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Government of Ireland

Residential Tenancies (Amendment) Act 2019

and Pre-63 Residential Properties

Prepared by the Department of Housing, Planning and Local Government

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1. *Introduction*

Concerns have been raised regarding the impact that the Residential Tenancies (Amendment) Act 2019 provisions in relation to a substantial change in the nature of the accommodation provided will have on the viability of modernising residential properties that qualify for "Pre 63" planning exemptions. Residential properties that undergo modernisation that meets the "substantial change" definition are exempted for the first subsequent rent setting, from the 4% per annum rent increase restriction in Rent Pressure Zones.

This document sets out at section (2) below the amendments to the substantial change definition in the Act to enable a landlord to qualify for an exemption from the RPZ rent increase restriction. At section (3) below "Pre 63" planning designations are explained. In Section (4) below details the exemption from RPZ rent increase restrictions which can be availed of if a property has not been available for rent in the preceding two years.

Section (5) sets out the regulations in relation to standards that must be complied with when renting a residential property. These standards apply regardless of the "Pre 63" status of the property, and are minimum requirements for any rental property. Works undertaken to comply with the regulations do not constitute criteria for substantial change such as would justify an exemption from the RPZ rent increase restrictions.

Section (6) provides case studies to show how "Pre 63" residential properties can achieve the 7 BER rating point reduction, which is one of the routes to qualify as a substantial change, and section (7) deals with the subset of "Pre 63" residential buildings that are located in Architectural Conservation Areas or that are designated as protected structures.

2. *Residential Tenancies (Amendment) Act Provisions in Relation to Substantial Change*

Section 6 of the 2019 Act amends section 19 of the Act of 2004, which relates to rent setting by inserting a definition of a 'substantial change in the nature of the accommodation provided under the tenancy' in respect of which an exemption applies from the rent increase restriction of 4% p.a. in RPZs to the extent that the works carried out to the dwelling concerned –

(i) consist of a permanent extension that increases the floor area of the dwelling by at least 25% or

(ii) improve the BER of the dwelling by at least 7 ratings or

(iii) result in at least 3 of the following:

(I) the internal layout of the dwelling being permanently altered,

(II) the dwelling being adapted to provide for access and use by a person with a disability,

(III) a permanent increase in the number of rooms within the dwelling, or

(IV) the BER of the dwelling being improved by at least 3 ratings if D1 or lower; or

(V) the BER of the dwelling being improved by at least 2 ratings if C3 or higher

Such works cannot solely consist of works carried out for the purposes of compliance with Regulations covering minimum standards (section 12(1)(b) of the Act of 2004 obliges a landlord to comply with minimum standards, see below).

3. *Pre 63 Planning Designation*

a. The term "pre 63"?

The Local Government (Planning and Development) Act 1963 came into force on 1 October 1964 and for the first time imposed a general requirement to obtain planning permission. This requirement was not retrospective in the sense that development commenced prior to 1 October 1964 did not require planning permission. There was an express statement to this effect in the 1963 Act. This principle continues and is recognised under the Planning and Development Act 2000 whereby the definitions of unauthorised structure, use and works all exclude development prior to 1 October 1964. The term "pre 63" is often used to describe this situation.

Essentially, this means that buildings constructed prior to 1 October 1964, while not having been granted planning permission with conditions, are not unauthorised development. Any development taking place after that date would be subject to the requirements of the 1963 Act and subsequently the 2000 Act.

b. Works to "pre 63" buildings?

Therefore, any proposed development, including proposed development works to buildings constructed prior to the 1964 commencement date, is subject to the requirements of the planning code as set out in the 2000 Act and associated regulations. This may require the

making of a planning application. Alternatively, the proposed development may also benefit from any relevant exempted development provision in the Act or Regulations.

For example, the 2000 Act provides that development involving works for the "maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure ……" is exempted development. There are also additional exemptions in the planning regulations relating to works to a house, including an extension, subject to certain limitations.

Exempted development provisions are also subject to certain restrictions. For example, works to a protected structure shall be exempted only if the works would not affect the structure or the element of the structure identified for protection. A declaration to this effect may be obtained from the local authority on request.

It should be noted that an exemption from the requirement to obtain planning permission does not remove obligations to meet the requirement of other codes, such as building standards, fire, rental standards etc.

In general works to existing dwellings subject to a requirement of Part A - Structure or Part B - Fire Safety and Part M - Access and Use ("material alterations") of the Building Regulations are required to comply with all parts of the current Building Regulations. This requirement only applies to the works themselves. There should be no new or greater contravention of any part of the Building Regulations to areas affected by these works. Part M - Access and Use, does not apply to works in connection with extensions to and material alterations of existing dwellings, provided that such works do not create a new dwelling.

