable behaviour or use of an apartment contrary to terms of the tenancy agreement. Termination of regular tenancies normally requires a period of notice. This period usually varies between two months and a year depending on the duration of the tenancy. Extraordinary termination of a tenancy due to tenants' violation of contractual terms such as default of payment, disturbance of domestic peace or misuse of the apartment does not require a period of notice. It does, however, entail a juridical procedure of eviction which may last as long as one year.

Laws lay down mandatory provisions which cannot be undermined by contractual agreements. Some contractual terms are negotiable, while others are subject to legally predetermined conditions. In the private rental market, as a rule, prices are freely negotiated at the beginning of a tenancy but remain controlled throughout the duration of a contract. This provision puts landlords in an advantageous position at the beginning of a tenancy but protects tenants from unlawful rent increases during the tenure. Duration of term contracts are generally defined in tenancy laws as well as the time-limits within which a notice to quit may be given to tenants.

Specific terms of regular and extraordinary termination of a tenancy vary from one country to another but are legally well established everywhere. All member states have strong laws which protect tenants from unwarranted notice to quit. Measures to avoid evictions are implemented in all member states. The legal framework of preventive action includes a broad range of social assistance to tenants threatened by a loss of a home. Measures range from assumption of rent arrears and counselling to transitory measures such as stay of eviction or non-enforcement of court orders to evict. Eviction procedures may allow for a stay of eviction of up to one year. If a landlord obtains an eviction order he is not allowed to evict a tenant himself. In most countries authorities are reluctant to execute an eviction even when a court order is based on tenants' failure to pay rent. As a rule, evictions are not carried out during the winter months. However, in Germany, for example, there are no restrictions on evictions during the winter months and they are carried out throughout the year.

On average, in the Union one in five procedures for extraordinary termination of tenancies is terminated by an eviction. It seems that an instigation of the procedure is mainly used by landlords as an instrument of pressure on tenants to meet their obligations and pay rent or move out. In the Netherlands, for example, it is almost impossible to evict a tenant if he shows good will to pay rent arrears. Landlords have to propose ways to settle arrears and if it comes to an eviction, they are at a clear financial loss because they will not be able to recuperate the bulk of rent arrears.

3.3. Lack of Information about Regulations and Rights

Insecurity of tenants does not originate in tenancy laws. This, however, does not imply that the mere existence of a formal legal framework suffices. Clarity of regulations, dissemination of information and allocation of adequate financial resources to accompany legislative changes are the missing link in the system of protection of the needy. Lack of knowledge about rights and entitlements may be identified as the single strongest obstacle to an efficient protection of tenants in private rented housing. The level of knowledge about rights and obligations seems to be low both for tenants and landlords in many European countries. Lack of information can be an advantage for owners. It never is an advantage for tenants.

In Belgium a survey showed that tenants are not well informed about their rights and generally overestimate landlords' rights. In Austria tenants are not very knowledgeable about price regulations – four out of 10 tenants did not know the guiding figures for rents. Illegal eviction of tenants is a criminal act in most countries. All have strong laws to protect tenants from arbitrary eviction. However, lack of information about rights and high costs of litigation are barriers for tenants who are illegally evicted.

Compensation to tenants who are victims of illegal eviction is an important tool of dissuasion for landlords who contemplate evicting tenants in order to increase profits. An example of good dissuasion is a court case in England where a tenant was awarded 46,000 euros in damages in 1995 because he was illegally evicted by a private landlord.

3.4. Examples of Assistance to Socially Vulnerable Tenants

Housing problems often start when a tenant receives a notice to quit at the end of a contract or when a landlord decides to refurbish and upgrade a dwelling. Due to the shortage of affordable private rented housing, a tenant may not be able to find affordable substitute accommodation. Laws can, and in some countries do, address these situations.

The social clause in the German tenancy legislation stipulates that a notice to quit can be opposed by a tenant if a termination of a tenancy would bring hardship to him and his family. Thus, a tenant is protected even when the landlord's notice to quit is in full accordance with the Civil Code of Law and the Code of Civil Procedures. The threat of hardship includes a situation when a tenant cannot find adequate substitute permanent accommodation. A tenant is expected to make a serious effort to find such accommodation. The social clause is not applicable when notice to quit is motivated by tenant's breach of a tenancy agreement by non-payment of rent or socially unacceptable behaviour.

Purchase of old buildings by housing promoters who refurbish low-quality apartments and put them back on the market as luxury condominiums is pushing the poor out of the private rental market.

In order to protect tenants when a landlord wants to convert rented flats into condominiums and sell them, special measures have been devised in Germany. In areas where there is a housing shortage, the new owner may have to wait five, even 10 years, before he may give these tenants notice to quit on grounds of need for personal use, refurbishing or other reasons.

In many cities, there is a large number of vacant dwellings because owners are speculating with their real estate either to keep rents high or to convert housing estates into offices.

In order to combat urban neglect and housing speculation a number of Belgian cities have introduced a tax on uninhabited houses. The tax level is determined per square metre and varies between 125 euros and 500 euros in Gent and 150 euros and 1,000 euros per year in Mechelen. The impact of this measure varies greatly. In Gent the slum tax and tax on unoccupied dwellings contributed to decreasing by half the number of registered uninhabited houses over a five year period. The practice of the municipalities of the Brussels district shows, by contrast, how good legislation can be undermined by a weak political commitment to implement it. Although it is estimated that there are between 10,000 and 30,000 unoccupied houses in Brussels, only 500 landlords in 1995 paid a tax on vacant housing.

Even penal laws can contribute to temporary housing protection of destitute individuals and families squatting in privately owned premises.

Eviction *manu militari* of squatters is interpreted in the French legal practice as a violation of domicile. The penal definition of a domicile given by the Supreme Court of Appeal (1982) is broader than the civil one. As a consequence, police do not enter premises which have been occupied by squatters for 48 hours or more. Although there is no legal definition of the duration of stay after which squatted premises become a domicile, in practice once 48 hours expire an owner can repossess his property only by pursuing eviction proceedings.

3.5. The Role of Local Authorities in Private Rented Housing

Local authorities are only recently becoming involved in a more effective way as facilitators and mediators in the private rented sector.

- In order to compensate for a general shortage of housing for one-income and one-person households, the Danish government has been promoting cooperation between municipal authorities and private landlords. A municipality can make agreements with private owners under which local authorities buy the right to assign tenants to some flats in the owner's estate. The municipality makes a commitment to pay a certain amount per apartment directly to a landlord in exchange for assignment rights. Costs thus incurred by the municipality are reimbursed by the state. This scheme sets a limitation of one five-year contract per estate and this cannot be renewed on the same estate.

This programme is a direct outcome of the activity of the Danish Urban Commission which was set up to identify problem issues such as high rents, housing mobility, the impact of unemployment, the degradation of housing, difficult tenants with a record of alcohol and drug abuse; and proposed ways to deal with them. The Commission focussed in particular on housing problems of refugees and immigrants. In its first report, the Urban Commission recommended that the authorities become more involved in the private rental market in order to compensate for an insufficient supply of affordable housing for rent.

- In Sweden, in order to assist economically weak households to access the private rental market, municipalities established a system of 'housing assignment groups'. This is formalised cooperation between local social authorities and landlords under which landlords receive guarantees of a continued financial support to low-income households. There is also an informal system under which local authorities give rent guarantees for tenants with a record of financial difficulties.
- In Germany, social assistance may be granted under the Federal Welfare Act to cover rent arrears. If a welfare institution makes a commitment to assume rent arrears and pay them to the landlord from its own funds or through a loan to a tenant, the notice to quit becomes void.
- A project initiated in 1993 in Austria showed that early intervention results in considerable savings for the authorities. Financial advantages to prevention of eviction due to rent arrears as opposed to later assistance to the homeless proved to be considerable. In the case of eviction, the social welfare service has to find apartments on the free market. In the meantime, accommodating the evicted in emergency shelters is a burden on welfare funds. Savings on eviction costs for the housing association are also considerable. Although evicted tenants are liable for eviction costs, they can hardly ever be recovered from people who generally lack a sizable income. Prevention can cost almost 10 times less than assistance to people who become homeless after eviction. The savings for the authorities translated into proportion of costs to prevent an eviction and to cover costs following an eviction range between 1:4.5 and 1:9.5. The low average income and the high amount of debts of the risk population 'led to the conclusion that the potential costs (of evictions) would mainly be costs to the public' (Kofler, 1995). Close to 60% of rent arrears were paid by tenants themselves – after using the counselling service. A prevention project implemented in Salzburg in 1993 helped tenants with rent arrears to maintain a dwelling and achieved considerable savings for the public. Similar results were achieved in prevention projects implemented in Germany, first in Cologne in 1983 and later in other cities.

Active involvement of local authorities in the private rental market as intermediaries between socially weak tenants and landlords is important not only because it helps to overcome the financial constraints but also because it helps to prevent discrimination in the private rented housing. This is particularly important for immigrants and ethnic minorities who are often socially disqualified when trying to access standard rented housing. Access to the private rental market is not only a matter of financial resources. Discrimination on racial, ethnic, linguistic or social groups is difficult to control when local authorities are not involved in negotiating tenure on behalf of vulnerable groups.

4. VULNERABLE GROUPS AND AREAS OF POLICY ACTION

While poverty may be identified as the strongest single factor of housing deprivation and exclusion, in recent years we can also observe the changing face of housing vulnerability. This poses new challenges for the implementation of housing protection of vulnerable groups and assistance in crisis situations.

The most commonly found problems regarding affordability and access to standard quality private rented housing affect in particular:

- Young people in transition to first employment and independent housing;
- Unemployed and non-worker groups;
- Immigrants and refugees;
- Groups with specific needs such as substance abusers and the homeless.

The housing options for vulnerable groups have narrowed as a consequence of:

- Disengagement of governments in the provision of publicly funded housing for rent (social housing);
- Massive sales of social housing to sitting tenants;
- Declining rent control in the private sector;
- Urban renovation and reduction in the marginal (often substandard) low cost market segment;
- Decrease in the real value of housing benefits, rent subsidies and other cash transfers;
- Increase in housing related costs.

Integrated approaches to housing policy and 'soft methods' in the guidance of rented housing, both social and private, seem the best way forward in addressing the housing needs of people unable to access home-ownership.

The changing face of vulnerability imposes the need to redefine public responsibilities and community action. The role of local authorities as facilitators and mediators between socially weak tenants and landlords is desirable, as it provides greater security for both parties. The need for dissemination of information campaigns and counselling services for tenants opens a challenge for voluntary and community groups to intensify monitoring of implementation of policy commitments made by the authorities and provide necessary guidance and information to tenants.

Dealing with current problems related to unmet needs in the rental housing sector through palliative measures is an indispensable step forward in promoting social integration and improving the quality of life of Europe's citizens. But equally necessary is a fundamental rethinking of the philosophy underlying two key values: *work and home*.

On the one hand, the Union and national governments are promoting mobility of workers and attaching high value to mobile people who are ready to follow work opportunities. On the other hand, national governments are promoting home-ownership and the image of 'home' is almost exclusively tied to the concept of ownership. There is an open rift between work policies and housing policies. Work is expected to be flexible –

housing keeps people anchored. The majority of home-owners in Europe are repaying loans and mortgages which tie them down for several decades.

Thus, if we want to go a step further from housing pragmatism and look toward the future in a more integrated way we should ask ourselves: is it not in the interest of society to give preferential treatment to the rental sector in order to increase housing options and enable greater mobility of people in terms of geographic movement and greater adaptability to new family dynamics and changes in household composition over a lifetime?

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Private rented housing in the Netherlands

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1. SIZE, DEVELOPMENT AND PRESENT SHARE OF THE PRIVATE RENTED SECTOR

The housing stock of the Netherlands amounts to 6,366,000 dwellings (January 1997 figure). Of these, 49.5% are owner-occupied, 37.3% belong to the social rented sector (mainly owned by housing associations and a few by local authorities) and the rest, 13.2%, is privately rented. The private rented sector shrank rapidly from 80% in 1920, to 54% in 1947, to 20% in 1975 to its current share of 13.2%, which is 26% of all rented dwellings.¹ Until 1960, it was the dominant tenure, but the rapid expansion of the social rented sector and the national aim of providing accommodation for both middle and low-income groups meant that it gradually took on more and more tenants from the private sector.

From 1975 till 1989, the national rent setting system for newly built houses with premiums (the dynamic cost-price rental [DCPR] system) acted as a disincentive to investors.² New building ceased in the sector, while landlords of older private housing continued to sell off their stock to local authorities, housing associations or sometimes tenants. Many of the older private rented dwellings were also acquired or expropriated for demolition. The number of housing completions in the private rented sector dropped from 29,000 a year (24%) in 1970 to 6,500 (7.6%) a year in 1992. It never recovered in the 1990s, although the DCPR system was abandoned. The abolition of most construction subsidies and operating cost subsidies was a factor, as was the competitive strength of the owner-occupied sector in the 1990s. The vast and good quality social rented sector, which also houses middle income households, made it unnecessary to counter this development. Nevertheless the private rented sector still fulfils an important supplementary role at both ends of the rented sector.

2. GEOGRAPHICAL DISTRIBUTION

The private rented sector is unevenly distributed over the country. It is somewhat over-concentrated in the two western provinces (16–17%) and even more in the four big cities, where 240,000 of these dwellings (29%) can be found. In Amsterdam its share is 29%, in the Hague 27% and in Rotterdam 23%.

3. TYPES OF LANDLORDS

The present private rented sector (839,000 dwellings) is owned by various types of landlords:

- Private persons: 355,000 dwellings or 42% of the private rented sector;
- Financial institutions (about 40 pension funds, insurance companies, investment funds): 200,000 dwellings or 24%;
- Not-for-profit institutions (e.g. for aged persons, students etc.): 104,000 dwellings/units or 12%;
- *Adhoc* landlords (for relatives, people on temporary leave etc.): 50,000 dwellings or 6%;
- Other private institutions/firms (builders, developers, traders): 130,000 dwellings or 15%.

Private individuals (nr 1) and the other private institutions/firms (the last) taken together add up to about 44,000 landlords. Of these, 37,600 smaller landlords each owns 3.5 dwellings on average and the 5,900 bigger landlords 55 dwellings. This means that 27% of the private rented stock is owned by small landlords and two-thirds by bigger landlords. 86% of the stock owned by these two types of landlords they manage themselves and only 12% is managed by others (mainly real estate agents). Bigger landlords and especially financial institutions are more in favour of external housing management. The largest pension fund (ABP) owns more than 55,000 dwellings all over the country and, together with the second largest institutional landlord, they have more than 10% of the private rented sector. So there is extreme concentration of ownership by the financial institutions at one end of this sector, while at the other end there is an extreme dispersal among very small individual landlords.

4. TYPES OF STOCK

Financial institutions own virtually no pre1945 dwellings, while private persons own mainly pre-1945 stock. New construction in the private rented sector after 1945 became almost exclusively an activity of the financial institutions. This has to do with the size of the housing complexes to be built, the required finance and the way property development took over the scene in what are called urban extension areas. This is the reason why private individuals own predominantly small, cheap and old accommodation and financial institutions the larger, more luxurious and medium to high rent dwellings. So there are at least two completely different subsectors within the private rented sector.³ They cater for two complementary ends of the rented sector: the bottom and the top end, with the vast social housing sector in between.

11% of the stock rented from private persons are houses in multiple occupation (HMOs), mainly rooms for young people. Instead of purely independent dwellings, the stock of not-for-profit institutions is also often split up into rooms, mainly for the elderly, but also for students, mentally ill or handicapped people. It is often easier to enter the private rented sector than the social rented sector, particularly for newcomers on the local housing market. Letting furnished dwellings is not as popular in the Netherlands as elsewhere, although rent control and rent regulations can often be evaded this way.

5. QUALITY OF STOCK, MAINTENANCE AND IMPROVEMENT

In terms of quality, the private rented sector is still the most problematic part of the stock. In total there were in 1995 still some 350,000 dwellings in modest or poor building condition, of which 40% were private rented pre-war dwellings. 60,000 of them were located in the four big cities. The pre-war private rented dwellings showed average necessary repair costs of dfl. 18,000 (IR£6,430) per unit, in total a dfl 7.5bn (IR£2.68bn) backlog of repair.

While the size of the private rented stock is 1:3 of the social rented stock, the relative expenditure for maintenance and improvement (*intervention*) is only 1:5.5 and per dwelling dfl 1,400 (IR£500) to dfl 2,300 (IR£821). Per year only 30% of the dwellings receive some kind of intervention (27% in the four big cities and 44% in the rest of the country), compared to 40% in the social rented stock. The amount spent on improvement/maintenance is also much lower in the big cities. Private rented sector tenants spend money for maintenance and improvement: 75% of the landlord's expenditure in official expenditure terms. If we recalculate the do-it-yourself hours as official workmen's hours, the tenants pay twice the sum of the landlords' expenditure. We are still talking about rented dwellings, where it should be normal for landlords to spend much more on repair and improvement than tenants, because of their legal duty to repair and maintain.

