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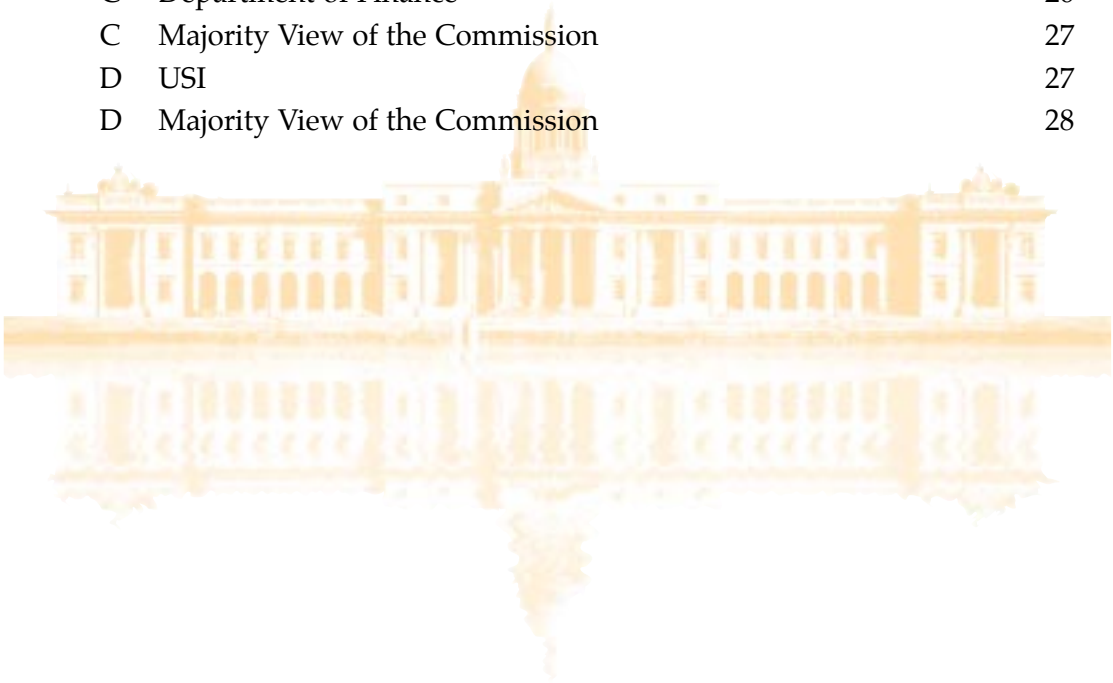
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## CHAPTER 8

### FUTURE OF THE PRIVATE RENTED SECTOR : CONCLUSIONS OF COMMISSION'S DELIBERATIONS

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# *Chapter 8 Future of the Private Rented Sector: Conclusions of Commission's Deliberations*

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## **PART II - CONCLUSIONS OF COMMISSION'S DELIBERATIONS**

### **8.3 Dispute Resolution**

8.3.1 The view has been expressed that tenants and landlords have a right to speedy resolutions of disputes between them through the courts. This, however, must be balanced with the practicalities of the operation of a court system where delays are an inherent, perhaps inevitable, characteristic. A necessary pre-requisite of a vibrant private rented residential sector is access to a much speedier dispute resolution process than is likely to be available through the Courts without a radical overhaul of practices and procedures.

8.3.2 Moreover, many of the disputes between tenants and landlords concern different perceptions of the conditions of the physical accommodation, fittings and fixtures, levels of rent, behaviour and the right to deposit return. These do not require legal experience to determine but often would benefit from mediation, an expert opinion or just simply an independent third party view. It follows that the landlord and tenant relationship would be improved considerably if disputes of this type were dealt with in a more speedy, informal and confidential manner. These are strong arguments for the establishment of a Board to deal with disputes arising from the landlord and tenant relationship.

### **8.4 Proposal to Establish a Private Residential Tenancies Board**

8.4.1 It is proposed to establish a statutory Board, suggested to be called the Private Residential Tenancies Board, to deal with disputes between residential tenants and landlords. It would be mandatory for tenants and landlords to refer to the Board all disputes where agreement between the parties could not be reached.

#### **8.4.2 Other Functions of the Board**

Other functions of the Board could include; research, monitoring and providing policy advice on the operation of the sector for the Government and the public generally, developing model leases and good practice guidelines for periodic tenancies, providing information for landlords, tenants, citizen advice centres and voluntary agencies operating in the sector. The development of model leases and guidelines for periodic tenancies by the Board, as an objective, independent body with statutory authority, would be

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beneficial for the sector as the Board would be in a position to bring the perspectives of both parties (landlords and tenants) to the task, taking into account the responsibilities and obligations of each. As part of its information provision function, the Board would produce information on market rents that would assist landlords and tenants in setting and reviewing rents. Other research functions of the Board could include the areas referred to in the introduction to Chapter 2 – Profile of the Private Rented Sector in Ireland.

### 8.4.3 Dealing with disputes

8.4.3.1 Disputes that may be dealt with by the Board include those relating to:

- retention or refunds of deposits,
- rent reviews being imposed more frequently than once yearly (unless there has been a substantial change to the nature of the accommodation) or being set at a level that is substantially higher than open market rent levels,
- failure by the landlord to comply with his/her tenancy obligations,
- failure by the tenant to comply with his/her tenancy obligations (including non-payment of rent, anti-social behaviour, etc.),
- non-compliance with the standards and rent books regulations,
- termination of a tenancy by a landlord, and
- overholding by a tenant subsequent to the expiry of a notice to quit period.

8.4.3.2 The dispute procedures would involve a two stage process - an informal mediation/ conciliation stage which would be confidential and, in the event of continuing non-agreement, a Tribunal-like hearing by the Board into the facts of the case. The mediation/conciliation function would be performed by locally based agents of the Board, who would be properly trained and who would not necessarily be full-time staff of the Board.

8.4.3.3 The landlord will be required to transfer the deposit relating to a tenancy to the Board in the event that a dispute is not resolved at the mediation/conciliation stage and goes to a full hearing.