4. *Residential Tenancies (Amendment) Act Provisions in Relation to RPZ Exemptions*

The previous exemption for new rental properties in Rent Pressure Zones applied to properties that were not rented out at any time during the 2 years prior to RPZ designation or that come onto the rental market during the period of the RPZ designation. This is now replaced by an exemption for the initial rent setting only in the case of properties that were not rented out in the two years before the new tenancy commences.

Therefore, if a property is not available for rent during a two year period because it is undergoing modernisation during that period, the landlord will be able to avail of this exemption for the first subsequent rent setting which can be in line with market rents for similar properties in a comparable area. Thereafter, further rent increases would be subject to the RPZ restriction of a maximum of 4% increase per annum.

5. *Housing (Standards for Rented Houses) Regulations 2019*

Section 12(1)(b) of the Residential Tenancies Acts obliges a landlord to maintain his/her rental property in good repair to meet the statutorily required minimum standards for rental properties and to carry out any repairs necessary to the structure and interior of the dwelling to ensure compliance with standards prescribed under the Housing (Miscellaneous Provisions) Act 1992.

The Housing (Standards for Rented Houses) Regulations 2019 specify requirements in relation to a range of matters, such as structural repair, sanitary facilities, heating, fire, ventilation, natural light and safety of gas, oil and electrical supply. With very limited exemptions, these regulations apply to local authority and voluntary housing units as well as private rented residential accommodation.

a. All landlords have a legal obligation to ensure that their rented properties comply with these regulations. Responsibility for the enforcement of the regulations rests with the relevant local authority.
b. **Regulation 5** of the Housing (Standards for Rented Houses) Regulations covers sanitary facilities. The purpose of Regulation 5 is to ensure that each house has exclusive use to its own sanitary facilities, that those facilities are contained within the same habitable area of the house and that these sanitary facilities are maintained in good repair and working order.
c. **Regulation 7** relates to Food Preparation and Storage and Laundry facilities. Amongst other things, this Regulation requires a sink, with a piped supply of potable cold water taken directly from the service pipe supplying water from the public main or other source to the building containing the house and a facility for the piped supply of hot water, and an adequate draining area. As with all the regulations, these facilities are required to be maintained in good repair and safe working order.

d. **Regulation 10** requires that multi-unit dwellings are required to contain a fire detection and alarm system and emergency lighting in common areas. Rental units that do not form part of a multiple unit must have a suitable, self-contained fire detection and alarm system. Smoke alarms should be either mains-wired with battery back-up or 10-year self-contained battery-operated smoke alarms.

e. **Regulation 12** requires that all gas, oil and electricity installations be maintained in good repair and safe working order.

f. It is a legal requirement under the regulations that all fixtures and fittings are maintained in a safe condition and are in good working order;- this would include the plumbing/wiring of any fixtures.

g. As such, the rewiring of a property or renovation of plumbing works would not be considered as a substantial change in the nature of accommodation, given that such works, if necessary, would be required to ensure compliance with a landlord's statutory obligations.

6. Achievement of BER Reductions in Pre 63 Buildings

The case studies in appendix 1 set out measures that can be taken in relation to "Pre 63" buildings to achieve BER reductions. In these particular worked examples, a combination of insulation, window and door improvements or replacements and boiler replacement together with thermostatic controls can achieve an improvement of up to ten grades on the BER scale for "F", "G" and "E" rated dwellings.

7. Architectural Conservation Areas and Protected Structures

In an architectural conservation area, any works to the exterior of a building which would materially affect the character of the area require planning permission. However, works to the interior may not require planning permission.

In the case of a protected structure, any works which affect its character will require planning permission. Legal protection also extends to the interior of the building and to other structures and features within the curtilage of a protected structure.

A property might be in an area of architectural conservation, but might not be a protected structure. This distinction is often misunderstood. Further information on the relevant planning obligations can be obtained from the Architectural Conservation Officer of the local authority.

Advice on retrofitting traditional buildings is also available in the Department of Culture Heritage and Gaeltacht Guidance Document "Energy Efficiency in Traditional Buildings" and further guidance is planned for development in accordance with Recommendation 3 of the "Report of the Working Group on the Reuse of Existing Dwellings[9]."

It is estimated that there are in the order of 45,000 protected structures in Ireland. Given this number of such properties, it is likely that some are used for rental accommodation.

