

**Mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises and the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context**

REFERENCE:  
OL IRL 2/2019

22 March 2019

Excellency,

We have the honour to address you in our capacities as Working Group on the issue of human rights and transnational corporations and other business enterprises and Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, pursuant to Human Rights Council resolutions 35/7 and 34/9.

We are writing to express our concern with respect to your Government's practice of adopting laws and policies which treat housing as a commodity and undermine the enjoyment of housing as a human right. We invite you to reflect on the following concerns with a view to developing a human rights based response.

Our chief concern lies with those laws and policies which have allowed unprecedented amounts of global capital to be invested in housing as security for financial instruments that are traded on global markets, and as a means of accumulating wealth. This expanding role and unprecedented dominance of unregulated financial markets and corporations in the housing sector is now generally referred to as the "financialization of housing" and it is having devastating consequences for tenants.

Contrary to international human rights obligations, investment in housing in the Republic of Ireland has disconnected housing from its core social purpose of providing people with a place to live in with security and dignity.

In Ireland, in late 2007 to early 2008, the housing bubble - which started in the early 1990s - burst and the construction sector collapsed. Given the very close financial connection to developers and construction firms, so did Ireland's banks.

Central to the Government's recovery strategy was the introduction of austerity measures, a programme of ridding domestic banks of non-performing debt assets, and increasing levels of foreign financial investment in the domestic housing and mortgage market. Sweeping cuts were introduced notably to the public housing capital construction budget - from €1.46bn in 2008 to €167m in 2014 - which was disproportionately higher and more severe than other public sectors. As a result, newly built social housing stock fell from 5,300 units in 2009 to 1,000 in 2012 and then an effective ceasing of the social house-building programme with just 476 units built in 2015. Between 2005 and 2017, the number of families on the social housing waiting list increased by 100% from 43,000 to 86,000.

Foreign investment and finance was brought into the country by the Irish State in the post-crisis period through a number of measures including: the establishment of the National Asset Management Agency (NAMA) charged with selling assets to global investors; the introduction of the 2013 Real Estate Investment Trusts (REIT) tax, which enabled and encouraged the establishment of REITs to benefit investors; and the sale by the state controlled Irish banks of non-performing loans to investment funds. The loans NAMA has purchased have a combined real value of €74.2bn, but were purchased by NAMA for less than half of that, €31.8bn. Owing to the heavy deregulation of foreign investors, and the legislative changes introduced to make Irish property markets more attractive to these investors, the sale of non-performing loans and securitised assets to foreign private financial institutions has increased exponentially. Of all assets sold by NAMA, 93% have gone to foreign investors, with 90% being sold to US private equity funds. By 2016, one third of all properties sold in Ireland were being purchased by investors.

At the same time the housing need has been increasing in Ireland. In 2015 only 8,000 new dwellings were added to Ireland's total housing stock, despite the underlying demand of 23,000 units. In 2018 output had increased to 18,072, but estimates of annual housing need are in the range of 30,000 to 50,000. Whilst the Government has indicated a willingness to provide an additional 137,563 units of social housing by 2021, in reality 87,560 (63.7%) of these will be provided through private rental subsidies. This shift has been enabled by legislative change under the Housing (Miscellaneous Provisions) Act 2009 (as amended), which means the provision of rental subsidies is now deemed legally akin to the direct provision of social housing. Where a family is provided with rental supplements, they are removed from the social housing waiting list and no support is given to them to find housing in the private rental sector (aside from some homeless services support in certain cases).

Heavy private housing investment combined with the cuts in public housing budget has been making housing in Ireland significantly unaffordable. This is made worse by land hoarding: investors sit on vacant land to restrict supply and thus increase demand and value. In Dublin rents have increased by 42% in the past six years, and a person with an average salary renting the average property now has to allocate 86.3% of their earnings on rent. Owner-occupation is also becoming more expensive, with house prices now approaching levels last seen at the height of the property bubble, and Ireland's Housing Agency defining housing in Ireland as 'moderately unaffordable', with Dublin being described as 'seriously unaffordable'. Private equity landlords, such as Ireland's largest landlord, I-RES REIT, have openly discussed policies of introducing the highest rents possible in order to increase returns for shareholders. The recent report by the Department of Finance notes that these large REIT investor landlords are playing a key role in setting inflated market rents in certain areas.

Private housing investment, and the related increased unaffordability and availability it has generated, has also impacted security of tenure. Property investors (and investor landlords) are known to push tenants and owners out of their homes by taking possession, evicting, or creating conditions to compel tenants to leave – such as vastly

increased rents or using loopholes in rent legislation. Those living in private rental accommodation are particularly at risk of experiencing insecurity of tenure, with 491 complaints regarding illegal evictions made to the Residential Tenancies Board in 2017, up from 351 in 2016, and 320 in 2015.

For example, in October 2017, private equity fund Lugus Capital purchased the 78 unit Leaside Apartment Complex at auction, where it was advertised as having the potential for greatly increased rental yields through refurbishment. Whilst Cork City is a Rent Pressure Zone (RPZ), where rent increases are limited to 4% annually, a loophole in the law allows for increases of more than 4% where substantial refurbishment takes place. Refurbishment to increase fire safety in one building began in spring 2018 and has led to serious health and safety concerns, with residents, a mix of international students and low-income students, still living in the building reporting flooding, cold and damp. Residents have led protests and have taken their case to the Residential Tenancies Board, in an attempt to stop the evictions, however to date no decision has been reached.