8.4.3.4 The Board's power to deal to finality with a dispute will apply even where one party does not participate in the process. The Board's determinations will be appellable to the Courts only on a point of law. If there is no appeal within a specified period, the Board's determination order will be binding and in the

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event of non-compliance being brought to the attention of the Board, it would apply to the Circuit Court for an enforcement order via the County Registrar. The enforcement order would be referred to the Sheriff for immediate execution.

8.4.3.5 The legislation will provide that where a dispute has been referred to the Board and the Board has not issued its determination, the tenancy concerned may not be terminated or the rent may not be increased pending the making of the determination. It would also provide that rent would be payable while the Board is dealing with a dispute relating to a tenancy. The Board would be given power to award full or partial costs or to award compensation where it considers that the circumstances warrant such an action.

8.4.3.6 Clear and certain time limits would require to be specified in the rules for dealing with disputes. These rules, which would specify how the various types of disputes were to be heard and decided, would be made by the Board with the consent of the Minister and would take account of the relevant legislative provisions. Provision would be included in the rules for hearings to be held by means of Tribunals drawn from a panel of appropriate people and chaired by a member of the Board, with the degree of formality dependent on the matter in dispute. It is not possible for the Commission to be more specific about time limits; however the vital importance of speedy resolution should, of course, be highlighted.

8.4.3.7 The Board would be able to deal with a dispute arising from the termination of a tenancy where it is referred to the Board subsequent to the tenant's compliance with a notice to quit, e.g. if a tenancy was terminated for reason that the landlord required the dwelling for own occupation, but it was instead let to a new tenant, the former tenant could refer the matter to the Board. Depending on the applicable circumstances, the determination of the Board may be confined to the award of compensation, having established the facts of the case.

#### 8.4.4 Membership of the Board

As the Board's dispute resolution function is quite different from its policy and research functions, the members of the Board should be appointed on the basis of relevant skills and expertise, including a perspective on landlord and tenant interests, but not representative of same. The Board would have a

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panel of experts with arbitration skills from which it would set up Tribunals for the hearing of disputes. A member of the Board would chair each Tribunal.

#### 8.4.5 Resources of the Board

It would be essential that the Board be adequately resourced and staffed to enable it to perform its functions effectively and within the time scale envisaged. If there was any likelihood that staffing or other constraints would prevent the Board from dealing with disputes speedily, the Board would be perceived very negatively by participants in the sector.

#### 8.4.6 Registering of Tenancies with the Board

8.4.6.1 All tenancies would be required to be registered with the Board by the landlord and the following details would have to be supplied;

- name and address of landlord
- address of property
- registration number issued by the relevant local authority
- name of tenant and no. in household
- description of the property (house, bedsit etc), including no. of bed spaces and estimated floor area
- personal public service number (PPSN) of both the landlord and the tenant
- date tenancy commenced
- rent amount and frequency of payment
- term of lease, if applicable.

8.4.6.2 Landlords would be required to register each change of tenancy with the Board as it arises and to include, in addition to any changes to the other details provided at initial registration or registration renewal, the following information:

- Board registration reference number
- name of tenant and no. in household
- PPSN of the tenant
- date tenancy commenced
- rent amount and frequency of payment
- terms of lease, if applicable.

8.4.6.3 Time limits for registering details of tenancies with the Board will be specified.

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8.4.6.4 The mechanism for registering tenancy details would not be unduly bureaucratic and might simply involve a detachable insert from the Rent Book to be completed at the commencement of the tenancy and signed by both landlord and tenant. Responsibility for forwarding it to the Board would lie with the landlord. An obligation would also be placed on landlords to notify the Board when registration was no longer appropriate and the reasons for same. These details would be necessary for the Board's information provision function. Failure to comply with these requirements would be an offence on the part of landlords and would therefore have tax incentive and exemption implications.

#### 8.4.7 Fees

The Board will be empowered to charge fees. The applicable fees in the case of referrals of disputes to the Board should not be such as to deter landlords or tenants from seeking recourse to the Board's services in the case of a genuine dispute.

#### 8.4.8 Disputes concerning Rent Reviews

Tenants may refer to the Board disputes regarding rent reviews where payment of the increase is being sought before a year has elapsed or where the tenant considers the revised rent amount to be excessive in terms of market rents. For the purposes of determining such disputes, the legislation or rules governing the Board's activities would have to clearly stipulate that neither the tenant's nor the landlord's circumstances were a factor which could be taken into consideration in deciding the appropriate market rent.

#### 8.4.9 Tenancy Obligations

8.4.9.1 Standard letting terms would be developed for application to tenancies not governed by a lease.

8.4.9.2 The obligations that would apply to tenants include

- to pay the agreed rent on the date due
- to maintain the condition of the property so that no act or omission causes the deterioration of the property beyond normal wear and tear or causes non-compliance with the provisions of the Standards Regulations
- not to behave in such a way as is dangerous, or anti-social (to be defined in legislation)

- 
- not to assign or sublet the property without the consent of the landlord
  - not to alter or improve the property without the consent of the landlord.

Failure to comply with any of these obligations would be grounds for terminating a tenancy by the landlord.

8.4.9.3 The obligations that would apply to landlords include:

- to allow the tenant the peaceful and exclusive occupation of the property
- to carry out any repairs, for which s/he is responsible, required to ensure that the property is retained at the standard in which it was let and, as a minimum, that it continues to comply with the provisions of the Standards Regulations
- to return any deposit paid at the end of the tenancy on whatever basis was agreed between the parties
- to insure the property.

8.4.9.4 Lease tenancies will be required to include the foregoing provisions as part of the lease terms. It should not be possible to contract out from the minimum terms and conditions.

## **8.5 Proposal to Improve Security of Tenure**

8.5.1 In order to provide tenants with a greater measure of security of tenure in their occupation of their dwellings, it is proposed that all tenants, where the tenancy has lasted a minimum period of 6 continuous months, would, subject to specified conditions, be statutorily entitled to continue in occupation of a dwelling for a period of up to 4 years from the date of commencement of the tenancy. (For existing tenants, the initial 6 month period would commence from a date subsequent to the enactment of the legislation.) During the initial 6 months, the landlord may terminate the tenancy by giving 28 days notice, but the legislation will provide that no right to continue in occupation will apply once the notice has issued before the last day of the 6 month period.

