



LAW SOCIETY
OF IRELAND

Submission on Local Government Rates and Other Matters Act 2019

Department of Housing, Local Government and Heritage

20 December 2024

Submission on Local Government Rates and Other Matters Act 2019

About the Law Society

The Law Society of Ireland (the **Law Society**) is the educational, representative and professional body of the solicitors' profession in Ireland.

The Law Society's main statutory functions in relation to the education, admission, enrolment, and discipline of the solicitors' profession are provided by the *Solicitors Acts 1954 to 2015*. These statutory functions are exercised by the Council of the Law Society or by the various committees, task forces and working groups to which the Council may delegate certain statutory functions. A separate organisation - the Legal Services Regulatory Authority - is responsible for regulating the provision of legal services by legal practitioners.

The Law Society delivers high-quality legal education and training and also places significant emphasis on civic engagement, supporting local community initiatives and driving diversity and inclusion. The Law Society is committed to participating in discussion and advocacy on the administration of justice and the effective implementation of public policy.

Introduction

This document sets out some key issues and concerns that we have identified with certain provisions relating to rates contained in the [Local Government Rates and Other Matters Act 2019](#) (the **2019 Act**). Specifically, we have identified issues relating to sections 4, 10, 11, 13 and 14 of the 2019 Act (the **Relevant Provisions**). The Relevant Provisions were commenced on 1 January 2024.

Background

The legislation governing commercial rates has undergone significant change and concerns a number of different pieces of legislation which have undergone amendment. We now seek to outline the relevant legislative provisions.

Prior to the commencement of the 2019 Act, the key provisions governing commercial rates in the context of property transactions were those set out in section 71 of the Poor Relief (Ireland) Act 1838 and [section 32 of the Local Government Reform Act 2014](#) (the **LGRA 2014**). Section 32 dictated what rates liability needed to be discharged upon a transfer of an interest in a property, the notification that had to be given to the local authority on foot of that transfer and the circumstances in which rates arrears would attach as a charge on property, including any penalty for failure to notify the local authority.

Due to concerns raised about the legislation, the Oireachtas made fundamental changes to the rates provisions of the 2019 Act before they were commenced. These changes were introduced by sections 262 to 274 of the [Historic and Archaeological Heritage and Miscellaneous Provisions Act 2023](#) (the **2023 Act**).

When the Relevant Provisions were commenced on 1 January 2024, section 32 of the LGRA 2014 was repealed¹ and certain provisions of the Poor Relief (Ireland) Act 1838 were repealed/amended. The laws relating to rates are now largely embodied in the 2019 Act.

Whilst, in some respects, the 2019 Act brings about welcome changes to the law on commercial rates, some issues and concerns remain despite the amendments made by the 2023 Act. These are discussed below.

Summary

Our concerns arise in relation to six key areas that we have identified. Those are summarised below and are each addressed in greater detail in the remainder of this document.

1. **Relevant Property:** The definition of ‘relevant property’ in section 1 the 2019 Act appears to include residential property, along with other property types that are not rateable, although this does not appear to have been the intention of the legislators.
2. **Liable Person:** The definition of ‘liable person’ as set out in section 4 of the 2019 Act presents difficulties as to whether or not a liable person can cease to be a liable person during a calendar year. There are divergent views on this. This has knock-on effects in terms of apportionment of rates during a calendar year and on when notification requirements arise upon a change in the liable person.
3. **Pre-existing Charges:** Notwithstanding the intention of the 2019 Act to modernise and consolidate the law on commercial rates, any pre-existing charges on a property which arose under section 32 of the LGRA 2014 remain despite section 32 having been repealed. This has implications for the conveyancing process, with enquiries still having to be made in respect of any pre-existing charges arising under section 32.
4. **Obligation to Notify:** The new notification obligations arising under section 10(2A)(a) of the 2019 Act will necessitate a check of the relevant local authority’s rates database as part of the conveyancing process. It is not entirely clear whether the rates databases will be publicly available for the purposes of such checks being carried out. In addition, section 10(2A)(a) does not allow for a representative of the liable person to give the necessary notification. This is in contrast to the notification requirements under section 11(1) of the 2019 Act which allows for a third party (e.g. a solicitor or agent) to give the notice on the liable person’s behalf.
5. **Meaning of ‘Sell’ or ‘Sale’** (Section 13 of the 2019 Act): The meaning of ‘sell’ or ‘sale’ in section 13 and what this includes is not clear. In addition, the strict requirement to pay rates before completion of a sale can present practical difficulties and fails to take account of current conveyancing practice.
6. **Meaning of ‘Sold’** (Section 14 of the 2019 Act): The meaning of ‘sold’ in section 14 and when a charge for unpaid rates falls away upon a property being ‘sold’ is unclear, particularly in the case of sales by receivers and mortgagees in possession.

Appendix 1 to this Submission provides detail on the legal analysis and **Appendix 2** sets out, in tabular format, the proposed amendments.

¹ Although section 32 of the LGRA 2014 has been repealed, any charge which arose under section 32 would remain indefinitely against the owner until such time as the charge has been paid or 12 years as against a purchaser in good faith for value or mortgagee.