Homelessness has increased exponentially in recent years, with the number of homeless adults rising by nearly 95.9% between 2015 and 2018, whilst levels of child homelessness grew by 227.7% over the same period. The central causes of homelessness are issues related to the private rental sector. The lack of tenant protections in the private rental sector – such as the ease with which a landlord can evict for sale or to move family members in and the lack of life-time leases means that tenants are extremely vulnerable to exploitation, housing insecurity and homelessness from the actions of investor landlords. Homelessness is one of the most egregious and damaging violations of the right to adequate housing. The impact of homelessness on children in particular, is known to be devastating on their development both physically and mentally.

The financialization of residential real estate undermines the enjoyment of the right to non-discrimination and to housing. Because the business model associated with financialization demands short-term profits, there is heightened pressure placed on purchasing affordable housing - often where the most vulnerable communities are located - and then securing the highest possible return on investment through the persistent extraction of profits through monthly rents. The result of this is the constant escalation of housing costs for tenants. Turning housing into an investment leads to decision-making that is investor centric, rather than tenant centered. When the focus is on maximising profits, housing becomes less affordable, less available, less secure, and less habitable.

We would like to remind your Excellency's Government of its obligations under various international human rights instruments, in particular the International Covenant on Economic, Social and Cultural Rights to which the Republic of Ireland has been a party since 8 December 1989, and more specifically article 11.1 which states that “[t]he States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.” In addition, we would like to bring to your Government attention the UN Guiding Principles on Business and Human Rights (UNGPS), which remind States that they must protect against human rights abuse by business enterprises within their territory and/or jurisdiction. As part of

their duty to protect against business-related human rights abuse, States are required to take appropriate steps to “prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication” (Guiding Principle 1). In addition, States should “enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights...” (Guiding Principle 3). In addition, business entities also have an independent responsibility to respect human rights, including the right to adequate housing, according to the UNGPs.

As you may know, according to international human rights law, your Government is required to take progressive measures, to the maximum of available resources, to ensure access to adequate housing for all without discrimination. To address the issue of financialization and its impact on the enjoyment of the right to housing, your Government must develop policies and laws that include a full range of taxation, regulatory and planning measures in order to re-establish housing as a human right, promote an inclusive housing system, prevent speculation and limit the extraction of profits at the expense of tenants. This will require a transformation of the relationship between your Government and the financial sector, whereby human rights implementation becomes the overriding goal. In this regard, we would also like to draw your attention to the report of the Special Rapporteur on the financialization of housing (A/HRC/34/51).

Please note that a letter with a similar content has been sent to several countries concerned, and to the company Blackstone Group highlighting its human rights obligation as private actor to avoid any harm and to take positive steps to realize the right to housing.

We use this opportunity to encourage the Republic of Ireland to recognize the impact of the financialization of housing on the enjoyment of the right to adequate housing particularly for minority and vulnerable groups, and to take concerted steps towards returning housing to its core function as a social good. Failure to do so can only be regarded as a retrogressive step, and accordingly puts the State at odds with its obligations under international human rights law.

We intend to publicly express our concerns in the near future, as we believe that the wider public should be alerted to the potential implications of the above-mentioned policies. The press release will indicate that we have been in contact with your Excellency’s Government’s to clarify the issue/s in question.

This letter and any response received from your Excellency’s Government will be made public via the communications reporting website within 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of our highest consideration.

Surya Deva  
Chair-Rapporteur of the Working Group on the issue of human rights and transnational corporations and other business enterprises

Leilani Farha  
Special Rapporteur on adequate housing as a component of the right to an adequate  
standard of living, and on the right to non-discrimination in this context



TPN 032/2019

The Permanent Mission of Ireland to the United Nations Office at Geneva presents its compliments to the Secretary General of the United Nations (High Commissioner for Human Rights) and has the honour to refer to the joint communication sent by the Working Group on the issue of human rights and transnational corporations and other business enterprises and the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, concerning Communication No. **OL IRL 2/2019**.

The Permanent Mission of Ireland has the honour to submit the Response of Ireland in the case of the aforementioned Communication No. OL IRL 2/2019.

The Permanent Mission of Ireland has the honour to remain at the disposal of the Special Procedures Branch, should the latter require further submissions on the matter.

The Permanent Mission of Ireland to the United Nations Office at Geneva avails itself of this opportunity to renew to the Secretary General of the United Nations (High Commissioner for Human Rights) the assurances of its highest consideration.



Geneva, 23 May 2019

**Ireland's Response to the joint communication received from:**

Mr Surya Deva

Chair-Rapporteur of the Working Group on the issue of human rights and transnational corporations and other business enterprises

Ms Leilani Farha

Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

**Joint Communication from Special Procedures OL IRL 2/2019  
May 2019**

**1. Introduction**

Ireland thanks the Chair Rapporteur of the Working Group on the issue of human rights and transnational co-operations and other business enterprises and the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and on the right to non-discrimination for their Joint Communication dated 22 March 2019 (Communication). Ireland welcomes the opportunity to comment on the issues raised in the Communication, which has been considered by the relevant Irish authorities.

Prior to responding in detail in the consolidated reply below, Ireland would like to reaffirm that it takes very seriously the issues and concerns raised in the Communication. The provision of housing, whether it be social, affordable or private housing, and the support of households who are experiencing homelessness is and will continue to be a critical priority for the Irish Government. This is reflected in the policy initiatives being advanced and the budget and resources that are being provided to tackle issues in the housing sector, which the Communication rightly highlights are issues that many other countries also currently face.

