

Guidelines for good practice on:

The Substantial Change Exemption in Rent Pressure Zone Areas



RTB

Bord um Thionóntachtaí Cónaithe
Residential Tenancies Board

About Us

What is the Residential Tenancies Board?

The Residential Tenancies Board (RTB) is a public body set up to support and develop a well functioning rental housing sector. We provide high quality information on the sector, resolve disputes between landlords and tenants and maintain a national register of tenancies.

What we do

Information, research and education

We provide high-quality information to tenants and landlords as well as to the general public on their rights and obligations, in terms both of living and providing accommodation in the rental sector. We also provide accurate and authoritative data on the rental sector, such as the Rent Index, which allows us to monitor trends in the rental sector, but also allows individuals to check and compare rents in particular locations.

Registrations

All private residential landlords and Approved Housing Bodies (not for profit housing providers, often referred to as AHBs or Housing Associations) are obliged to register their tenancies. At the end of 2016, there were 325,000 tenancies registered with us. A public register of tenancies is available on our website. The registration of tenancies enables us to collect important data on the sector, but is also a key part of regulating and supporting the sector and ensuring landlords and tenants are aware of their rights and responsibilities.

Dispute resolution

Since 2004, we have replaced the courts in dealing with the majority of disputes between landlords and tenants through our Dispute Resolution Service. This service offers a choice of resolution types to parties – mediation or adjudication.

1. Introduction

This guide has been prepared by the Residential Tenancies Board (RTB) to support landlords, tenants, agents and other stakeholders in understanding the requirements:

- (i) If a landlord is intending to rely on an exemption from a Rent Pressure Zone (RPZ) by reason of a substantial change to the nature of a rental property; or
- (ii) If a landlord intends to terminate a tenancy for the purpose of a substantial refurbishment or renovation of a rental property.

It is intended as a guide only and is prepared at the direction of the Minister for Housing, Planning and Local Government. The RTB has produced this guide using the powers under section 151 of the Residential Tenancies Act 2004 (as amended).



2. Who should read this guide?

There have been a lot of questions from both landlords and tenants on what is meant by a substantial change in the nature of rental accommodation and substantial refurbishment. The information in this guide, in respect of rent reviews, does not apply to Approved Housing Bodies or their tenants. **It is aimed at landlords and tenants in private rented properties in Rent Pressure Zone (RPZ) areas.**

It is important to note that, while this guide is focused, in particular, on Rent Pressure Zones, there are also requirements in the law in relation to rent reviews in private rented dwellings outside of Rent Pressure Zone areas.

Rent reviews outside of Rent Pressure Zones are restricted so that a landlord can only review the rent once in any two year period. However, similar to within Rent Pressure Zones where there is a substantial change in the nature of the accommodation provided, a landlord may review the rent before the two year period has ended and therefore many of the principles in determining what substantial change is are the same.

This guide is intended to help landlords and tenants to interpret the law and understand what both substantial change and substantial refurbishment mean in the context of rent reviews and termination of tenancies. Each individual case will differ and therefore the document provides guiding principles, which should be used to help determine if a property meets the substantial change or refurbishment requirements.

A table and examples are also provided along with details of what is required by landlords in terms of the provision of information. As individual circumstances will vary, it is the responsibility of the landlord to satisfy themselves that they are using the criteria for exemption correctly.

If a case relating to substantial refurbishment or substantial change to the nature of accommodation is referred as a dispute to the RTB, our independent decision makers (Adjudicators and/or Tribunal members) will consider the case on the facts and evidence of each case brought before them.

3. Context and Background

3.1 Context

There are certain rules that apply when setting or reviewing a rent, with additional rules applying where a property is located within what is known as a Rent Pressure Zone area.

In December 2016, Rent Pressure Zones were introduced in order to moderate the rise in rents in parts of the country where rents were highest. Some rental properties can use a limited exemption which allows for a review of the rent outside of the rent restrictions in these areas when a **substantial change in the nature of the accommodation** has occurred.

There has been some confusion as to what constitutes a 'substantial change' for the purposes of this exemption. This guide is intended to help people understand how to use it correctly.