The most important improvement subsidies were abolished around 1992. Probably because of that, the intervention costs per dwelling dropped by 60% in the private rented sector. Subsidies are not important any more in financing intervention, but the termination of them is probably quite important in the falling numbers of interventions. The maintenance behaviour of private landlords is different from social landlords: less planned or preventative and more reacting to complaints of the tenant and therefore curative.

6. AFFORDABILITY AND HOUSING BENEFITS

The monthly rent of 55% of all dwellings owned by private persons and other private institutions/firms is below dfl 600.- (IR£215). So this part of the private rented sector is quite important for housing low-income tenants. Its tenants are younger, more likely to be single and poorer than the average tenant, even more so than social sector tenants. The tenants of the financial institutions however have higher incomes than in the social rented sector.

The housing benefit system, introduced in 1975, makes no difference between private or social rented sector tenants. Since the abolition of almost all land, building and operation cost subsidies, these allowances are the most important financial instrument of national government. 30% of all tenants now receive housing benefits, on average dfl. 2,712 a year (IR£969).

7. RENT REGULATIONS

In the Netherlands there is no difference in rent increase rules between the social rented and the private rented sector, apart from the situation at the start, when new dwellings enter the market. For many years, initial social rents had to be below a certain ceiling, which was too low to make it profitable and therefore this was done by the non-profit social sector. In exchange for that, housing associations – the main social landlords in the Netherlands – got lower land prices, construction and running cost subsidies. Initial private rents were freely set, except when a premium was given, which was often the case. Initial private rents are usually much higher than social rents, because of size and quality differences and also the profit-making perspective of private landlords.

The annual rent increase for both sectors is settled by a complex set of rules, containing a maximum % rent increase, decided annually by the housing minister and a maximum absolute rent level, according to the quality level, is measured in so-called housing appraisal points. The size of the dwelling is the most important quality factor in this system, but also amenities, house type, housing environment, nuisance, age and so on are weighed. When the rent level exceeds the quality point maximum (the so-called 'maximum reasonable rent'), no rent increase is allowed in that year. In cases of very bad maintenance or when essential facilities are lacking, it is possible for the tenant to require zero increase or even a rent reduction to the minimum reasonable rent (55% of the maximum reasonable rent). On average, the real rent level in the private sector lies at 70% of maximum reasonable rents, and in the social sector at 60%. In July 1997, the average rent increase was 3.8% in the social rented sector, 3.5% for dwellings of financial institutions and 3.7% for dwellings of private persons, all of which is far above inflation. Larger landlords differentiate the rent increase percentage among their dwellings more often than smaller landlords, but their stock is probably more diverse. Rent increases in a loose housing market are somewhat lower than in a tense market situation, but the influence of national rent policy is much more important. Financial institutions with their more luxury apartments have to slow down now their rent increases, because of the competing owner occupied sector, fuelled by low interest rates.

8. RENT CONTROL

The main rule for private and social renting in the Netherlands is that the tenant and the landlord are free to settle initial rents and later rent increases (freedom of contract). However, if either landlord or tenant finds the settled rent level 'unreasonable', one can go to the Rent Commission, to check if the rent (increase) is reasonable. If landlord or tenant don't agree with the outcome, they can go, within two months, to court, which can set another rent level. Normally, rent changes are only possible once in a year, on the 1st July, when the annual maximum rent increase percentages become valid. Besides that, incidental rent increases are possible in the case of a change of tenant or housing improvement. So once a rental has started, only the maximum reasonable rent and the maximum reasonable rent increase are important for the private landlord and tenant.

There are different tables to calculate these for dwellings and units. For listed buildings and some 80,000 luxury rented dwellings (above a monthly rent of dfl. 1085. or IR£388), this rent control régime is not fully applicable. The same is true for very short term renting. For furnished accommodation, there is a similar system. In principle, the rent level is calculated for renting the dwelling or unit itself and not for all kinds of extra facilities and services and deliveries (e.g. heating, water, gas, electricity). For these extras, only the real costs can be levied.

9. SECURITY OF TENURE

In the Netherlands there is a long tradition of security of tenure, including the private rented sector, to protect the tenant. This has to do with postwar housing scarcity, which is still present in some parts of the country and especially in the four big cities. By law, there are only six reasons for the landlord to terminate a rental contract:

- The tenant does not behave as a good tenant;
- The rental contract was set for a restricted period because of the absence of the landlord (interim tenancy);
- The landlord needs the dwelling urgently for his own use;
- The tenant refuses a reasonable offer for a new lease;
- The landlord wishes to implement the zoning indicated in the land use plan;
- The interest of the landlord to terminate a sublease of a room in a dwelling inhabited by himself is higher than that of the tenant of the room.

If one of these six reasons is valid, the district judge has to give in to the landlord's claim. The second reason cannot be used for other kinds of temporary leases. The third reason requires that the need of the landlord to use the dwelling for his own use is greater than that of the tenant to continue the lease. It should also be proven that the tenant can get another suitable home, although this does not have to be supplied by the same landlord.

Compensation of some re-housing costs should be part of the deal. This reason does not include a situation when the landlord wishes to sell the dwelling empty. When the ownership of a rented dwelling has been changed, the new landlord has to wait for at least three years to start a procedure under this heading. The fourth reason is often used in the case of conflict over housing improvements. Only when the tenant refuses to pay the subsequent rent rise, there is another procedure to settle such a dispute. The sixth reason is important for renting rooms from an in-house landlord. In such cases, there is no tenant protection for the first nine months but afterwards it is sometimes possible to terminate the sub-lease. This procedure is incorporated into the law in order to stimulate the letting of rooms. For the same purpose, there is also exemption from income tax for the first dfl. 6,300 (IR£2,250) annual rental income from letting rooms. Many old dwellings have lower rents than this amount for only one room. There is also some form of tenant protection in the event that the tenant dies. If there are co-tenants (wife/husband, children, partners), they can continue to live there and take over the rental contract.

Summarising, one could say that security of tenure is rather good in the Dutch private rented sector from the tenants' point of view, which makes it less attractive for those landlords who are interested in short-term leases or selling after some time.

10. ALLOCATION OF PRIVATE RENTED DWELLINGS

There is not much difference between the private rented and the social rented sector in terms of allocation rules. According to the Accommodation Act, 1993, every citizen is in principle free to locate where he or she pleases. Nevertheless, local authorities can regulate the allocation of dwellings with a monthly rent under dfl. 1,085 according to priority criteria. This quite high rent ceiling means that the tenants of very many private rented dwellings are allocated by a public system instead of through selection by private landlords. In the past, this was often done in a very mechanistic way, allocating the household with the highest priority at a specific moment in time to a specific dwelling when it came available. Nowadays, most municipalities have changed to a more market-oriented system, in which tenants can apply for vacant dwellings. The allocation is then based upon the duration of the present lease or the age of the applicant, provided that the size and income of the applying household fits into the characteristics of the dwelling. Sometimes this new allocation system only operates in the social sector, while the private rented sector still prefers the old mechanistic system, under which the landlord can choose half of the new tenants and the local authority the other half, provided that all those tenants fit into the criteria of the allocation rules. This strong regulation of the selection of tenants is a real disincentive for private landlords, but they have had to live with that since World War II.

11. TAX INCENTIVES

There is a difference in fiscal treatment between the social and the private rented sector and within the private rented sector. No corporate tax is levied either in the social rented sector or from institutional investors, while private individuals do pay income tax and private firms are subject to corporate tax. Paid interest and maintenance costs can be deducted however by the last two types of landlords. Rental income is free of Value Added Tax.

12. INNOVATIVE PRACTICE

There are not many examples of good practice or innovative models in this sector in the Netherlands. Private landlords are often too insignificant to make good news, while bad practice is more evident. Moreover, they generally compete through low prices or quick access rather than with good quality. They also find it difficult to improve their dwellings when required. All kinds of government support were introduced to help them in doing this, such as building support agencies, extra subsidies, collective improvement irrespective of tenure, handing over the project management of the improvement to housing associations or municipal officers and collective maintenance.

Institutional investors with their larger postwar apartments did not have these problems and needed no special assistance. They are now looking for new markets and niches within the private rented sector, because their middle and higher income tenants are stepping into the owner-occupied sector. So they are widening their scope to include smaller and lower rent accommodation, to combined housing with care projects, to management cooperation deals with housing associations. Institutional investors are more interested in ownership, revenue and increasing the value of rented accommodation, while some housing associations now think about transferring ownership of their dwellings to financial institutions and concentrating on maintenance and management, letting not only their own properties or former properties, but also the stock of the institutional investors. In some postwar restructuring areas and new extension areas, the ties between both factors are becoming much closer.

The city of Amsterdam, together with the local tenants' umbrella organisation ASW, has set up several rent control teams, staffed with mainly unemployed experts or people in training programmes. When called in, they control the rent level of the dwelling according to size, location, facilities and quality. If the current rent is too high, they give advice as to how to approach the landlord, or, if necessary, later on, the Rent Commission. Many rents have proven to be much too high, but one has to take into account that the teams are called in only when there is a rent problem.

Another Amsterdam innovation, but one mainly in the social rented sector, is the campaign to look for specific dwellings or neighbourhoods where there is suspicion of illegal subletting: *Operation Searchlight*. This is done by combining different official databases but also on-the-spot control. Since social sector rents are still far below the maximum reasonable rent, there is ample room for legal tenants, when they are changing home or starting to live together with somebody else, to sublet their dwellings at market prices. The official estimate in Amsterdam is that this is the case for 15% or 20,000 of the social rented dwellings. When the contracts with these illegal sub-landlords can be terminated, an important number of affordable dwellings become available, probably for the same group which is now forming the sub-tenants, but at a lower price. The same search can be done for the private rented sector, though the price difference there is less.

One of the more interesting innovations for tenants in the Netherlands last year was the new Deliberation Act for Landlords and Tenants, introduced by a member of Parliament, a former president of the national tenants' association, the *Woonbund*. This Act requires that all landlords, private and social, owning more than 250 dwellings, have to inform and listen to their tenants' organisations concerning specified items. There are well specified conditions for the recognition of such tenants' associations per landlord or per building complex. When there are associations at both levels, the Act is only valid for the top level. The right of information concerns repair and improvement, demolition, allocation and letting policy, rent level policy, rental agreement conditions, composition, price and quality of additional services and facilities on top of the rent itself. If giving some information is against the commercial interest of the landlord, he can withhold that kind of information, but this can be judged by the district court judge. In case of policy changes, information about content, motives and consequences for the tenants is obligatory. The same applies to mergers, participation in other legal entities or sale of the company.

The tenants' associations can ask to deliberate about the delivered information and have the right to respond within four weeks. The landlord is obliged to react on that advice within two weeks. Landlords have to provide 50% financial support for the reasonable costs of tenant association meetings and training. This new Act is a big step forward for the tenants' association of the private rented sector.

13. SOME POLICY ISSUES

The housing appraisal point system, which is very administrative and complex, is now increasingly at odds with the market in the different regions. There is no price differentiation between the north and east of the country, where a situation of oversupply is emerging and the west, where there is still sufficient demand for all sorts of housing. So these point rents are too low in very attractive areas, like inner cities, and too high in areas with high vacancy rates, like post-war areas of the north. The point system is cushioning market forces for all tenants below a very high rent ceiling and neglecting the different competitive strength of the owner occupied sector in different parts of the country. The housing allocation system should be changed in a more relaxed market situation, which causes all kinds of subsequent action by the different types of private landlords.

There is no clear government vision of the role of the private rented sector. Institutional investors, who were stimulated heavily in some post-war periods, are now dis-investing by selling off in the present market circumstances of growing oversupply of luxury apartments. Neutrality of tenure has not been achieved, although many rules and subsidies are or were equal in both rented sectors.

Lacking most housing and urban renewal subsidies now, it has become harder to carry out improvement and replacement programmes in dilapidated pre-war and post-war housing areas, especially for the remaining unimproved private rented stock.

Splitting up older building complexes into condominiums is now a component of official restructuring policy, but it is unclear if this should be permitted for housing associations while forbidding it to private landlords.

14. CONCLUSIONS

In the Netherlands, the private rented sector has been shrinking rapidly over the last number of decades, but it still fulfills an important supplementary role at both ends of the rented sector. There are in fact two completely different sub-sectors, offering different products and serving different customer groups.

Not only small private landlords but also big institutional investor landlords are leaving the scene gradually, although rental revenues are now much better than in the preceding decades.

The highest concentrations can be found in the four big cities, predominantly pre-war stock with poor to modest quality, but is low-priced and more easily accessible than the social rented sector.

Rent regulations and rent control are still quite tough and show little difference between the private and social rented sector. The same is true for housing benefits, allocation regulations and security of tenure.

For a long time, subsidies for new construction, operating costs and for improvement were much more important than tax incentives, but subsidies are now becoming rare.

Most innovation may be found in the field of management and maintenance cooperation between the private and social rented sector, support by government for smaller landlords, collective improvement and entry to new markets.

The Deliberation Act between landlords and tenants' associations, 1998, is a real innovation in the interaction between both parties in the private rented sector.

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The private rented housing sector in Denmark – a critical overview

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INTRODUCTION

In this century, rent regulation in the private rented market in Denmark has distorted the allocation of resources within the housing market. Only the properties' long lifetime explains why the sector still exists. Private rented housing now accounts for less than 20% of the housing stock. Compared to other tenure types, they are the oldest and are of the lowest quality.

Rent regulation sets down a level playing field with standards (tenants' protection, clauses on use, right to relet) and regulates the rent level. The rent structure is distorted and the rent level is lowered to maybe below half that of the market rent. Although all sectors are subsidised, private rented housing seems to be the most subsidised type of tenure. A removal of rent regulation alone would not create tenure neutrality or make building of new private rented housing profitable. In Denmark, owners of private rented properties are taxed on both net rent incomes and capital gains. Social rented and private cooperative housing are not taxed and owner-occupiers only by a low imputed rent income. As a result, the private rented sector has been in decline since World War II. The sector has been characterised by lack of maintenance and inadequate renovation. Few new dwellings have been built during the last 30 years and there has been a shift to the owner-occupied and private cooperative housing. It is difficult to obtain a private rental dwelling without personal contact. Landlords minimize services and maintenance. Public support for renovation and urban renewal has been the result. Excess demand is translated into other types of tenure.

There are good arguments for a revival of private rented tenure in Denmark. To reach tenure neutrality, it is necessary not only to abolish rent regulation but also to remove the taxation of private rented housing. Such a model should be accompanied by a level playing field policy in tenant security and housing allowances. However, these proposals are far from the political agenda, which will destroy this form of tenure in the long run.

1. THE PRIVATE RENTED HOUSING MARKET'S BASIC PROBLEMS

Most of this century, rent regulation has been a basic feature in the market for private rented housing. After considerable increases during the first years of the Great War, rents were frozen in 1916. Throughout the 1920s, regulation of rent was reduced and finally removed in 1934 (Bjerregaard Christensen, 1978). The policy of deflation during this period led to a problem with renting out dwellings and many vacancies resulted (Ministry of Housing, 1993, chap. 3).

In 1939, new regulations were introduced to set maximum rent levels, for fear of big rent rises during the forthcoming war. Nowadays, these regulations make for an inefficient and complicated body of laws. Rent regulation was originally introduced to protect tenants and to ensure a fair rent for the tenants. Rent regulation ensured neither that the neediest people obtained private rented housing, nor that such homes were actually available.

Today, the housing market is marked by imbalances created by rent regulation for private rented housing. There is a lack of tenure neutrality in general. People do know the advantages of having the opportunity to choose between different housing tenures in all sizes and qualities in a well-functioning market. For years, economists have drawn attention to rent regulation as the specific problem that has damaged the housing market. Rent regulation was the last of many wartime price restrictions.

There have been many analyses of the system of rent regulation, of which I shall only mention: Albon and Stafford's *Rent control* (1987), in which they describe what they call the 'tangled web of rent control'. The economic problems of rent regulation can be illustrated by this example: if the pound price of pears – of all kinds – was artificially maximized to less than half the price of profitable production, pear trees would be cut down, apple trees planted and more apples supplied (as well as imported fruit) instead. Customers will then buy apples and after a couple of seasons they will have forgotten all about pears. Private rented housing does not disappear that quickly from the market, since the properties have a very long lifetime. Year after year, dwellings are rented out at the legal maximum rents, as this return is better than no return at all. However, without new building and with the movement to other types of tenure, private rented dwellings will disappear gradually. Customers become unable to rent inexpensive dwellings and are forced to buy other types of residences. The properties' long lifetime alone ensures the existence of private rented housing today.

The problem is more complex, though. It is not only maximum rents for private rented housing that cause lack of tenure neutrality. Another classic problem of maintaining maximum prices is the fact that the producer can lower the quality of the product (if it is still profitable to produce). This has clearly been seen. For long periods, these properties have been badly maintained and the quality of the landlords' services to the tenants is like that of any discount product. Yet in everyday life, neither landlords nor tenants are really aware that this is what is happening.

2. PRIVATE RENTED HOUSING IN THE CURRENT DANISH HOUSING MARKET

Generally speaking, the Danish system of housing is among the best in the world. The average dwelling measures 107 m², and the average Dane occupies 51 m². Few live in cramped conditions, with less than 2% of the population in properties with two or more people per room.