Ireland notes that the data referenced in the Communication refers to cutbacks made between 2008 and 2014 without reference to the huge increases in budget subsequently provided in the period to 2019. The Joint Communication also characterises new house building based on data from 2012 and 2015, without reference to the extensive range of widely available published data which highlights the eight-fold increase in 2018 in new build social housing through Rebuilding Ireland compared to the 2015 reference point in the Communication. Furthermore, the subsequent drop in households on the social housing waiting list has not been referenced in the Communication.

Finally, the Chair Rapporteur and the Special Rapporteur will wish to note that, in accordance with the Irish Constitution, the correct name of the State in the English language is Ireland. It would be appreciated if this could be borne in mind in all future communications with the State.

## 2. Rebuilding Ireland: An Action Plan for Housing and Homelessness

In 2016, the Irish Government published **Rebuilding Ireland**, an action driven plan to accelerate housing supply in Ireland in order to address the evident under-supply of housing that had emerged. The plan includes a range of measures to address the needs of homeless people and families in emergency accommodation, accelerate the provision of social housing, deliver more housing generally, utilise vacant homes and improve the rental sector.

As evidence of its commitment to tackling these issues and to support the roll out of the ambitious Rebuilding Ireland Action Plan, over €6 billion is being provided by the Government over the lifetime of the Plan. This funding will:

- support an increase in the overall supply of new homes to 25,000 per annum by 2020;
- deliver an additional 50,000 social housing homes in the period to 2021; and
- meet the housing needs of an additional 87,000 households through the Housing Assistance Payment (HAP) scheme and the Rental Accommodation Scheme.

## 3. Tackling homelessness and the provision of social housing

The Communication asserts that *'sweeping cuts were introduced notably to the public housing capital construction budget'* and also refers to *'cuts in public housing budget'*. These statements are entirely at odds with the factual position in recent years, with housing budgets increasing year on year. As reflected below, the housing budget for 2019 is just under €2.4 billion. This is the highest level of funding ever provided for housing purposes in any given year in Ireland.

The 2019 budget set a target of 10,000 new social homes to be delivered in 2019 and allocated €310m for delivery of Affordable Homes through the Serviced Sites Fund.

*Table 1: Housing Expenditure 2016 – 2018 and Budget for 2019*

<b>Year</b>	<b>Current €</b>	<b>Capital €</b>	<b>Total €</b>
<b>2016</b>	401,142,846	541,828,208	942,971,054
<b>2017</b>	572,260,079	836,230,401	1,408,490,480
<b>2018</b>	751,817,542	1,309,074,990	2,060,892,532
<b>2019</b>	960,977,000	1,411,411,000	2,372,388,000

In relation to the delivery of social housing supports for households, it should be noted that over the three-year period 2016 – 2018, over 72,000 households had their social housing needs met under the Rebuilding Ireland Action Plan. It is estimated that by the end of 2019, this number will have increased to over 100,000 households.



In 2018 alone:

- 27,103 new households that had their housing need met under Rebuilding Ireland;
- 8,422 new homes were brought into the active social housing stock through build, acquisitions, voids and leasing programmes, 7% ahead of the target for the year;
- Looking at the new build element of delivery, this increased by 185% in 2018 compared to 2017 and the number was eight times greater than the number built in 2015, the year before Rebuilding Ireland;
- Construction figures from December 2018 show almost 5,000 new social housing homes being built across 291 sites. These are being added to on a weekly basis; and
- All of this was facilitated in 2018 by over €2 billion of investment of taxpayers' money, up 47% on 2017.

The Communication's commentary in relation to the provision of social housing supports through private rental subsidies presents an incomplete picture of the range and flexibility of the supports provided.

The commitment under Rebuilding Ireland is to add some 50,000 homes to the social housing stock through Build, Acquisition and Leasing Programmes and, in addition, to provide a further 87,000 flexible housing supports through the Housing Assistance Payment (HAP) and Rental Accommodation Scheme (RAS) between 2016 and 2021.

There is public demand for a social housing structure that is blended to suit the varied needs of people. While there are multiple underlying schemes facilitating the delivery of the 50,000 long-term homes, what matters ultimately to the recipient is not the delivery mechanism but the availability of a home that is suited to their needs. The flexibility of the HAP scheme lies in its capacity to enable the individual to work and also to have autonomy in choosing the location and type of accommodation, depending on their own particular preference.

In relation to social housing targets, it should be noted that the mix of delivery through the different programmes continues to evolve year on year and that by the time we reach 2021, more households will at that stage be supported through build, acquisition and leasing schemes (over 12,000 homes that year) than through the HAP scheme. Table 2 below sets out the detailed targets for each of the 6 years of Rebuilding Ireland, as well as details of the delivery achieved to the end of 2018.

Table 2: Housing Delivery 2016 -2018 and targets out to 2021

Rebuilding Ireland - Targets and Progress											
Category	Target 2016	Output 2016	Target 2017	Output 2017	Target 2018	Output 2018	Target 2019	Target 2020	Target 2021	Overall Target 2016 to 2021	Cumulative Delivery (end Q4 2018)
Build	2,260	2,965	3,200	4,054	4,969	4,811	6,545	7,736	8,907	33,617	11,830
Acquire	1,755	1,957	1,250	2,214	900	2,610	1,325	800	800	6,830	6,781
Lease	225	792	600	827	2,000	1,001	2,130	2,631	2,450	10,036	2,620
<b>Subtotal</b>	<b>4,240</b>	<b>5,714</b>	<b>5,050</b>	<b>7,095</b>	<b>7,869</b>	<b>8,422</b>	<b>10,000</b>	<b>11,167</b>	<b>12,157</b>	<b>50,483</b>	<b>21,231</b>
RAS	1,000	1,256	1,000	890	600	755	600	600	0	3,800	2,901
HAP	12,000	12,075	15,000	17,916	17,000	17,926	16,760	13,000	10,000	83,760	47,917
<b>Subtotal</b>	<b>13,000</b>	<b>13,331</b>	<b>16,000</b>	<b>18,806</b>	<b>17,600</b>	<b>18,681</b>	<b>17,360</b>	<b>13,600</b>	<b>10,000</b>	<b>87,560</b>	<b>50,818</b>
<b>Overall Total</b>	<b>17,240</b>	<b>19,045</b>	<b>21,050</b>	<b>25,901</b>	<b>25,469</b>	<b>27,103</b>	<b>27,360</b>	<b>24,767</b>	<b>22,157</b>	<b>138,043</b>	<b>72,049</b>