8.5.2 The landlord may terminate a tenancy at any time during that 4 year period (but only in accordance with the terms of any lease that may apply to the tenancy) for the following reasons only:

- The tenant has not fulfilled his/her obligations under the agreement,

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(e.g. has not paid the rent, has not looked after the property properly, has been guilty of anti-social behaviour, etc.)

- The accommodation is no longer suitable to the tenant's circumstances by reference to the number of bedspaces (i.e. no. of occupants is greater than no. of bedspaces)
- The landlord wishes to sell or substantially refurbish/renovate the property in a way which requires the property to be vacated, change its business use, or requires it for own or family member occupation.

8.5.3 The tenant may terminate the tenancy at any time during the 4 year period by giving the following notice to the landlord:

28 days if the tenancy has lasted six months or less in total

35 days if the tenancy has lasted more than 6 months and less than 1 year in total

42 days if the tenancy has lasted 1 year or more but less than 2 years in total

56 days if the tenancy has lasted 2 years or more and less than 3 years in total

84 days if the tenancy has lasted 3 years or more and less than 4 years in total

112 days if the tenancy has lasted 4 or more years in total.

The landlord who is terminating a tenancy for reasons other than the tenant's failure to fulfil the obligations of the tenancy must give similar notice to the tenant. In the case of periods in excess of 28 days, provision would be included to enable these periods to be reduced by agreement between both parties. The Board would be given power to review these notice periods

Note : The IPOA has expressed reservations about these notice to quit periods.

8.5.4 Where a tenancy is being terminated by the landlord for failure to comply with the obligations of the tenancy, 7 days notice will suffice in the case of behaviour which is anti-social or threatening to the fabric of the property and 28 days notice will suffice in other cases, including where the tenancy is being terminated by reason of the rent being 7 days in arrears. Prior to issuing a termination notice for failure to comply with the obligations of a tenancy, the landlord will be required to comply with a due process procedure in accordance with guidelines to be issued by the Board. Where a tenant terminates a tenancy on grounds of the landlord's failure to comply with his/her obligations, 28 days notice of termination will suffice where the landlord has been advised of the breach of the tenancy and has not acted to remedy the breach. Safeguards, such as applying a burden of proof on

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landlords, will also need to be introduced to protect tenants from eviction in circumstances where the tenant has made a complaint or taken other action in pursuit of compliance with the provisions of the statutory regulations applying to the sector.

- 8.5.5 If a tenant fails to give the landlord the specified notice of his/her termination of a tenancy, the fact that the dwelling has been vacated by the tenant and that the rent is in arrears of 28 days will be sufficient grounds for regarding as terminated a tenant's entitlement to continue in occupation for up to 4 years.
- 8.5.6 This proposal would apply to lease and periodic tenancies. Obligations that will apply to all tenants and landlords, irrespective of whether or not the tenancy is governed by a lease, will be specified in the legislation. As at present, tenancies governed by lease will contain whatever additional terms may be agreed between the parties. As the proposal will have implications for landlords whose usual practice is to enter into a one year lease from the outset of a tenancy, they may wish to start with a lease for 6 months with an option to renew for a further 6 months which the landlord may exercise by giving 28 days notice of such renewal to the tenant. If the landlord decides not to exercise the option, the notice arrangements outlined at the end of paragraph 8.5.1 will apply.
- 8.5.7 The tenant may not assign or sub-let the tenancy or alter the property without the landlord's consent, which the landlord will be free to withhold. (Note: the legislation will provide that a right to continue in occupation for a period of up to 4 years may not be assigned even though a lease may be assigned.) If the tenant vacates the property at any stage during the 4 year period, the tenancy is terminated, i.e. a tenant who leaves the dwelling may not return and demand a right to occupy for the unexpired portion of the 4 years.
- 8.5.8 For the purposes of the proposal, the tenant(s) must be designated by the parties to a letting. If the designated tenant is more than one person, replacement of the designated tenant should only be with the agreement of the landlord, who must therefore be notified of the vacating of the dwelling by any of the designated tenants. Within 7 days of becoming aware of the fact that all the designated tenants have vacated the dwelling, the landlord is free to terminate the tenancy by giving 28 days notice. Alternatively, s/he may enter into a new tenancy with one or more of the group of individuals then

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residing in the property. If so, and if the tenancy is not terminated within the following 6 months, these new designated tenants will be entitled to continue in occupation, subject to the specified conditions, for a further 3 1/2 years.

- 8.5.9 At the end of a 4 year period, the landlord would be free to terminate a tenancy without specifying a reason in accordance with the notice arrangements outlined in the next paragraph. If the landlord and tenant decide to continue the letting, the tenant, after a further 6 months, would be entitled to continue in occupation for a further period of up to 4 years from the date of expiry of the previous period of occupation. If the tenancy is terminated and the property is let to a new tenant, that tenant, having completed 6 months in occupation without being issued a notice of termination, would be entitled to continue in occupation for a period of up to 4 years from the date of commencement of that tenancy.
- 8.5.10 If a landlord is terminating a 4 year tenancy, the tenant would be entitled to 84/112\* days notice of termination and the latest date for issue of such notice is the second last day of the six month period immediately following the 4 year period of tenancy. Where a tenant is in occupation for a consecutive period of more than 4 years and 6 months but has been issued a notice of termination within the allowable period, the legislation will provide that no right to continue in occupation after expiry of the notice period will apply in such circumstances.
- 8.5.11 The minimum notice periods applying to landlords and tenants specified in paragraph 8.5.3 apply to each successive 4 year period, i.e. each 4 year period is effectively a new tenancy. This means that a tenant who leaves a dwelling 6 years and 12 days, for example, after first occupation of the dwelling would be required to give 56 days notice to the landlord. (While it may seem unreasonable that the longer notice period has to be re-accumulated during each successive 4 year period in occupation, not to do so could act as a deterrent to allowing the tenant to qualify for successive 4 year periods in occupation.)

\* Whether the notice is 84 or 112 days depends on whether it issues before the 4th anniversary of the commencement of the tenancy or within the following six months.