The Danish housing market can be divided into four main types of housing: owner-occupied, private cooperatives, private rented and social. There is little in the way of true local authority housing (Table 1).

Table 1: types of housing in Denmark, 1 January 1994

Type	Units 000	Percentage
Owner-occupied		
Single family houses	891	36.9
Multi-family houses	106	4.4
Rural farmhouses & cottages	133	5.5
Flats	133	5.5
Company-owned & others	11	0.5
Total owner-occupied	1,274	52.8
Private rented housing		
Single family houses	59	2.4
Multi-family houses	30	1.3
Rural farmhouses & cottages	16	0.7
Flats	359	14.9
Company owned & others	6	0.3
Total private rented	471	19.5
Social housing	448	18.6
Private cooperative housing	126	5.2
Student halls of residence	31	1.3
Public authorities	62	2.6
Total actual housing	2,413	100.0
Institutions	15	
Summer cottages	211	

Source: Housing and property register, Statistics Denmark

Owner-occupied housing accounts for 53% of the housing stock, private rented 20%, social 19% and private cooperatives 5%. Both the general breakdown by sector and the more detailed breakdown vary somewhat according to the size of a town or district and there are regional variations. Assessing the size of the sectors on the basis of the number of occupiers rather than dwellings paints a slightly different picture. Around two-thirds of the population live in owner-occupied housing where the average dwelling is larger (detached houses), while the proportions of the population in the other sectors are relatively smaller.

The share of social housing and owner-occupied housing has risen significantly since World War II, while the share of private rented housing in fact was halved (Table 2). This happened through new building and by transforming private rented dwellings into owner-occupied dwellings or private cooperatives. The crisis in owner-occupied housing from the end of the 1980s stopped the growth of this type of housing.

Table 2: total housing stock grouped by tenure, 1955-94

Year	Owner-occupied	Private rented*	Social	Others
1955	45%	38%	7%	10%
1970	47%	34%	14%	5%
1985	55%	23%	17%	5%
1994	53%	25%	19%	4%

Source: Ministry of Housing, August 1988 – Statistics Denmark

**Includes private cooperatives, 5% of housing in 1994.*

In this century up to World War II, the building of private rented dwellings made up almost half of all house building. This fell to around a fifth in the period to around 1970 and since then has almost ceased (Skifter Andersen, 1991, p. 64). Furthermore, mergers, demolition, parceling out for owner-occupation and transforming into private cooperatives have also contributed to a smaller amount of private rented dwellings.

Owner-occupied dwellings are dominated by a group of older dwellings and by widespread building in the 1960s and 1970s. Social housing is relatively new and for this very reason it should be of high quality. Private cooperatives are divided into a quite new (subsidised) part and an older part which was originally private rented dwellings and therefore among the oldest in the housing stock.

Table 3: actual housing grouped by type and year of construction (1.1.1994)

000	<1940	1940-9	1950-9	1960-9	1970-9	1980-9	1990-3	Total
Owner-occupied	440	58	106	228	280	95	7	1,214
Private rented	265	27	28	54	39	36	15	464
Social housing	23	42	84	89	98	77	23	436
Cooperative housing	77	6	4	4	0	21	10	122
Public	27	8	7	6	4	2	2	56
Total actual	832	141	229	381	421	231	57	2,292

Source: Ministry of Housing, 1994.

Note: the types of housing diverge a little from the two previous tables

The dwellings within each type of housing vary a lot in size, age, location and other qualitative characteristics. This especially reflects economic and legal conditions at the time of construction or renovation. Dwellings in multi-storey buildings, owner-occupied dwellings, private cooperatives and mostly private rented dwellings are relatively smaller than single-family houses. As the private owned rented properties in general were built several years ago, they are often located in central city areas. These dwellings are exposed to traffic noise and pollution. With extensive urban renewal, these areas have become more attractive, especially for young people who demand small dwellings.

These mainly old dwellings were built using another technology with lower quality than for the housing stock in general. These dwellings were often built without facilities such as toilet, bath or central heating. Even though these facilities were installed later, solutions were not of the same standard as new buildings.

Within the private rented housing stock there are big differences, however. With the relatively high age of private owned rented properties, their physical and economic lifetimes are of great importance. Almost all properties survive past 40 years, and over 90% are allowed to remain for at least 80 years. Most are demolished after their 80th year, at the rate of about 2% per year (Ministry of Housing, 1990, chap. 3). The dwellings' long lifetime means that new building and renovation change the housing stock only slowly.

3. RENTAL LEGISLATION

3.1. Level Playing Field

Rental legislation contains several level playing field rules for the relationship between tenant and landlord. Even though these rules are, to a great extent, independent of the setting of the rent (see next section), the growing advantage of being able to rent a dwelling places an even bigger pressure on the rules for the relationship between landlord and tenant (Box 1).

Box 1: example of level playing field rules

In principle, tenancy agreements can be freely arranged, but the Rent Restriction Act sets down very narrow limits in reality. The tenant can freely terminate the tenancy with three months' notice on the first weekday of a month. Only in exceptional cases can the landlord give a tenant notice to quit, for example:

- If the apartment is situated in a two-family house, where the landlord lives in the other apartment if the landlord wishes to use the apartment himself. If the landlord already lives in an apartment in the property, this must be offered to the tenant.
- If the tenant disturbs other tenants or damages the rented apartment (but the legal practice is very restrictive).

In exceptional cases, the landlord can cancel a tenancy at once:

- If the tenant does not pay the rent on time.
- If the apartment is used for purposes other than those agreed and following a landlord's warning.

The tenant has the right to barter the apartment for another rented apartment, but in many circumstances the landlord can prevent the exchange. The spouse or another member of the household has the right to continue the tenancy after the tenant's death. At divorce or separation, each can continue the tenancy. The tenant may only re-let the apartment to a new tenant for two years.

The landlord has the obligation of maintenance, i.e. the duty to remove the effects of wear and tear and damage to the property. It is compulsory for the landlord to carry out the external maintenance. The landlord must also do the internal maintenance, unless the tenant agrees to take on this duty.

3.2. Rules about Maximum Rents

In Denmark, almost all methods to limit rents have been tried. Recently, the history of this legislation and its principles were analysed by the Rent Act Commission with a view to making proposals for new housing legislation (Ministry of Housing, February 1997). The Commission, which also included representatives of interest groups, disagreed strongly though not surprisingly on this.

From 1939 on, maximum levels of rent were set and, with small adjustments, these were extended 15 times until 1951. That year, the 1939 level of rents was gradually increased by 64% after a change in the housing legislation. This lasted till 1965. Not only the rent level, but also the rent structure, became unbalanced. After a broad-based political compromise in 1966, a rent assessment was carried out for all dwellings. New rents were set, with equal yearly rises from 1967 to 1974, when it was intended that rents would have reached the natural market level.

Unfortunately, the legislators forgot about inflation, which had taken hold in 1966 and accelerated in the following years, causing the rent level in 1974 to be effectively the same as in 1966 in fixed prices. However, the assessments meant that differences in quality were better reflected in the rent structure.

Another broad political compromise took place in 1974 when the principle of cost-based rent came into effect. After this, rents were expected to equal the operating costs, taking in the costs of interior and exterior maintenance, renovation and capital costs. In 1973, these capital costs were estimated at 7% of the rented property's assessed value. With this solution, rents were still below market level, as the properties' assessed value had to equal market value, which already reflected low rental incomes. Furthermore, capital cost was not adjusted to future inflation, which was to remain significant. With these new rules, rents increased about 40% on average (Lunde, 1975).

From 1980 onwards, several minor changes have been carried out, leading to rents increasing a bit more than inflation. The estimated costs of interior and exterior maintenance were increased several times during the 1980s. In this period also came some minor changes in the Rent Act.

Each of them has contributed to the current vast set of rules. Today there are at least ten different ways to settle the capital costs of the calculation of rents, even though no more than a couple of ways are effectively usable in any specific case. Furthermore, the principle of the tenancy's value must be respected: rents must be lowered if they exceed the tenancy's value by any considerable amount. The tenancy's value can be settled with reference to similar tenancies in the local area, but it is an elastic concept. There is a special legal system to settle disputes between landlords and tenants in the rented housing sector.

3.3. Rent Level and Rent Structure

As part of the property assessment for residential properties with at least three apartments, information on rent is collected (Table 4).

Table 4: average yearly rent, DKK/m² (1995)

Private	423
Built before 1980	397
Social	444
Built before 1980	412
Total	435
Built before 1980	405

Source: Ministry of Housing, 1997, 144

Rents in social housing are a little higher than those of private rented accommodation, but they are considerably younger and of better quality than private rented dwellings. Rents for private rented dwellings increased by 8.9% annually from 1981 to 1995, which is much more than inflation and also more than the 6.5% increase in social housing. Residential improvements and changes in the housing stock can explain a growth in rents of 2.9% yearly, compared to only 0.7% yearly for improvements in social housing (Ministry of Housing, 1997, pp. 1441–48).

After so many years with rent regulations, nobody knows what the rent level would be without subsidies. Therefore, only a very rough estimate can be given: the building cost per m² dwelling is set at 10,000 DKK, which is little above a cost-based price for new building without any luxuries. The rent, defined as user costs, is set at 1% for depreciation, 5% for the alternative interest rate as capital cost and 2% for operating, administration and maintenance (the capital cost still equals the real interest rate before taxes for an alternative investment with the same risk). After this, rents will be 800 DKK per m² yearly or nearly double average rents. Again it must be pointed out that this is a 'guestimate', and is uncertain.

Recently, rules for capital costs provide an opportunity to demand market rents (though such rents are not sufficient to ensure the building of new dwellings, see section 4). The oldest tenancies from before 1930 have, on average, a higher m² rents than the younger tenancies, due to widespread housing renovation, which must be paid through rent increases.

3.4. Rent Subsidies – Who is Paying?

A rent subsidy can be seen as the difference between a non-subsidised, market rent (m) and the actual rent (m^*): $S = m - m^*$.

With maximum set levels of rents, a landlord will receive lower rent incomes and therefore he pays a rent subsidy. As rental incomes are liable to tax, the landlord will save taxes (T) on the missing income, which will reduce the landlord's rental income after taxes:

$$s(1-T) = (m - m^*)(1-T)$$

while the tax authorities' tax expenditure is:

$$sT = (m - m^*)T$$

As maximum set levels of rents have existed continuously since 1939, the market for properties with rented housing adjusted to the regulation long ago. The constant limitation to the property investment's return is no doubt capitalised in lower property prices. As a matter of fact, the owners paid twice over when rent regulation was introduced, as they attained a lower return and had capital losses on property value. After many years, most of the private owners must have realised these losses. As a consequence, most of the existing owners of rented properties have bought their properties at low prices, expecting the maximum set levels of rent to remain constant. This way, it is logical to conclude that existing owners of rented properties do not contribute to paying for rent regulation!

On the contrary, if rented housing properties were partly bought with an expectation that rent regulation would be abolished, or at least in part – and this is not quite unlikely – then the sellers have not lost that much on rent regulation, while the existing owners have been disappointed by losses on the continuation of rent regulation.

4. LACK OF TENURE NEUTRALITY – NEW BUILDING UNPROFITABLE

As mentioned, there have frequently been arguments against continued rent regulation which have often led to proposals for removing rent regulation, naïvely trusting that a free housing market with market rents would ensure an efficient and well-functioning housing market. This will not happen, as other types of housing are continuing to be subsidised. It will create a user cost level below the level for private owned rented dwellings where it is profitable to build private rented dwellings without subsidies.

Even though restrictions are not formally preventing rents in new-built properties at an unsubsidised level, competition with the other types of housing will destroy that opportunity. For many years, building of social rented dwellings has been highly subsidised, with payment of construction costs (as loans without interest and repayments) and especially with paying part of the interest of the mortgage loans.

Officially, the subsidy percentage for new social housing is set at about 50% of building costs (Ministry of Housing *et al*, 1989, p. 15). In this calculation, it should be mentioned that social companies are tax-free. Private rented dwellings are never built with subsidies. Politically, it has been policy to encourage social housing, but not private owned housing. At the same time, social dwellings are allocated according to social needs. On the other hand, no supply of privately owned dwellings is ensured – apart from the already existing ones – to that part of the remaining population who wishes to rent the dwelling, instead of buying an owner-occupied or a private cooperative. But all these types of housing are also already subsidised.

Owner-occupiers pay income tax on the imputed rent value of their homes – generally 2% of their estimated value. Alternatively, the owner could have attained a higher return from a different form of investment with the same risk. The tax value of the difference between these two returns equals the owner-occupiers' subsidy.

Old private cooperative housing in Denmark comprises older private properties which have been taken over by tenant cooperatives. As tenants, members of the cooperative still receive the rent regulation subsidy. As owners, members receive the maximum possible imputed rent value subsidy as the cooperatives are exempted from tax. This is the most heavily subsidised form of all housing types. New cooperative housing comprises properties built since 1980 under a range of subsidy schemes. The state helps with the repayment of the loans and the yield on the mortgage loans is partly paid (an overview is given in the appendix).

By calculating user costs within each tenure form in new buildings where the dwellings are assumed to have the same price, we can compare subsidisation within different types of newly built dwellings. A study from 1996 (Lunde, 1996b) showed that the most subsidised types are social housing and new private cooperatives, while the owner-occupied dwellings are less subsidised. This gap will widen until year 2001, as the interest tax deductibility is limited. The only non-subsidised type of housing is new-built private rented dwellings. On the contrary, rent surveys suggest – as mentioned – that older private rented, older social and older cooperative housing are all relatively cheaper to live in and thus more heavily subsidised than the newly built housing types.

5. THE MISSING LINK: TAXATION

When discussing economic conditions in the private rented housing market, there is always a focus on the rules on maximum rents, but extremely rarely on taxes. This is a serious mistake which leads to wrong conclusions and perhaps wrong housing policy decisions. Also in professional analysis, taxation of investment in private rented dwellings is rarely discussed: I only remember seeing the tax issue discussed by Miles (1994, chap. 9) and Whitehead *et al* (1995).

The rules on the taxation of returns on property investments differ within the four tenures: private rented housing, social dwellings, owner-occupied dwellings and private

cooperatives. They are just as important as rent restrictions and housing subsidies. The personally taxed owner of a private rented property must pay 50% or more in marginal income tax on the year's net income as well as other personal or corporate income. The owner can deduct interest expenses on taxable income. When selling his property the owner must pay capital gains tax, and usually 70% of capital gains is taxed by the same tax rate as any other income. For the corporately taxed owner of a private rented property, the same rules are in force when settling the return of the property, but the company tax is only 34%.

Pension funds and life insurance companies that own private rented properties must pay tax on the year's net income and also on the year's capital gain. In Denmark these tax rules are the hardest among owners of properties but they are rarely enforced. Instead, these investors invest in public limited companies with lower corporate tax and pay tax at 70% of the capital gain at realisation as late as possible (if ever). These owners became totally tax-free on the yield on properties, bought up within a short sequence of years (1982-86) and since then for quite a few years.

Social housing cooperatives are tax-free for the period's return and on the increase in property value. But these cooperatives are not allowed to sell the properties.

The owner-occupier is taxed on the imputed rent of his own dwelling at, generally, 2% of the public assessed property value. The imputed rent can be compared to the yearly return on a private rented housing property. As an alternative real interest rate with the same risk, the owner could demand a much higher return than the 2%. From year 2000 this tax will be changed to a property tax at 1% of the assessed value. The owner-occupier has – like the owner of rented property – the right to deduct interest expenses. The owner-occupier is not taxed on capital gains. The owner of a rented property who lives in an apartment in his own property must include the imputed rent in the same way as a similar owner-occupied dwelling's value in his income.

The private cooperatives are tax-free as they neither are taxed by net income nor by capital gains. Therefore, the cooperatives have no chargeable income of which he then can deduct possible interest expenses. The households in cooperatives do not pay taxes on an imputed rent and are tax-free from the capital gain on the shares.

The owners of private rented housing properties have no access to depreciation for wear and tear on their property as other tradesmen who use business properties as part of their business. In this case, the owners of private rented housing properties are extraordinarily taxed.

**Table 5: estimates of effective income tax rates, 1997,
for owners of housing properties**

Owner & owner's tax regulation	Effective tax rate year's net income	Effective tax rate for year's capital gain
Private landlord, personally taxed	appr. 47% to 62%	appr. 47% – 62% to appr. 21.5% – 28.3%*
Private landlord, corporately taxed	34%	44.1%
Pension fund landlords	44.1%	0%
Social Housing	0%	0%
Owner-occupied dwelling**	From 0.02/0.08 x appr. 40% = 10% to 0.02/0.08 x appr. 46% = 11.5%	0%
Owner's own dwelling, rented property**	From 0.02/0.08 x appr. 40% = 10% to 0.02/0.08 x appr. 46% = 11.5%	0%
Private cooperative	0%	0%

* Effective tax rate for the capital gain is partly calculated as property gain tax after one year's ownership and partly calculated after assumed 20 years of ownership (calculated from today) and is then discounted with a calculated interest rate after taxes at 4%/year.