1. Relevant Property

Appendix 1 outlines the relevant legislation, case law and legal analysis regarding “relevant property” which can be summarised as follows:

1. Residential property is ‘relevant property’, despite not being rateable. The occupier of a residential property, or the owner of a residential property where it is not occupied, is a liable person, despite there being no liability to pay rates.
2. There is an obligation under section 11(1) of the 2019 Act on the owner of a residential property capable of being occupied to notify changes of ownership or occupation, on penalty of criminal sanction, notwithstanding that no rates are payable.
3. The same interpretation applies to many other property types that, whilst not rated or rateable, constitute relevant property within the meaning of schedule 3 of the Valuation Act 2001. For example, this would include agricultural land, land developed for forestry or sport, buildings used for community sport, farm buildings, buildings used for religious worship and hospitals.

It appears unlikely that this was the intended effect of the legislation but the imposition of such an obligation to notify in respect of such a property is onerous and may arise as a result of a drafting error.

2. Liable Person

Appendix 1 outlines the relevant legislation, case law and legal analysis regarding “liable person” which can be summarised as follows.

There is a conflict between section 4(4)(a) and section 4(4)(b) of the 2019 Act. Paragraph (a) provides that the liable person is determined on the first day of the local authority financial year (currently 1 January) as the occupier or the person entitled to occupy the property on that day. It appears that it was the intention of the Oireachtas that the liable person could change during the course of the rates year. Paragraph (a) is “*Subject to paragraph (b)*” and paragraph (b) introduces the concept of a ‘subsequent liable person’.

However, section 4 does not provide that a liable person can cease to be a liable person before 1 January the following year. For instance, there is nothing in the provisions to say that where a tenant assigns their lease, they cease to be the liable person and the assignee becomes the liable person. The wording in section 4(4)(b) “*Where ... [the liable person] to whom a rates bill has been given under this section ceases to be the liable person*” does not cause them to cease to be a liable person.

Whilst the 2019 Act introduces and attempts to provide for apportionment of rates between a seller and a buyer where rates have not yet been fully paid for the year, the issue we have identified with the definition of ‘liable person’ in the 2019 Act is such that, it may be argued that the ‘liable person’ remains the liable person for the rates until the end of the year. There appears to be a drafting error and the introduction of the concept of ‘subsequent liable person’ does not adequately deal with this.

The uncertainty surrounding the definition of ‘liable person’ also has a number of knock-on effects and flows through a lot of the remaining rates provisions, in particular, the notification obligations under section 11(1) and section 10(2A)(a).

3. Existing Charges Under Section 32 of the LGRA 2014

Any charge that arose on a property under section 32(3) or section 32(5) of the LGRA 2014 will continue to apply notwithstanding the repeal of section 32.²

Any such charge would continue to apply indefinitely as against an owner until such time as it is discharged or for 12 years as against purchasers in good faith for value and mortgagees. This is fundamentally different to the new provisions introduced by section 14 of the 2019 Act, which essentially provides that a charge for unpaid rates imposed under the 2019 Act falls away upon a sale. Notwithstanding section 14, practitioners acting in a conveyance/lease of property would still need to make enquiries and satisfy themselves that there is no pre-existing charge under section 32 of the LGRA 2014. This presents practical difficulties and uncertainty as there is no register showing such charges against properties that could be checked and, typically, such a charge is not registered against a property in the Registry of Deeds or Land Registry.

We question whether it was indeed the intention of the legislators for any pre-existing charges under section 32 of the LGRA 2014 to continue to apply or whether this was simply an oversight. If the latter is the case, an amendment to the legislation would be required to provide that any charge in respect of any unpaid rates either imposed under the 2019 Act or arising under the LGRA 2014 falls away upon a sale.

In the interests of conveyancing practice and certainty, we submit that the legislation should be amended so that only charges arising under the 2019 Act going forward should be of concern to practitioners as part of the conveyancing process.

4. The Rates Database and Obligation to Notify Under Section 10(2A)

Section 10(2A)(a) of the 2019 Act requires the liable person to notify the local authority upon becoming aware of a change in particulars on the rates database relating to that liable person or the property.

There are two issues with this requirement:

1. The legislation is not exhaustive in what particulars are to be included in the database. Section 10(2)(e) permits local authorities to determine what additional information is appropriate to hold in relation to the property. A question arises as to whether the doctrine of notice applies to the contents of this database and therefore whether or not it will be necessary for those selling/acquiring/leasing property to check the rates database in each instance as to what information is held. Will this information be publicly available and will it be possible for practitioners acting in the sale/acquisition/lease etc of property to have access to this information?
2. Both section 10(2A)(a) and section 11(1) of the 2019 Act impose new notification obligations. Whilst section 11(1) allows a person authorised in writing by a liable person to give the notification required under that section (upon a change in the liable person), section 10(2A)(a) does not provide for this. It requires the liable person in every instance to give this notification. There does not seem to be any obvious rationale for this. Practically speaking, for example, it could result in the solicitor acting for a vendor in a sale giving the notice under section 11(1) whilst requiring a separate notification to be given personally by that vendor under section 10(2A)(a). There does

² Sections 26(2)(b) and 27(1)(c) and 27(1)(d) of the Interpretation Act 2005.

not appear to be any obvious benefit or logic to this approach. The notification given by the solicitor should also be sufficient for the purposes of section 10(2A)(a). An amendment to section 10(2A)(a) would be required to allow a person authorised in writing on behalf of the liable person to give the notification.