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8.5.12 Rent reviews may not take place more frequently than once every year of tenancy (except where substantial improvements had been carried out to the property) and the revised rent should not be greater than market rent. The tenant must be given 28 days notice of the revised rent. In any dispute about a rent review, the landlord and tenant may refer the matter to the proposed Private Residential Tenancies Board.

8.5.13 As the proposal envisages some tenants occupying properties for successive 4 year periods, it would be necessary to abolish the long occupation equity entitlement contained in the 1980 Act, i.e. the right to claim a lease of up to 35 years after 20 years in occupation. However, in order to cater for those tenants who may already be entitled to claim such a lease (or will be so entitled within the next few years) but have not yet done so, a transitional period of five years should apply. During the 5 year transitional period a voluntary opt-out option should be available, in accordance with the recommendation of the 1996 report of the Working Group on Security of Tenure. This is necessary so that there is an alternative to eviction for those tenants coming up to the 20 year mark.

## **8.6 Rents and Affordability**

8.6.1 As is reflected in the proposals regarding dispute resolution and security of tenure, the Commission recommends that rents applicable to tenancies in the private rented sector should be the open market rent. Tenants may not be asked to pay rents greater than the market rate and may be subjected to rent reviews no more frequently than once per annum (unless there is a substantial change to the nature of the accommodation before the review date).

8.6.2 The Commission recognises that paying market rents is creating hardship for some categories of tenant, particularly those on low incomes. Where this imposes hardship and there is a question of affordability, specific measures to deal with that issue must be considered urgently having regard to the time-scale involved in achieving a sufficient increase in supply of rented accommodation.

8.6.3 The Commission considers that tax credits, particularly on a refundable basis, could provide a means of targeting assistance in meeting their housing costs to persons in low-paid employment, while avoiding the high cost and many

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of the distortionary effects associated with some other options. It recommends that the special Working Group, established under the *Programme for Prosperity and Fairness* to examine the role of refundable tax credits, pay particular attention to their possible use in meeting unaffordable housing costs. The Commission recommends that the Planning Group which is looking at new local authority rental assistance arrangements should consider the issue of poverty traps in that context. It notes that a specific approach being explored by the Group involves, for example, more direct arrangements or partnerships between local authorities and landlords or investors.

- 8.6.4 The Commission considers that the need for the adjustment of tax free allowances applicable to tenants should be kept under review in the context of affordability.

## **8.7 Tax and Supply Incentives**

- 8.7.1 The Commission's terms of reference require it to "make recommendations with a view to increasing investment in, and the supply of, residential accommodation for renting, including the removal of any identified constraints to the development of the sector". At the outset, the Commission was requested by the Minister for Housing and Urban Renewal to have regard, when making recommendations in relation to this aspect of its terms of reference, to the likely impact on the wider housing market. The Commission is aware that any measures introduced to encourage investment in rented accommodation, however targeted or ring-fenced, can have consequences for other aspects of the rental sector market and for other areas of the wider housing market. In addition, tax incentives can have implications for overall equity of treatment within the taxation system and must be capable of implementation in the manner intended. In the limited time available for the Commission's work, the recommendations were developed having regard, as far as possible, to these aspects. However the Commission recognises that in its consideration of this report, the Government will have to more fully consider the overall implications for the operation of the housing market of its recommendations in this area.

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- 8.7.2 The recommendations broadly fall into two categories;
- (a) those designed to promote greater investment in the rented sector, including participation by corporate investors, and
  - (b) those which are consistent with the Commission's conclusion that in order to encourage responsible and professional management in the sector, as a general principle, the business of providing residential rented accommodation should, where appropriate, be treated for tax purposes in the same way as other businesses.

8.7.3 Promoting Investment

- The availability of section 23 type relief for designated urban and rural renewal areas and the tax reliefs included in the new Town Renewal and Living Over the Shop Schemes should be continued until the supply demand balance within the rented sector improves.
- Section 23 type relief should apply for a limited period to the provision of rented accommodation targeted at groups identified as having priority needs having regard to the local authority housing strategies, such as low-income households, the disabled, the elderly, employer housing, etc. The relief should be applied having regard to the overall balance of supply and demand within the housing market and so that it doesn't result in the creation of ghettos of the various categories of housing need.
- Section 50 relief, for the provision between 1 April, 1999 and 31 March 2003 of student accommodation complying with specified conditions, should be extended for a further period.
- It is recommended that the operation of the section 50 relief be kept under review and, in the event that there is a significant shortfall in the provision of student accommodation in certain areas, alternative options, including direct assistance, should be considered in the context of the commitment on student accommodation in Framework III of the *Programme for Prosperity and Fairness*.
- The 9% rate of stamp duty, now applicable to investment properties, should be immediately reviewed in the light of this report.

8.7.4 Promoting Professionalism

In principle, notwithstanding the classification of rental income as Case V, the business of providing residential accommodation for renting should, where appropriate, be treated for tax purposes in the same way as any other business, provided that it is a legitimate business being actively managed.

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- In the case of specified categories of rented accommodation (e.g. multi-unit accommodation available for renting for a specified period, student accommodation, housing for the disabled and elderly, etc.), where the Revenue Commissioners are satisfied that a landlord's property portfolio is actively managed, all expenses arising in connection with the business, including interest payments, should be treated for income tax in the same way as expenses relating to other businesses. Losses on residential property investments could not be applied against a tax liability arising from any other income.
  - Roll over relief on Capital Gains Tax should be available where the proceeds of the sale of an investment property are invested in another investment property within the applicable time limits.
  - Refurbishment works classified as capital expenditure carried out on rental properties should be allowable, in addition to routine maintenance work, against tax on rental income. A clawback of the relief should apply for a ten year period in the event of the sale of the property or it ceasing to be privately rented. It is not the intention that the relief would apply in the case of what could be regarded as an excessive level of fitting out.
  - Business relief from Capital Acquisitions Tax should apply to the inheritance of rented property where at least 80% of the inheritor's income is derived from the inheritance.
  - The Capital Acquisitions Tax payable on family home inheritances should be calculated in the same way for inheritors who are landlords as for other inheritors.