** The tax of imputed rent of own dwelling is converted into an effective tax rate of the total imputed rent. A tax imputed rent at 2%, an assumed true imputed rent at 8% and alternative tax rates for capital income without tax at highest level.

Table 5 does not contain the formal tax rates but the calculated effective tax rates for 1997. For 1998, the rates are almost the same, however pension funds are taxed at 35.8% when renting out. From 2000, the tax rate for pension funds and life insurance companies will be 26%. The new property tax on owner-occupied dwellings will correspond to an effective income tax rate at 12.5%.

Calculations show that housing property types are taxed in different ways and that private owned rented properties are extremely highly taxed compared to the other housing types. They also show that their tenants are taxed quite differently. These different taxation methods will in themselves work against private rented dwellings being bought up by (corporate taxed) companies and pension funds.

6. DESTRUCTION OF THE PRIVATE RENTED SECTOR

Hard taxation terms and – partly – the many years of rent regulation have taken away the incentive for building new private rented dwellings. Hardly more than 20,000 private rented dwellings have been built since 1970. Even though properties have a long lifetime, they become worn-down, decayed and are eventually demolished. Finally, Parliament has by law promoted the transformation of private rented dwellings into other types of housing.

We shall have a short look at this destruction of this tenure. All properties must be maintained and renovated regularly to resist wear and tear. However, owners were able to increase their year's surplus only by minimizing maintenance. As a result, the physical quality quickly dropped in properties under rent regulation. For the last couple of years, several minor changes in rent legislation have improved maintenance: owners may now increase rents after renovation of their dwellings and they do take advantage of this. There is also a risk of over-renovating, when rents are far below market rents.

Urban renewal has also increased. In practice, it is aimed at big cities and central areas. As private rented dwellings are situated there and are in the poorest condition, private rented dwellings have particularly been renewed. Urban renewal by itself reduces the number of apartments, as it often includes the removal of properties and the merging of apartments. However, the strategy for urban renewal has generally been to keep existing properties, even though they are extremely expensive to renovate. Such properties would have been demolished earlier. Urban renewal also often leads to a change in the property's owner status from privately owned to socially owned or private cooperative property. Other rented housing properties in central areas were likely to be removed in connection with traffic renewal.

In the years 1966–1979 privately owned rented properties and apartments were parceled out as owner-occupied dwellings. This met with massive resistance. The households were not able to rent a cheap dwelling, but instead had to buy an expensive owner-occupied dwelling. This housing policy created a wide gap between rented and owner-occupied dwellings. The owners of properties realised a great windfall gain when they parceled out and sold their housing properties and that aroused envy. Today there are about 180,000 of these owner-occupied dwellings of which about 40% are rented out to – among others – the original tenants who could not be forced to move when re-organising.

From 1979 onward, the possibility of forming private cooperatives was strengthened. When the owner sold a housing property, the tenants got priority to buy the property at the same price if they formed a cooperative. As the tenants this way could buy at low property prices, which was the capitalised result of rent regulation, you could say that they only paid low rent during the time of rent regulation (on the condition that the tenants do not use means to improve the property. It is common, though, that a new cooperative improves its property to a large extent, simply to achieve better dwellings). At the same time, both the cooperative as well as its tenants become tax-free of their property investment, while the former owner paid full tax.

Without official statistics, my estimate is that those living in old cooperatives paid between a third and half the price of living in similar owner-occupied dwellings. Statistics do not reveal how many private cooperatives are formerly private rented housing properties. It is known that from 1986 to 1995, 21,500 dwellings were sold to new cooperative associations (Ministry of Housing, 1997, p. 238). This development seems likely to continue. This way only properties owned for example by pension funds – they are normally not forced to sell at any time – are expected to remain private rented dwellings in the long run. Keeping to an unchanged housing policy, it will only be this small group of private owned rented dwellings and owner-occupied dwellings, which are rented out for some years, that will make up the future private rented housing market. It will only be a small percentage of the housing stock and will reach the European minimum level.

7. MODERN HOUSING PROBLEMS FOR THE PRIVATE RENTED HOUSING MARKET

7.1. Lack of a Market

With rent regulation and lack of new building, the private rented housing market in Denmark is characterised firstly by the fact that there are not enough dwellings – perhaps not even if there were tenure neutrality – and secondly by the fact that the dwellings do not have the size and quality demanded. An important element in the Danish ‘housing lottery’ is the hard-to-get rented dwellings. Vacant private rented dwellings are rarely advertised, but are passed on by personal contact or by business connections. Other examples could be well-off families who have bought small properties to rent out cheaply to the family’s children. And their members have first priority for cheap tenancies in the properties of the pension funds.

With this process of renting out, the question is whether the buyer can get a cheap apartment in a take-it-or-leave-it situation. In reality, the buyer cannot choose between rented dwellings like for instance in the owner-occupied dwelling market. The landlord still has a strong incentive to minimize his operating costs. In spite of a better Rent Act, this still goes for maintenance. And it goes for the landlords’ service to the tenants, too, which is far below what the customers are used to when paying for other services.

7.2. Pressure on Other Types of Housing

As a private rented dwelling (together with the old cooperatives) is the cheapest tenure in the housing market and as the number of dwellings is declining, the only result can be a considerable excess demand which will pass demand onto other tenures. Long ago this increased the number of dwellings in the other groups. It depends very much on the buyers’ financial situation and household characteristics, whether they meet the social requirements to be allocated a social rented dwelling or the opposite situation when buying an owner-occupied dwelling – do they have the required income, savings and abilities to save?

Attention is therefore drawn to a population group – which is hard to define – which has small or normal incomes, without savings and with weak abilities to save, but which does not have social needs either. This group will have to buy an owner-occupied dwelling – if they have no personal connections either to private landlords or private cooperatives. This way a group of buyers is forced into the owner-occupied housing market, where they are tempted to buy without having the necessary savings and therefore they get a high leverage. This group of buyers is especially exposed to risk in owner-occupied dwellings as regards prices, debts and equity (in Denmark, generally only fixed payment mortgages are used. Therefore, changes in the interest rate after taking up the loan (and after buying the dwelling) lead to changes in the size of the debt, while cash flow will remain the same).

In Denmark, only tenants in rented apartments can get housing allowances or benefits. Households with children and pensioners are most likely to get housing allowances. The public costs of housing allowances have grown heavily within recent years, but private rented dwellings have hardly contributed much to this development. Rent regulation and the falling numbers of private rented dwellings reduce public costs of housing allowances. On the other hand, owner households may not receive housing allowances. If you compare two households with the same income, they are typically both forced to pay higher housing expenditures and do not receive housing allowances, if they have to buy an owner-occupied dwelling instead of being able to rent a private rented or social dwelling.

8. TENANTS IN THE PRIVATE RENTED HOUSING MARKET

Statistically it is possible to identify types of households in the private rented housing market in Denmark. Among other things we can prove that :

- There are relatively many single people;
- There are relatively many single people with children;
- There are relatively many young people;
- There are relatively many old people (from years back when a private rented dwelling was a widely available alternative);
- Tenants have relatively small incomes compared to property owners;
- Tenants have relatively little wealth compared to property owners;
- Private rented dwellings are more widespread with growing urbanisation; and
- Private rented dwellings are more widespread on moving towards the city centre.

A more detailed statistical explanation of the classification of households by types of housing would partly be outside this paper's scope, it would partly lead to a focus on households instead of their economy due to limited statistical possibilities and it would give a misleading picture.

When private rented apartments are not spread throughout the market, only a small part of the population will get access to them. This cannot be shown in statistics of households in rented dwellings. If an owner's son gets a tenancy, he will be young and have a low income if he is studying (or simply because of his young age). If a lawyer provides his client's daughter and son-in-law with a cheap rented dwelling, the couple still has a small income, but they are also on their way to afford a single-family house with a garden. Statistics only focus on their young age and low income.



It is obvious that private rented dwellings cannot solve social housing problems. Lack of information about vacant private rented dwellings and allocation by personal contact make it very difficult for newcomers to get a dwelling, for example immigrants, persons with low incomes, persons in bad educational situations, ill persons, drug-abusers, or social outcasts.

These groups of people can only obtain a social rented dwelling. This has contributed strongly to social segregation in Danish society. Such segregation is expected to increase, as we see a development towards fewer private rented dwellings. Politically, many proposals have popped up and suggestions have been made to use private rented dwellings for social purposes. Such suggestions have until now always run up against the constitutional protection of the private property rights. At the same time, such proposals always have been 'free lunches', as they have never included suggestions for compensation for rent regulation.

The moment rent regulation and tax discrimination on private housing properties are removed, rented dwellings will be rented out on market terms. It is hard to see why all population groups should not get this from landlords – if they are able to pay the rents for the chosen dwelling. This demands a willingness to keep up housing allowances which will be even higher than for the most expensive social housing. Total public expenses for housing allowances will be much bigger, but it must be kept in mind that higher public costs to a wide extent are paid by higher tax incomes from the owners of private rented properties.

9. REVITALISING THE PRIVATE RENTED SECTOR

Internationally, there has been a strengthening in recent years of the viewpoint that private rented housing needs revitalisation and should be treated just as favourably as any other tenure of housing. Whitehead *et al* concludes:

The private rented sector in the UK has been in decline almost throughout the twentieth century. As a result, the UK has probably the lowest proportion of households in privately rented accommodations of any OECD country. There are some signs of revival, but none which suggest that new players could make an adequate return such that they would be prepared to remain in the sector over the longer term (Whitehead *et al*, 1995, p. 69).

Furthermore, there has been a focus on the private rented sector in the German and Swiss housing markets. In Germany, 43% of dwellings are privately rented and here the tax rules (with depreciation possibilities) are assessed to be more favourable than for the owner-occupied dwellings (McCrone & Stephens, 1995). In Switzerland, 63% of all dwellings are rented dwellings, mainly privately owned and here the housing policy is characterised by no subsidies, almost fully taxed owner-occupied dwellings and other types of housing, and by a soft rent control system with a market-rent-system in which the rent is negotiated between landlord and tenant when moving and where the landlord has to base his demands for rent increases on a rise in the operating costs or in interest rates, (cf. Werczberger, 1997).

Economically there are good reasons – in Denmark, too – why the private rented sector should be secure many years ahead. Socially, there is every reason why private rented housing can meet the demand for renting from the whole of the population. My estimate is that even though Ireland has had a quite different housing policy for private rented dwellings than Denmark, the aim of tenure neutrality is necessary if both countries are to reach a fully well-functioning private rented housing sector. If this aim of tenure neutrality is to be reached for the Danish private rented housing market – without changing the conditions for the other types of housing – it will require:

- a) Removal of the rules about maximum levels of rents so the rent can freely be agreed by landlord and tenant and so that rent the following years can be adjusted for development in operating costs covered by the rent, whereas the cost of capital in the rent can be adjusted with a price index (the cost of capital in the rents must both cover the real interest, which the owner loses by not receiving the return of an alternative investment with the same risks, plus the depreciation on the property, equalising the wear and tear on the property).
- b) Equal taxation for investors in private rented housing properties, owners of social housing, owners of cooperatives and owner-occupiers, an equivalence which demands tax exemption for the return of investment in private rented housing properties.

With the model described in (a), we ensure that the investment in the property creates a return with nearly the same cash flow profile as an indexed bond. The investment's yearly return through the rents approximately corresponds to the real interest of the indexed bond, while the property's capital gain corresponds to the indexation of the bond's value. With the tax model described in (b), we can stop the discrimination against private rented housing. But at the same time, this approach requires the removal of the gap between the full tax exemption for social housing and private cooperatives and the low taxation of owner-occupied dwellings. As the value of the deducted interest expenses is now being limited in Denmark, a new imbalance in the housing market is being added through the tax system. As a logical counterpart, the tax value of mortgage interest expenses must be reduced for the owners of private rented properties if the rentals are not taxed (or if they are taxed as owner-occupied dwellings).

This clean model for revitalising the private rented housing type is not complicated here by necessary social considerations in the introduction of the rent increases over a long period of time. For instance, present tenants probably would not accept rent increases much above inflation. If the model is extended, some issues must be taken into account.

First of all, the legislation must be characterised by the creation of a level playing field. This field is currently already made up by rent legislation with terms for the payment of rents, rents in advance, the distribution of responsibility for maintenance, tenant's treatment of the dwelling, animals in apartments, protection of the tenant against eviction, tenant's period of notice – and many other practical rules. These rules can also be arranged by private contracts, but no doubt it is advantageous to have one set of standard rules resolved by law or by agreements between associations, companies or similar bodies. Consumer protection like this has been introduced in many other fields and in Denmark there is also extensive consumer protection for buyers of owner-occupied dwellings.

Secondly, people with low incomes must still be guaranteed affordability for a rented dwelling of an acceptable standard. Housing allowances must still be granted even though the public cost for this will rise steeply. This increase will simply match hitherto hidden subsidies.

Thirdly, it must be possible to parcel out rented housing properties into owner-occupied dwellings, as the property price for an apartment will be the same no matter whether it is rented out or if the owner himself lives in it, when there is tenure neutrality. This is the same way that tenants can have priority for the property with its dwellings if they transform it into a cooperative association, but they will not get any financial advantages for doing so because of tenure neutrality.

Fourthly, a revitalising of the private rented dwelling type must be expected to change the owner's role in the private rented housing market as the investors' demand for private housing properties may increase. This may lead to acquisitions of these properties for investment portfolios (e.g. pension funds, quoted investment trusts) and to management of these properties by professional companies who give a better service to their clients: the tenants. In this case, fewer people will own a property, bought with the intention of securing pension savings and meeting special housing demands.

10. AN ALTERNATIVE SOLUTION

Other models can be developed to guarantee a future for the private rented sector. Only one single alternative will be described below. Instead of making the return on private rented housing properties tax-free, the state could pay direct financial support for the construction of private rented dwellings or for direct support for the payments on some of the loans taken for financing the building of new rented dwellings. The last type corresponds exactly to the support given to newly built social housing properties.

An arrangement like this implies that some of the investment in a private rented housing property is paid by the public sector. This reduces the rent demanded for the investment to be profitable. Tax relief for the investor works exactly the same way. There is one decisive difference between the two models: the price level for rented properties will be much lower if the state subsidises construction. Of course, nobody wants to pay more for a property on the second market than the price minus subsidies for a new property.

Another advantage with this model is that we avoid an introduction of market determined rents. Tax-free rent incomes are capitalised as steep price rises for existing properties. Big windfall gains like this would be expected to be taxed at a high rate. However, using the building-subsidy-model, you remove the market's regulation of when it is advantageous to invest in new rented properties. Public funds may have a budget limit on their grants for the purpose. Instead, a political discussion arises about whether the amounts granted are sufficient enough and whether the subsidy per constructed m² dwelling is enough to ensure a modern quality building. The planned economy element of the model reminds one of the discussion that has been going on for many years: are we building enough social housing? Are the dwellings too big or too small? Are the properties too expensive?

Is the quality of the dwellings too high or too low? And so on. Many elements will speak in favour of a market solution in which the investor decides what property to construct for renting purposes. It will be far more simple to use taxation to cut a great deal of the windfall gains the owners would realise, if market rents and tax-free properties were introduced.

11. POLITICAL FORUM

There is no doubt that a revitalising of the private rented sector needs a political decision. This is a dangerous field within Danish politics. Several articles, professional statements and public commission reports have been published for limiting or abolishing rent regulation, lately by an advisory assembly of professors in economics (Ministry of Housing, 1993) and of a broad commission (Ministry of Housing, 1997). Since 1974, though, no principal changes of the rent legislation have been made. No suggestions to ease the taxation of the investors have been proposed either. In recent times, housing policy has had a great influence on voters at the general elections. In the mass media's simplified world, the tenant is always poor and any increase in the rent is tough on the tenant who is not able to cope with the increase financially.

The events of the last general election on 11 March 1998 gave an example. The conservative opposition had a strong lead in the opinion polls. They wanted lower taxes on owner-occupied dwellings. A few days before the election, the government noted that the opposition also wanted to increase rents for rented dwellings. That did it for the opposition and the social democratic government won the election by a very vast majority. A few days after the election, the new-elected Minister of Housing said that rent regulation was to be eased – but only for the most expensive private rented dwellings, though. The government has recently said that it was too complicated to change rent legislation for private rented dwellings in this government's term.

12. COMMON AMBITIONS FOR THE IRISH AND DANISH PRIVATE RENTED HOUSING POLICY?

The Irish private rented housing market seems to be a market neither developed on corporate principles, social needs nor overall housing political and economic regards. The Irish and Danish housing markets function quite differently. The Danish private rented housing market is almost destroyed by the good intentions of the Scandinavian welfare model. Irish and Danish housing politics for private rented dwellings are derived from two different worlds. If the aim of tenure neutrality between the types of housing is followed in both countries in future, the two private rented housing markets will converge. The above model described for the private rented housing market in Denmark could just as well be developed for the Irish housing market.