5. Section 13 of the 2019 Act

Appendix 1 outlines in more detail several issues with section 13 of the 2019 Act, which are summarised below.

(a) The meaning of 'sell' or 'sale'

The 2019 Act does not provide a definition of 'sale' or 'sell'. There is a lack of clarity around whether 'sell' or 'sale' for the purposes of section 13(1) includes all or any of the following:

- an occupational lease;
- an assignment of an occupational lease;
- sub-letting by an occupational tenant;
- surrender of a lease; or
- granting of a licence in circumstances where the licensee becomes the liable person.

(b) Requirement to pay rates before completion

Section 13(1) requires that a liable person who proposes to sell a property must **before** completion of the sale discharge any rates imposed under the 2019 Act that are owing by that liable person.

This requires a liable person to discharge rates arrears before they have received the sale proceeds from the sale of the property. This can present cash flow difficulties and does not take account of conveyancing practice where an undertaking to discharge any outstanding arrears or outlays out of the proceeds of sale is often given and the arrears are then paid in compliance with that undertaking after the sale completes and the sale proceeds are received.

The requirement to discharge the rates before completion of a sale can also present a practical difficulty where the rates have not yet been levied by the local authority for the current rates year, particularly where a sale completes in the first couple of weeks in January, and the amount is not yet known for rates for the current year.

(c) Conflict between section 13(1) and section 13(2)

Whilst section 13(1) requires the liable person proposing to sell a relevant property to pay any rates due by that liable person up to the day **before** completion, section 13(2) provides that the local authority is to provide confirmation of the amount of rates owing by that liable person as **of** the date of expected completion.

There is a day's difference between what is owed by the liable person and what amount is to be confirmed by the local authority. This would appear to be an anomaly and drafting error.

(d) Sales by receivers/mortgagees

- (i) *Sales by receivers*: There is a lack of clarity over whether a receiver (who acts as agent of the mortgagor) is deemed to be the 'liable person' proposing to sell the property under section 13, such that the receiver would be liable to pay outstanding

rates owing by a mortgagor before the sale. In addition, in a sale by a receiver, who is the party obliged to serve a notice on the local authority under section 10(2A)(a) and section 11(1) – is it the receiver or the mortgagor?

- (ii) *Sales by mortgagees not in possession:* It would appear that there is no obligation on a mortgagee not in possession (**mortgagee NIP**) to discharge any outstanding rates owing by a mortgagor as a sale by a mortgagee NIP is not a sale by the liable person and so it would not fall under section 13.
- (iii) *Sales by mortgagees in possession:* it is arguable that a mortgagee in possession (**MIP**) who takes possession of a property after 1 January in any year and sells that property before 31 December in the same year does not become the 'liable person'. The opposite result would apply if the MIP is in possession of the property on 1 January in any year prior to the sale. In such instance the MIP would become the 'liable person' and would be required to discharge any outstanding rates due by the MIP before a sale. It seems unlikely that such contrasting outcomes were intended. In either case, as it would be a sale by the MIP and not by the mortgagor, there would appear to be no obligation on the mortgagor under section 13 to pay rates owing by them before the sale by a MIP. Given the lack of clarity around section 13 and the definition of 'liable person' the position is not clear. In addition to the obligation to pay rates, there is a lack of clarity over who is obliged to give any notification under section 10(2A)(a) and section 11(1) upon a sale by a MIP.

6. Section 14 of the 2019 Act

We have identified some issues with section 14 of the 2019 Act, which are set out below.

(a) The meaning of 'sold'

Section 14(2A) provides that a charge in respect of unpaid rates will cease to apply where a property is sold such that the liable person referred to in section 14(1) ceases to be the owner of the property.

There is a lack of clarity as to what constitutes 'sold'. No definition of 'sold' is contained in section 14 or elsewhere in the 2019 Act. Does 'sold' include all or any of the following:

- a CPO;
- a sale for no consideration or at an under value;
- an occupational lease;
- an assignment of an occupational lease;
- sub-letting by an occupational tenant;
- surrender of a lease; or
- granting of a licence in circumstances where the licensee becomes the liable person?

Unlike section 13, section 14 does not confirm that 'sold' includes, for example, a compulsory purchase. Given that the owner would change in a CPO, 'sold' is likely intended to capture a CPO. Is it also intended to include a transfer of property for no consideration or at an under value? The owner in such a transfer would be changing and there is no exclusion in respect of such a transfer contained in section 14 so it appears that 'sold' for the purposes of section 14(2A), although possibly not intended by the Oireachtas, would include such a transfer.

The application of section 14 to the grant of leases (both long leases and occupational leases) and dealings with those including assignments, surrenders, sub-lettings, forfeiture and

exercise of break options is unclear, with the potential for differing application in different circumstances.

