

# Cost Rental Guidance Note

## WHAT IS COST RENTAL?

A ‘cost rental’ dwelling is a rented dwelling, where the rent charged is no more than the cost incurred in delivering, managing and maintaining the dwelling. Cost rental is a means of providing affordable housing to moderate-income households, who may experience financial difficulty accessing housing or meeting the on-going cost of accommodation.

The provision of cost rental homes is governed by the Affordable Housing Act 2021 (the “AHA”).

**This document provides guidance on tenancy protections under Residential Tenancies Act 2004, as amended (the “RTA 2004”), in respect of cost rental dwellings.**

Please see the Appendix for further information (as at 4 May 2022) in relation to cost rental accommodation, including who is eligible for a cost rental dwelling and the laws that apply to them.

## APPLICATION OF THE RESIDENTIAL TENANCIES ACT 2004 TO COST RENTALS

### Residential Tenancies Board (“RTB”)

The RTB is a public body set up to support and develop a well-functioning rental housing sector. The RTB’s role is to regulate the rental sector, provide information to inform policy, maintain a national register of tenancies, resolve tenancy disputes between landlords and tenants, initiate investigations into improper conduct by landlords and provide information to the public to assist tenancies to run smoothly.

The RTB’s remit covers the private rental sector, lettings by approved housing bodies, student specific accommodation and now cost rental tenancies, including those provided by public authorities (which includes local authorities) who are not otherwise subject to the RTB’s jurisdiction.<sup>1</sup>

The RTA 2004 applies to cost rental tenancies subject to certain exceptions. These have been identified throughout this document.

### Registrations of cost rental tenancies

Cost rental tenancies must be registered with the RTB within one month of the tenancy commencement date and again, within one month of each anniversary of the tenancy commencement date, for so long as the tenancy exists (see RTB guidance on annual registration – [www.rtb.ie](http://www.rtb.ie)). The fees that apply to registering private sector tenancies, apply to cost rental tenancies.

### Repair and maintenance

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<sup>1</sup> Section 32(1) AHA.

The rules in the RTA 2004 in relation to repair and maintenance apply to cost rental dwellings, this includes the minimum standards regulations. More detail on landlords' obligations in relation to repair and maintenance can be found at [www.rtb.ie](http://www.rtb.ie).

### **Security given to cost rental tenants**

Security of tenure provisions in the RTA 2004 apply to cost rental lettings. This means that after 6 months in continuous occupation tenants acquire what are known as "Part 4 tenancy" rights. These rights entitle the tenant to remain in occupation for a further 5 ½ years. The tenant will be entitled to further 6 year periods of occupation (known as "further Part 4 tenancies"), subject to the landlord's right to terminate the tenancy in accordance with the RTA 2004.

From 11 June 2022, the Part 4 tenancy rules described above will change. For tenancies created on or after that date, the tenant will have the right to remain in occupation for an unlimited duration, after the tenant has been in continuous occupation for 6 months. Existing tenancies will transition to tenancies of unlimited duration over time.

### **Termination of a Tenancy**

Where the tenant of a cost rental tenancy has been in continuous occupation for 6 months (i.e. a "Part 4 tenancy"), the landlord can only terminate the cost rental tenancy under one or both of the following limited grounds:

1. The tenant has breached his/her obligations;
2. The dwelling is no longer suitable to the accommodation needs of the tenant and of any persons residing with him or her having regard to the number of bed spaces and the size and composition of the occupying household.

This means that most of the usual grounds on which a landlord can terminate a "Part 4 tenancy" do not apply to cost rental dwellings (i.e. the landlord cannot terminate the cost rental tenancy because the landlord wants to sell the property, the landlord or a family member wants to live there, the landlord wants to substantially refurbish/renovate the property or to change its use).

### **Sub-letting or assignment not permitted**

Sub-letting occurs when the original tenant permits another party to lease the rental property, with the original tenant assuming position of landlord. Assignment is where a tenant transfers their entire interest in a tenancy to a third party creating a new landlord and tenant relationship.

Tenants of cost rentals are not permitted to sub-let or assign the dwelling. The Minister may prescribe the process by which tenants may be added or removed from the cost rental tenancy for the purposes of giving effect to the eligibility criteria. The consent of the landlord is, however, required.<sup>2</sup>

### **Licensee**

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<sup>2</sup> Section 32(4) and (6) AHA.