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APPENDIX

Overview of tax, subsidy and financing schemes

	Private rented	Owner occupied	Private cooperative	Social
Income tax	Surplus tax	Imputed rent value tax (>surplus tax)	Exempt	Exempt
Property tax	Yes	Yes	Yes	Yes
Price ceilings	Rent ceilings, esp. for older properties		Price ceilings for members' shares	Rent ceilings
Financing	Free market terms	Free market terms	Old: free market terms New: obliged to take tax-free, index-linked bonds	Old: obliged to use traditional forms New: obliged to take tax-free index-linked bonds
General subsidies	Rent regulation subsidy	Imputed rent value subsidy	Old: rent subsidy + tax-free ownership New: payment subsidies + cheap loans	Old: rent subsidy New: payment subsidies + cheap loans
Housing allowances	Yes	No	No	Yes

A review of housing legislation since 1992¹

by Áine Ryall, Law Department, University College, Cork

INTRODUCTION

The aim of this paper is to critically assess recent legislative reforms impacting on the private rented sector. Since 1992, a series of measures, collectively known as the *Charter for rented housing*, has purported to grant important new rights to tenants. Legislation implementing the charter provides for: a statutory minimum notice to quit; mandatory rent books; statutory minimum standards of rented accommodation; abolition of the remedy of distress; tax relief for tenants; and mandatory registration of certain rented dwellings. In a separate development, the jurisdiction of the small claims court has been extended to include disputes over rental deposits up to a value of £600². By any standard, this is an impressive catalogue of reforms. In practice however, the charter exhibits a number of significant shortcomings.

This paper examines the development of the charter and sets out its key elements. The extent to which the charter is being enforced by local housing authorities is also considered. The paper concludes with an assessment of the charter and highlights a number of outstanding issues. In light of the shortcomings which have become apparent in the day to day administration of the charter, it is submitted that the Department of the Environment & Local Government should undertake to review the operation of the charter as a matter of urgency.

1. BACKGROUND

The charter evolved in the period 1991–1996. Two significant policy documents were published by the Department of the Environment & Local Government during this period. *A plan for social housing* (February 1991) set out *inter alia* the background to the development of the charter. Proposals for reform emerged from a review of the operation of the private rented sector undertaken by the Department of the Environment & Local Government. The Department of the Environment & Local Government's main objective was to seek to improve the position of tenants living in the private rented sector while, at the same time, not creating a disincentive to new investment through excessive regulation. The plan promised 'additional safeguards' in the form of rent books, minimum standards and a minimum notice to quit.³

¹ This paper presents a summary of the main legislative provisions. For a more detailed treatment see Ryall, 'Recent Developments in Residential Tenancy Law' (1997) *Conveyancing and property law journal* 51 and (1998) *Conveyancing and property law journal* 4.

² District Court (small claims procedure) Rules, 1993 (SI No. 356 of 1993) and District Court (small claims procedure) Rules, 1995 (SI no. 377 of 1995).

³ *A plan for social housing* (Department of the Environment & Local Government, 1991) p. 28.

The Housing (miscellaneous provisions) Act, 1992 (hereafter 'the 1992 Act') forms the legislative basis of the charter. The charter was introduced in phases. The first phase, incorporating minimum notice to quit and abolition of distress, came into effect on 1st September 1992. The following year, detailed regulations made under the 1992 Act provided for the right to a rent book and minimum standards of rented accommodation. The relevant regulations, the Housing (rent books) Regulations, 1993⁴ and the Housing (standards for rented houses) Regulations, 1993⁵ came into effect on 1st September 1993 and 1st January 1994 respectively.⁶

The next significant development was the Finance Act, 1995, which introduced a limited tax relief for tenants. Prior to the 1995 Act, tax relief was only available to tenants over 55 years of age.

Social housing – the way ahead was published in May 1995. Here, we find a clear statement of policy in relation to the private rented sector:

The important role of the private rented sector in the overall housing system is now clearly recognised and *the promotion of a thriving, more diverse and well-managed rented sector is one of the specific objectives of housing policy.*⁷ (Author's emphasis)

The way ahead noted rather blithely that 'the position of tenants in the private rented sector has been improved considerably in recent times'⁸ and listed the reform measures which had been introduced to date. Most significantly, the document promised that regulations would be introduced (again, under the 1992 Act), providing for registration of certain private rented dwellings.⁹ The Department of the Environment & Local Government saw registration as a means of facilitating enforcement of the other aspects of the charter. The Housing (registration of rented houses) Regulations, 1996,¹⁰ came into effect on 1st May 1996.

4 SI No. 146 of 1993.

5 SI No. 147 of 1993.

6 The standards regulations also apply to dwellings let by local housing authorities as from January 1, 1998.

7 *Social housing: the way ahead* (Department of the Environment & Local Government, 1995) p. 35.

8 Ibid.

9 Note that two distinct systems of registration were already in place prior to the introduction of the 1992 Act. The first system had its legislative basis in section 70 of the Housing Act, 1966. Section 70 required local housing authorities to make bye-laws to ensure certain minimum standards in rented houses. A model set of bye-laws was produced by the Department of the Environment & Local Government in June 1973. According to the Department of the Environment & Local Government, 53 local authorities introduced bye-laws (based on the model set) under section 70. The model set of bye-laws included a system of registration of rented houses. Pursuant to paragraph 6 of the model bye-laws, landlords of houses in which there were more than two dwellings were required to notify the local authority (in writing) of the date of the first letting of the house. This system of registration was never effectively enforced by local authorities. See Guerin, *Claiming rent supplement: theory and practice in Cork city* (Threshold, 1993) pp. 28-29 and 31. Section 70 of the 1966 Act (and bye-laws made thereunder) was repealed on 1st January 1994. Housing (miscellaneous provisions) Act, 1992, section 37 and Schedule. Housing (miscellaneous provisions) Act, 1992 (commencement) Order, 1993 (SI No. 145 of 1993).

The second system of registration (which is still in force) applies to formerly rent-controlled dwellings. See de Blacam, *The control of private rented dwellings* (2nd ed., 1992) pp. 49-50. See Housing (private rented dwellings) Act, 1982, section 24 and Housing (private rented dwellings) Regulations, 1982 (SI No. 217 of 1982) and Housing (private rented dwellings) (amendment) Regulations, 1983 (SI No. 286 of 1983). This system of registration is unaffected by the 1992 Act. Note that sections 24-27 of the 1982 Act have been repealed by the 1992 Act. However, regulations made under section 24 remain in force. See 1992 Act, section 37(5).

10 SI No. 30 of 1996.

Significantly, the charter does not address the contentious issue of security of tenure. That this issue is a major concern is beyond doubt. Notice to quit is the most common reason for tenants contacting Threshold, the national housing advice and research organisation. In 1997, 2,737 tenants contacted Threshold in connection with notice to quit.¹¹ Lack of security of tenure has a marked impact on the day to day operation of the charter. It remains the case that the majority of tenants in the private rented sector are weekly or monthly periodic tenants. There is a real danger, especially at the lower end of the market, that a periodic tenant who seeks to enforce these newly acquired rights may be faced with a notice to quit or a significant rent increase. The charter provides no protection in the event of retaliatory action by a landlord. Clearly, this state of affairs creates serious obstacles for tenants who wish to enforce their 'rights'. While leases are becoming more common, the usual term is for a period of 6 or 12 months. Tenants generally enjoy security of tenure during this period. However, tenants may still be wary of seeking to enforce their rights. A landlord may refuse to renew the lease, or seek a rent increase when the lease expires. Once a lease expires, a tenant no longer enjoys security of tenure. In practice, it is quite common for a tenant to continue in occupation as a periodic tenant (without the benefit of security of tenure) after a lease has expired.

It is very difficult for a tenant to qualify for long term security of tenure under the current landlord and tenant code. The relevant legal rules provide that a tenant must 'clock-up' 20 years' continuous occupation in their dwelling, or execute very considerable improvements, in order to claim an entitlement to security of tenure.¹² A landlord may prevent a tenant from qualifying for security of tenure by serving notice to quit before the tenant reaches the 20 year threshold. This practice was vividly illustrated in 1993 in what came to be known as the Mespil Estate controversy.¹³ It is generally accepted that the number of tenants who qualify for long term security of tenure is extremely small.

In drafting the charter, the Department of the Environment & Local Government was conscious of the fact that an over zealous level of regulation might operate to deter new investment and drive existing landlords from the market. Attention was directed at particular issues that appeared to offer the most flexible possibilities for reform with minimal effect on the supply side of the market. Thorny issues such as security of tenure were therefore left to one side. Also, it must be noted that the security of tenure issue falls within the jurisdiction of the Department of Justice, Equality & Law Reform while the charter (and housing policy in general) is the responsibility of the Department of the Environment & Local Government. This unfortunate division of responsibility results in piecemeal reform of the landlord and tenant code.

An attempt was made to address the security of tenure issue in November 1993. Following the Mespil Estate controversy, the then Minister for Justice, prompted by embarrassing questions in the Dáil, agreed to establish a working group to consider this difficult issue and to report to government with recommendations for reform. A report was eventually presented to the minister in July 1996. The report has never been published. It seems fair to say that there is currently no official interest in re-opening the debate on security of tenure.¹⁴

11 Source: Threshold statistics for 1997.

12 Landlord and tenant (amendment) Act, 1980 (as amended) s.13(1)(b), s.16 and s.23.

13 See, for example, *Hynes and Conlon v Walsh*, circuit court, unreported, 24 June, 1994 (Judge McGuinness).

14 For a recent example of the difficulties lack of security of tenure creates for tenants see *Sunday Business Post*, May 17, 1998 ('Tenants get a bank reprieve').

2. THE CHARTER FOR RENTED HOUSING

I propose to briefly examine the key elements of the charter in this section.

(a) Minimum notice to quit

Section 16 of the 1992 Act provides for a statutory minimum notice to quit subject to certain limited exceptions. A notice to quit is not valid unless it is in writing and is served not less than four weeks before the date on which it is to take effect. The principal change effected by this provision is that, as regards dwellings, it abolished the long-established common law rule whereby a weekly tenancy could be terminated by one week's notice to quit. Also, notice to quit must now be in writing – verbal notice is no longer sufficient.

This is a very significant reform. It was generally accepted that one week was often an insufficient period for a tenant to find suitable alternative accommodation. Landlords had also experienced difficulties replacing tenants who had given notice within this brief notice period. Verbal notices to quit had led to confusion and uncertainty. It must be emphasised however, that section 16 offers little additional protection to long-standing tenants. The notice period is not related to length of tenancy. For example, a weekly periodic tenant of, say, nine weeks standing and a periodic tenant of nineteen years standing are both entitled to the same minimum period of notice i.e. four weeks. In practice, of course, a periodic tenant may be reluctant to vacate their home and may 'enjoy' a further 6-12 month's occupation while their landlord pursues ejectment proceedings. However, this state of affairs is unsatisfactory for both landlord and tenant. It is submitted that the fact that a long-standing, elderly tenant can be required to vacate their home at four weeks' notice raises serious social justice issues. An important first step towards addressing the deficiencies in the legal framework governing security of tenure would be to re-open the debate on this issue by publishing the report and recommendations of the Department of Justice, Equality & Law Reform working group on security of tenure.

On a related issue, a practice has developed in certain local authorities whereby tenants who are faced with a court order requiring them to vacate their private rented accommodation are very favourably treated in the local authority housing list. As a result of this practice, it is often in a tenant's best interests 'to sit it out' and force a landlord to pursue a court order. Court proceedings can prove lengthy and expensive. The delays and costs associated with ejectment proceedings tend to promote 'illegal evictions'. An 'illegal eviction' occurs where a landlord evicts a tenant in the absence of a court order. During 1997, Threshold's Dublin office received 117 queries relating to 'illegal eviction'.¹⁵ This figure vividly illustrates that the legal framework governing ejectment proceedings in the event of non-payment of rent or other breach of covenant is generally unsatisfactory and in need of reform.

¹⁵ Source: Threshold statistics for 1997.

(b) Rent books

Under section 17 of the 1992 Act, regulations have been made requiring landlords to provide tenants with a rent book or other document to the like effect. Again, there are a number of limited exceptions to the right to a rent book. The rent book incorporates more than simply a receipt for rent paid. Many detailed particulars are required to be recorded including: the amount of deposit paid; the term of the tenancy; and a statement of information for landlords and tenants.

The right to a rent book is a very important reform. Previously, tenants were not legally entitled to a receipt for rent or other monies paid to their landlord. Where a dispute arose over payments, the absence of a receipt often left tenants in a weak position. The detailed records required under the rent book regulations have the potential to reduce the scope for landlord-tenant disputes. The extension of the jurisdiction of the small claims court to embrace disputes over rental deposits provides tenants with an accessible, affordable forum for processing these disputes.

The main difficulty with the rent book regulations is that a periodic tenant may be reluctant to put pressure on their landlord to provide a rent book for fear of prompting notice to quit or a rent increase. Furthermore, if a tenant does complain to the housing authority, it is up to the housing authority to take the necessary steps to enforce the rent book regulations. A tenant may well have moved to alternative accommodation by the time enforcement proceedings come to fruition.

(c) Minimum standards of rented accommodation

Under section 18 of the 1992 Act, regulations have been made providing for certain minimum standards of rented accommodation, subject to some limited exceptions. While these regulations are quite minimalistic in scope, they do provide a baseline against which the standard of rented accommodation can be measured. Clearly, the regulations will have greatest impact at the lower end of the market, especially in the case of older buildings that have been subdivided into flats and bed-sits.

Particular difficulties arise in the context of formerly rent-controlled dwellings.¹⁶ The standards regulations also apply to this shrinking category of rented properties.¹⁷ The rents landlords receive for these dwellings are generally well below market value. Consequently, landlords have little or no incentive to improve these premises. Many elderly, rent-controlled tenants live in poor conditions and it is clear that the standards regulations have not operated to improve this situation to date.¹⁸

16 See de Blacam, *The control of private rented dwellings* (2nd ed, 1992).

17 As at December 31, 1996, 9,400 formerly rent-controlled dwellings were registered with local housing authorities. See *Rent Tribunal annual report and accounts, 1997*, (Department of the Environment & Local Government, 1997) p. 6.

18 *Rent Tribunal annual report and accounts, 1993*, (Department of the Environment & Local Government, 1994) p. 17; *Rent Tribunal annual report and accounts, 1994*, (Department of the Environment & Local Government, 1995) p. 3.

Again, as with the rent book regulations, a periodic tenant may be reluctant to complain about standards (or the related issue of fire safety) for fear of prompting notice to quit. While a tenant may have a good case against a landlord for breach of contract where standards are poor, in practice, tenants do not have an accessible and effective remedy in such cases. In the absence of an effective system of civil legal aid and advice, even the district court is an expensive and inaccessible forum. At the lower end of the market, tenants will not generally initiate legal proceedings in connection with poor standards. A complaint may be made to the housing authority and it is then up to the authority to initiate enforcement proceedings against the landlord.

Environmental health officers working in the field have drawn attention to a number of practical deficiencies in the standards regulations.¹⁹ For example, the regulations do not 'outlaw' outdoor WC facilities; require the provisions of adequate artificial lighting for stairways; or provide for the storage of refuse.²⁰ On a more legalistic point, there is considerable uncertainty about the exact nature of the relationship between the standards regulations and repair covenants in leases. Surprisingly, section 18 of the 1992 Act is silent on this critical point. Difficulties in interpretation arise in practice as the public law duties imposed under the standards regulations do not sit easily with the private law obligations set out in repair covenants in leases.²¹ This important issue requires clarification as a matter of urgency.

(d) Distress

Distress is an old common law remedy whereby a landlord is entitled to enter the rented premises and seize a tenant's goods, without recourse to the courts, in order to enforce payment of rent due. Section 19 of the 1992 Act abolishes the remedy of distress in the case of rented dwellings. Generally speaking, most landlords will act on foot of a court order and will not stoop to seizing tenants' goods. However, Threshold still receives complaints from tenants in connection with distress. During 1997, Threshold dealt with 139 queries in connection with seizure of tenants' goods.²² In my view, this is a worrying figure that vividly illustrates that section 19 has not had the desired effect on certain landlords. The most common scenarios are where landlords seize tenants' bicycles, computers, televisions and videos.²³ The issue of an accessible and effective remedy where a landlord illegally seizes a tenant's goods remains to be addressed.

(e) Tax relief for tenants

Since the Finance Act, 1995, tenants are entitled to claim tax relief on account of rent paid in respect of residential premises used as a sole or main residence. The intention behind the introduction of 'rent relief' was to 'reduce the tax disadvantage suffered by

19 See, for example, O'Malley, 'An insight into the control of private rented accommodation', (1994) *Environmental Health Officers Association Yearbook* 34, 37.

20 Ibid. p. 37.

21 On this issue see Ryall, above n.1, pp.56-57.

22 Source: Threshold statistics for 1997.

23 Ibid.

renters vis-a-vis purchasers.²⁴ However, it is generally accepted that rent relief compares most unfavourably with the various incentives available to owner occupiers. In practical terms, the relief does not operate to improve the attractiveness of private rented accommodation as a genuine alternative to owner occupation.