The Communication asserts that *'Where a family is provided with rental supplements, they are removed from the social housing waiting list'*. While this is the case as, under Irish law, a household's housing needs are considered to have been met, it should also be noted that Ministerial directions have issued to ensure that, should they so choose, HAP recipients can express an interest in moving to other forms of social housing support through a transfer list. Furthermore, local authorities have also been directed that HAP recipients, who apply to go on the transfer list, should get full credit for the time they spent on the waiting list and be placed on the transfer list with no less favourable terms than if they had remained on the waiting list.

As HAP recipients generally move from the Social Housing list to the Housing Transfer list, they should not be subject to any further Housing Need Assessments when moving from one form of Social Housing to another (assuming there has been no break in their receipt of housing support). It should be noted that, at end 2018, over 2,100 households who had been in receipt of HAP, had transferred to another form of social housing support through the mechanism of the transfer list.

The Communication asserts that *'Between 2005 and 2017, the number of families on the social housing waiting list increased by 100% from 43,000 to 86,000'*. It is unclear why this particular statistical comparison was chosen. Given that Rebuilding Ireland is the Government's Action Plan to address issues in the housing sector, it is considered that it is far more appropriate, and representative, to compare the numbers of households on waiting lists since Rebuilding Ireland was introduced in 2016. As can be seen from the data in the table below, the numbers on waiting lists had reduced significantly (by 21.5%) by 2018 and data will continue to be reported on an annual basis.

Table 3: Social Housing Waiting List

Year	Households on the social housing waiting list
2016	91,600
2017	85,799
2018	71,858

#### 4. Right to housing

The Communication suggests that Ireland's housing policies are '*contrary to international human rights obligations*' and that Ireland is failing '*to protect against human rights abuses by business enterprises*'.

The Irish Government does not accept this assertion and wishes to set out the legal position in Ireland regarding rights to social housing and protections in relation to private and rented accommodation.

Ireland is very conscious of its obligations under Article 11.1 of the International Covenant on Economic, Social and Cultural Rights in relation to the right of people to an adequate standard of living for themselves and their families, including adequate food, clothing and housing. While the Irish Constitution does not contain an express right to housing, there are however a range of rights and protections in relation to social housing provided for in Irish legislation, including:

- the right to apply for social housing assistance and the right to be assessed for social housing assistance once you have applied;
- the right to obtain Housing Assistance Payment, if eligible, or to be placed on a waiting list for social housing;
- the right not to be discriminated against on the basis of gender, marital status, family status, sexual orientation, religion, age, disability, race or membership of the Traveller Community;
- the right to purchase your local authority house subject to certain conditions;
- the duty of the local authority to make an assessment of housing need, to make an Allocation Scheme and operate according to it and to have regard to the needs which the scheme is designed to meet;
- rights in relation to the procedure for a Tenancy Warning and eviction; and
- the responsibility on local authorities through the Housing Act 1988 to provide for the accommodation needs of people who are homeless.

There are also legislative protections in relation to private housing and rented accommodation, including:

- protections for the family home;
- the right to a six-year tenancy, with limited grounds for termination, in private rented accommodation if a tenant has been in occupation for six months continuously and no notice to quit has been served;
- the right to refer a landlord and tenant dispute or resolution to the independent Residential Tenancies Board (RTB) and the right of appeal from the decision of the RTB to the High Court on a point of law; and
- the duty to build all new houses in accordance with Building Regulations which include highly demanding quality standards.

The Eighth Report of the Convention on the Constitution recommended that the State should progressively realise economic, social and cultural rights, including the right to housing, subject to maximum available resources, by inserting such a right into the Constitution. The Convention's recommendation raises substantial questions, including for example, the suitability or otherwise of the Constitution as a vehicle for providing for detailed rights in this area, the possible cost, and the fact that there is already power by legislation to confer rights and determine expenditure via primary and secondary legislation and an elected and accountable Government and Oireachtas (Parliament). For these reasons the issue of the right to housing was referred, for further consideration, to the appropriate Oireachtas Committee - the Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach in October 2017.

Recognising the impact that business activity may have on the enjoyment of human rights, Ireland launched the National Plan on Business and Human Rights (2017-2020) to give effect to the UN Guiding Principles on Business and Human Rights. The National Plan contains a number of key action points that are aimed at the promotion of responsible business conduct at home and overseas.

## 5. House Prices

The Communication asserts that *'House prices are now approaching levels last seen at the height of the property bubble'*.

The Central Statistics Office Residential Property Price Indices release (dated 11 April 2019) states that overall, the national index is 18.8% lower than its highest level in 2007. Dublin residential property prices are 22.1% lower than their February 2007 peak, while residential property prices in the Rest of Ireland are 22.7% lower than their May 2007 peak.