A licensee is a person who has permission to stay in a dwelling but who is not a tenant. A licensee may request the landlord if he/she can become the tenant of a dwelling. The landlord can refuse to allow a licensee of a cost rental to become a tenant.<sup>3</sup>

## SETTING AND REVIEW OF RENT FOR COST RENTAL DWELLINGS

There are specific rent setting rules applicable to cost rental tenancies, which are explained below. While Part 3 of the RTA 2004 (Rent and Rent Reviews) does not apply to cost rental dwellings,<sup>4</sup> disputes in relation to rent can be referred to the RTB.<sup>5</sup>

### Rent setting

Rent setting for cost rental tenancies is defined as including the initial rent setting under the tenancy and any subsequent review of rent.<sup>6</sup>

Rent for cost rentals is set using the formula  $((A / B) - 1) \times C$ .

The values vary depending on whether it is the initial setting of rent, the first rent review or a subsequent rent review.

In summary:

**A** is the value of the Harmonised Index of Consumer Prices (HICP) for the end of the month immediately preceding the new setting (*i.e. the initial rent or for rent reviews, the earlier of the date the rent review notice is signed or the new rent is to have effect*);

**B** is the value of HICP for the end of the month immediately preceding the month the rent was last set – (*i.e. in the cost rental designation, the initial setting or pursuant to a rent review*).

**C** is the rent in euros last set (*i.e. the initial maximum rent in the cost rental designation, the initial setting under the tenancy agreement or the rent in the previous rent review notice*).

Specific details of the values that apply in each scenario are contained in [S.I. No. 756/2021 - Affordable Housing Act 2021 \(Cost Rental Rent Setting\) Regulations 2021](#). Regard should be had to this regulation and the details of specific values that apply to ensure rent is legally set.

### Rent reviews

Rent reviews cannot take place more than once every twelve months, or within the first twelve months of a tenancy.<sup>7</sup> The tenancy agreement may contain provision for a rent review. If not, it may be initiated in accordance with the AHA.

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<sup>3</sup> Section 32(8) AHA.

<sup>4</sup> Section 33(1) AHA.

<sup>5</sup> Section 33(13) and (14) AHA.

<sup>6</sup> Section 33(3) AHA.

<sup>7</sup> Section 33(6) AHA.

A rent review is initiated by the landlord serving a rent review notice in the prescribed form.<sup>8</sup> This form can be found in the Schedule to [S.I. No. 756/2021 - Affordable Housing Act 2021 \(Cost Rental Rent Setting\) Regulations 2021](#). The notice must be sent or served on the tenant either by sending it by pre-paid post to the tenant at the cost rental address or by electronic email where the tenant has given prior consent in writing to the notice being served in this way. In the case of multiple tenants who are jointly and severally liable under the cost rental tenancy, the rent review notice is served by pre-paid post to the cost rental address or by email to one or more of the tenants where prior consent has been given to serve in this way.

A rent review notice shall be served not earlier than two weeks before, and not later than four weeks after, the date on which the setting of the rent by way of a review is to take effect.<sup>9</sup>

### **New rent taking effect and becoming payable**

The rent review notice must specify the date from which the new rent is to take effect.<sup>10</sup> Where a tenancy agreement does not specify the frequency of rent reviews, then the anniversary of the commencement of the tenancy shall be the date the new rent set pursuant to the rent review, shall take effect.<sup>11</sup>

Notwithstanding the foregoing, while the new rent may take effect from the date specified in the rent review notice, the new rent will not become payable until the next rent day (gale day) that falls 28 days after receipt of the rent review notice. Where a dispute is referred to the RTB, the new rent will not become payable until the next rent day that falls 28 days after the determination of the dispute by the RTB.<sup>12</sup> Any difference between the new rent and old rent between the time the new rent took effect and became payable, must be paid within 12 weeks from the date the new rent becomes payable.<sup>13</sup>

### **Disputes in relation to rent and rent setting**

Disputes about rent (including arrears<sup>14</sup>, rent set and rent reviews<sup>15</sup>) may be referred to the RTB. There are specific timelines in relation to the referral of certain disputes. A dispute in relation to the initial setting of rent or the initial maximum rent, must be referred to the RTB before the date on which the tenancy is to begin or within 28 days from the date of the cost rental tenancy agreement. A dispute in relation to a rent review must be made before the expiry of 28 days from the receipt by the tenant of the rent review notice.<sup>16</sup>

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<sup>8</sup> Section 33(9) AHA.

<sup>9</sup> Section 33(10) AHA.

<sup>10</sup> Section 33(10)(c) AHA.

<sup>11</sup> Section 33(8) AHA.

<sup>12</sup> Section 33(11) AHA.

<sup>13</sup> Section 33(12) AHA.