It appears that the true motive behind the introduction of this minor tax relief was to bring landlords into the tax net. Provisional figures from the Revenue Commissioners for the tax year 1996/97 indicate that as of February 1998, 37,000 tenants had claimed the relief.²⁵ This figure indicates a very low rate of take-up. It is difficult to pinpoint any definite reason for this low take-up. When rent relief was first introduced, there was considerable speculation that certain landlords would increase rents to compensate for being forced to declare previously undeclared income. In order to claim the relief, tenants are required to submit their landlord's Revenue and Social Insurance (RSI) number to the Revenue Commissioners. It is arguable that some tenants, especially at the lower end of the market, may have decided to forego the relief in order to avoid the possibility of a rent increase.

(f) Registration

Under section 20 of the 1992 Act, regulations have been made requiring landlords to apply to the local housing authority to register tenancies that are covered by the regulations. Again, there are certain limited exceptions to the registration requirement. The registration regulations came into effect on 1st May 1996. The rationale behind the introduction of registration was to facilitate the enforcement of other aspects of the charter.

Landlords must furnish certain details about each tenancy to the housing authority. These details include: the address of the tenancy; the name and address of the landlord; a description of the premises; and the rent reserved under the tenancy agreement. The register, which is kept and maintained by the housing authority, is available for inspection by any person during normal office hours. The following particulars *only* appear in the public register: the date of receipt of the application; the address of the tenancy and a description of the premises (i.e. whether a house, flat or bedsit etc.). All other details are treated as confidential by the housing authority.

A separate application is required in respect of each tenancy to which the regulations apply. Each application must be accompanied by a £40 registration fee. A landlord is also required to pay the housing authority an annual fee of £40 in respect of each tenancy. Particular aspects of the registration regulations are considered in more detail below in the context of enforcement.

²⁴ *Social housing: the way ahead*, above, n. 7, p. 35.

²⁵ Source: Revenue Commissioners (statistics section) Dublin, May 1998

(g) Offences

Section 34(1) of the 1992 Act, provides for offences in respect of sections 17, 18 and 20. These sections deal with rent books, minimum standards and registration. Any person who contravenes a provision of, or a regulation made under these sections, commits an offence. On summary conviction, a fine of up to £1,000 may be imposed. Section 34(1) also provides for an additional fine of up to £100 per day where a contravention is continued.

3. ENFORCEMENT

Responsibility for enforcing the rent books, standards and registration regulations rests with housing authorities. The registration fee (together with subsequent annual fees) is designed to provide housing authorities with additional resources to assist in the enforcement of the various sets of regulations.²⁶ The Department of the Environment & Local Government takes the view that it is a matter for individual housing authorities to make the necessary arrangements to ensure the enforcement of the regulations in their functional areas. The department requires each authority to put in place procedures designed to ensure 'prompt and effective follow-up action in relation to any enquiries, complaints or breaches of the regulations'.²⁷

The Department of the Environment & Local Government's *Annual housing statistics bulletin* sets out details of enforcement activity. Taking the standards regulations first, during 1996, a total of 3,846 dwellings were inspected. Of these dwellings, 814 failed to meet the requirements of the standards regulations. Out of these 814 cases, legal proceedings were instituted in only 16 cases. The *Bulletin* does not report on the outcome of these legal proceedings, nor does the *Bulletin* report what action was taken in the 798 cases of non-compliance where legal proceedings were not initiated.

Turning to the rent books regulations, the *Bulletin* reports that 2,526 investigations were carried out. Under the heading 'Results', it is reported that 170 of the cases investigated were remedied and that one case is 'ongoing'. There is no indication of legal proceedings having been initiated in cases of non-compliance.

In light of the limited information recorded in the *Bulletin*, it is very difficult to draw any definite conclusions on (a) the true level of enforcement and (b) the effectiveness of enforcement action taken by housing authorities. It is particularly regrettable that the outcomes of any prosecutions taken against landlords are not recorded in detail. There is a strong impression on the ground that inspections and investigations are undertaken in response to specific complaints to housing authorities. Spot checks appear to be rare. This state of affairs suggests that housing authorities may lack the personnel and resources to enforce the various regulations effectively.

²⁶ Department of the Environment & Local Government, Circular HRT 1/96, February 16, 1996.

²⁷ Department of the Environment & Local Government, Circular HRT 8/97, November 19, 1997.

It is interesting to compare enforcement activity during 1996 with figures for the previous year. Looking at the total figures nation-wide, the number of dwellings inspected for the purpose of the standards regulations dropped significantly in 1996.

Standards regulations – enforcement of statutory requirements

	dwellings inspected	dwellings inspected not meeting standards	legal action initiated
1994	6,017	2,765	15
1995	6,048	2,109	22
1996	3,846	814	16

Source: Annual housing statistics bulletin, 1995, 1996 and 1997
(Department of the Environment & Local Government)

It is difficult to state definitively why the level of inspections has dropped so dramatically. It seems too optimistic to assume that the reduced number of inspections corresponds with a dramatic improvement in standards. The *Bulletin* does not record the number of complaints received by housing authorities regarding standards. It is therefore not possible to compare the level of complaints received with the level of inspections undertaken. In 1997, Threshold received 1,179 queries in connection with standards in rented accommodation.²⁸ The number of complaints made to Threshold in connection with standards and conditions has remained relatively static in the period under review indicating that there has not been any significant improvement in standards.

There has been a similar drop in the level of enforcement activity under the rent book regulations.

Rent books – enforcement of statutory requirements

	Investigations carried out	Remedied	Ongoing
1994	2,202	2,013	190
1995	4,869	545	187
1996	2,526	170	1

Source: Annual housing statistics bulletin, 1995, 1996 and 1997
(Department of the Environment & Local Government)

Again, without drawing any hard and fast conclusions, I suspect that it is too optimistic to assume that the reduced level of investigations is a result of greater compliance by landlords. On the other hand, there appears to be a greater awareness of the regulations amongst landlords which may account for a higher level of compliance.

²⁸ Source: Threshold statistics for 1997.

An examination of the returns made to the Department of the Environment & Local Government concerning enforcement of the rent books and standards regulations in each local authority reveals that enforcement activity is very uneven. For example, during 1996, Cork County Council inspected eight dwellings for the purpose of the standards regulations. Cork Corporation did not carry out any inspections. In sharp contrast, the four Dublin local authorities carried out a total of 3,465 inspections.²⁹

Turning to the registration regulations, these regulations have proved particularly unpopular with landlords. One of the arguments advanced by landlords against registration is that the registration fee represents a covert tax on the owners of rented properties. Landlords are also very reluctant to make what they consider to be 'sensitive' information available to housing authorities. The registration regulations are currently the subject of judicial review proceedings.³⁰ There is some anecdotal evidence to suggest that landlords are awaiting the outcome of the judicial review before taking steps to register their properties.

The Department of the Environment & Local Government estimates that at least 90,000 tenancies are subject to the registration regulations. As at December 31, 1997, 25,799 houses had been registered.³¹ This figure clearly suggests a very high rate of non-compliance by landlords. The *Bulletin* does not recount details of any enforcement activity in connection with registration. Although the regulations are relatively new, it is surprising that there is no comment on enforcement activity to date.

Another practical point worth noting is that 'temporary convenience' lettings are excluded from the scope of the standards and registration regulations.³² This exemption creates difficulties as there is no definitive concept of a 'temporary convenience' letting in the residential context. Whether or not a tenancy is a *bona fide* temporary convenience letting will depend on the facts of each individual case. In light of this wide exemption, we can anticipate that landlords and their advisors will be more inclined to argue that tenancies are for the 'temporary convenience' of the landlord or tenant with a view to avoiding the application of the regulations.³³ The extent of reliance on the 'temporary convenience' argument should be kept under review. The exemption may need to be refined in light of practical experience.

A number of recent prosecutions taken in Ennis district court has revealed two serious shortcomings in the registration regulations.³⁴ The background to the prosecutions was as follows: six defendants were charged with breaching Article 5 of the registration regulations in failing to apply to register the tenancies of their rented properties with the local authority. Two defendants were charged with breaching Article 8 of the regulations. Article 8 relates to a failure to pay the annual fee of £40 to the housing authority, having previously registered the property in accordance with Article 5.

29 The four Dublin local authorities are: Dun Laoghaire-Rathdown, Fingal, South Dublin and Dublin Corporation.

30 *Cabinet Properties v. Minister of State at the Department of the Environment & Local Government, Ireland and the Attorney General*, 00179/JR/1996. Kelly J. granted leave to seek judicial review on 20th May 1996.

31 *Annual housing statistics bulletin*, 1997, (Department of the Environment & Local Government, 1998) p. 73.

32 On 'temporary convenience' lettings generally, see Wylie, *Irish Landlord and Tenant Law* (1992) para. 37.70n.

33 See *Ennis Urban District Council v. Tierney et. al.*, Ennis district court, 8th May 1998 (discussed below).

34 *Ennis Urban District Council v. Tierney et. al.*, Ennis district court, 8th May 1998.

In Ennis, the district judge accepted that the legislation underpinning the registration regulations did not create an offence in case of a breach of section 20A of the 1992 Act.³⁵ Section 20A relates to the obligation to pay an annual fee to the local housing authority. The effect of this interpretation is that while a local authority is entitled to levy the annual fee, the local authority cannot prosecute in cases of failure to pay the fee. A consideration of the relevant legislation confirms that the district judge's view appears to be correct. The practical implication of the district judge's decision is that it is most unlikely that landlords will continue to pay the annual fee, as there is, currently, no offence or penalty in case of non-payment. The registration regulations therefore require to be redrafted in light of the findings of the district court judge.

On another issue, the district court judge accepted that in respect of prosecutions for failure to apply to register a tenancy pursuant to Article 5, the onus lay on the local authority to prove (a) that a house was let and (b) that the letting was not a 'temporary convenience' letting. This interpretation renders the registration regulations unworkable in practice as it will be impossible to definitively establish the true intention of the parties when creating the letting in question.

It is clear that the manner in which the registration regulations have been drafted raises difficult questions of interpretation which operate to frustrate criminal prosecutions. In light of the district judge's interpretation, prosecutions under Article 5 will fail unless the regulations are amended.

4. ASSESSMENT

The charter incorporates significant reforms which are likely to have most impact at the lower end of the private rented market. The right to a rent book is one of the most important reforms. Mandatory rent books, incorporating detailed records of the terms of each tenancy, will reduce the scope for disputes between landlord and tenant and encourage a more 'professional' private rented sector.

Arguably, some of the recent reforms do not go far enough. For example, the minimum notice period could be related to length of tenancy. The standards regulations lay down very basic requirements which have little or no relevance to the vast majority of properties on the market. Rent relief is a paltry gesture towards tenants which fails to redress the imbalance between the incentives available to tenants and those available to owner occupiers. It is disappointing that the legislation underpinning the charter does not offer tenants some measure of protection against retaliatory action by their landlord where tenants seek to enforce their newly acquired rights. In the case of periodic tenancies, the absence of such protection may well undermine the success of the charter.

A related issue is that of remedies. If the rights granted to tenants under the charter are to be meaningful, tenants must have access to effective remedies to enforce their rights. As regards rent books, standards and registration, a tenant's remedy is limited to making a

³⁵ The 1992 Act was amended by section 4 of the Local Government Act, 1994. The effect of section 4 was to repeal section 20(3) of the 1992 Act and to insert a new Article 20A after section 20.

complaint to their local housing authority. It is then up to the authority to initiate appropriate enforcement action. There is clear evidence that housing authorities have neither the personnel nor the resources to enforce the various regulations effectively. If this situation continues, landlords will have no incentive to take the charter seriously.

Where a landlord seizes a tenant's goods illegally, or, where a landlord evicts a tenant without following the required legal procedures, a tenant's only remedy is to pursue a civil action through the courts. This can be a slow and expensive process. Tenants with limited means may not have ready access to legal advice. In light of the many shortcomings in our system of civil legal and advice, an effective remedy may lie beyond the means of certain tenants. The result is that, in practical terms, there is little to deter a landlord with the inclination to take the law into his own hands.

The lack of effective remedies highlighted above, may be usefully contrasted with the small claims procedure which is available to tenants who assert that a landlord has wrongfully retained their deposit. In deposit retention cases, a tenant may initiate a small claim at a cost of £6. The procedure is straightforward and there is no necessity to take legal advice. In practice, even the threat of a small claim may encourage a recalcitrant landlord to change his mind and return a deposit. This point serves to illustrate the potential impact of an accessible and effective remedy.

Again, in the context of remedies, it is widely acknowledged that the delays often experienced by landlords who bring ejectment proceedings in the district court are unacceptable. In the interests of a 'professional', well-managed private rented sector, effective remedies must be available to both landlords and tenants where problems arise.

Earlier sections of this paper highlighted some practical issues which have emerged in the day- to-day operation of the various regulations. For example, the uncertainty regarding the relationship between the standards regulations and repair covenants in leases and the exclusion of 'temporary convenience' lettings from the standards and registration regulations. Uncertainty in the law hampers the effectiveness of the charter.

The way ahead claimed that:

Particular importance is attached to achieving a satisfactory level of enforcement in all areas and if monitoring shows up deficiencies, further measures will be considered (author's emphasis).³⁶

In light of this objective, and given the poor levels of compliance and enforcement to date, it is submitted that the Department of the Environment & Local Government should undertake a review of the operation of the charter as a matter of urgency. Practical issues such as those highlighted above should be examined and possible modifications considered. Options for improving rates of compliance and the related issue of remedies should also be examined.

³⁶ *Social housing: the way ahead*, above, n. 7, p.35

5. CONCLUSION

The potential knock-on effect of increased regulation on the supply side of the market is a critical consideration when designing reforms in the landlord and tenant code. In the wake of the Bacon report³⁷ and recent government measures aimed at cooling house prices³⁸, well-founded concerns have been expressed over the supply of *affordable* private rented accommodation. There is some anecdotal evidence to suggest that since the introduction of the charter, landlords who had not been declaring rental income have left the private rented market. There is also evidence that a significant number of properties which had been subdivided into flats (especially in areas such as Dublin 4 and 6) have been reconverted into single, owner occupied dwellings. Organisations working with people seeking private rented accommodation argue that tenants who are claiming social welfare payments; low income families; families with children; people with disabilities; students; and asylum-seekers *already* experience difficulties in securing good quality, affordable accommodation.³⁹ While there are reports that the luxury apartment rental market is booming, the lower end of the market, where tenants of limited means traditionally found accommodation, is in sharp decline.

It appears to be the clear intention of current housing policy that the private rented sector will play a significant role as a provider of 'social housing'.⁴⁰ Social housing need has been defined by the Department of the Environment & Local Government as 'the housing needs of households whose resources are insufficient to provide them with access to suitable and adequate housing'.⁴¹ The private rented sector is therefore seen as providing a service traditionally provided by the State. In 1995, Fahey and Watson estimated that c. 33,000 low-income households (which required some form of housing assistance from the State) were accommodated in the private rented sector.⁴² An estimated £96 million will be spent on rent supplements under the Supplementary Welfare Allowance (SWA) Scheme in 1998.⁴³ The voluntary housing sector, whilst expanding steadily, is not yet a major supplier of social housing.

It must be questioned whether the current landlord and tenant code (incorporating the charter) provides adequate safeguards for the categories of tenants listed above. Traditionally, social housing need was met by public rented housing, provided by local authorities. In sharp contrast to the private rented sector, public rented housing offers security of tenure and affordable rents. The main shortcomings of private rented accommodation identified by respondents in Fahey and Watson's study were: 'insecurity of tenure, poor physical standards and inability to afford rents'.⁴⁴ In light of these findings, it is clear that the private rented sector (at least as currently regulated) is far from an ideal provider of social housing.

37 Peter Bacon and Associates, *An economic assessment of recent house price developments* (1998) ('the Bacon Report').

38 *Action on house prices*, Department of the Environment & Local Government (1998)

39 See, for example, *Irish Times*, June 16, 1998 ('Low-cost rents for people on low incomes becoming harder to find' and editorial 'Public Housing') and Guerin, above n. 9.

40 *Social housing: the way ahead*, above, n. 7, p. 35.

41 *Ibid.*, p.50.

42 Fahey and Watson, *An analysis of social housing need* (ESRI, 1995), p. 199.

43 *An economic assessment of recent house price developments*, above n. 37, p. 18.

44 *An analysis of social housing need*, above n. 42, p. 198.

A highly polarised private rented sector has emerged, where standards of accommodation and management practices vary significantly between the upper and lower end of the market. Arguably, the most vulnerable tenants, who may not be aware of their rights, are concentrated in the lower end of the market. If the private rented sector is to operate successfully as a provider of social housing, and offer a genuine and attractive alternative to owner occupation, both landlords and tenants must be provided with effective rights and remedies.

In summary, there are three main reasons why the *Charter for rented housing* is not operating as effectively as it might:

First, the general lack of security of tenure in the private rented sector and the lack of legal protection against retaliatory action by a landlord where a tenant seeks to enforce his/her rights.

Secondly, certain aspects of the legislation underpinning the charter have been poorly drafted. Poorly drafted legislation undermines effective enforcement and leads to confusion and uncertainty in practice.