There has also been confusion between the term 'substantial refurbishment' and 'substantial change.' Where a Part 4 tenancy (a tenancy that has been in place for over 6 months) exists a landlord may only terminate the tenancy on specific grounds, one of these is where the landlord intends to 'substantially refurbish' or renovate the property. This is a different requirement to what is required for rent exemptions in Rent Pressure Zones and a termination for substantial refurbishment does not

automatically entitle a landlord to exempt their rented property from Rent Pressure Zone restrictions. A substantial refurbishment does not always equate to a substantial change in the nature of the accommodation. Therefore, it is important that a landlord considers the termination of a tenancy and any subsequent claim of an RPZ exemption separately. This guide should assist landlords in doing this and support tenants in understanding their rights in these situations

In general, works that would be expected as part of on-going maintenance and upkeep of a property or works undertaken to bring a property up to meet minimum standards may not be relied on when seeking an exemption from Rent Pressure Zone rent restrictions for substantial change to the nature of the dwelling or substantial refurbishment.

3.2 What are Rent Pressure Zones?

In geographic areas designated as Rent Pressure Zones, rents can only rise using a prescribed formula by a maximum of 4% per annum. This applies to rents set at the start of a tenancy and when rents are reviewed during an on-going tenancy. The rent set for the property must also not be above market rent, and three examples of rents for comparable properties must be presented to demonstrate this.

The RTB has developed a RPZ Rent Calculator which can calculate the maximum rent amount permitted for the dwelling and this can be found on www.rtb.ie.

There are 21 Local Electoral Areas which have been designated as Rent Pressure Zones as well as all of Dublin and Cork City. The address of a property can be inputted into the RPZ Rent Calculator to determine whether it is located in a Rent Pressure Zone area.

3.3 What properties are exempt in Rent Pressure Zone areas?

Some properties are exempt from the 4% rent restriction in Rent Pressure Zone areas. Exemptions are available in two circumstances:

- (i) properties new to the rental market or those that have not been let in the previous two years; and
- (ii) properties which have undergone a **substantial change in the nature of accommodation that affects the letting value.**

It is important to note **that where an exemption is used where a property has undergone a substantial change in the nature of accommodation, it is a limited exemption. This means that a landlord can apply the exemption for either rent setting purposes or for the purposes of a rent review of an existing tenant only after the substantial change occurs. They cannot continue to apply this exemption for any following rent reviews.**

If a landlord uses this exemption they must follow a specific process to review the rent (see section 5).

4. What is a substantial change in the nature of accommodation for the purpose of an exemption in Rent Pressure Zone areas?

A property may be exempt from the Rent Pressure Zone restrictions if:

1. There has been a substantial change in the nature of the accommodation; and
2. It can be shown that the market rent for the property would be different as a result of this change than at the last time the rent was set or reviewed.

If a substantial change in the nature of the accommodation has occurred which would change the market rent for the tenancy from when it was last set or reviewed, then a property may be exempt from the rent review limits of 4% in a Rent Pressure Zone for the purposes of the rent review.

Once this exemption is used, a further rent review (which can only take place in 12 months) cannot rely on the same exemption unless a further change in the nature of the property has taken place.

4.1 Guiding principles when considering if there has been a substantial change in the nature of the accommodation

The following are the key guiding principles that should be used to determine if a property is suitable for exemption.

It is a matter for the landlord to satisfy themselves that there has been a **substantial change in the nature** of the accommodation as a direct result of the works being carried out. It is important that tenants are also aware of this information so they can enquire whether the right rent has been set.

1

Improvement versus change



When determining whether works would be considered a substantial change in the nature of the accommodation permitting a RPZ exemption, the extent of those works need to be considered and how they materially change the property. The following questions should be asked:

- **In what way is the nature of the property changed?**
- **Has the property been structurally changed?**
- **Has the property been extended, reconfigured or modified in some way, for example, has a bedroom been added or has the accommodation increased in size?**

Improvements to the property do not necessarily change the nature of the accommodation.

For example, an upgrade and modernisation of the property, replacing appliances or furniture for example, while improving the property, do not constitute a change in the nature of the accommodation being provided. The works must be out of the ordinary and not usual works which would be carried out to maintain the accommodation.