<sup>14</sup> Section 33(13) AHA.

<sup>15</sup> Section 33(14) AHA.

<sup>16</sup> Section 33(14) AHA.

## **Cost rental tenancies subsisting on termination of cost rental period<sup>17</sup>**

Where a “Part 4 tenancy” or a “further Part 4 tenancy” is in existence and there is a revocation of a cost rental designation by the Minister, the tenant is not required to vacate but it protected by the security of tenure provisions of the RTA 2004 (see above) until the tenancy is validly terminated.<sup>18</sup>

## **APPENDIX**

### **Background information on Cost Rental accommodation**

#### **LETTING A COST RENTAL DWELLING**

##### **Who provides cost rental tenancies?**

Any owner of a residential property can apply to have it designated as a cost rental dwelling. This means that private owners, as well as local authorities, approved housing bodies and the Land Development Agency can provide cost rental tenancies.

##### **Am I eligible for cost rental accommodation?**

The main eligibility criteria for cost rental accommodation is that the household’s annual income, less income tax, PRSI, universal social charge and superannuation contributions, must be under an income limit as prescribed by the Minister, which shall not be greater than €53,000.<sup>19</sup>

Prior to granting any tenancy, the landlord must also ensure that the dwelling is suitably sized to meet a household’s needs based on the number of occupants.<sup>20</sup> The landlord will have final discretion over entering into a tenancy agreement with any prospective tenants who meet the eligibility criteria.<sup>21</sup>

Households who are in receipt of housing assistance payment (“HAP”) are not eligible for a cost rental dwelling. The only exception to this is if one member of the household for which HAP is sought has been party to a current tenancy agreement in respect of that cost rental dwelling for a continuous period of more than 6 months.<sup>22</sup> Although a tenancy of a cost rental dwelling is not in itself a form of social housing support (notwithstanding that the landlord may be an approved housing body or a local authority), the payment of HAP in respect of a cost rental dwelling, will be deemed to be social housing support.<sup>23</sup>

##### **How do I know when cost rental dwellings become available?**

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<sup>17</sup> Cost Rental Period in relation to a cost rental dwelling, means the period beginning on the date on which the cost rental designation specifying the dwelling is sealed by the Minister and ending on the date specified in the cost rental revocation – section 28 AHA.

<sup>18</sup> Section 39 AHA.

<sup>19</sup> S.I. No. 755/2021 - Affordable Housing Act 2021 (Cost Rental Letting and Eligibility) Regulations 2021.

<sup>20</sup> S.I. No. 755/2021 - Affordable Housing Act 2021 (Cost Rental Letting and Eligibility) Regulations 2021.

<sup>21</sup> Section 31(4) AHA.

<sup>22</sup> Section 34(1) AHA.

<sup>23</sup> Section 35 AHA.

The landlord of a cost rental dwelling must advertise it online for a period of not less than 7 days. The landlord will specify how an application for a cost rental dwelling is to be made. In cases where the number of applicants exceed the number of available homes, the landlord must use an independently-verifiable lottery to select applicants.<sup>24</sup> Landlords must lease cost rental dwellings in a transparent manner.<sup>25</sup>

## DESIGNATION AS A COST RENTAL DWELLING

### How is a property designated as cost rental?

To have a dwelling designated as a cost rental, an application must be made to the Minister for Housing, Local Government and Heritage (the “Minister”). The application form is contained in Schedule 1 to [S.I. No. 425/2021 – Affordable Housing Act 2021 \(Cost Rental Designation\) Regulations 2021](#).

Information about the dwelling (e.g. number of bed spaces) must be provided in the application form, in addition to the following information:

- a proposed cost calculation period and minimum cost rental period (see below);
- the proposed initial maximum rent (see below);
- the estimated cost rental income;
- the estimated market rent (i.e. if it was not let as a cost rental); and
- details of costs associated with the dwelling – e.g. costs incurred in acquiring the dwelling and estimated costs for maintenance, management and financing.

Documentary evidence supporting the application must also be provided (e.g. to establish the applicant’s title to the dwelling). The applicant must also make a declaration that they will comply with the obligations applying to owners of cost rentals and must declare that they will take all reasonable steps to procure that the applicant’s successors in title will comply with these obligations.<sup>26</sup>

### Minimum cost rental period and cost calculation period

The minimum cost rental period defines the owner’s minimum commitment to let the dwelling as a cost rental dwelling. It is intended that the receipt of any future State support for the delivery of cost rental homes, in the form of funding or land, will be conditional on the minimum period being significantly longer than the cost calculation period.