Thirdly, local housing authorities do not have the personnel or resources to enforce the various elements of the charter effectively.

In light of the above analysis, the following recommendations should be considered with a view to overhauling the current charter.

6. RECOMMENDATIONS

1. The Department of the Environment & Local Government should review of the operation of the charter. The practical difficulties which have come to light in the day to day administration of the charter should be closely examined. Appropriate modifications to the legislation underpinning the charter should be considered. The Department of the Environment & Local Government should consult widely with interested parties in the course of any such review.
2. Although the security of tenure issue is the responsibility of the Department of Justice, Equality & Law Reform, any meaningful review of the legal regulation of the private rented sector cannot be achieved without addressing this critical issue. It is submitted that the review proposed above should embrace the security of tenure issue and should include the Department of Justice, Equality & Law Reform. As a first step, the report of the working group on security of tenure, which was presented to the Minister for Justice in July 1996, should be published. The recommendations of the working group will provide a useful starting point for discussion.

3. In the context of the security of tenure issue, any review of the landlord and tenant code should not ignore issues arising in the formerly rent-controlled sector. Under the provisions of the Housing (private rented dwellings) Act, 1982, the right of certain family members to retain possession of formerly rent-controlled dwellings under the 1982 Act will come to an end in July 2002.⁴⁵ Consideration must be given to examining how the rights and interests of these tenants can best be protected when the right to retain possession under the 1982 Act expires.
4. Returning to the *Charter for rented housing*, there is a glaring lack of useful statistical information detailing the level of enforcement activity taking place on the ground. The statistics set out in the housing statistics bulletin published by the Department of the Environment & Local Government do not facilitate detailed analysis. The format in which local authorities return statistics to the Department of the Environment & Local Government should be reviewed at the earliest opportunity.
5. If the Department of the Environment & Local Government is seriously committed to the charter, local authorities must be provided with sufficient resources and trained personnel to enforce the different aspects of the charter effectively. Resources should be made available to promote and advertise the charter.
6. The issue of effective remedies for both landlords and tenants should be reviewed. Pioneering research work has been done by Threshold in this area.⁴⁶ A number of alternative methods of resolving disputes between landlord and tenant are currently in place. For example, the small claims procedure currently provides an accessible remedy in cases of deposit retention. The Rent Tribunal determines the terms of the tenancies of formerly rent-controlled dwellings. It is interesting to note that in 1993, the *Report of the lord mayor's commission on housing* suggested a fast-track system (within the existing district court structure) to deal with ejectment proceedings for non-payment of rent and other breaches of covenant.⁴⁷ The most effective means of resolving landlord-tenant disputes should be considered as part of the review proposed above. Attention should also be drawn to the inadequacies of the current system of civil legal aid and advice in the context of landlord and tenant cases.

⁴⁵ Or, in certain cases, depending on when the right to possession arises, July 2007.

⁴⁶ See generally, *Resolving landlord and tenant disputes: are rental deposit boards the answer?* (Threshold, 1993) and *Behind open doors: out of court options for housing debt cases* (Threshold, 1996).

⁴⁷ *Lord mayor's commission on housing*, Dublin Corporation, March 1993, p. 23.

Changing circumstances, latest consequences: new data on rents, conditions and attitudes in the private rented sector, 1998

by Dáithí Downey, Co-ordinator, Threshold's Housing Debt Project & Ivan Devilly, Department of Geography, Maynooth University

1. INTRODUCTION

Rents had begun to rise in parallel with new property prices from the beginning of 1997. Residential rents in Dublin have closely tracked the overall increase in property prices rising 15% to 20% throughout 1997. For example, typical monthly rents for standard two-bedroom apartments in Dublin city centre locations rose from £450 to £600 at minimum during 1997. In Dublin suburbia and outlying areas of Lucan, Blanchardstown, Celbridge and Maynooth, where rental demand from nearby 'high-tech' industry workers is strong, typical rents for three and four bedroomed semi-detached housing rose from approximately £600 to £800 per month.⁴⁸

Meanwhile some of the more dramatic changes occurred at the upper end of the market where the growth in demand for corporate rental intensified during 1997. Typically a two-bedroomed luxury apartment now commands a minimum rent of £1,000 per month in today's Dublin market.⁴⁹

2. PUSH AND PULL FACTORS ON RENT LEVELS IN 1998

Higher rents charged for accommodation at the mid to upper-end of the rental market reflect the quality and location of dwellings in the first instance. However, the strength of demand for residential lettings, combined with the inflated price paid by investors and landlords for new property to supply this market, has a direct bearing on both the rent level set and the rate of rent increase sought. The inter-relationship between the capital value paid to obtain housing and the revenue derived from the sale of a dwellings' 'housing services' ensures that revenue – or rent – must be high enough to firstly cover the costs of obtaining the capital sum necessary to initially purchase the property, and secondly to produce a rental yield or profit on the sale of the dwellings' housing services. The question arises whether this inter-relationship is combining to produce a 'pull effect' on lower rent levels further down the market as landlords seek to maintain the relative comparability of their rental yields across the sector. Therefore, notwithstanding developments in the mid to

⁴⁸ Threshold, Dublin Housing Advice Service.

⁴⁹ Radcliffe Hall in St. John's Road, Sandymount, Dublin 4 is one of Dublin's most expensive residential developments with 70 apartments and townhouses. A total of 45 new homes worth £14.6 million were sold in advance of the official launch in March, 1998. Two-bedroomed apartments were on the market to rent a minimum £1,000 per month, three bedroom apartments cost £1,500 per month and townhouses £1,800 per month.

upper-end of the market, it is at the lower or 'budget-end' of the rental market that nascent structural changes in rents and conditions throughout the sector threaten an increase in housing poverty for low to and below average income households.

The threat of increased housing poverty is even more stark when the range of possible 'push factors' currently at work on rent levels are considered. Firstly, the availability of investment properties more traditionally associated with the budget-end of the tenure (typically houses in multiple occupation divided into flats or bedsits) is becoming increasingly scarce and arguably less attractive to investors. Landlords with this type of investment portfolio have been quick to realise the capital gains to be made by withdrawing these dwellings for sale on the private market as family homes in need of renovation.⁵⁰ Secondly, receding supply at the budget-end of the rental market has pushed up rents accordingly in early 1998. For instance, typical rent levels for ordinary flatland bedsits in Dublin, many in poor and sometimes appalling condition, have risen from £50 per week in 1997 to £65, £70 and £80 per week depending on location. Rent rises, particularly at this end of the market, threaten to produce a significant deterioration in the housing conditions of the cautiously estimated 40,000 households in receipt of SWA⁵¹ rent allowance.

Accounting for over one-third of all households residing in private rented housing in 1998⁵² the majority of tenants are in receipt of SWA rent supplement with a current maximum subsidy of £50 per week. SWA tenants are therefore facing a growing shortfall between the SWA subsidy and real or actual rent levels as well as a contraction in supply. Consequently SWA tenants find it more and more difficult to source and secure suitable accommodation. The SWA rent allowance is argued to have underpinned rising rent levels. However this remains an essentially contestable point. Health board policy to ensure the relative size of any shortfall between rent and allowance payable does not widen due to rent increases may have resulted in an increase in costs. However the expanding cost of the subsidy is considered to be a direct result of wider eligibility and greater take-up by those entitled (SWA Review Group. 1996). Instead SWA housing arguably acts as the determinant of minimum rents in the market-place for low standard accommodation. In 1989 SWA rent allowance stood at £6 million. By 1996 the cost had risen to £73.1 million, where the allowance supported housing needs equivalent to 40% of the number of households accommodated in local authority housing.⁵³ In 1998 the estimated cost of the allowance is £96 million.

Other push factors on rent levels exist that are directly related to the strength of demand for rented housing, which itself is a feature of house price inflation in the 'tiger economy'. As well as absorbing growing net immigration, private renting is also meeting the needs of more and more aspiring first-time buyers who are currently priced out of the market and have postponed house purchase to rent. Their arrival signals increased competition for

50 The resultant contraction of supply at the budget-end of the market is exemplified by the recent sale of two adjoining residential letting properties in flats on the Rathmines Road, Dublin, which fetched £880,000 at auction by Gunne Estate Agents.

51 Supplementary Welfare Allowance.

52 Bacon and Associates, 1998: *An economic assessment of recent house price movements*, pp18.

53 Paper presented by Minister Liz McManus, TD, at Threshold Housing Debt Project's one-day conference on the future of SWA housing assistance, March 1997.

good quality dwellings at the cusp of the budget-end of the tenure, especially as these deflected home owners are keen to maintain a savings régime to assist their next attempt to enter owner occupation. These households, however, can afford, and are prepared, to pay a higher rent to secure a dwelling. Finally in the aftermath of *Action on house prices* the re-alignment of tax designations for residential investment threatens a significant overall drop in the number of units supplied to the market.

This is despite strong evidence that housing demand alone will support high rental yields on investment (Bacon, 1998). Nevertheless investor withdrawal threatens to transform the availability of dwellings in the mid- to upper-end of the market, which will itself focus more demand on good quality budget end accommodation. Notwithstanding this, at the time of writing it yet remains to be seen what the full impact of recent government initiatives will be on the rate of investment in the residential lettings market throughout 1998.

Therefore, even in terms of rent levels alone, there has been a significant change in circumstances for tenants living in private rented housing over the period. These new circumstances are not without consequences. The significance of upward rent movements in a highly polarised housing private renting tenure remains the fact that while a minority of the most vulnerable, low-income tenants will face the immediate prospect of homelessness due to new, higher rent levels, other low-income tenants are facing a broader spectrum of consequences. They include reduced non-housing disposable income; lower savings; being forced to move to a cheaper dwelling in a different location; and generally the risk of significant changes in their perceived and real quality of life. Finally, their attitudes and opinions towards private renting as tenure of choice are being affected accordingly.

3. BACKGROUND TO THE SURVEY – AIMS, OBJECTIVES AND METHODOLOGY

Since the beginning of 1998, especially during January and February, Threshold's Dublin housing advice service noted a rapid growth in the number of clients presenting to the service with rent increase difficulties. Subsequent staff discussion around what the direct causes of this increase might be prompted the Housing Debt Project to design, pilot and conduct a questionnaire-based survey enquiry into what the exact changes in rents were. Initially the survey was conceived simply to answer the question 'what is the rate of rental increase in the budget end of the private rented market?' However the need for supplementary data and information relating to the context of rent levels experienced in different locations demanded that the survey also consider the housing conditions and attitudes of tenants living predominately in the 'budget' end of the tenure. The survey was also considered an opportunity to evaluate the strength of push and pull factors on rents in 1998.

The first questionnaires were drafted and piloted in the three areas of Dublin, Galway and Cork. In total 52 pilots were completed before the final questionnaire was agreed.

4. SURVEY FINDINGS

4.1. Demography and Labour Market Details

Three quarters of the whole sample was under 35 years of age, with the largest group aged between 25 and 34 years of age. 12% of the sample were aged between 55 and 64 years of age. The majority, at 75% were single, 16% were lone parents, 6% married with children and 3% married without children. Overall, the sample is fairly representative of the private rented tenure with 50% of households in full or part-time employment, 23% unemployed, 25% student households and 2% retired.

One of the first indicators that the sample was highly representative of low-income private rented tenants was the distribution of income ranges. A significantly large 45% of all respondents have incomes at or below the average industrial wage of £16,000 p.a. while 26% of all respondents are on very low incomes below £10,000 p.a. In contrast, a total 9% of all respondents are on above average incomes between £16,000 and £20,000 p.a. while only 2% of all respondents recorded incomes above £20,000 p.a. and £25,000 respectively. The income profile of the sample can be regarded as typical of tenants with housing difficulties who present to Threshold's housing advice service. Nevertheless the spectrum of incomes recorded indicates that housing problems are common to all tenants in the private sector irrespective of income.

4.2. Tenancy Details of Survey Respondents

Table 1: leaseholders and periodic tenants

	Dublin %	Galway %	Cork %	Whole sample %
Percentage of respondents with lease	47	38	35	44
Lease up to one year's residency	10	14	10	10
Lease up to one and a half year's residency	36	24	21	32
Lease up to two year's residency	1	0	4	1
No lease (4 weeks periodic tenancy)	53	62	65	56

Table 1 shows the percentage of leaseholders and periodic tenants recorded in the survey. Only 44% of tenants in the survey had a current lease in 1998. Of those with a lease, 10% had a lease for one year and 32% had a lease for up to a year and a half. A lease gives the tenant a fixed security of tenure and a fixed rent for the period of the lease. Nevertheless, 56% of tenants are periodic tenancies with no lease. This means rent can be increased by the landlord with only 28 days' notice if the rent is paid monthly or 7 days' notice if the rent is paid weekly. Periodic tenancies also reduce security of tenure to a minimum 28 days' written notice to quit.

Table 2: previous tenure of respondents

	Dublin %	Galway %	Cork %	Whole sample %
First time renting privately	27	18	22	24
Percentage originating from parental residence	22	10	17	19
Percentage who have rented previously	73	80	81	76
Other (includes owner occupation)	5	10	2	5

Table 2 indicates the previous tenure of respondents. Significantly 24% of the tenants surveyed are renting for the first time, with 19% of these originating from the parental home. This is an important finding that confirms the strength of new demand for rented housing but is also an indicator that a 'crowding out' effect may in fact be occurring whereby new entrants to the tenure from the prime first time buyer point of origin – the parental home – are increasing the competition for quality budget end accommodation in the private rented sector. Nonetheless the majority of tenants in the sample had previously resided within the tenure.

Table 3: length of current residence

	Dublin %	Galway %	Cork %	Whole sample %
Up to one year	46	57	55	49
Up to two years	22	16	17	21
Over two years	31	27	28	30

Table 3 shows the length of tenants' current residencies in private rented accommodation. A total 49% of tenants have lived in the tenure for less than one year, whereas 21% have been renting for between one and two years and 30% have been renting for more than two years.

Table 4: frequency and method of rent payments

	Dublin %	Galway %	Cork %	Whole sample %
Frequency of rental payments				
Daily	0	0	2	1
Weekly	27	67	60	38
Fortnightly	2	0	0	4
Payments every four weeks	3	13	0	4
Payments per calendar month	66	0	38	55
Other	2	20	0	1
Method of rent payment				
Cash direct to landlord/agent	56	77	64	60
Cheque direct to landlord/agent	21	6	4	16
Cheque by post	0	0	2	1
Bank draft	2	2	2	2
Standing Order from Bank Account	17	4	13	15
Other	4	11	15	6

Table 4 indicated the frequency and method of rent payments by tenants. The majority of tenants either pay their rent weekly (38%) or per calendar month (55%). The majority (60%) pay cash direct to the landlord or his agent, indicating the degree to which rental payments can still remain as hidden income in 1998.

Table 5: SWA rent allowance

	Dublin %	Galway %	Cork %	Whole sample %
Percentage of tenants in receipt of SWA rent allowance	24	59	36	31
Frequency of SWA Payments				
Weekly	2	59	36	16
Fortnightly	0	0	0	0
Every 4 weeks	9	0	0	6
Per Calendar Month	12	0	0	8
Other	1	0	0	1
Percentage of tenants who experienced difficulty finding a landlord who accepted SWA clients.	15	61	32	24

Table 5 indicates the percentage of tenants in receipt of SWA Rent Allowance. A total 31% of tenants in this sample are in receipt of rent allowance. This finding concurs with the recent estimate that over one-third of all households living in the private rented sector are in receipt of rent allowance at an estimated cost in 1998 of £96 million.

Importantly, 24% of tenants in receipt of rent allowance had difficulty finding a landlord who would accept them as tenants, an indicator of the problems regularly faced by SWA clients trying to meet their housing needs.

Table 6: tenants' awareness of and opinion on landlord registration and minimum standards legislation

	YES %	NO %
Aware of minimum quality standards legislation?	60	40
Agreement on whether current accommodation meets minimum standards?	65	35
Awareness of legislation compelling landlords to register rented accommodation?	64	36
Tenants' awareness as to whether their current accommodation is registered with the local authority	31	17 (52% don't know)
Tenant agreement as to whether regulations on registration and standards are adequately enforced	4	78 (18% don't know)

Table 6 shows how little awareness exists among tenants regarding 1990s legislation on minimum standards and landlord registration (Housing Act, 1992). Firstly, while 40% of tenants were unaware of the minimum quality standard legislated for, an important 35% held the opinion that the condition of their current accommodation was below minimum standards. Secondly, 36% of tenants were unaware of the legal obligations on landlords to register with local authorities. Indeed only 31% of tenants knew that their landlord had registered with the local authority. This is a very important finding in relation to a tenant's ability to claim their yearly tax relief entitlement (£500 @ 24%) as they need to be able to provide their landlord's RSI number to claim the relief. Unregistered landlords are unwilling to provide this number for fear of tax liability on undeclared income.

