



**Submission to the Oireachtas committee on Justice, Equality and Defence
on
The Property Services (Regulation) Bill 2009**

Introduction

The Society of Chartered Surveyors Ireland was formed this year, following a merger of the Society of Chartered Surveyors and the Irish Auctioneers and Valuers Institute, both of whom have been vocal supporters of this legislation.

The Society has read the proposed amendments which your committee has produced, in conjunction with the latest draft of the Bill. There are a number of proposed amendments, but by far the most critical is the continued usage of “advised market value” which does not appear anywhere else in Irish legislation and runs counter to both the definitions used in the NAMA Act (2009) and international standards. Likewise, the Society is concerned about the definition of the measurement of buildings which is also contrary to industry standards. These issues are significant and will undoubtedly cause major difficulties in the implementation of this long-awaited legislation.

Current Bill draft

Section 2 (1) “Property Service” Definition

The Society believes that the definition of this title should be kept as wide as possible to ensure that all property service providers are captured under this one piece of legislation. The notable exception to the categories of service provider in the current definition is letting agents of residential property. This is a growing property service provision and it is important those service providers are included so that they operate under the same legislative system as other providers.

Section 10 (4) (a) Membership of the Authority

The current proposal suggests that “not more than three persons” on the Authority are representatives of those who provide property services. The Society recommends that property service providers should be increased to *not less* than three to ensure that the Authority reflects the wide diversity of professions involved in property services.

Sections 57 (1) (2) and 58 (1) “Advised Market Value”

This section refers to “the advised market value” of land. The Society has made a number of submissions over the last two years regarding the potential difficulties of the introduction of this new definition of market value into Irish law, which runs contrary to the well-established internationally accepted definitions and RICS “Red Book” standards

to which Chartered Surveyors must adhere. A copy of this submission is enclosed as an appendix to this submission. It is also important to note that the NAMA Act (2009) (Part 5) has adopted the 'Red Book' definition of market value and it is vital that this legislation remains consistent with the NAMA legislation by adhering to internationally accepted standards including the global RICS 'Red Book' standards.

The definition used in the NAMA legislation is also set out in an appendix to this submission.

Section 77 and Schedule 6 Compensation Fund

This section allows the use of the fund in a very broad range of cases, where a legal remedy through the Courts would be normal and advantageous to the resolution of issues. There is no precedent for use of such compensation funds to be used in such a wide range of cases, and the Society recommends that this fund's income be ring-fenced from only licensees who handle client funds and have client accounts, and its expenditure be likewise ring-fenced to provide for occasions where client money is misappropriated.

Committee Amendments

Section 36 (4)(b) Accountant's Report

The Society notes the proposed amendment of the legislation from the need for a licensee to submit an accountant's 'certificate' to a 'report' to the Authority. We also note that such a report must be in the prescribed format, but believe that the process of licensing would be improved if further advance detail of the prescribed format were provided in the legislation.

Section 86 Residential Property Database

The Society welcomes the creation of the register of residential property sales prices, and the publication of this data. It is not clear, however, who is responsible for the submission of this data to the Authority. In Section 88(1) (Commercial Lease Database) it is the responsibility of the tenant or his nominee to supply such data. To provide consistency across both databases, the Society recommends that the purchaser, their agent or the Land Registry supply the necessary data to the Authority.

Section 88 Commercial Lease Database

Again, the Society welcomes the committee's insertion into the Bill of this section. The Society has compiled a comprehensive list of information fields which should be part of the Commercial Property Database, and these are set out in an appendix below. The Society notes that the responsibility for the furnishing of this data rests with the tenant or his agent. The Society recommends that this section should specify that the person making the submission be qualified so to do.

The Society recommends that the reference in Section 88 (1) (e) to net floor area should be amended to bring it in line with the standards set in the Irish and international measuring practice guidance notes. Again, as with Sections 57 and 58, this would avoid

this legislation and the work of the Authority running contrary to existing legislation, regulation and industry standards.

Conclusion

The Society repeats its endorsement of this long overdue legislation and welcomes the creation of residential and commercial property databases. The small number of existing concerns are listed above to ensure that the work of the Authority complements provisions in existing Irish legislation and is in line with international standards.

