

Property Services (Regulation) Bill

Regulatory Impact Analysis

Policy context

The law relating to the regulation of auctioneers and letting agents is set out in the Auctioneers and House Agents Acts 1947 to 1973¹. They provide, subject to limited exceptions, that no person shall carry on the business of auctioneer or letting agent unless they hold a licence issued by the Revenue Commissioners. This licence is issued annually on foot of an up-to-date certificate of qualification obtained from the District Court² and a further certificate that the applicant maintains the required money deposit or guarantee bond in the High Court³. The Acts also contain strict standards in relation to the keeping of client accounts which are designed to protect clients' funds, including in the event of the bankruptcy or insolvency of a licensee.

Advance notice of an application for a certificate of qualification must be served on the District Court and on the Superintendent of the Garda Síochána within whose district the principal place of business of the applicant is situated. It must also be advertised in a newspaper circulating in the relevant court area. The grant of a certificate of qualification by the District Court is subject to production of an accountant's certificate in relation to compliance with statutory provisions relating to the opening and keeping of client accounts. The District Court may refuse to issue a certificate of qualification where it considers that an applicant is not a fit and proper person to hold such a certificate. A successful applicant for an auctioneer's licence may also apply to the Revenue Commissioners for an auction permit in order to conduct auctions.

Auctioneering/Estate Agency Review Group

The Review Group was established in July 2004 in response to public concerns regarding the adequacy of existing statutory provisions, in particular concerns relating to the adequacy of standards, e.g. those relating to sales of residential property, and to the safeguarding of consumer interests.

The Review Group, which submitted its Report to the Minister for Justice, Equality and Law Reform in July 2005, identified significant shortcomings in the existing statutory framework. Major weaknesses included the following

- there was little uniformity across court districts in the interpretation of suitability requirements and regarding documentation to be produced during the licensing hearings;
- existing sanctions to combat misconduct were inadequate. Failure by a complainant to obtain satisfaction through the complaints procedures operated by the professional bodies themselves did not provide sufficient grounds for the District Court to refuse the required certificate of qualification (it is likely in any event that such a refusal would be a disproportionate response to complaints of a less-serious nature);

¹ No 10 of 1947; No 9 of 1967; and No 23 of 1973.

² Order 63 of the District Court Rules refers.

³ The deposit/bond, currently set at €12,700, is available to compensate clients where necessary.

- the existing licensing system did not cover property management agents and funds under their control (e.g. service charges or management fees) were not safeguarded under the client account provisions applicable to auctioneers/letting agents;
- existing deposit/bond provisions had not kept pace with house price inflation and compensation arrangements were, therefore, totally inadequate;
- existing practices and procedures relating to the sale of land by auction and by private treaty were not sufficiently transparent and did not inspire public confidence in the system, e.g. existing practice whereby a vendor could bid up to the reserve price.

Reform recommendations

Arising from its analysis of the existing system and identification of weakness, the Review Group made a series of recommendations, including the following

- the existing District Court-based licensing system for auctioneers and house agents should be strengthened and transferred to a new Regulatory Authority and its scope should be extended to cover property management agents;
- the Regulatory Authority should set standards for the grant of licences (e.g. education/training standards, levels of professional indemnity insurance) and regulate standards for the provision of property services within its remit (e.g. terms of letter of engagement);
- the Regulatory Authority should have an investigative and enforcement function enabling it to investigate property services (whether in response to complaints or of its own motion) and impose appropriate sanctions;
- the Authority should administer a new Fidelity/ Compensation Fund which would be financed by means of contributions from licensees;
- existing safeguards for client funds should be extended to service charges/fees retained by management agents in respect of multi-unit developments and estates where management company structures are in place;
- additional statutory safeguards are required in relation to sales of land by auction (replacement of 'guide price' with more realistic 'advised minimum value') and private treaty (keeping a record of offers received and conditional acceptances) in order to protect the interests of both vendors and purchasers.

Objectives of reform

The overall objectives of the key reforms proposed by the Review Group and already accepted by Government are as follows

- reforming the property services licensing system to improve standards in the provision of such services, and extending it to cover management agents;
- improving consumer confidence in the property services market by promoting increased transparency and strengthening safeguards, including improved redress mechanisms and protection of client funds.

Property management companies and agents

One of the notable developments in the property market in recent years has been the increasing popularity of multi-unit apartment complexes. According to the Review Group, they account for about 50% of new housing accommodation in the Dublin area and up to a third nationally.

Purchasers of apartments in multi-unit complexes become members of a property management company (this model also applies in certain housing estates). This company is subject to company law requirements and is legally responsible for the maintenance and upkeep of the building, including common areas and facilities, e.g. lifts. One of its tasks is to draw up an annual maintenance budget which is funded from the annual 'service charge' paid by members (some of which may also be set aside in a 'sinking fund' for longer term or unexpected expenses).

The ownership and management of common areas in such complexes and the surrounding grounds pose particular problems. While the members making up the management company may decide to manage the complex themselves, it is much more common for the company to engage a management agent to manage it, deal with repairs, keep the accounts and pay the bills etc. This has led to the development of a new sector of activity within the property services market, i.e. the management of multi-unit complexes and housing estates on behalf of the owners who make up the management company.

The rapid spread of multi-unit complexes has led to the emergence of two sets of problems: firstly, the regulation and control of the services provided by property management agents; secondly; issues relating to the structure and operation of property management companies themselves.

According to the Review Group, improved regulation requires that management agents be of good character, have the necessary qualifications and have professional indemnity insurance. In short, the justification for extending the regulation of auctioneers and letting agents to management agents is to ensure high standards of service and protection of management company interests. It has been estimated that there may be in excess of 1,000 such businesses in operation at present, some of which may also operate as estate agents.