4.3. Rent Details of Survey Respondents

The range of rent levels payable by type of accommodation is a reflection of the variation in standards and condition typical of the tenure. Nevertheless, for accommodation types typical of the budget end of the tenure some startling rent levels were found. For example, up to 40% of bedsits and 50% of one bedroom flats in the survey cost between £200 and £400 per calendar month. Elsewhere, nearly 60% of one bedroom apartments cost more than £400 per calendar month to rent, while approximately 40% of one bedroom houses cost over £400 per calendar month to rent. The greatest range of rent levels (and thereby

the widest choice) is found in the traditional flatland areas of Dublin 6. Notably, some of the highest rents recorded are in the inner city apartment areas of Dublin 1, 2 and 3. The highest rents recorded overall are for rental properties with a county address, typically along the southern coastal seaboard of the city. Significantly, tenants below the average industrial wage of £16,000 pa are paying some of the highest rents recorded in the survey. For example almost 25% of tenants with registered incomes less than £10,000 pa are paying over £400 per calendar month. This is a minimum yearly rent of £4,800. Equally notable is the percentage of above average income households who rent in low or budget cost accommodation. This is high enough to suggest that a strategic decision – to postpone entry to home ownership but to rent in low cost accommodation and save to buy at a later date – is being made by a number of higher income groups. The effect of this strategy is increased competition for budget type accommodation which may lead to a ‘crowding out’ of lower income groups as well as produce another push factor on rent levels.

The survey found that a total 42% of households had experienced or were facing rent increases over the period 1997 to April 1998. The Dublin figures indicate the beginning of what can be described as a structural upward shift in rent levels across the tenure. The significance of these results is that they show how the rate of rent increase experienced in 1997 rose dramatically from a minimum of 10% per annum to a minimum of 20% per annum in 1998. In other words, the rate of rent increases within the sample has at least doubled between 1997 and 1998. Even more alarming, considering the predominance of low income households in the sample, is the range of rent increases being faced by tenants in the second half of 1998. 20% increases are now standard, nevertheless a growing number of tenants face an increase of up to 30%, 40% and even 50% in some cases. When queried as to whether they could afford an immediate rent increase of 20% almost three-quarters (72%) of households said no, however over one quarter (28%) said yes. The significant minority who answered in the affirmative is engaging, especially as their ability to pay a higher rent may be interpreted as a reflection of the stronger affordability position of those households on higher incomes within the sample.

Table 7 gives an indication of the range of consequences faced by tenants upon an immediate 20% rent increase. The majority of tenants nominated less disposable income and being forced to move to cheaper accommodation as the direct consequences of such a rent hike. However, being left without reduced savings and expecting to receive notice to quit due to an inability to pay the rent increase were also nominated as consequences.

**Table 7: consequences of a 20% increase in rent
as nominated by all tenants**

Forced to move to cheaper accommodation	36%
Forced to move to another area	13%
Left with less disposable income	45%
Higher rent leading to reduced savings	19%
Expected to receive notice to quit	18%
Deterioration in quality of life	20%

Lastly, in relation to affordability in the tenure, a gross rent-to-income ratio was calculated for all Dublin households and is shown in full in Table 8. Eight categories of income recorded among Dublin households are shown. Incomes ranged from the lowest, between £7-10,000 per annum, to the highest, between £25-28,000 per annum. The mean rent paid by each income category is then displayed on a monthly and yearly basis. Rents ranged considerably across income categories. The lowest income group paid just less than £3,000 rent per annum. Interestingly the third income category paid a lower rent again, despite being at least £2,000 per annum better off in terms of income. This might possibly be explained by the propensity of low income groups to minimize housing outlays such as rent against the standard and quality of dwelling so as to maximize non-housing disposable income. The highest income category recorded the highest rent paid of £5,703 per annum.

Table 8: Dublin rental survey data: incomes, rents, rent-to-income ratios and forecast changes upon rent increases of 10% and 20%

Income category:	1	2	3	4	5	6	7	8
Lower £	7000	10000	12000	14000	16000	18000	20000	25000
Upper £	9999	11999	13999	15999	17999	19999	24999	27999
Mean rent pcm £	246.57	254.94	228.53	309.21	254.87	320.5	255.1	477.5
Mean annual rent £	2958.84	3059.28	2742.36	3710.52	3058.44	3486	3061.2	5730
Worst current R/I ratio	0.42	0.31	0.23	0.27	0.19	0.21	0.15	0.23
Best current R/I ratio	0.30	0.25	0.20	0.23	0.17	0.19	0.12	0.20
Rent £ p.a. + 10%	3254.72	3365.21	3016.60	4081.57	3364.28	4230.60	3367.32	6303
Rent £ p.a. + 20%	3550.61	3671.14	3290.83	4452.62	3670.13	4615.2	3673.44	6876
Worst new R/I ratio with rent p.a. + 10%	0.46	0.34	0.25	0.29	0.21	0.24	0.17	0.25
Best new R/I ratio with rent p.a. + 10%	0.33	0.28	0.22	0.26	0.19	0.21	0.13	0.23
Worst new R/I ratio with rent p.a. + 20%	0.51	0.37	0.27	0.32	0.23	0.26	0.18	0.28
Best new R/I ratio with rent p.a. + 20%	0.36	0.31	0.24	0.28	0.20	0.23	0.15	0.25

As a measure of affordability, table 8 also presents the worst and best rent-to-income ratios for these income categories at current rent levels. Income is taken to equal 1, therefore a ratio of 0.42 indicates 42% of income is expended on rent. The highest ratios were recorded for the lowest income groups who have the worst housing affordability profile. In particular income categories 1 and 2 recorded worst case ratios above 0.30.

Income category 4 recorded a worst case ratio of 0.27. Income categories 3, 6 and 8 recorded ratios between 0.20 and 0.25, whereas income categories 5 and 7 recorded ratios between 0.15 and 0.19. Applying a rent increase of 10% and 20% across all recorded income categories demonstrates the extent to which the rent-to-income ratios of these respective income groups may depreciate. With a 10% rent increase, the worst affected groups are again the lower income categories. In particular, categories 1 and 2 who record a new rent-to-income ratio of 0.46 and 0.34 respectively. When a 20% increase is applied, the rent-to-income ratios for all but one of the income categories show significant depreciation. The ratio for the lowest income group is now 0.51, for the second lowest it is 0.37. Income categories 3, 4, 5, 6 and 8 display deteriorated ratios at 0.27, 0.32, 0.23, 0.26 and 0.18. Uniquely the ratio for income category 7 does not depreciate any lower than 0.18, even after a 20% rent increase is applied.

5. CONCLUSION

The 20% to 30% increase in capital values for housing that occurred throughout 1997 is the strongest pull factor producing an equivalent rise in rent levels. While rent levels may have been considered 'soft' over the period when compared to growth in capital values for housing, the findings presented in section three indicate the beginning of a structural upward shift in rent levels across the private rented sector. On the basis of survey results, the rate of rent increase in 1998 is expected to be 20%. This is double the rate of increase recorded in the survey for rent increases during 1997. Accordingly, the income affordability position of low and below-average income tenants is set to deteriorate significantly. Two direct consequences will follow. The first will be stronger pressure for SWA rent allowance to rise to bridge the gap between current maximum rates of subvention and new higher rents.

Secondly, housing poverty of low and below-average income groups residing in the sector will worsen as increasing numbers of households are left with less disposable income, reduced savings and are forced to occupy the worst accommodation in terms of quality, condition and location. A corollary of the rate of rent increase in 1998 is the expectation that poor housing conditions, squalor, overcrowding and rising incipient and street homelessness will become increasingly prevalent among SWA tenants.

Finally, a number of push factors on rent levels have been identified here as adding to the erosion of low and below average income affordability in the sector. In particular, the effects of contracting supply to the budget end of the rented sector is being exaggerated by what has been described here as a 'crowding out' effect, whereby aspiring first time buyers are postponing entry to owner occupation due to the significant decline in the capital affordability of private housing. These households are consequently transferring their housing need to quality budget end private rented accommodation where rent levels are considered affordable and offer the opportunity to accumulate savings for eventual entry to home ownership.

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Social partnership – the way ahead in housing policy

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SUMMARY

The time is now opportune for a re-examination of the role of the private rented sector in housing provision, particularly as it affects the accommodation needs of low-income families. I use the concept of social partnership as a framework within which I advance three different formats that could facilitate discussion between representatives in housing policy. Such dialogue would focus on the means of providing reasonable, good quality accommodation for low-income households. In addition, it would place policy on the private rented sector in the larger housing policy context. Finally, I suggest that the involvement of institutional investors in partnership with state housing providers offers one way forward in addressing the issues of lack of supply of accommodation for low-income households.

1. INTRODUCTION

Housing need and housing availability have been the subject of topical debate for some time now. Economic and demographic conditions have combined to place pressure on the housing market that has resulted in an unprecedented demand for accommodation. Not surprisingly, attention is focused on examining ways of making home ownership more affordable for first time buyers. The report by Dr Peter Bacon and the government initiatives flowing from that report specifically address this issue.

An unintended, and indeed a largely unexpected, consequence of the current housing crisis is the attention given to the private rental sector as a housing provider for low-income households. Demand for this market has grown, fuelled by the short supply of housing for private ownership and by a shortfall in the stock of public rental accommodation. In the post-Bacon policy context, most comment on the private rental market assumes two forms. One view is critical of the limitations placed by the government on speculative investment in the housing property market. The second view is critical of the rise in the cost of rental accommodation charged by speculative investors. This brief description of opposing perspectives on the private rental sector does not capture the range of complex interactions informing these views. However, it serves to illustrate the polarised nature of the debate in this area.

It is now widely recognised that the state has increasingly come to rely on the private rental sector to meet the accommodation needs of households on modest and low incomes. As the number of households waiting for local authority accommodation creep up once more, local authorities have begun to turn increasingly to the private rental market to supply the long-term housing needs of these families. One comparative figure illustrates the extent of the public subsidy to private landlords. For the last nine years, the state has provided a considerable subsidy to landlords through the Supplementary Welfare Allowance (SWA) scheme which has grown from £6 million in 1989 to £96 million in 1998. In the Eastern Health Board (EHB) area alone, £38.4 million (59 per cent of EHB expenditure) is allocated to fund rent supplementation to the private rented sector.

2. DEVELOPING A PARTNERSHIP APPROACH: THE PRINCIPLES

The participation of interested parties in accommodation, planning and decision-making is slowly becoming a feature of the housing policy arena. In the home ownership sector, there is evidence of a more consultative link between government and housing finance agencies as means are devised by which home ownership can become more affordable for households on modest incomes. In public housing, local authorities have become more pro-active, and indeed more constructive and creative, as they move to include tenant representatives in decision making on estate management. The 1997 Housing Act gives formal expression to this trend towards inclusive decision making.

Policy making for the private rental sector, in contrast, is characterised by a piecemeal approach. There are evident shifts in the pattern of accommodation required for the future: one and two-person households constitute the fastest growing segment of the population that require housing. In addition, it is likely that there will be a demand for greater choice and diversity in housing. It is, therefore, opportune to consider policy in the private rental sector in a comprehensive, over-arching manner. In doing so, the following principles could be taken into consideration:

- First, the private rental market should be seen as an integral part of the response to the housing crisis, and in the more long-term, a response to housing need in general.
- Second, the concept of diversity in housing provision, and the incorporation of the views of diverse interests in the housing market must inform policy and practice.
- Third, the concept of consumer choice should be an integral part of housing policy. The integration of a perspective that allows households to change their accommodation to fit their life circumstances without incurring penalties (financial or quality) would assist in the creation of flexibility in the housing market as a whole. At the moment, there are no real alternatives on offer: home ownership or accommodation in a residual rental sector. That's not a genuine choice.

3. DEVELOPING A PARTNERSHIP APPROACH – THE POSSIBILITIES

The concept of social partnership in building a consensus around the direction of policy is not a new one in Irish decision making. It is a concept which has a 30 year history, developed, expanded and deepened since the early national wage agreements of 1969 and 1972. Recent examples of a partnership approach to a policy include *Partnership 2000 for inclusion, employment and competitiveness*, the establishment of the National Crime Forum and the work of the National Anti-Poverty Strategy Committee. Now is a good time to explore the possibilities of applying a partnership approach to housing policy in general and to the private rental sector in particular.

In order to facilitate this development, it is necessary to create a public dialogue between three broad groups of interests: traditional policy-makers, such as local authorities and the Department of the Environment & Local Government; traditional interests in this sector such as the financial agencies, developer interests and landlord representatives and the new social partners in this sector such as voluntary sector groups, student interests, unemployed associations, tenant organisations and trade union interests. The obvious concern of this discussion would centre on increasing the supply of accommodation. The outcome of this dialogue would be the development of a view on the private rental sector integrated within an overall vision for housing policy. This would provide a structured framework within which the private rental sector could be seen as a genuine alternative to home ownership, not as a site of last resort.

In order to include the perspectives of the many diverse interests in the housing policy arena, a number of consultative strategies might be employed. Again, drawing from models of social partnership, the concept of a public forum, or convention, to which interests and individuals could address their views, is one device for securing involvement in the process of imagining a new deal for the private rental sector (as, for example in the National Crime Forum). This forum could be led by a significant independent chairperson and would provide a report which would feed into a government discussion paper on private rental policy.

Another useful model of social partnership is that of an interdepartmental committee or task force, comprising three broad groupings: representatives of government departments, local authorities and state agencies with responsibility for social housing and representatives of non-state provider and consumer interests and individual experts. This committee could possibly be chaired by the Minister for Housing and Urban Renewal, for example, with a secretariat drawn from the Department of the Environment & Local Government. This task force would present a coordinated and comprehensive plan for the future of the private rental sector to government.

A third method of opening up the debate on housing policy is through the social partnership structure supporting *Partnership 2000*. The key objectives of this national agreement are 'the continued development of an efficient modern economy capable of high and sustainable economic and employment growth and operating within the constraints of international competitiveness, ensuring that Irish society becomes more inclusive, that long-term unemployment is substantially reduced and that the benefits of

growth are more equally distributed' (*Partnership 2000*: 1.2). Of particular significance in this regard is the emphasis given in the partnership agreement to equality and increased social inclusion as a basis to sustaining competitiveness and in ensuring 'our society's overall efficiency and cohesiveness' (*Partnership 2000*: 7).

A vital element in the review of the operation of *Partnership 2000* is the work of the National Economic and Social Council (NESC), which provides regular reports to government on the development of the provisions regarding social inclusion and equality under the partnership agreement. Given that the current housing crisis has implications for the key objectives of *Partnership 2000*, namely, sustainable economic growth and competitiveness and concern to promote social cohesion, it is appropriate that the issue of private rental housing be a subject for NESC attention. As a complement to the work of the NESC in this area, the National Economic and Social Forum (NESF) could provide a useful discussion arena for housing issues, given that its representation is drawn from the three pillars of *Partnership 2000* – government and Oireachtas; traditional social partners; the voluntary and non-governmental organisation (NGO) sector. Organisations that are not formally represented within the forum structure could be invited to participate in this process.

The advantage of this third model rests in the fact that housing policy, and policy on the private rental sector in particular, would be linked to the partnership infrastructure which addresses economic and social issues. In adopting this channel of dialogue, the private rental sector would receive mainstream policy attention rather than languishing at the margins as it does at present. This would be a major step in the direction of producing an integrated plan for housing, incorporating a clearly defined role for the private rental sector.

Each of the three models presented would clearly assist in the development of policy thinking on the role of the private rented sector in providing for the medium and longer-term housing needs of low-income households. It is likely that legislative measures would result from this process. These would set out structures for the management of the rental sector in a new partnership between local authorities, rental accommodation providers and tenants. But whichever model is adopted, a new deal for the private rental sector as a supplier of high quality accommodation at reasonable rent levels for low-income households should be an objective and an end result.

For instance, rental accommodation providers could comprise a mix of individual landlords, as is traditional in Ireland, and institutional landlords in the form of companies set up by finance agencies, trade unions and voluntary cooperatives. While the former, individual landlords, would be in the market for profit, institutional landlords could offer an alternative form of rental accommodation akin to the cost rental accommodation available in Germany, the Netherlands and Australia. The development of a 'cost rental' sector would become a component of the private rental market. This new sector (which, in fact, is not really new in that the housing provided by voluntary associations already fits into this category) could provide a positive contribution to the overall structure of the housing market. It could be developed as a sector which would allow households on

modest incomes to save with a view to home ownership at a later date. It would also have the potential to serve as an adjustment mechanism in terms of private rents, and in doing so provide government with an instrument for controlling the escalation of the rent supplement costs to the exchequer. A pilot project based on a strategic partnership between the local authority and an institutional player could provide a model for the way forward in this area.

4. CONCLUSION

In sum, then, this paper advocates that current conceptions of the private rental market be revisited. This calls for a redefinition of what is meant by 'private' in discussing the rental sector, and a reassessment of the functions and the responsibilities of local authorities, landlords and tenants. Ultimately, this paper outlines a future for the private rental sector that breaks with the old stereotypes of the past and encourages moves towards a sector that is responsive to current and future demands for lower income household accommodation. In the process, this new initiative could assist in a reassertion of a stable supply and demand situation in the housing market. It would provide real accommodation choices for households and would assist all interests in the policy sector to work together to relieve the supply problems in the market at present.

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