Appendix 1- Case Studies

Three case studies are provided below for retrofit works to pre 1963 dwellings which achieve at least 7 points upgrade on the BER. It should be noted that the measures applied and costs to achieve these upgrades in energy and carbon emissions performance will vary depending on several factors including dwelling type, age, location, original condition and construction type. It should also be noted that the costs for works to historic and traditional buildings can be higher than for dwellings of modern construction due to the special character of these structures. Examples given are indicative and measures shown and associated cost will be different for more recent dwellings. Benefits shown include reduced energy bills, reduced carbon emissions and improved health, improved occupant comfort. Case studies provided are based on the EU Intelligent Energy Europe Tabula study[1].

Case Study 1: Typical 1930s Mass Concrete Dwelling with inefficient gas fired central heating system[2]

Description:
Terraced house, very common in Dublin's 1930s and 1940s housing stock. Originally built by Dublin Corporation with mass concrete walls and solid floors. This house type is an ideal candidate for external wall insulation as space is limited internally.

Building elements :		Insulation	U - value
Walls	Solid mass concrete	none	2.2
Roofs	Pitched, insulation between joists	50 mm	0.68
Floors	Solid floor	none	0.61
Windows	Single glazed, metal frame	N/A	5.7
Doors	Solid wooden	none	3.0

Heating systems characteristics:		Fuel	Efficiency
Primary	Central heating boiler, pipe work un-insulated	Mains gas	65%
Secondary	Open fire in grate	Smokeless	30%
Hot water	From primary heating system. Electric immersion used in Summer.		
Cylinder	Insulated with loose jacket, 25mm, no cylinder thermostat		
Controls	Programmer only		

Retrofit Works required to achieve an improvement from an F Building Energy Rating (BER) to C1 – cost optimal equivalent BER (7 points):

1. Install 300 mm mineral wool insulation between and over joists in attic.
2. Install 100mm of external wall insulation on rear and front wall.
3. Replace inefficient gas boiler (65% efficiency) with efficient gas boiler (90% efficient) and replace radiators and pipework.
4. Replace inefficient single glazing (U Value =5.7W/m^{2}K)) with efficient double glazing (U value=1.4W/m^{2}K)

[1] http://www.energyaction.ie/projects/tabula.php
[2] NSAI SR 54 Case Study C available at http://www.ili.co.uk/en/S.R.54-2014.pdf

5. Upgrade controls to programmer, thermostatic radiator valves and flow switch
6. Install wall ventilation in habitable rooms

Estimated construction costs[3&4] – €33,500 to €39,500 excluding vat (13%)

Benefits:

- Savings of 1.8 Tonnes of carbon dioxide saved each year[5]
- Actual savings of €504 euro per annum[3]
- Reduced running cost to €1100 per annum from €3200[6] per year.
- Improved comfort for occupants (increased warmth, improved ventilation)
- Improved health of occupants due to warmth and reduced use of solid fuel.
- Improved outdoor air quality due to reduced solid fuel use.

Retrofit Works required to achieve an improvement from an "F" Building Energy Rating (BER) to B2 BER (9 points):

1. Install 300 mm mineral wool insulation between and over joists in attic.
2. Install 100mm of external wall insulation on rear and front wall.
3. Replace inefficient gas boiler (65% efficiency) with efficient gas boiler (90% efficient) and replace radiators and pipework.
4. Replace inefficient single glazing (U Value =5.7W/m^2K)) with efficient double glazing (U value=1.4W/m^2K)
5. Upgrade controls to Programmer, two heating zones each with time control and room thermostats, separate time control for domestic hot water, two pipe system, TRV's, boiler interlock
6. Install factory insulated hot water cylinder
7. Seal open fire place
8. Install wall ventilation in habitable rooms

Estimated construction costs[3&7] – €36,500 to €42,500 excluding vat (13%)

Benefits:

- Savings of 2.1 Tonnes of carbon dioxide saved each year[8]
- Actual savings of €720 euro per annum[3]
- Reduced running cost to €800 per annum from €3200[9] per year.
- Improved comfort for occupants (increased warmth, improved ventilation)
- Improved health of occupants due to warmth and reduced use of solid fuel.

[3] Costs are based on 2018 Cost Optimal report.
[4] Cost will vary based on starting BER and dwelling size and type.
[5] Standardised values for carbon dioxide and financial savings are reduced by 70% to account for occupant use.
[6] This is the standardised annual cost for running an "F" rated home.
[7] Cost will vary based on starting BER and dwelling size and type.
[8] Standardised values for carbon dioxide and financial savings are reduced by 70% to account for occupant use.
[9] This is the standardised annual cost for running an "F" rated home.