#### 8.7.5 Corporate Investment

The Commission considers that other measures, tailored specifically to attract corporate investment, are necessary and might include the following:

- the putting in place of mechanisms, perhaps involving the voluntary and non-profit sector, for the management of such properties and the development and policing of codes of practice setting out minimum standards for the management and maintenance of private rented accommodation, and
- the development of residential investment vehicles including the concept of property equity securitisation, taking account of the difficulties experienced in the UK and the specifics of the Irish situation, including the experience in the case of the commercial sector. These would have to be on the basis of an overall increase in supply.

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8.7.6 The Commission is strongly of the view that any tax incentives or reliefs being introduced on foot of the foregoing recommendations should, as is the case with exemptions from the anti-speculative property tax introduced in *Action on Housing*, be dependent upon compliance with the regulatory controls applicable to the private rented sector and to the registering of tenancies with the proposed Private Residential Tenancies Board.

## 8.8 Statutory Regulations

8.8.1 The Commission considers that the high level of non-compliance by landlords with the provisions of the Standards and Registration Regulations and the low level of enforcement activity by local authorities should be urgently addressed. It recommends that enforcement of these regulations be given much greater priority by local authorities and that adequate staffing and other resources should be assigned to the task. In this context, smaller local authorities should consider grouping together to facilitate enforcement of the regulations or should consider contracting out this function, where practicable.

8.8.2 The Commission recommends the amendment of the registration regulations to provide that

- a landlord must register each unit on the initial letting of the dwelling or on the acquisition of a dwelling containing a sitting tenant and must renew the registration every 4 years,
- the details to be provided should exclude those relating to the tenant and rent payable and should include other details relating to the dwelling,
- fees in the region of £50 for dwellings let as a single unit and £200 for dwellings let in multiple units should apply to initial and renewal of registration.

## 8.9 Formerly Rent Controlled Tenancies

8.9.1 The Commission considered the situation of the formerly rent controlled sector, in the context of the existing provisions applying to that sector and pending expiry for some tenants of the protection of the 1982 Act, and in the light of the framework being proposed by the Commission for the rented sector as a whole. It also took account of the submissions made to it by landlords and tenants of formerly rent controlled dwellings.

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8.9.2 The Commission's recommendation for a transitional period of 5 years during which the entitlement to claim a lease of up to 35 years may be exercised would enable all the tenants concerned, who wish to do so, to ensure a continuing right to occupy their dwellings. The Commission recognises, however, that the fact that market rents will then apply every five years has affordability implications for the tenants concerned, as well as implications for revised rent assistance arrangements being developed at present. These, together with the poor standard of many of these dwellings, are issues that now require examination by the Department of the Environment and Local Government.

### 8.10 Other Conclusions

- The policy of the Gardai in relation to disputes between landlords and tenants should be reviewed by the Garda Commissioner, bearing in mind that intervention by the Gardai is only appropriate in cases of allegedly criminal activity.
- A code of practice should be developed relating to licences to reside on the basis that their use appears to have aspects of a contrivance.
- Census housing questions should be more informative and relevant and housing data should be collected in each census. The housing data should be published more speedily and more comprehensively and modules on housing should occasionally be included during inter-censal periods in the CSO's Quarterly National Household Surveys.
- The Commission welcomes the focus of the Rent Assistance Planning Group towards greater emphasis on the supply of good standard private rented accommodation.
- The Commission recommends that any housing information and advice infrastructure being provided on foot of the commitment in the *Programme for Prosperity and Fairness* must relate to the private rented sector as well as to other housing tenures.
- The Commission considers that Letting Agencies should be required to have a licence to operate and recommends that legislation be introduced in this area.

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## 8.11 Reservations by Members

### A Irish Property Owners' Association Objections

The IPOA submitted the following points in opposition to the recommendation of the Commission in relation to limited rights to continue in occupancy for a total period of 4 years:

***"AUTOMATIC RIGHT TO CONTINUE IN OCCUPATION  
OF A DWELLING  
IPOA OBJECTIONS.***

- *Imposing an automatic right to continue in occupation of a dwelling undermines the principle of consent to which all contracts and agreements should be freely entered into. Forcing one or other of the parties into an untested arrangement is unfair and will work to disadvantage of providers and tenants alike.*
- *If we are to model the dispute resolution mechanism on the one prevailing in the employment area we should look at how employment contracts operate. When an employment contract ends, both sides then freely and openly enter into the negotiation on the terms of a new contract.*
- *On the face of it the imposition of this feature is of little or no benefit to the vast bulk of people using rented accommodation. Their requirement is for short-term temporary convenience lettings. Therefore the conferral of this right is disproportionate to the perceived problems. It confers a claim on the property, which is the creation of a new asset.*
- *It is facile to suggest that fears relating to automatic right to occupy are grounded on some perception/misconception. It is also incorrect to suggest, in this area, that reality and perception are two entirely different things. The harsh reality will have to be tested again and again through the new dispute resolution mechanism and in the courts where the provider traditionally has to foot the bill. The cession of this claim to tenants is likely to be a fundamental constraint on future investment.*
- *Investors will recognise this automatic right to occupy as an encumbrance on the property rights of the provider. It fundamentally changes the balance of*

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*the relationship. Tenants can remain in occupation for significantly extended periods unless the provider can convince a third party otherwise. Tenants will see this as a financial asset at the expense of the provider. This new property right will be open to abuse by unscrupulous tenants. At a time where "hello money" is being banned in the retail industry it is hardly appropriate to introduce "goodbye money" in the rented accommodation industry.*

- *More alarming is the fact that investors will recognise this as a sea change and will see it as the **thin end of the wedge** with the prospect of further constraints not far over the horizon. Governments tend to react to activist's demands, which have a populist flavour. It is worth noting that Property Owners experience of tenancy boards in other jurisdictions is far from satisfactory. The New Zealand Property Owners been a case in point. In fact one Australian tenancy board was so ineffective that it had to be scrapped. The new board will need a long lead in time before it proves its effectiveness or lack of it. In these circumstances it is well worth considering placing exemptions to the full impact of these changes, particularly for properties in multiple units, which are becoming an endangered species but are more necessary than ever to house low-income tenants. Temporary convenience lettings should also be exempt.*
- *In European Countries clear distinctions are made between categories of tenants, there is stratification. Clearly in the first instance the state is duty bound to provide housing for these without the resources to fund their own homes. However for families with school going children, lone parents and people on low fixed incomes the P.R.S. could provide longer tenures with leases structured set but freely agreed by both parties.*
- *It can be very misleading to compare or introduce in Ireland systems in European countries where in excess of 50% of property is rented privately or publicly. **Any feature, which might even marginally reduce investment in residential rented property, will be detrimental to tenants interests.** Given that the British labour party has abandoned policies of this type and in the Netherlands all new stock is deregulated why should we choose the route that other states are abandoning!!*
- *The rent supplement should be paid directly to Property Owners and*