2

Minimum Standards for Rented Accommodation



Landlords are required to make sure the rented property meets minimum standards and that repairs they are responsible for are carried out within a reasonable timeframe. It is important to remember that, in general, **works undertaken that merely bring a property up to meet minimum standards would not be considered an eligible factor on their own to seek an exemption for substantial change to the nature of the accommodation.**

A complete modernisation of a property which includes a combination of works, including bringing the property up to minimum standards, may be suitable for exemption if the overall impact is to substantially change the nature of the accommodation.

3

On-going repairs and maintenance



A landlord is responsible for maintaining their rental property in a good state of repair and ensuring that the property is safe and healthy to live in. Ensuring a property is well maintained and repairs are carried out is a vital element of overall management of the dwelling and lack of maintenance can lead to greater expenditure over the longer term.

A landlord is responsible for repairs caused by normal wear and tear. Planned maintenance on a property is necessary to ensure that they continue to meet minimum standards and that they are in a suitable condition to rent. Planned maintenance over the lifetime of a property would normally include heating upgrades and/or replacement of kitchens and bathrooms etc.

Examples of cyclical (more regular) maintenance include electrical testing or rewiring, window servicing, servicing of heating systems, fire alarms and gutter cleaning.

In general, **these types of on-going repairs and maintenance are not considered substantial changes to the nature of the property** and are part of a landlord's ordinary responsibilities.

4

Evidence of a change in the letting value



The changes to the dwelling must be of such a kind and extent that they would have a significant effect on the letting value of the dwelling.

This would be over and above any change in the letting value that would have occurred due to changes in the rental market if the changes to the property had not been made. This means a landlords needs to be able to show that the rent at the last time it was either set or reviewed would have been different had these substantial changes been made. For example, if the property has been extended and an additional bedroom added, what would the rent for a 3 bed have been at the time compared to a two bed property in the same area?

When first setting the rent or reviewing the rent, landlords are recommended to retain evidence of comparable dwellings which support the letting value of the property. If seeking this information retrospectively an average rent dataset can be accessed on the RTB website or reference can be made to other property rental reports or valuations.

5

Determining if the change and works are substantial



In order to qualify for an exemption there not only needs to be a change in the 'nature' of the accommodation, but it must also be 'substantial' or significant. In this context it is useful to consider:

- the value of the works that are to be undertaken,
- whether the accommodation has increased in size or how it has been improved and/or enhanced?
- whether the works are so substantial to require the accommodation,
- the value of the works comparative to the annual rental value of the property.

Certification from an Architect or Structural Engineer may be useful.

Useful scenarios

Useful scenarios to help understand the guiding principles.

Scenario 1

Pat plans to carry out works on a house in a Rent Pressure Zone that will alter the internal layout of the property. He will add a downstairs bathroom and change the separate kitchen and dining rooms into an open plan kitchen/dining area. He will also redecorate the interior of the house. These works will require the tenant to vacate the property for two months and the cost of the works to the landlord will be in excess of €11,000 inclusive of VAT in verifiable expenditure.

This work is considered to be substantial change in the nature of the accommodation as the work has materially changed the layout of the property. Work of a lesser extent, in terms of its nature (e.g. refurbishment with no internal reconfiguration); of lesser duration; or lower costs (the cost of decoration work only) may not be considered a substantial change in the nature of the accommodation and rather a substantial refurbishment.

Scenario 2

Tom owns a semi-detached house in a Rent Pressure Zone. The house was part of new estate when he purchased it in 2005. He lived there for a short while but due to financial circumstances he has been renting the house to tenants since 2007. Tom had the same tenants for six years. They were paying a monthly rent of €1,300. Tom had not really carried out any repairs or maintenance to the house while the current tenants were there. When they leave he notices that the walls are very shabby and the cooker is in need of replacement. Tom also notices that the house is cold even when he puts the heating on.

Tom wants to increase the rent when he advertises the house for new tenants and he has heard that he can do so if he carries out some works and changes to the house.

Tom carries out the following works:

- Paints every room in the house.
- Installs a new cooker.
- Services the boiler.
- Replaces one of the windows.
- Buys new furniture.

This costs Tom €6,000. However, these works are unlikely to constitute a substantial change to the nature of the dwelling which would entitle Tom to an exemption to the Rent Pressure Zone rent restriction. The majority of the works that are carried out by Tom have been in accordance with his obligations as a landlord.