- Improved outdoor air quality due to reduced solid fuel use

SEAI Grants available to Landlords:

Attic insulation	€400
External Wall Insulation	€4,500
Heating Controls upgrade	€700
Total	**€5,600**

Case study 2 - typical brick walled house from late 1900 to 1930s[10]

Description:
Typical redbrick house found in Dublin, Cork, Limerick etc from late 1800s up to 1930s. Often includes a flat roof extension to rear. Suited to a mix of internal and external wall insulation. Suspended timber floors are common that can be retrofitted with insulation.

Building elements :		Insulation	U - value
Walls	Solid brick, 325 mm	none	1.64
Roofs	Pitched, insulation between joists	50 mm	0.68
Floors	Suspended timber floor Solid floor (kitchen)	none none	0.69 0.79
Windows	Single glazed, wooden frame Single glazed, metal frame	N/A N/A	4.8 5.7
Doors	Solid timber	none	3.0
Heating systems characteristics:		**Fuel**	**Efficiency**
Primary	Central heating boiler, pipe work un-insulated	Mains gas	65%
Secondary	Open fire in grate	Smokeless	30%
Hot water	From primary heating system. Electric immersion used in Summer.		
Cylinder	Insulated with 25mm lagging jacket, no cylinder thermostat.		
Controls	Programmer only		

Works required to increase from a "G" rating to a "C2" rating-cost optimal equivalent (7 points on BER scale)

1. Install vapour permeable insulation between and over joists in attic.[2]
2. Install vapour permeable insulation for traditional walls[11].
3. Insulate under suspended timber floor with insulation and air tightness membrane[2]
4. Replace inefficient gas boiler (65% efficiency) with efficient gas boiler (90% efficient), replace radiators and pipework
5. Install two separated heating zones with time and thermostatic control, independent water heating.
6. Hot water cylinder insulated with 50 mm spray foam. Secondary heating system is removed and chimney is sealed.
7. Install secondary glazing system to reduce heat loss from traditional single glazing (U Value =5.7W/m^{2}K)) to improve (U value=1.7 W/m^{2}K)
8. Upgrade controls to programmer, thermostatic radiator valves and flow switch

[10] EU Funded Tabula Project Example 7 available at: http://episcope.eu/fileadmin/tabula/public/docs/brochure/IE_TABULA_TypologyBrochure_EnergyAction.pdf
[11] Historic Scotland Fabric Improvements for Energy Efficiency in Traditional Buildings provides guidance for insulating walls and roofs in traditional buildings. https://www.historicenvironment.scot/archives-and-research/publications/publication/?publicationId=179c1909-3679-4486-9583-a59100fa98c1

9. Ensure adequate ventilation in habitable rooms either by retaining existing ventilation flow via gaps between the meeting rails of sash window or by installing new wall ventilators[12]

Estimated construction costs[13&14] – €49,500 to €55,500 excluding vat (13%)

Benefits:

- Savings of 2.3 Tonnes of carbon dioxide each year[15]
- Actual savings of €810 euro per annum[3]
- Reduced running cost to €1100 per annum
- Improved comfort for occupants (increased warmth, improved ventilation)
- Improved health of occupants due to warmth and reduced use of solid fuel.
- Improved outdoor air quality due to reduced solid fuel use

Works required to increase from a "G" rating to a "B2" rating (10 points on BER scale)

1. Install vapour permeable insulation between and over joists in attic.[2]
2. Install vapour permeable insulation either directly onto walls or within framing on walls depending on insulation type chosen[16].
3. Insulate under suspended timber floor with insulation and air tightness membrane[2]
4. Replace inefficient gas boiler (65% efficiency) with heat pump and heating system.
5. Install two separated heating zones with time and thermostatic control, independent water heating.
6. Hot water cylinder insulated with 50 mm spray foam. Secondary heating system is removed and chimney is sealed.
7. Install secondary glazing system to reduce heat loss from traditional single glazing
8. Upgrade controls to Programmer, two heating zones each with time control and room thermostats, separate time control for domestic hot water, two pipe system, TRV's, boiler interlock
9. Ensure adequate ventilation in habitable rooms either by retaining existing ventilation flow via gaps between the meeting rails of sash window or by installing new wall ventilators[17]

[12] Ventilation should be evaluated during installation. Ventilation though gap on mid rail is preferred. Planning permission may be required for wall ventilators on protected buildings.
[13] Costs are based on 2018 Cost Optimal report.
[14] Cost will vary based on starting BER and dwelling size and type.
[15] Standardised values for carbon dioxide and financial savings are reduced by 70% as occupants do not heat "G" rated homes to standard comfort conditions.
[16] Historic Scotland Fabric Improvements for Energy Efficiency in Traditional Buildings provides guidance for insulating walls and roofs in traditional buildings. https://www.historicenvironment.scot/archives-and-research/publications/publication/?publicationId=179c1909-3679-4486-9583-a59100fa98c1
[17] Ventilation should be evaluated during installation. Ventilation though gap on mid rail is preferred. Planning permission may be required for wall ventilators on protected buildings.