The minimum cost rental period for the dwelling, cannot be less than the cost calculation period. The minimum cost calculation period is 40 years.<sup>27</sup> The ‘cost calculation period’ is the length of time over which the owner models the costs to calculate the initial maximum rent (see below).

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<sup>24</sup> S.I. No. 755/2021 - Affordable Housing Act 2021 (Cost Rental Letting and Eligibility) Regulations 2021.

<sup>25</sup> Section 31(1)(a)(i) AHA.

<sup>26</sup> Section 29 AHA and S.I. No. 425/2021 – Affordable Housing Act 2021 (Cost Rental Designation) Regulations 2021.

<sup>27</sup> Section 29(1)(d) and (4) AHA.

The minimum cost rental period is unrelated to a tenant's right to remain in the property, which is governed by the security of tenure provisions in the RTA 2004. If a cost rental designation ends during a tenancy, the security given to tenants by the RTA 2004, still applies provided the tenant has been in continuous occupation for 6 months or more (see below).<sup>28</sup>

### **Initial maximum rent and subsequent rents**

The initial maximum rent for cost rentals is calculated on the basis of the cost of acquiring, developing, managing and maintaining the property in question and the maximum rent cannot exceed these costs to the owner over the cost calculation period (i.e. a minimum period of 40 years).<sup>29</sup> The initial setting of rent and any subsequent rent review also includes a component linked to inflation based on the Harmonised Index of Consumer Prices as published by the Central Statistics Office ("HICP").<sup>30</sup>

### **Designation as cost rental dwelling**

If an application to be designated as a cost rental dwelling is approved, the Minister shall provide the owner of the dwelling concerned with a cost rental designation document in the prescribed form.<sup>31</sup> Amongst other things it contains a statement of the minimum cost rental period and the initial maximum rent. If the owner is satisfied to proceed with the cost rental designation as set out, the document must be executed and returned to the Minister. A cost rental designation must be registered in the Registry of Deeds or Land Registry, as appropriate.

## **TERMINATION AND EXTENSION OF COST RENTAL PERIOD**

### **Extension of minimum cost rental period**

The owner of a cost rental dwelling may apply to the Minister to extend the minimum cost rental period that the dwelling has been designated as a cost rental. The minimum cost rental period will have initially been set at the time of the cost rental designation. The extension cannot be for a period of less than 5 years. The Minister must grant the extension. The extension is registerable in the Registry of Deeds or the Land Registry, as appropriate.<sup>32</sup>

### **Termination of cost rental period**

There is an opt-out mechanism, whereby the owner of the dwelling may request a revocation once the minimum cost rental period has expired. The Minister must consent to the revocation in such circumstances.<sup>33</sup>

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<sup>28</sup> Section 39 AHA.

<sup>29</sup> Section 29(3)(d) AHA.

<sup>30</sup> Section 33(4) AHA and S.I. No. 756/2021 - Affordable Housing Act 2021 (Cost Rental Rent Setting) Regulations 2021.

<sup>31</sup> S.I. No. 425/2021 - Affordable Housing Act 2021 (Cost Rental Designation) Regulations 2021.

<sup>32</sup> Section 37 AHA.

<sup>33</sup> Section 38(1) and (2) AHA.

The owner can apply for the revocation of the cost rental designation *during* the minimum cost rental period. The Minister has a discretion as to whether to revoke the cost rental, and will only do if he or she is satisfied on “exceptional grounds” that it is in the public interest to do so.

“Exceptional grounds” means facts and circumstances not reasonably foreseeable by the owner or the Minister at the time of the cost rental designation, which the Minister believes renders the operation of the dwelling as a cost rental unachievable under the relevant laws.<sup>34</sup>

The registration for the cost rental dwelling in the Registry of Deeds or Land Registry, as appropriate, should be updated to reflect the revocation of the cost rental designation.<sup>35</sup>

## **OTHER MATTERS**

### **Obligation of owner to provide information**

The Minister may require owners of cost rental dwellings to keep certain records and make them available to the Minister. This is for the purpose of monitoring compliance with the legislation and the compilation of statistical data.<sup>36</sup>

### **Loans to Approved Housing Bodies in support of cost rentals**

The Housing Agency may make loans to Approved Housing Bodies to fund the provision of dwellings to be designated as cost rentals, out of funds provided for that purpose by the Minister.<sup>37</sup>

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<sup>34</sup> Section 38(4) and (5) AHA.

<sup>35</sup> Section 38(10) and (11) AHA.

<sup>36</sup> Section 36 AHA.

<sup>37</sup> Section 40 AHA.