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*contractual arrangements drawn up between individual providers and Local Authorities. In line with I.P.O.A. submissions to the commission and to government. This would afford greater protection to vulnerable tenants and at the same time control the practice of some S.W.A. tenants of defrauding both Property Owner and taxpayer alike.*

- *Quite clearly a reformed registration system together with fiscal incentives could promote best practice in the private rented sector in a variety of ways. Tax credits could be offered to providers offering longer leasing agreements and registration would be linked to fiscal incentives.*

#### **Residential Tenancies Board**

- *The IPOA believe that the Residential Tenancies Board should deal solely with Dispute Resolution. The IPOA have grave reservations regarding the allocation of general and unspecified functions to the Board. In reality this is the creation of a statutory agency to oversee the entire rental accommodation sector. They feel that these functions should not be ceded to an appointed and unaccountable Quango.*
- *All functions, except those relating to dispute resolution, i.e. those relating to information, collection of statistics, policy advice etc should remain with the Department of Environment and Local Government and with a Minister or Minister of State answerable to the Oireachtas."*

#### **Registration**

The IPOA also oppose the requirement to register details relating to all tenancies with the proposed Board on the basis that it constitutes an unreasonable burden on landlords and that the proposed research and information function could be carried out by the Board by the use of surveys. The IPOA consider that registration should be of properties and with the local authorities on the basis that local authorities have statutory functions for which the information is required.

#### **A: Majority View of the Commission** Security of Tenure Proposal

Having considered the arguments put forward by the IPOA in opposition to the proposal, the majority of the Commission nevertheless recommended the implementation of the security of tenure proposal outlined in this chapter for the following reasons:

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Tenancies will be freely entered into by both parties. The limited rights to continue in occupation apply only after the tenancy has lasted a minimum period of 6 months during the course of which the landlord is free to terminate the tenancy without any reason by giving 28 days notice as at present. Therefore the right to continue in occupation for a further period of 3<sup>1</sup>/<sub>2</sub> years only arises where the landlord has chosen not to avail of his/her option to terminate the tenancy. Even during those 3<sup>1</sup>/<sub>2</sub> years, the tenant has no right to continue in occupation if s/he fails to abide by any of the obligations relating to the tenancy, or if the landlord wants to sell or substantially refurbish/renovate the property, or if the landlord requires the property for own or family member occupation, or if the accommodation is no longer suitable by reference to the number of bedspaces. The Commission considers that the grounds for regaining possession are quite exhaustive as they include all those put forward by the landlords. The Commission does not therefore accept that the proposal undermines the principle of consent or represents an encumbrance on the property rights of the landlord. Nor is a new asset created, as the limited rights to continue in occupation may not be assigned. As the limited rights to continue in occupation expire every 4 years, the analogy to employment contracts, if appropriate, would be to a 4 year contract.

Those tenants who require rented accommodation for very short periods will be free to terminate the tenancies on giving 28 days notice in accordance with the existing statutory requirements, as the gradually lengthening notice periods apply only after the completion of 6 months tenancy. While the Commission fully accepts that improved security of tenure may not be the concern of considerable numbers of tenants in the sector, it recognises that it is a major concern of many others and it therefore could not disregard its terms of reference in this area.

In relation to the concerns expressed by the IPOA as to perception rather than reality, the Commission acknowledges that the experience of landlords in taking Court proceedings in the past may have contributed to their fear that, notwithstanding the intentions expressed in new legislation which will require to be introduced on foot of these proposals, the Courts may take the view that greater rights than those intended have accrued to the tenants. The points that the Commission would make in this regard are the following;

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- (i) the report strongly adverts to the requirement for the legislation to be drafted so that the proposed dispute resolution mechanism and the provisions relating to rights to continue in occupation are implemented in the manner envisaged by the Commission,
  - (ii) the intention is that disputes will be resolved to finality by the proposed Board with appeals arising only on a point of law – this should mean that recourse to the Courts should occur in exceptional circumstances only.

The Commission did not consider exemptions from the limited rights to continue in occupation to be appropriate as no convincing arguments were advanced for the suggested categories of exemption.

The Commission's recommendations are not based on the system in operation in any particular country because, as referred to in paragraph 3.1.2 of Chapter 3 – The Private Rented Sector Abroad, it is not considered appropriate to replicate systems from other jurisdictions as the general economic and housing market characteristics, as well as the historical factors underpinning the systems, differ significantly from the Irish situation.

The majority of the Commission did not accept that the proposed changes recommended by it would act as a deterrent to investment in the sector. The combination of the fiscal incentives recommended, together with the better regulation of the sector, should in the Commission's overall view lead to increased investment in the sector, particularly on a more long-term basis. The package of recommendations, including the proposed abolition of the right to a lease of up to 35 years under Part II of the Landlord and Tenant (Amendment) Act, 1980, should contribute to greater certainty for investors in the sector.

Finally, the Commission did not see the relevance of the final two points as arguments against allowing limited rights to continue in occupation.

#### Other Functions of the Board

The majority view of the Commission was that while the principal function of the Board would be in the area of dispute resolution, the Board should also have a role in relation to the provision of advice and information relating to the private rented sector. The Commission's report adverts to the difficulty

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posed to its examination of the sector in the context of the severe paucity of information available at present and it is highly desirable that this information deficit be addressed. In addition, it would be appropriate in the context of the expertise that will be available to the Board for it to provide advice and issue good practice guidelines to assist the optimum operation of the sector.