The Society would be happy to meet with you, and to explain in further detail the reasoning behind these recommendations. As professionals working in the field of property services, we urge you to adopt these recommendations and facilitate the approval of this Bill.

Appendix 1: Recommended information fields for commercial property database

- Address of property including district and postcode
- Type of property (tick boxes)
 - a) Entire building
 - b) Part of a larger multi-let/occupied premises
 - c) provide details- e.g. unit in shopping centre or floor or part floor in office building
- Description
 - a) Office
 - b) Shop
 - c) Industrial
- Type of transaction
 - a) letting
 - b) assignment
 - c) surrender
 - d) sale
 - e) other . specify (e.g. surrender and re-grant or exchange/swop of units in shopping centre)
 - f) rent review/ variation of rent (including an agreement to rent abatement)
 - g) other deed of variation
- Size of property (calculated in accordance with Measuring Practice Guidance Notes)
- Parties
 - a) Landlord
 - b) Tenant
 - c) Vendor
 - d) Purchaser
 - e) Tax no and company registration number
- Description of interest: Freehold/leasehold
- Term, Rent review frequency, Date of next review
- Break option, when exercisable, by whom, penalty for break?
- Date of transaction
- Consideration
 - a) Price
 - b) Rent including any premium or reverse premium

NB Full details of all incentives/other financial terms material to the transaction e.g. rent free period, capital sum in respect of fit out or other arrangement, suspension or waiver of rent, other premises exchanged or surrendered

- Supply copy any side agreement varying principal terms
- Declaration that return is complete and accurate, by principal or solicitor after proper enquiry and inspection of documents. Penalty for false declaration - must be a serious disincentive to falsify information.
- Contact details of party making declaration

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PART 5 Valuation Methodology

Section 72.

(1) In this Part ~~property~~ means property that is the subject of the security for a credit facility that is a bank asset.

(2) In this Part:

(a) a reference to the market value of property is a reference to the estimated amount that would be paid by a willing buyer to a willing seller in an arm's-length transaction after proper marketing (where appropriate) where both parties act knowledgeably, prudently and without compulsion,

(b) a reference to the market value of a bank asset is a reference to the estimated amount that would be paid by a willing buyer to a willing seller in an arm's-length transaction after proper marketing (where appropriate) where both parties act knowledgeably, prudently and without compulsion,

(c) a reference to the long-term economic value of property is a reference to the value, as determined by NAMA in accordance with this Part, that it can reasonably be expected to attain in a stable financial system when the crisis conditions prevailing at the passing of this Act are ameliorated and in which a future price or yield of the property is consistent with reasonable expectations having regard to the long-term historical average, and

(d) a reference to the long-term economic value of a bank asset is a reference to the value, as determined by NAMA in accordance with this Part, that it can reasonably be expected to attain in a stable financial system when the crisis conditions prevailing at the passing of this Act are ameliorated.

The Society of Chartered Surveyors Ireland

Dating back to 1895, the Society of Chartered Surveyors Ireland is the independent professional body for Chartered Surveyors working and practicing in Ireland.

Working in partnership with RICS, the pre-eminent Chartered professional body for the construction, land and property sectors around the world, the Society and RICS act in the public interest: setting and maintaining the highest standards of competence and integrity among the profession; and providing impartial, authoritative advice on key issues for business, society and governments worldwide.

Advancing standards in construction, land and property, the Chartered Surveyor professional qualification is the world's leading qualification when it comes to professional standards. In a world where more and more people, governments, banks and commercial organisations demand greater certainty of professional standards and ethics, attaining the Chartered Surveyor qualification is the recognised mark of property professionalism.

Members of the profession are typically employed in the construction, land and property markets through private practice, in central and local government, in state agencies, in academic institutions, in business organisations and in non-governmental organisations.

Members' services are diverse and can include offering strategic advice on the economics, valuation, law, technology, finance and management in all aspects of the construction, land and property industry.

All aspects of the profession, from education through to qualification and the continuing maintenance of the highest professional standards are regulated and overseen through the partnership of the Society of Chartered Surveyors Ireland and RICS, in the public interest.

This valuable partnership with RICS enables access to a worldwide network of research, experience and advice.