(b) Position with charge after sale by mortgagee/receiver

Section 14(2A) provides that a charge in respect of unpaid rates will cease to apply where a property is sold such that the liable person referred to in section 14(1) ceases to be the owner of the property³.

Where a receiver is appointed or a mortgagee takes possession in order to sell a property, they become the 'owner' of that property within the meaning of section 14, being the party entitled to receive the rent of the property⁴.

The appointment of a receiver or taking of possession by a mortgagee would not constitute 'sold' under section 14(2A), which means that any charge arising on the property due to rates arrears owing by the borrower (mortgagor) would not fall away upon the receiver's appointment/the mortgagee taking possession.

The application of section 14(2A) to any charge upon the subsequent sale of a property by a receiver/mortgagee in possession (**MIP**) is, however, not clear.

It would appear that any charge arising on a property due to arrears owing by a MIP as a liable person would fall away upon a sale by that MIP. However, it is not as clear whether a charge arising due to arrears owed by a mortgagor would cease to apply upon a sale by a receiver/MIP. Arguably, the 'owner' would already have changed upon the appointment of the receiver/mortgagee taking possession and the sale by the receiver/MIP would not result in the liable person ceasing to be the owner within the meaning of the 2019 Act. It could also be argued that the mortgagor remains the 'owner' when a receiver is appointed/mortgagee takes possession (both of them being 'owners' simultaneously) and any sale by a receiver/MIP would result in a change of owner such that any charge for unpaid rates owing by the mortgagor would fall away under section 14(2A).

A mortgagee not in possession (**NIP**) is neither the 'owner' of the property nor the 'liable person'. If no receiver has been appointed, then the mortgagor remains both the 'owner' and the 'liable person'. Any outstanding rates levied on the mortgagor as liable person from 1 January 2024 will be a charge on the property. When the property is sold, the mortgagor shall cease to be the owner and the charge on the property will fall away.

The position is not as straightforward when a receiver has been appointed before the sale by the NIP (as is often the case). The mortgagor ceases to be the 'owner' when the receiver is appointed.

³ Section 14(1) provides that:

"Subject to subsection (2A), any rates levied by a rating authority in respect of a relevant property payable under this Act and any interest referred to in [section 12](#) which is due and unpaid by the owner of the relevant property in the owner's capacity as a liable person shall be and remain a charge on the relevant property to which it relates."

⁴ 'Owner' is defined in section 1 of the 2019 Act as follows:

"owner" in relation to a relevant property, means a person (other than a mortgagee not in possession) who, whether in that person's own right or as trustee or agent for any other person, is entitled to receive the rent of the property or, where the property is not let, would be so entitled if it were so let;" [emphasis added]

If the receiver was appointed prior to 1 January 2024, any outstanding rates levied on the mortgagor as liable person since 1 January 2024 will not be charged on the property, as the mortgagor is not the 'owner' under the 2019 Act.

If the receiver was appointed after 1 January 2024, any outstanding rates levied on the mortgagor as liable person from 1 January 2024 until the appointment of the receiver will be charged on the property. As the mortgagor ceases to be the owner on appointment of the receiver, rather than on the sale of the property, any such outstanding rates that are not discharged prior to sale will remain charged on the property and will not fall away on the sale.

The nuanced application of section 14(2A), lack of clarity and potential for differing approaches or interpretations to be taken creates a high level of uncertainty surrounding sales of properties by secured lenders and receivers, especially for purchasers acquiring from them in circumstances where there are any rates owing by mortgagors.

Conclusion

For the reasons set out above, the Law Society requests that the Minister for Housing, Local Government and Heritage considers the proposals that we have outlined in this Submission, with a view to introducing amending legislation to correct the deficiencies that we have identified.

The Law Society, in particular through members of its Conveyancing Committee, would be pleased to expand on any aspect of this Submission.

For further information on any aspect of this submission, please contact the Policy Department of the Law Society of Ireland at: PolicyTeam@LawSociety.ie

APPENDIX 1

LEGAL ANALYSIS

1. Relevant Property

Section 11 of 2019 Act provides that:

11. (1) Where a person (in this subsection referred to as the ‘person concerned’)—

(a) ceases to be a liable person in respect of a relevant property,

(b) becomes a liable person in respect of a relevant property, or

(c) changes his or her status as a liable person in respect of a relevant property by virtue of—

(i) ceasing to fall within paragraph (a)(i) of subsection (4) of section 4 but falling within paragraph (a)(ii) of that subsection in respect of such property, or

(ii) ceasing to fall within paragraph (a)(ii) of subsection (4) of section 4 but falling within paragraph (a)(i) of that subsection in respect of such property, the person concerned (or such other person as the person concerned has authorised in writing to act on his or her behalf for the purposes of this subsection) shall, not later than 10 working days after the date on which the person concerned falls within paragraph (a), (b) or (c), as the case may be, give notice in writing of that fact (and, where the person concerned falls within paragraph (a), particulars known (if any) to the person concerned of the name and address of any person who has become a liable person in respect of the relevant property upon the person concerned ceasing to be a liable person in respect of the relevant property) to the rating authority concerned and in the notice specify that date and the relevant property.