### Registration

In relation to the registration of tenancies with the Board, the majority of the Commission considered that the Board would be unable to function without the tenancy details listed in paragraph 8.4.6. It does not accept that the burden placed on landlords is unduly onerous as registration is required only on commencement of a tenancy.

#### **B.1 USI and the Society of St. Vincent de Paul**

The USI and the Society of St. Vincent de Paul (together with Threshold) proposed that the period of limited rights to continue in occupation should be 6 years, that market rents should apply initially and revised every 3 years and that annual rent increases in intervening years should be based on a system of indexation. In the context of the agreement that the appropriate period within which limited rights to continue in occupation would apply is 4 years, these bodies considered that market rents should only apply every 4 years.

#### **B.2 Threshold**

Threshold's view is that the Board should hold all deposits as they have long proposed the establishment of a Rental Deposit Board. The following reservations were entered by Threshold to the agreed recommendations on security of tenure, rents and the notice to quit period:

#### ***"Summary Statement***

*Threshold is of the view that the range of recommendations proposed by the Commission in relation to security of tenure, rent regulation and affordability will not result in a fundamental and necessary reform of the private rented sector, and will not result in a substantial or immediate benefit to tenants. The proposal to introduce a 4-year conditional, continuous right to occupy a dwelling, while falling short of what is required, is a significant improvement on the current situation. However, the absence of recommendations to adequately address the frequency and size of rent increases and measures to address the affordability issue effectively means that the security of tenure proposals are critically undermined.*

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### **Rent Regulation**

*Threshold opposes the Commission's recommendation that rents applicable to tenancies in the private rented sector should be open market rents. While accepting the position that initial rents should be freely negotiated between tenants and landlords, Threshold is of the view that the later evolution of those rents should be based on an annual index, which would link rent increases to other inflation measures. Further, Threshold is of the view that:*

- *The absence of any proposals for rent regulation is an inadequate response to the situation where significant numbers of tenants face substantial annual rent increases;*
- *The Commission's recommendation to provide for a continuous, conditional right to occupy up to a maximum of 4 years is diluted by the absence of any rent regulation. If a tenant faces a succession of substantial annual rent increases during this 4 year protected period the tenants security of tenure will be critically undermined.*
- *A possible unintended consequence of limiting rent increases to one per year, and at the same time permitting a landlord to issue a notice to quit within the first six months of the protected period will be that some landlords will issue a notice to quit to an existing tenant in order to gain a higher rent from a new tenant. To protect against this it is Threshold's view that annual rent increases should be linked to the property and not just to the tenancy.*

### **Continuous right to occupy**

*Threshold is of the view that tenants should have a continuous, conditional right to occupy their rented home, and that it should not be subject to any upper time limit. If such measures were introduced it would give long-term security of tenure to tenants. The issue of security of tenure proved to be one of the most difficult issues for the Commission to resolve. In order to try and reach some agreement Threshold, St Vincent dePaul, and Union of Students of Ireland proposed a model for achieving medium term security of tenure. The model proposed an upper limit of 6 years on the conditional right to occupy and allowed that these rights would not apply for the first 4 months.*

*Threshold's reservations about the proposal agreed by the Commission are as follows:*

- *An upper limit of 4 years is too short. Increasing numbers of households will be living in the private rented sector for longer periods. Threshold's original proposal was for six years.*
- *That the rights would not apply for the first six months runs the risk that*

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some landlords may continually issue notice's to quit in order to evade the new rights that would accrue to tenants once they had been in occupation for over 6 months.

- Threshold disagrees with the proposal to allow a six month period following the completion of each 4 year tenancy period, during which the landlord will be able to issue a notice to quit without providing a reason. The reason being that the first 6 month period at the beginning of the tenancy is to meet the need to the landlord to satisfy themselves that the tenant is going to comply with the terms and conditions of the tenancy. Such a need will not be present at the end of the four-year period. Threshold proposes that the landlord should be required to issue the notice to quit at the end of the four-year period.

### **Notice to Quit:**

Threshold is of the view that a minimum period of 2 months notice to quit should apply to tenants irrespective of how long they have occupied their rented home, and that a graduated scheme of an increasing notice to quit period should accrue to tenants up to a maximum of 6 months after a period of 5 years or more.

Threshold's objections to the Commission's recommendations are as follows:

- Retaining the current minimum period of 28 days for the first six months of a tenancy is inadequate. At a minimum tenants need 8 weeks in order to find alternative suitable accommodation. This is particularly important in the current market where there is a shortage of private rented accommodation.
- The recommendation that equal notice to quit periods should apply to both landlord and tenants is objected to on a number of grounds:
  - The needs of tenant and landlord are distinctly different for a notice to quit period, and both will not require the same amount of time. From a tenants perspective the notice to quit period needs to be sufficiently long to allow adequate time to find suitable alternative accommodation; to reconcile a move of home with other, often longstanding commitments and responsibilities, e.g. childcare and children's schooling; and to adjust to the unsettling experience of having to move home without the move having been freely chosen. On the other hand the needs of the landlord are to re-let the property and to consider their future options of letting or not re-letting. Even in a sluggish rental market, knowing that the property is going to be vacant in three or four months time will be of little value to the landlord. Many of the people looking for rented accommodation need

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- it to be vacant in the coming weeks not months. Many prospective tenants would not be willing or able to wait around for a number of months for a property to become vacant.*
- *A possible serious unintended consequence of a tenant having to serve their new extended notice to quit periods may be the loss of their deposit. An example of this is where the tenant is required to move home for reasons and within a time scale beyond their control e.g. they have been offered a local authority house which must be taken up in the immediate future or have to move to a different job in another part of the country.*
- *The proposal that the accumulated notice to quit period should be rebased to 28 days once a tenant moves from their first 4 year period of continuous occupation to the second is seriously flawed.*
- *This recommendation goes against the principle which underpins the notion of a graduated scale of increasing notice to quit periods, which is - the longer a person has lived in their home the greater their need for a longer notice to quit.*
  - *It leaves tenants in a very vulnerable situation and against a sense of natural justice.*
  - *Concerns are overstated that allowing existing tenants to retain the entitlements to the longer notice to quit period would provide an incentive to landlords to replace tenants every 4 years so that the shorter notice to quit periods would apply to each tenancy. They do not take into account the interests of landlord's of holding onto a tenant with whom they are satisfied rather than issuing a notice to quit and taking in a new tenant who is an unknown quantity. "*

### **B.3 Threshold and USI**

Threshold and the USI have reservations about the Commission's recommendation that the entitlement to claim a lease of up to 35 years where the tenant has been in continuous occupation for 20 years (i.e. the long occupation equity clause) should be abolished on the basis that the security of tenure which will accrue to the tenants arising from the Commission's recommendations is inadequate.