The table below shows these figures as extracted from the Index tables (Source - CSO Statbank table HPM06).

Table 4: Residential Property Prices

Property Location/Type (Jan 2005=100)	Latest Value - Feb 2019	Maximum Value	Period of Maximum Value	Current Value as % of Maximum
National - all residential properties	106.4	131.0	Apr-07	81%
National - houses	109.7	132.5	Apr-07	83%
National excluding Dublin - all residential properties	99.9	129.3	May-07	77%
National excluding Dublin - houses	101.2	130.0	Apr-07	78%
Dublin - all residential properties	105.1	135.0	Feb-07	78%
Dublin - houses	110.6	138.2	Apr-07	80%

## 6. Housing Affordability

The Communication raises the issue of affordability, suggesting that the Housing Agency defines “*housing in Ireland as moderately unaffordable with Dublin being described as seriously unaffordable*”.

The Housing Agency’s National Statement of Housing Supply and Demand 2016 and Outlook for 2017-18 notes that there are various definitions of affordability and ways to measure it.

More generally, the findings of research (Corrigan et al, 2019)<sup>1</sup>, prepared and published in collaboration with the Economic and Social Research Institute, does not support a contention that housing is universally unaffordable in Ireland. In fact, for many households, housing costs are not high relative to household disposable income. The paper finds that on average households were paying one-fifth of their income on housing costs in 2016, albeit that there was substantial variation across households. Very considerable components of the total population of households were, on average, faced with housing costs that were eminently affordable and sustainable; the average mortgage payment to disposable income ratio was 21%, the average payment by households paying rent to a local authority was circa 12%.

It was, and remains the case, however, that high housing cost burdens were concentrated amongst particular cohorts. Private renters, those living in Dublin and the surrounding mid-east region and low income households were paying a significantly higher proportion of their incomes on housing payments. This is acknowledged and policy measures are directed towards improving affordability for these households.

In addition, the Government has put in place measures to help potential homebuyers with affordability, including, inter alia:

<sup>1</sup> See Corrigan et al (2019) Exploring Affordability in the Irish Housing Market, The Economic and Social Review, Vol. 50, No. 1

### *Affordability Regulatory Framework*

- Part 5 of the Housing (Miscellaneous Provisions) Act 2009, which provides for the delivery, by local authorities, of affordable housing for purchase, was commenced in June 2018.
- A discount of up to 40% on market prices will be available, with the discount being converted into an equity stake to be bought out in due course, with the proceeds being recycled into an Affordable Housing Fund in order to assist other home purchasers.

### *Serviced Site Fund*

- €310 million is committed over the three years 2019 to 2021, under the Serviced Sites Fund (SSF) announced as part of Budget 2019, for key facilitating infrastructure, on public lands, to support the provision of affordable homes to buy or rent. 6,200 affordable homes can be facilitated by this measure alone.

### *Help to Buy Scheme*

- Help to Buy is a tax refund scheme which allows first-time buyers to reclaim up to €20,000, subject to certain criteria, towards the deposit for a newly constructed home.
- Up to the end of March 2019, 11,557 HTB claims had been made, of which 11,043 were approved. The estimated total value of approved HTB claims to date is in the order of €161.5 million.

### *Rebuilding Ireland Home Loan*

- The Rebuilding Ireland Home Loan was launched in February 2018. The scheme allows low-income first time buyers, aged between 18 and 70, who cannot secure sufficient mortgage finance from a commercial lender, to access sustainable mortgage finance that is designed to enable them to purchase a new or second-hand property, or undertake a self-build, within a suitable price range at low interest rates. It is subject to certain qualifying criteria and is aimed at improving affordability.
- Up to the end of March 2019, 720 loans to the value of €127.5m had been drawn down with an average loan value of €177,073. Some 1,884 loan applications have been recommended for approval by the Housing Agency's central credit assessment service.

## **7. Availability of Land**

In relation to land, the Communication asserts, without supporting evidence, that *'investors sit on vacant land to restrict supply and thus increase demand and value'*. This assertion does not take account of the fact that a vacant site levy has been introduced as a mechanism to incentivise the development of vacant and underutilised sites in urban areas for both the provision of housing and regeneration more generally. The application of the levy commenced on 1 January 2019 in respect of sites which were vacant and on the vacant site register during the year 2018 and for each year thereafter, as long as a site remains on the register. The levy is charged at a rate of 3% of the market value of vacant sites on the

registers in 2018 and increases to 7% for sites on the register for the year 2019 and each consecutive year. At present, there are collectively over 360 sites on vacant site registers across local authority areas. It is estimated that the levy proceeds nationally could be €8.4million in 2019 (applying the current 3% levy rate) and €21.1million in 2020 (applying the increased 7% levy rate).

Similarly, the communication does not reference the reduction of the applicable holding period of relief from Capital Gains Tax on property. The period was reduced from seven years to four years in the Finance Act 2017.

## **8. Rents and Tenant Protections**

The Communication makes a range of assertions in relation to the rental market, including that *'In Dublin..... a person with an average salary renting the average property now has to allocate 86.3% of their income on rent'*, that there is a *'constant escalation of housing costs for tenants'* and that *'Turning housing into an investment leads to decision-making that is investor centric, rather than tenant centered'*.

The Government acknowledges that upward pressure persists in the private residential rental market due to Ireland's strong economic and demographic growth and the restricted rental accommodation supply available. However, the assertion that decision-making is investor centric rather than tenant centred is not supported by the significantly increased tenant protection measures which have been introduced in Ireland, as well as the actions taken to limit rent increases.