(2) A person who, without reasonable excuse, contravenes subsection (1) shall be guilty of an offence and shall be liable, on summary conviction, to a class A fine.

(3) The Minister may make regulations for the purposes of specifying the information or documents (or copies of documents) which shall accompany a notice under subsection (1) or a notice under that subsection which falls within a class of such notices specified in the regulations.

The 2019 Act provides the following definitions:

“‘liable person’ shall be construed in accordance with section 4;

[...]

‘relevant property’ has the same meaning as it has in the Valuation Act 2001;”

The Valuation Act 2001 (the **2001 Act**) provides that:

“‘relevant property’ shall be construed in accordance with Schedule 3;”

Schedule 3 of the 2001 Act identifies the nature of relevant property and includes lands used or developed for any purpose and any constructions affixed thereto. Section 2 of Schedule 3 requires that the property:

“(a) is occupied and the nature of that occupation is such as to constitute rateable occupation of the property, that is to say, occupation of the nature which, under the enactments in force immediately before the commencement of this Act (whether repealed enactments or not), was a prerequisite for the making of a rate in respect of occupied property, or

(b) is unoccupied but capable of being subject of rateable occupation by the owner of the property”.

As to the definition of rateable occupation in *Fibonacci Property ICAV v Commissioner of Valuation* [2020] IEHC 31, the Court noted:

“There is no definition of rateable occupation in the Act although there is a definition of occupier as being ‘in relation to property (whether corporeal or incorporeal), every person in the immediate use or enjoyment of the property.

However, there is a significant volume of case law in relation to what constitutes rateable occupation. In Telecom Éireann v. Commissioner of Valuation [1994] IR 66, O’Hanlon J., referring back to Keane J.’s work on ‘The Law of Local Government in the Republic of Ireland’, identified the essential ingredients of rateable occupation i.e. that it must be, (1) exclusive in the sense that the person using the hereditament can prevent any other person from using it in the same way; (2) of value or benefit to the occupier but not necessarily of financial benefit; and (3) not for too transient a period.”

It is clear that residential property is relevant property. In *Commissioner of Valuation v Birchfox Taverns Limited* [2008] IEHC 110, the Court held:

“Some relevant property is not rateable under Schedule 4. This includes any domestic premises (i.e. property which consists wholly or partly of premises used as a dwelling and which is neither a mixed premises nor an apart-hotel).”

Accordingly, residential property is relevant property, despite not being rateable. Section 4(4)(a) of the 2019 Act provides:

“Subject to paragraph (b), the following persons (in this Act referred to as a ‘liable person’) are liable to pay the rate levied under this section:

- (i) the occupier of the relevant property on the day specified in subsection (3);*
- (ii) if the relevant property is unoccupied on that day, the person who is for the time being entitled to occupy the property on that day.”*

The text “*are liable to pay the rate levied under this section*” appears to be a substantive provision that imposes an obligation on liable persons, rather than forming part of the definition of ‘liable person’.

Accordingly, the occupier of a residential property, or the owner of a residential property where it is not occupied is a liable person, despite there being no liability to pay rates.

Based on this analysis, there appears to be an obligation under section 11(1) of the 2019 Act on the owner of a residential property capable of being occupied to notify changes of ownership or occupation, on penalty of criminal sanction, notwithstanding that no rates are payable.

The same interpretation applies to many other property types that, whilst not rated or rateable, constitute relevant property within the meaning of schedule 3 of the 2001 Act. For example, this would include agricultural land, land developed for forestry or sport, buildings used for community sport, farm buildings, buildings used for religious worship and hospitals.

It appears unlikely that this was the intended effect of the legislation but the imposition of such an obligation to notify in respect of such a property is onerous and may arise as a result of a drafting error.

There are other issues that arise from the definition of relevant property. For instance, the local authority is obliged to maintain a database in respect of all relevant properties which would, on our interpretation set out above, include many property types that are not rated or rateable.

2. Liable Person

Section 4(3) and 4(4) of the 2019 Act provide as follows:

“(3) The rate calculated under this section shall be due and payable on the first day of the local financial year to which the rate applies.

(4) (a) Subject to paragraph (b), the following persons (in this Act referred to as a ‘liable person’) are liable to pay the rate levied under this section:

- (i) the occupier of the relevant property on the day specified in subsection (3);*
- (ii) if the relevant property is unoccupied on that day, the person who is for the time being entitled to occupy the property on that day.*

(b) Where a rate has been levied in respect of a relevant property in any local financial year and the liable person to whom a rates bill has been given under this section ceases to be the liable person in respect of the relevant property before the end of that year and has not paid the rate so levied, such liable person shall be liable to pay that portion of the rate levied in respect of that part of that year during which he or she remained the liable person and the remaining portion of the rate shall be levied on any subsequent liable persons on a pro-rata basis in respect of that part of that year in respect of which they were such liable persons.” [emphasis added]

There is a conflict between paragraphs (a) and (b) of subsection 4(4). Paragraph (a) provides that the liable person is determined on the first day of the local authority financial year

(currently 1 January) as the occupier or the person entitled to occupy the property on that day. It appears that it was the intention of the Oireachtas that the liable person could change during the course of the rates year. Paragraph (a) is “*Subject to paragraph (b)*” and paragraph (b) introduces the concept of a ‘subsequent liable person’.