### **B: Majority View of the Commission**

The Commission considers that the package of measures recommended here will be to the overall benefit of all those participating in the sector. Having

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fully considered the proposal put forward by Threshold, USI and the Society of St. Vincent de Paul for indexation of rents at specified intervals, it concluded that, for the detailed reasons outlined in chapter 5 - Rent Regulation, Security of Tenure and Affordability - the State should not intervene in the determination of rents within the sector. Ultimately, the Commission did not think it appropriate to recommend such a measure, as it considered that it would lead to higher rents for existing and future tenants and would result in tenants, participating in the sector in the short-term, having to pay a premium for their accommodation.

In relation to security of tenure, the majority view of the Commission was that having regard to the diversity of needs of tenants within the sector and the concerns of members in relation to the freedom of landlords to manage their investments, the appropriate period in which limited rights to continue in occupation should apply, was 4 years. While many landlords may be in a position to take their decision in relation to terminating or continuing a tenancy before it enters the final 84 days of the 4 year period, the majority of the Commission considered that a further 6 months should be allowed within which the decision could be taken by the landlord. The concern was to avoid landlords feeling compelled to issue a notice to quit, as an automatic practice, before the tenancy entered the final 12 weeks of the 4 year period.

The agreement by the Commission in relation to the appropriate notice to quit period represented a compromise between the views held by representatives of tenant interests and representatives of landlord and investment interests. The majority of the Commission did not accept that as a rule of general application, tenants would always require more notice of the termination of a tenancy than would the landlord. The Commission could envisage different market circumstances to those presently applying, whereby it could take much longer to secure a tenant than to source another suitable property for renting. It is always open to the parties to agree a shorter notice period where the circumstances so warrant. Moreover, under the scenario outlined by Threshold, it should be pointed out that where the tenancy is governed by a lease whose term has not expired, breaking it would, as a minimum, also mean losing the deposit under existing and proposed future arrangements.

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In relation to the re-accumulation of entitlement to a longer notice to quit period throughout each successive period of tenancy, the view was taken that this would be necessary for two reasons:

- (a) contrary to the view expressed by the IPOA to the effect that the proposal involves the granting of an encumbrance on the property rights of the landlord, from a legal perspective a new tenancy would be created every 4 years and consistent with this, notice periods would therefore have to be re-based,
- (b) allowing the existing tenant to retain the entitlement to the longer notice period would provide an incentive to landlords to replace tenants every 4 years so that the shorter notice periods would apply to each tenancy.

The recommendation to abolish the long occupation equity clause arose as a direct consequence of recommending the security of tenure proposal. The Commission considered that it would be undesirable to retain, within the legislative framework applying to the private rented sector, a provision that would discourage landlords from allowing tenants to continue in occupation for successive 4 year periods. The repeal provides clarity and certainty for landlords and tenants. Provision is being made for a voluntary opt-out to apply for a transitional period of 5 years. This means that existing tenants who are approaching the 20 year mark will have the opportunity to claim the entitlement. It also means that such tenants will have an alternative to eviction where their landlord does not want the lease to be capable of being claimed.

**C: Department of Finance**

The representative of the Department of Finance entered the following reservation in respect of the taxation and supply incentives recommended by the Commission:

*"In terms of the overall economy and having regard in particular to the dynamics of the labour market, a modern active private rented sector largely operated by professional landlords is desirable.*

*In any consideration of taxation recommendations regard must be had to measures that will lead to a lasting increase in the supply of rented accommodation especially for segments of the market where previous or existing measures have not made an*

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*impact. Proposals on taxation must lead to improvements in the quality of supply and must be conditional on full compliance with all regulatory standards.*

*The private rented residential sector is part of an overall housing sector. In that regard care should be taken that any action taken should be in harmony with overall policy with respect to housing, particularly taking account of the changes made to taxation policy for the housing sector in recent years. There must also be concern that in relation to recommendations which may well be inflationary, i.e. which would increase the purchasing capacity of investors to the detriment of taxpayers generally without any increase in the supply of accommodation. Account will also have to be taken of tax equity considerations both within the housing sector and the tax code generally.*

*Arising from the above considerations, Mr O'Neill expressed particular reservations about allowing interest payments in full against income tax, roll over relief on Capital Gains Tax, and re-consideration of the 9% rate of stamp duty applicable to investment properties."*

**C: Majority View of the Commission**

The Commission acknowledges that its recommendations in the tax and investment area have to be assessed by the Government in the context of the overall impact on the housing market and the extent to which intended outcomes would be achieved. The Commission's recommendations were framed in the context of the agreed objective that a more professional approach to the provision and management of rented accommodation would be desirable. The majority considered that this could best be achieved by treating for tax purposes the business of providing accommodation for renting in the same way as any other business, where appropriate, and provided that it is a legitimate business being actively managed. The Commission also framed its recommendations in the context of the identified need for increased investment in the sector, particularly by institutional investors.

**D: USI**

In relation to the recommendation that the need for alternative options to the tax incentives available under section 50 for the provision of student accommodation should be kept under review, the USI enter the following reservation:

*"The USI consider that there is a strong case for the direct provision of some 10,000 units of purpose built student accommodation and, in the event that the review of the*

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*section 50 incentive referred to in paragraph 8.7.3 identifies a continuing shortfall of student accommodation, the USI would wish that the direct provision route be pursued by the Government."*

**D: Majority View of the Commission**

The Commission agreed that it would be inconsistent to simultaneously recommend an extension of the section 50 tax relief (which was unanimously agreed) and an expenditure proposal on the basis that section 50 would not be availed of if grants were on offer also.