Identification of options for regulation of the property services sector

The principal options for future regulation of the sector are as follows:

⇒ No change

The Review Group has identified significant shortcomings in the existing licensing system and has presented compelling reasons in support of its recommendations for reform. Retention of the existing inadequate system is not a feasible option therefore.

⇒ Limited reform based on current system

One possible option could be to build on the current court-based system rather than establish a new regulatory structure. While this would avoid the need to establish the new statutory authority recommended by the Review Group, it would not address many of the shortcomings identified by the Group. For example, it would not overcome the lack of uniformity regarding standards across court districts, nor, more importantly, would it address the need to put in place a structure and mechanisms to investigate complaints, enforce standards and impose sanctions where appropriate.

It would also leave intact the current fragmented licensing system which involves the District Court (certificate of qualification), High Court (lodgement of deposit/guarantee bond); the Garda Síochána (notice party to application); and the Revenue Commissioners (issue of licences and permits).

⇒ **Establishment of Regulatory Authority**

The key recommendation of the Review Group is the establishment of a new Regulatory Authority with a range of functions designed to improve standards in the provision of property services market and to improve consumer confidence in that sector. When approving publication of the Group's Report in October 2005, the Government accepted this recommendation and approved preparation of the General Scheme of a Bill to give effect to it and other key recommendations in the Report.

The establishment of a new Regulatory Authority has been endorsed by the Law Reform Commission in its Report on Multi-Unit Developments. Moreover, establishment of the Authority constitutes an important element of the strategy to address problems arising in relation to the management of multi-unit developments.

Identification of costs and benefits

The principal costs involved are those directly related to establishment of the Regulatory Authority, i.e. staff salaries and related expenses; office accommodation and operating expenses; and investigation/enforcement expenses. The Review Group recommended that the Regulatory Authority should charge fees for its services, including licence fees, and envisaged that, when fully operational, it would be self-financing. Licensees will also be required to make contributions to a Property Services Compensation Fund (Part 9 and Schedule 6).

It has been estimated that the annual cost of the Authority's operations will be in the region of €3m. It is intended that this cost will be covered by fees charged to licensees. Section 25(3) of the Bill provides that "The total amount of fees charged annually under this Act shall, as nearly as may be, taking one year with another, be equal to the total expenditure incurred annually in the administration of this Act". In addition, licensees who are found to have engaged in improper conduct may, as part of a major sanction, be required to pay all or part of the costs of an investigation by the Authority (up to €50,000) and/or pay up to €50,000 into the Compensation Fund.

Pending enactment of the legislation, the Property Services Regulatory Authority has been established on a non-statutory basis and an Implementation Group has been appointed to assist and advise on practical matters relating to the establishment of the new body and to prepare for the new licensing system. The Implementation Group and the Chief Executive designate have been involved in establishing the necessary organisational structures, systems and procedures. Other activities have also been undertaken, e.g. a code of practice for auctioneers and house agents has been agreed following consultation with representative bodies and other interested parties and existing licensees have been invited to subscribe to it. Work is ongoing on the development of a Code of Practice for property management agents. A programme of education and training, designed specifically for the industry, is currently being prepared in consultation with the industry and the Institutes of Technology.

The establishment of the Property Services Appeal Board will also give rise to some costs. It is not possible at this stage to quantify these costs but they are not expected to be significant.

In any event, it will be possible for the Minister to make regulations to require persons appealing against a decision of the Authority to pay an appropriate fee.

It is expected that the transfer of current licensing functions from the District Court, High Court and Revenue Commissioners will lead to certain efficiency gains in these bodies.

The purchase of land, especially the purchase of residential accommodation, is one of the most important financial transactions that many people enter into during their lifetimes. It is in their interests, and therefore in the public interest, that the property services sector operates to high standards of probity and diligence and that its services are provided in a professional, efficient and transparent manner.

Impacts

National competitiveness

A professional and efficient property services sector can make an important contribution to creating and maintaining a positive business climate through the services it provides, whether in the area of residential accommodation or meeting the more specialised needs of the business sector.

Socially excluded or vulnerable groups

Adherence to high standards in the property services sector will benefit all consumers of such services, included socially-excluded or vulnerable groups. In particular, the investigative and enforcement role of the new Authority will provide an independent redress mechanism which may be of particular benefit to more vulnerable groups, e.g. older people.

Environment

It is expected that the licensing of management agents and the improved consumer awareness and clarification of the responsibilities and duties of such agents arising from the licensing system, will contribute to improved maintenance of the common areas in multi-unit complexes and surrounding areas. This will contribute to an improved landscape and land use.

Consumer and competition

One of the overall objectives of the reforms contained in the Bill is to improve consumer confidence in the property services market by promoting increased transparency and strengthening safeguards, including improved redress mechanisms and protection of client funds. The Report prepared for the National Consumer Agency⁴ strongly supports the recommendations of the Auctioneering/Estate Agency Review Group.

Citizens

The complaints procedure contained in the Bill will enhance citizens' rights, including protection of their property rights, e.g. improved maintenance of common areas within complexes and their surroundings will help to protect the value of the property.

Consultation

The Review Group invited written submissions from interested parties during the course of its work. Its Report lists the extensive range of professional bodies, interested groups and others who made submissions in response to its invitation.

⁴ See footnote 4

Enforcement and compliance

The new Regulatory Authority will have extensive investigative and enforcement powers in relation to its standards. Compliance with these standards, which will be set out in regulations made by the Regulatory Authority with the agreement of the Minister, will be a condition of the licences issued by the Authority.

Review

The operation of the new licensing system will be kept under review by the Regulatory Authority and the Minister.