However, section 4 does not provide that a liable person can cease to be a liable person before 1 January the following year. For instance, there is nothing in the provisions to say that where a tenant assigns their lease, they cease to be the liable person and the assignee becomes the liable person. The wording in section 4(4)(b) “*Where ... [the liable person] to whom a rates bill has been given under this section ceases to be the liable person*” does not cause them to cease to be a liable person.

As the statute relates to raising money it is likely to be treated as a tax statute and as such it is not clear that a purposive approach may be taken to interpreting the provisions, to the disadvantage of any potential ratepayer. The leading case in this regard is *Bookfinders Ltd. v. Revenue Commissioners* [2020] IESC 60.

In *Bookfinders*, O’Donnell J. acknowledged (at para.46) as follows:

“It follows that I should not have suggested [in his earlier Supreme Court judgment in the O’Flynn Construction case) that s. 5 of the Interpretation Act 2005 allowed a “purposive interpretation” of taxation statutes. Rather, such statutes must be taken to be within the exception of provisions relating to “the imposition of a penal or other sanction” unless the legislature otherwise provides.”

But O’Donnell J also held that the fact that a purposive approach within section 5 of the Interpretation Act 2005 is not available in interpreting tax statutes, does *not* mean:

“... that the interpretation of tax statutes cannot have regard to the purpose of the provision in particular, or that the manner in which the court must approach a taxation statute is to look solely at the words, with or without the aid of a dictionary, and on that basis conclude that, if another meaning is capable of being wrenched from the words taken alone, the provision must be treated as ambiguous, and the taxpayer given the benefit of the more beneficial reading. Such an approach can only greatly enhance the prospects of an interpretation which defeats the statutory objective, which is, generally speaking, the antithesis of statutory interpretation.”

Whilst the 2019 Act introduces and attempts to provide for apportionment of rates between a seller and a buyer where rates have not yet been fully paid for the year, the issue we have identified with the definition of ‘liable person’ in the 2019 Act is such that, it may be argued that the ‘liable person’ remains the liable person for the rates until the end of the year. It is not clear whether this was intended to be the case but, in our view, there appears to be a drafting error and the introduction of the concept of ‘subsequent liable person’ does not adequately deal with this.

It appears to us that in order to achieve what appears to be the intention, provision should have been made:

- for a liable person to cease to be the liable person on the date where they cease to occupy the property and have no continuing entitlement to do so or, if the property is vacant, on the date where they cease to have an entitlement to occupy the property; and

- for any person who succeeds (i) the liable person as occupier of the relevant property, or (ii) if unoccupied, to the liable person's *entitlement* to occupy the relevant property to be the liable person in respect of that property (as the "subsequent liable person").

The uncertainty surrounding the definition of 'liable person' also has a number of knock-on effects and flows through a lot of the remaining rates provisions, in particular, the notification obligations under section 11(1). On the interpretation of 'liable person' outlined above, it follows that the liable person cannot change until 1 January in the following rates year, which would mean that the ten working days permitted to give notice in respect of a change in the liable person would only commence from 1 January in the year following the change in occupation. We presume this was not intended by the legislators, who intended that notice be given within 10 days of a change in occupation. The same rationale would also apply in certain cases to the obligation on the liable person to notify the local authority of a change in particulars in the rates database under section 10(2A)(a).

3. Section 13 of the 2019 Act

The Law Society has identified 4 issues with this section as follows.

(a) The meaning of 'sell' or 'sale'

Section 13(1) of the 2019 Act provides that:

"(1) The liable person in respect of a relevant property who proposes to sell the property shall, before the completion of the sale, pay to the local authority concerned any rates imposed under this Act and accrued interest which is due and payable in respect of that property—

(a) for the period up to and including the day immediately before such completion, and;

(b) for which the person is liable in the person's capacity as a liable person."

The 2019 Act does not provide a definition of 'sale' or 'sell'. Section 13(4) merely provides that 'sale' includes, amongst other things, the transfer of a property by the owner (or by a trustee or per rep of the owner) to another person in consequence of a CPO, or a transfer for no or below market value consideration.

There is a lack of clarity around whether 'sell' or 'sale' for the purposes of section 13(1) includes all or any of the following:

- an occupational lease;
- an assignment of an occupational lease;
- sub-letting by an occupational tenant;
- surrender of a lease; or
- granting of a licence in circumstances where the licensee becomes the liable person.

The application of section 13 to the grant of leases (both long leases and occupational leases) and dealings with those including assignments, surrenders, sub-lettings, forfeiture and exercise of break options is unclear, with the potential for differing application to different circumstances. The application of section 13 is dependent on whether any of those dealings is considered a proposal to "sell" i.e. whether it is considered that the grant of a long lease is a sale, but the grant of an occupational lease is not; whether an assignment of a lease is a sale irrespective of the length of term; and whether a surrender is considered a sale, but a forfeiture or exercise of a break option is not.