Ultimately, the most effective way to reduce and stabilise rents in the medium to long term, with benefits for the entire sector, is to increase supply and accelerate delivery of housing for the private and social rental sectors. Rebuilding Ireland<sup>2</sup> is working to dramatically increase the supply of new homes, to rent and to buy, which is the fundamental problem in our housing sector.

An important source of evidence of the actual rents paid by, and the incomes of, households renting in the private market is available from the Survey on Income and Living Conditions<sup>3</sup>. The most recent available dataset is in respect of 2017. The following table sets out some relevant estimates of rental cost ratios.

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<sup>2</sup> <https://www.housing.gov.ie/housing/policy/launch-rebuilding-ireland-action-plan-housing-and-homelessness>

<sup>3</sup> The Survey on Income and Living Conditions (SILC) in Ireland is a household survey covering a broad range of issues in relation to income and living conditions. It is the official source of data on household and individual income and also provides a number of key national poverty indicators, such as the 'at risk of poverty' rate, the consistent poverty rate and rates of enforced deprivation. <https://www.cso.ie/en/silc/releasesandpublications/>

*Table 5: Rental Cost Ratios (Estimates)*

<i>Year</i>	<i>Median Household Annual Rent<sup>4</sup></i>	<i>Median Household Disposable Income of Renting Households<sup>5</sup></i>	<i>Median Annual Ratio of Market Rent to Household Disposable Income</i>	<i>Mean Annual Ratio of Market Rent to Household Disposable Income</i>
2017	Circa €9,000	Circa €39,500	Circa 0.25	Circa 0.33

Having regard to this, Ireland would welcome additional information on the methodology followed by the authors of the communication in arriving at a figure of 86.3% of income being spent on rent.

It is undoubtedly the case that the rents paid by many households have increased since 2017, although for many households, incomes will also have risen in line with general wage growth. It is clear from published research in this area that some households, such as low income households resident in urban areas and renting in the private market, face pronounced affordability challenges.<sup>6</sup> Such affordability challenges are not universal among households renting in the private market and for many, housing costs are relatively affordable. Market commentary often focuses on the most recent quarterly measure of standardised rents and compares this estimated rent to an income estimate. It is important to note, however, that standardised rent is an estimate of newly agreed rents in any given quarter, and is not based on the stock of all rental contracts. Secondly, rent to income ratios should reflect the distinction between individuals and households. Rental costs are absorbed by households, which are often composed of multiple adults and multiple income streams.

#### *Restricting Rent Increases through Rent Pressure Zones*

Arising from the publication of the Strategy for the Rental Sector<sup>7</sup>, in December 2016, a number of targeted measures and initiatives were announced with the aim of providing better security of tenure, higher accommodation standards and greater rent certainty for tenants, as well as enhancing the supports and services available to landlords to facilitate the development of a more vibrant and sustainable rental sector.

A significant initiative was the Rent Predictability Measure to moderate rent increases in those parts of the country where rents are highest and rising, resulting in great difficulty for households finding affordable accommodation. The Rent Predictability Measure introduced the Rent Pressure Zones (RPZs),<sup>8</sup> where rents can only increase by a maximum of 4% annually. The measure applies to new and existing tenancies, when rents are set at the start of a tenancy and when rents are set in a rent review during an ongoing tenancy.

<sup>4</sup> Prevailing or market rent.

<sup>5</sup> The nationally defined household disposable income of households renting in the private market.

<sup>6</sup> See Corrigan et al (2019) Exploring Affordability in the Irish Housing Market, *The Economic and Social Review*, Vol. 50, No. 1, pp 119-157.

<sup>7</sup> <https://www.housing.gov.ie/housing/rebuilding-ireland/rent-predictability/ministers-coveney-and-english-launch-strategy-rental>

<sup>8</sup> <https://onestopshop.rtb.ie/rent-pressure-zones/>



### *Further Developments to Enhance the Rent Pressure Zones*

The Residential Tenancies (Amendment)(No. 2) Bill 2018<sup>9</sup>, has passed all stages of the legislative process in the Dáil (Lower House of Parliament) and the third stage of the Seanad (Upper House of Parliament). Once enacted, it will provide powers to the Residential Tenancies Board (RTB) to investigate and sanction landlords who engage in improper conduct, including non-compliance with the rent increase restriction in Rent Pressure Zones. These key measures and reforms are designed to enhance enforcement powers for the RTB, provide greater security of tenure for tenants and further underpin the operation of the RPZ arrangements.

This Bill will make it a criminal offence for landlords:

- to implement rent increases that contravene the rent increase restriction in RPZs;
- to fail to cooperate with an RTB investigation;
- to fail to register tenancies with the RTB or fail to keep the related rental information up-to-date.

The Bill also provides for the RTB to initiate an investigation without the need for a complaint to be made by a tenant, and makes provisions relating to rent setting and rent reviews inside and outside of Rent Pressure Zones (RPZs).

Under the 2018 Bill:

- existing RPZs are extended until 31 December 2021;
- the exemption from the 4% p.a. rent increase restriction in relation to new properties or properties not subject to a tenancy in the preceding 2 years has been further restricted so as to apply only to the first rent setting during the period of RPZ designation;
- the type of works to be carried out to result in a ‘substantial change in the nature of accommodation provided under tenancy’ for the purposes of qualifying for an exemption from the 4% p.a. rent increase restriction in RPZs have been clearly defined;
- the rent of a dwelling in the Greater Dublin Area (Kildare, Wicklow and Meath) will now be compared to the average rent across the country, excluding Dublin rents, for the purpose of qualifying for RPZ designation;
- the rent of a dwelling outside of the Greater Dublin Area will be compared to the average rent across the country, excluding the Greater Dublin Area rents, for the purpose of qualifying for RPZ designation;
- outside of RPZs, the requirement for bi-annual rent review cycles is extended to the end of 2021.