Scenario 3

Marie has just inherited a Georgian house in a Rent Pressure Zone from her great aunt. Her great aunt had been letting the house to a family who have told Marie they want to leave. Marie is surprised that they have been paying a monthly rent of €600.

When Marie inspects the house she believes that it is need of serious refurbishment to modernise it. Marie decides to undertake a significant modernisation programme and the following works are carried out:

- Re-wiring of the entire house.
- Installation of insulation.
- Painting of the entire house.
- Installation of new triple glazed windows.
- Removal of load bearing wall and addition of new kitchen area.

The works which cost approximately €30,000 are likely to constitute a substantial change and mean that Marie is entitled to an exemption from the Rent Pressure Zone rent restriction for the following reasons:

- The majority of the works are over and above Marie's statutory obligations as a landlord.
- Marie has expended a significant amount of money to substantially change the property which would improve the letting value.
- The nature of the accommodation has substantially changed, is now more energy efficient, and/or has been structurally altered.

What works, once completed, are likely to constitute substantial change?

The table below provides an outline of works that may be considered as a substantial change in the nature of accommodation. It is important to note that these are illustrative only and should not be considered in isolation. The guiding principles and scenarios should also be reviewed.

Likely to constitute a substantial change	Indicative examples
<p>Structural alterations or major renovation works</p> <p><i>Note that a combination of a number of improvements may be required</i></p>	<ul style="list-style-type: none"> ● Attic conversion ● Alterations for the addition of bedroom(s) ● Garage conversion ● Work on load bearing walls ● Change of interior floorplan e.g. ground floor bedroom to improve the layout of the property ● Alterations for disability access
<p>Substantially reducing energy usage and improving the property BER rating</p> <p><i>Note that a combination of a number of improvements may be required</i></p>	<p>Insulation upgrade</p> <ul style="list-style-type: none"> ● Attic insulation ● Cavity wall or dry lining ● External wall insulation <p>Services</p> <ul style="list-style-type: none"> ● Replacement boiler (more energy efficient) ● Replacement pipework and radiators ● Replacement cylinder <p>Windows and doors</p> <ul style="list-style-type: none"> ● Replacement of external windows & doors
Unlikely to constitute a substantial change	Indicative examples
<p>General upkeep/upgrade repairs and maintenance in line with meeting minimum standards.</p>	<p>Mandatory repairs and replacements for the maintenance of the interior and fittings.</p> <p>Upgrade of electrical installations including smoke alarms</p>
<p>Modernisation/Cosmetic improvement</p> <p><i>Note that a combination of a number of improvements may suffice as a substantial change</i></p>	<p>Internal upgrades (on an individual basis)</p> <p>Upgrade of kitchen</p> <p>Upgrade of bathroom(s)</p> <p>Painting and decoration</p> <p>Plaster repairs</p> <p>Replacement of carpets/flooring</p> <p>Painting, tiling and decorating</p>
<p>External works</p>	<p>Works to garden and boundaries</p>

5. What steps are required to utilise a substantial change in the nature of the accommodation exemption?

It is important that landlords follow the correct procedures under the Residential Tenancies Act (as amended) when seeking to rely on a substantial change exemption for Rent Pressure Zone and non-Rent Pressure Zone dwellings. In summary it must follow a two step rule:

1. Ensure that it meets the criteria using the guiding principles above.

- (i) Have the works carried out substantially changed the nature of the accommodation; **and**
- (ii) as a result of those works, would the rent level have been different to the market rent level at the time the rent was last set?

2. Ensure the tenant is provided with the required information

- (i) **For existing tenancies, a landlord is still required to serve a valid rent review notice in a specific format.**
If the property is within an RPZ and the landlord is seeking to rely on the substantial change exemption, the rent review notice must also confirm that the exemption is being relied on.

Landlords should show the tenant that as a result of the changes, the rent would have been different to what market rent for the dwelling would have been at the time the rent was last set (see example below).

A sample rent review notice for substantial change in the nature of accommodation can be downloaded from www.rtb.ie.

- (ii) **For new tenancies of dwellings previously subject to a tenancy in an RPZ**, a landlord needs to comply with their obligations to provide:
 - written information to the tenant on the amount of rent that was last set under the previous tenancy;
 - the date that rent was last set; and
 - a statement explaining how the rent was calculated considering the RPZ requirements.