(b) Requirement to pay rates before completion

The requirement to pay arrears before completion of the sale represents a departure from the position that applied previously under section 32 of the LGRA 2014, which did not require rates arrears to be discharged before completion of the sale.

The requirement to discharge the rates before completion of a sale can also present a practical difficulty where the rates have not yet been levied by the local authority for the current rates year, particularly where a sale completes in the first couple of weeks in January, and the amount is not yet known for rates for the current year. Granted, a statement can be requested from the local authority in respect of any outstanding rates. However, local authorities have 10 working days within which to provide that statement. Such a statement may not be received in time for a sale to complete within the first couple of weeks of January at a time when the rates will not yet have been levied.

(c) Conflict between section 13(1) and section 13(2)

Nothing further to add to this section.

(d) Sales by receivers/mortgagees

(i) Sales by receivers

There is a lack of clarity over whether a receiver (who acts as agent of the mortgagor) is deemed to be the 'liable person' proposing to sell the property under section 13, such that the receiver would be liable to pay outstanding rates owing by a mortgagor before the sale.

If a receiver is required to discharge outstanding rates of a mortgagor, the requirement that such rates be paid **before** a sale poses significant practical difficulties as such rates would ordinarily be paid by a receiver out of the proceeds of sale **after** the sale completes.

In addition, in a sale by a receiver, who is the party obliged to serve a notice on the local authority under section 10(2A)(a) and section 11(1) – is it the receiver or the mortgagor? It would appear from the legislation that the mortgagor (if they are the liable person) would be the party obliged to give the notice notwithstanding that the mortgagor may have had no involvement in the sale and may be unaware of the date of completion for the purposes of serving notice within the required timeframe. Moreover, a question arises as to whether or not a notice by the receiver would be sufficient to satisfy the obligations imposed on the mortgagor. Given that it is a criminal offence to breach the notification requirements, the legislation should clearly set out who is liable to serve the notice in the case of a sale by a receiver.

(ii) Sales by mortgagees not in possession

It would appear that there is no obligation on a mortgagee not in possession (**mortgagee NIP**) to discharge any outstanding rates owing by a mortgagor as a sale by a mortgagee NIP is not a sale by the liable person and so it would not fall under section 13. Similarly, there would be no obligation on the mortgagor to discharge rates before the sale under section 13 as, in a sale by a mortgagee NIP, the mortgagor is not the person proposing to sell.

Notwithstanding that it is a sale by a mortgagee NIP, where the mortgagor is the liable person it appears that they (and not the mortgagee NIP) would be obliged to comply with the notification requirements under section 10(2A)(a) and section 11(1) as they would be ceasing to be the liable person upon a sale by a mortgagee NIP.

(iii) Sales by mortgagees in possession

Given the anomaly identified with the definition of 'liable person', it is arguable that a mortgagee in possession (**MIP**) who takes possession of a property after 1 January in any year and sells that property before 31 December in the same year does not become the 'liable person'.

On this interpretation of 'liable person', in any such sale by a MIP, the MIP would not be the 'liable person' proposing to sell and so there would be no obligation on the MIP to discharge any outstanding rates before a sale. The opposite result would apply if the MIP is in possession of the property on 1 January in any year prior to the sale. In such instance the MIP would become the 'liable person' and would be required to discharge any outstanding rates due by the MIP before a sale. It seems unlikely that such contrasting outcomes were intended by the legislature depending on the date a mortgagee takes possession.

In either case, as it would be a sale by the MIP and not by the mortgagor, there would appear to be no obligation on the mortgagor under section 13 to pay rates owing by them before the sale by a MIP.

However, given the lack of clarity around section 13 and the definition of 'liable person' the position is not clear. In addition to the obligation to pay rates, there is a lack of clarity over who is obliged to give any notification under section 10(2A)(a) and section 11(1) upon a sale by a MIP. It would appear that such obligation would fall on the mortgagor (if the mortgagor is the liable person) and not on the MIP.

APPENDIX 2: Proposed Amendments to the Local Government Rates and Other Matters Act 2019

Section of the Act	Issue	Proposed Solution
Section 1	<p>Relevant Property</p> <p>The definition of Relevant Property is set out in section 1 as “having the same meaning as it has in the Valuation Act 2001”</p> <p>The Valuation Act 2001 provides that “‘relevant property’ shall be construed in accordance with Schedule 3.</p> <p>Schedule 3 of the 2001 identifies the nature of relevant property and includes lands used or developed for any purpose and any constructions affixed thereto. Section 2 of Schedule 3 requires that the property:</p> <p>“(a) <i>is occupied and the nature of that occupation is such as to constitute rateable occupation of the property, that is to say, occupation of the nature which, under the enactments in force immediately before the commencement of this Act (whether repealed enactments or not), was a prerequisite for the making of a rate in respect of occupied property, or</i></p> <p>(b) <i>is unoccupied but capable of being subject of rateable occupation by the owner of the property”.</i></p>	<p>Amend the definition of Relevant Property in the 2019 Act so that it has a standalone meaning and expressly excludes property that is not rateable or that it is to be construed in accordance with the Valuation Act 2001 but excludes property that is not rateable.</p>
Section 4	<p>Liable Person</p> <p>There is a conflict between sections 4(4)(a) and 4(4)(b). Sections 4(3) and 4(4) of the 2019 Act provide as follows:</p> <p>“(3) <i>The rate calculated under this section shall be due and payable on the first day of the local financial year to which the rate applies.</i></p> <p>(4) (a) <i>Subject to paragraph (b), the following persons (in this Act referred to as a ‘liable person’) are liable to pay the rate levied under this section:</i></p> <p>(i) <i>the occupier of the relevant property <u>on the day specified in subsection (3)</u>;</i></p>	<p>Amend section 4(4)(a) to provide that the liable person shall cease to be the liable person on the date they cease to be the occupier of the relevant property or, if the relevant property is unoccupied, on the date they cease to be the person who is for the time being entitled to occupy the property.</p>