In relation to tenant protections, the Communication asserts that *‘the lack of tenant protections in the private rental sector – such as the ease with which a landlord can evict for sale or to move family members in and the lack of life-time leases means that tenants are extremely vulnerable to exploitation, housing insecurity and homelessness from the actions of investor landlords’* and also asserts that *‘Property investors (and investor landlords) are known to push tenants and owners out of their homes by taking possession, evicting, or*

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<sup>9</sup> <https://www.oireachtas.ie/en/bills/bill/2018/140/>

*creating conditions to compel tenants to leave – such as vastly increased rents or using loopholes in rent legislation’.*

Some of these issues have been addressed in measures that have been introduced in recent years with the objective of improving security of tenure for tenants, while others are being addressed in the Residential Tenancies (Amendment)(No. 2) Bill. Security of tenure provisions under the Residential Tenancies Acts 2004-2016 apply once a tenant has been in occupation of a dwelling for a continuous period of 6 months, with no valid notice of termination having been served during that time. Section 34 provides that a landlord must state a reason for the termination in any notice served, in line with those set out in section 34 of the Act.

The ‘Tyrrelstown amendment’, included in the Planning and Development (Housing) and Residential Tenancies Act 2016, limits the ability of landlords to use the grounds of sale to terminate tenancies. Where a landlord proposes to sell 10 or more units within a single development, that sale will now be subject to the existing tenants remaining in situ, other than in exceptional circumstances.

The Residential Tenancies (Amendment) Act 2015 extended the notice periods to be served in connection with tenancy terminations. The Residential Tenancies (Amendment)(No. 2) Bill 2018 further strengthens the security of tenure provisions for tenants including by significantly extending tenancy termination notice periods.

Under the 2018 Bill:

- the new RTB sanctioning regime will apply to improper conduct by a landlord who contravenes the tenancy termination provisions;
- landlords will be required to copy a tenancy termination notice to the RTB;
- where a landlord terminates a tenancy because he/she intends to sell the property, he/she must enter into a contract for sale within 9 months of the termination date and if not, must offer to re-let, at the existing rent levels, to a former tenant who provides their contact details;
- where a landlord terminates a tenancy because he/she needs the property for his/her own occupation or for a family member, that property must be offered back, at existing rent levels, to the former tenant who provides their contact details where it again becomes vacant within 1 year, rather than 6 months (as currently provided for in the Act), of the termination date;
- where a landlord terminates a tenancy because he/she needs to substantially refurbish/renovate the property, that property must be offered back, at existing rent levels, to the former tenant who provides their contact details, upon completion of the works;
- a certificate from an architect or surveyor will now be required to the effect that the proposed substantial refurbishment/renovation works in question would pose a health and safety risk requiring vacation by the tenants and would require at least 3 weeks to complete;
- the notice period to be provided by landlords who terminate a tenancy of between 3 and 7 years’ duration is increased to 180 days.

The Communication asserts that *'Those living in private rental accommodation are particularly at risk of experiencing insecurity of tenure, with 491 complaints regarding illegal evictions made to the Residential Tenancies Board in 2017, up from 351 in 2016, and 320 in 2015'*.

The Residential Tenancies Board (RTB) is an independent body established under the Residential Tenancies Acts 2004-2016. The RTB noted the following in relation to complaints received - "It is also important to note that on average 6 tenants a week present themselves to the RTB as having been illegally evicted from their dwelling or where a serious threat to the termination of their tenancy has occurred. The RTB carries out important work in contacting both parties and outlining their rights and responsibilities to ensure the case proceeds through the RTB dispute resolution process and parties do not take matters in to their own hands. Some of these unlawful termination referrals do not result in an actual application as it is resolved at this early stage through RTB intervention".

The 2017 RTB Annual Report states that "It is important to note that the percentage of applications received for dispute resolution (for all dispute types) remains at 1 – 2 % of the total number of registered tenancies, which is significantly low, and that of the 5,823 dispute applications received in 2017, there were 9,921 types of dispute listed (applications can address more than one issue), of which only 491 were in relation to unlawful termination of a tenancy".

#### *Private Rental Sector and Homelessness*

The Communication asserts that *'The central causes of homelessness are issues related to the private rental sector'*.

It should be noted that the Dublin Regional Homeless Executive, in its March 2019 report "Reported Reasons for Family Homelessness in the Dublin Region: July to December 2018", noted that 47% of the 558 families who presented to homeless services stated that they had come from the private rented sector. Within this 47%, 154 families (27% of all presentations) stated that the types of Notice of Termination received related to Landlord intention to sell or renovate the property or to a Landlord requiring the property for own or family use.

Under the Residential Tenancies (Amendment) (No. 2) Bill 2018, the RTB will have enhanced powers to investigate Notices of Terminations for these reasons and if they are found to be invalid, the former tenant would be offered the property again, as outlined above.

#### *Lugus Capital - Leaside Apartment Complex*

The Communication notes the purchase by Lugus Capital of the Leaside Apartment Complex as an example of poor treatment of renters.

The Leaside Apartment Complex is, in fact, a demonstration of the State's efforts to provide social housing. Following the multi-million euro refurbishment by Lugus of the Leaside Apartment Complex, the approved housing body, Clúid, in conjunction with Cork City Council, recently bought the 78-unit apartment complex for €20 million. The property is well located in the centre of Cork City with excellent local services. A total of 13 HAP and 6 private tenants remained in the complex during the refurbishment carried out by the vendor.