Estimated construction costs[14&18] – €59,500 to €66,000 excluding vat (13%)

Benefits:

- Savings of 2.7 Tonnes of carbon dioxide each year[19]
- Actual savings of €960 euro per annum[3]
- Reduced running cost to €800 per annum
- Improved comfort for occupants (increased warmth, improved ventilation)
- Improved health of occupants due to warmth and reduced use of solid fuel.
- Improved outdoor air quality due to reduced solid fuel use

SEAI Grants available to Landlords:

Attic insulation	€400
Internal Wall Insulation	€1,600
Heat Pump	€3,500
Total	**€5,500**

[18] Cost will vary based on starting BER and dwelling size and type.
[19] Standardised values for carbon dioxide and financial savings are reduced by 70% as occupants do not heat "G" rated homes to standard comfort conditions.

Case study 3 – typical 3 storey brick walled house from late 1800s to 1930s[2021] split into 3 apartments.

Description:
Typical brick terrace house found in Dublin, Cork, Limerick etc from late 1800s up to 1930s. These 3 storey dwellings often have a parapet wall to the front which disguises the pitched roofs behind. In order to retain the aesthetic of the streetscape, an internal insulation solution would be ideal.

Building elements :		Insulation	U - value
Walls	Solid brick, 325 mm Solid Brick 225 mm	None Dry lined	1.64 1.41
Roofs	Front pitched, insulation between joists Rear pitched roof	100mm None	0.4 2.3
Floors	Solid floor (basement)	None	0.61
Windows	Single glazed, wooden frame Double glazed, PVC frame	N/A N/A	4.8 2.7
Doors	Solid timber	none	3.0

Heating systems characteristics:		Fuel	Efficiency
Primary	Storage heating	Elect	65%
Secondary	Open fire in grate	Smokeless	30%
Hot water	From primary heating system. Electric immersion used in Summer.		
Cylinder	Insulated with 25mm lagging jacket, no cylinder thermostat.		
Controls	Programmer only		

Works required to increase individual apartments[22] from an "E2" rating to a "B2/B1" rating (8 points on BER scale)

1. Install 300mm mineral wool insulation between and over joists in attic and ensure adequate ventilation.
2. Internal vapour permeable insulation
3. Replace inefficient electric storage heating with efficient heat pumps
4. Hot water cylinder insulated with 50 mm spray foam.
5. Install secondary glazing behind original windows.
6. Upgrade controls to programmer, thermostatic radiator valves and flow switch
7. Ensure adequate ventilation in habitable rooms either by retaining existing ventilation flow via gaps between the meeting rails of sash window or by installing new wall ventilators[23]

Estimated construction costs[24&25] per apartment €39,000 to €41,000 excluding vat (13%).

[20] EU Funded Tabula Project Example 3 available at: http://episcope.eu/fileadmin/tabula/public/docs/brochure/IE_TABULA_TypologyBrochure_EnergyAction.pdf
[21] Historic Scotland Fabric Improvements for Energy Efficiency in Traditional Buildings provides guidance for insulating walls and roofs in traditional buildings. https://www.historicenvironment.scot/archives-and-research/publications/publication/?publicationId=179c1909-3679-4486-9583-a59100fa98c1
[22] Basement apartment flat used in example
[23] Ventilation should be evaluated during installation. Ventilation though gap on mid rail of sash windows is preferred. Planning permission may be required for wall ventilators on protected buildings.
[24] Costs are based on 2018 Cost Optimal report.
[25] Cost will vary based on starting BER and dwelling size and type.

Benefits per apartment:

- Savings of 1.23 Tonnes of carbon dioxide each year[26]
- Actual savings of €430 euro per annum[3]
- Reduced running cost to €570 per annum
- Improved comfort for occupants (increased warmth, improved ventilation)
- Improved health of occupants due to warmth and reduced use of solid fuel.
- Improved outdoor air quality due to reduced solid fuel use

SEAI Grants available to Landlords:

Attic insulation	€400
Internal Insulation (Dry Lining)	€1,600
Heat pump	€3,500
Total grant available per apartment	€5,500

[26] Standardised values for carbon dioxide and financial savings are reduced by 70% to account for occupant behaviour

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