	<p>(ii) <i>if the relevant property is unoccupied on that day, the person who is for the time being entitled to occupy the property <u>on that day</u>.</i></p> <p>(b) <i>Where a rate has been levied in respect of a relevant property in any local financial year and the liable person to whom a rates bill has been given under this section <u>ceases to be the liable person</u> in respect of the relevant property <u>before the end of that year</u> and has not paid the rate so levied, such liable person shall be liable to pay that portion of the rate levied in respect of that part of that year during which he or she remained the liable person and the remaining portion of the rate shall be levied on any subsequent liable persons on a pro-rata basis in respect of that part of that year in respect of which they were such liable persons.” [emphasis added]</i></p> <p>Section 4 does not provide that a liable person can cease to be a liable person before January the following year.</p>	
Section 10	<p>Rates Database Section 10(2)(e) permits local authorities to determine what additional information is appropriate to hold in relation to the property and is not exhaustive. It is not clear if the doctrine of notice applies to the contents of this database.</p>	<p>There should be a defined list of information for the notification required under section 10(2A)(a).</p> <p>It should be clarified if the rates database will be publicly available and accessible for practitioners acting in the sale/acquisition/lease of property.</p>
	<p>Obligation to Notify Section 10(2A)(a) and S 11(1) impose new notification obligations. Section 11(1) allows a third party authorised by the liable person to make a notification but section 10(2A)(a) does not permit this and obliges the liable person to give the notification in all cases. There is no logic to this different approach to the provision of notice.</p>	<p>An amendment to section 10(2A)(a) is required to allow a person authorised in writing on behalf of the liable person to give the notification.</p>
Section 13	<p>Lack of definition of ‘sale’/‘sell’ There is a lack of clarity as to what constitutes ‘sale’ or ‘sell’ in the absence of a definition of these terms in the 2019 Act.</p>	<p>Amend the 2019 Act to include a definition of ‘sale’/‘sell’ (within the meaning of section 13) to clarify if the following are included; (i) an occupational lease; (ii) an assignment of an occupational lease; (iii) sub-letting by an occupational tenant; (iv) surrender of a lease; or (v) granting of a licence in circumstances where the licensee becomes the liable person.</p>

	Requirement to pay rates before sale Section 13(1) requires that a liable person who proposes to sell a property must discharge any rates imposed under the 2019 Act before completion of the sale. This presents practical difficulties and goes against practice.	An amendment to section 13 is required to provide that rates may be discharged on or before completion of a sale.
	Conflict between section 13(1) and section 13(2) Section 13(1) requires the liable person proposing to sell a relevant property to pay any rates due by them up to the day before completion. Section 13(2) provides that the local authority is to provide confirmation of the payable rates owing by that liable person as of the date of expected completion.	An amendment to section 13 is required to resolve this conflict.
	Sales by receivers/mortgagees There is a lack of clarity under what circumstances receivers, mortgagees in possession and mortgagees not in possession become a 'liable person'.	An amendment to section 13 is required to clarify the position.
Section 14	Lack of definition of 'sold' There is a lack of clarity as to what constitutes 'sold' in the absence of a definition of this term in the 2019 Act.	Amend the 2019 Act to include a definition of 'sold' (within the meaning of section 14) to clarify if the following are included; (i) a CPO (ii) a sale for no consideration or at an under value (iii) an occupational lease (iv) an assignment of an occupational lease (v) sub-letting by an occupational tenant (vi) surrender of a lease or (vii) granting of a licence in circumstances where the licensee becomes the liable person.
	Section 14(2A) Position with charge after sale by mortgagee/receiver How section 14(2A) operates when a receiver/mortgagee in possession sells a property is unclear. In addition, what is the position when a receiver has been appointed before the sale of a property by a mortgagee not in possession (NIP)? The lack of clarity and potential for differing approaches or interpretations to be taken with the application of section 14(2A) creates a high level of uncertainty surrounding sales of properties by secured lenders and receivers, especially for purchasers acquiring from them in circumstances where there are any rates owing by mortgagors.	An amendment to section 14 (2A) is required to clarify the position.
Additional Issue		
Section 32 LGRA 2014 (Repealed)	Any charge that arose on a property under section 32(3) or section 32(5) of the LGRA 2014 will continue to apply notwithstanding the repeal of section 32	The legislation should be amended so that only charges arising under the 2019 Act going forward apply.



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