The remaining 59 homes are being made available to applicants on the Cork City Social Housing list.

## **9. Institutional Investment**

The Communication asserts that *‘unprecedented amounts of global capital to be invested in housing as security for financial instruments that are traded on global markets, and as a means of accumulating wealth’* and notes the need *‘To address the issue of financialization and its impact on the enjoyment of the right to housing’*.

Finance is a vital element in the provision of any type of housing, be it public or private, as Ireland’s experience during the recession showed, when fiscal pressures led to reduced spending across all public services, including in social housing provision.

It should be noted that the level of institutional ownership of housing is relatively low in Ireland. There are approximately 340,000 tenancies registered with the Residential Tenancies Board (RTB), of which approximately 310,000 are private rented tenancies. The majority of landlords, just over 70%, own just one property, with a further 16% owning just two properties. Ownership of rental properties by large scale landlords (those that own more than 100 rental units) is minimal in the context of the wider market. Such firms hold just 4.6% of all tenancies nationally. In 2017, firms such as REITs, pension funds and specialist property companies were net purchasers of just 1 per cent of residential sales, or just over 500 units.

It is also important to recognise the positive effects that institutional investment can have in terms of the supply of housing, not least given the scale of housing development envisaged under Ireland’s National Planning Framework over the period to 2040, particularly apartment developments in the main urban centres. Recent market developments show that institutional investment is increasingly being directed at the forward purchase or funding of new developments, which over time helps address the supply challenges that Ireland faces. Institutional investment in apartments is likely to be the driving force behind a significant recent increase (130%) in the number of apartment units granted planning permission in Dublin.

While the increased supply from institutional investors will in time contribute to addressing demand pressures, there will still be those facing difficulty meeting rental or mortgage costs. Ireland will follow the roadmap in Rebuilding Ireland to support housing supply, whether social or private, and will continue to develop measures that help affordability, such as the Affordable Purchase Scheme and the Cost Rental Model.

Furthermore, contrary to what is stated in the Communication, the National Asset Management Agency (NAMA) was not “charged with selling assets to global investors”. It was mandated to get the best return for the Irish taxpayer from the resolution and disposal of loans and assets, working with both domestic and international clients. The reference to a figure of 93% of asset sales in the letter relates to loan sales only and does not include sales of property assets securing NAMA’s loans. To date, in excess of two-thirds of NAMA disposals have been sales of property assets or refinances. Almost 70% of purchasers of Irish properties sold by NAMA debtors and receivers were Irish. The inference that NAMA loans purchased by foreign investors are secured by Irish assets only is incorrect. Foreign assets have accounted for approximately 45% of the assets included as collateral for loan sales undertaken by NAMA.

The Communication asserts that *‘The recent report by the Department of Finance notes that these large REIT investor landlords are playing a key role in setting inflated market rents in certain areas’* and that *‘the business model associated with financialization demands short-term profits’* and alludes to *‘securing the highest possible return on investment through the persistent extraction of profits through monthly rents’*.

The Department of Finance report referred to states, in relation to pricing power, that *“although as yet unproven, there is a risk that at a sufficient scale an institutional investor or group of investors could, over time, develop monopolistic or oligopolistic pricing power”*.<sup>10</sup> It does not state that REIT investor landlords are, in fact, *actually* playing a role in setting inflated market rent, and the Communication’s references to the Department of Finance report do not accurately reflect that report’s content in that regard, nor does the Communication make any reference to that report’s positive endorsement of the role of institutional investment in increasing the supply of new apartments in Dublin. The report goes on to say that *“the highly dispersed nature of the Irish rental ownership structure to date may have obviated such a development in the past. Theoretically, such price setting power could be attained at local level given certain market conditions and sufficient scale”*.

The Department of Housing, Planning and Local Government will continue to monitor the structure of the rental market and the levels of rent being set. The requirement for annual registration of tenancies to the Residential Tenancies Board contained in the Residential Tenancies (Amendment)(No. 2) Bill 2018 will be of benefit in keeping the market under review, ensuring that we facilitate the positive impacts of institutional investment, while addressing any broader issues that may arise.

In relation to their investment horizon, many institutional investors take a longer-term view. For example, recent market developments show that institutional investment is increasingly being directed at the forward purchase or funding of new developments. Given that these developments generally take several years to be completed and thus will not generate income in the short-term, it is reasonable to conclude that some institutional investors have a longer-term investment strategy.

In relation to the level of rents, institutional investors are subject to the same RPZ restrictions and requirement to respect tenants’ rights as all other landlords.

## **10. Conclusion**

The Irish Government is very focused, through the Rebuilding Ireland Action Plan for Housing and Homelessness, on addressing the housing supply challenges across all five pillars of the action plan:

- addressing homelessness;
- accelerating social housing;
- building more homes;
- improving the rental sector; and
- utilising existing housing.

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<sup>10</sup> <https://www.gov.ie/en/publication/0e942b-institutional-investment-in-the-housing-market/>

Significant progress has been made in terms of implementing agreed actions across all these five pillars and the accelerated delivery of this plan will continue.

Finally, Ireland would like to take this opportunity to recall that it is one of a number of countries that has issued a standing invitation to all UN special procedures holders to visit. In this context, the Irish Government would welcome a visit by the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, and the Chair-Rapporteur of the Working Group on the issue of human rights and transnational corporations and other business enterprises and would be happy to arrange a programme to allow for sharing of further information on the policy and delivery issues involved in the delivery of housing.