- (iii) For tenancies where a substantial change has occurred, the landlord should provide a statement noting that they are seeking to rely on an exemption to the RPZ rules. The RTB recommends that best practice in seeking to rely on an exemption should mean that a landlord will retain the information or evidence supporting their reliance on an exemption and provide this to their tenant(s).
- (iv) Where **the dwelling is a new build or is new to the market (not let in previous 24 months)**, this obligation still applies. A landlord should provide the tenant with a statement confirming that the dwelling is a new build or is new to the market and therefore the RPZ formula does not apply to the calculation of the rent being set. The RTB recommends that best practice in seeking to rely on an exemption should mean that a landlord will retain the information or evidence supporting their reliance on an exemption and provide this to their tenant(s).

Example

The rent for a property in a Rent Pressure Zone has remained at €1,200 per month for the last 3 years. The landlord carries out works to change the nature of the accommodation and on completion seeks to increase the rent to new rent of €1,500. The dwelling is in a RPZ and the landlord wants to rely on the RPZ exemption to permit an increase above the 4% limit.

In this scenario, the landlord would have to satisfy themselves that:

- the works carried out amounted to a substantial change in the nature of the accommodation; and
- as a result of those works, the rent level would have been different to the market rent level at the time the rent was last set 3 years ago.

In order to do this, the landlord would need to ensure they have sufficient information or evidence available to support an assertion that there has been a change in the nature of the accommodation, and that the changes made mean that the rent level would have been different market rent was when the rent was last set for the tenancy 3 years ago.

6. What is substantial refurbishment or renovation for the purpose of ending a tenancy?

A Part 4 tenancy arises where a tenancy has lasted a minimum period of 6 months and because of this, the tenant is entitled to specific protections under the Residential Tenancies Act as long as the tenant complies with their own obligations.

One of the protections relates to the tenant's entitlement to remain in occupation for up to 4 years from the commencement of the tenancy (where the tenancy commenced prior to 24 December 2016) and for up to 6 years (where the tenancy commenced on or after 24 December 2016). The Residential Tenancies Act provides additional protections where a Part 4 tenancy is being ended, that is, it can only end for specific grounds and reasons.

One of the grounds on which a landlord can terminate a Part 4 tenancy is to undertake a substantial refurbishment or renovation of the property in a way which would require it to be vacated for that purpose. After the works are carried out, a landlord may set a new rent level for the new tenancy. This new rent level will be subject to the Rent Pressure Zone rules and therefore, the relevant rent increase limits will apply unless there has been a substantial change in the nature of the accommodation also.

6.1 Guiding principles when considering a substantial refurbishment or renovation of a property

Overleaf are the guiding principles, which should be considered when trying to determine if a tenancy needs to be terminated for substantial refurbishment or renovation. It is important to note that where a tenancy is terminated for the purposes of substantial refurbishment or renovation, if the property is complete, and available for re-let within 6 months of the termination, it must be offered for letting back to the original tenant.

1

Duration of works



In trying to understand substantial refurbishment, the nature and duration of the works should be considered carefully, including whether it is necessary or appropriate for the tenant to move out for these to take place. For example, if a kitchen is being fitted and the work is expected to take 3 or 4 days, then vacant possession of the property would not be required. In these cases, the landlord may come to an agreement with the tenant regarding the tenant leaving the dwelling for the period during which the works are being carried out.

The critical factor is whether it is necessary or appropriate for the tenants to move out for the works to take place.

2

Minimum Standards for Rented Accommodation



Landlords are required to make sure the rented property meets minimum standards and that repairs they are responsible for are carried out within a reasonable timeframe. It is important to remember that, in general, **any works undertaken that merely bring a property up to meet minimum standards would not be considered as an eligible factor on their own to terminate a tenancy on the ground of substantial refurbishment.**

A complete modernisation of the property, which includes a combination of works, including bringing the property up to minimum standards may allow for termination using the ground of substantial refurbishment.

3

On-going repairs and maintenance



A landlord is responsible for maintaining their rental properties in a good state of repair and ensuring that the properties are safe and healthy to live in. Ensuring a property is well maintained and repairs are carried out is a vital element of overall management of the dwelling and lack of maintenance can lead to greater expenditure over the longer term.

A landlord is responsible for repairs caused by normal wear and tear.

Planned maintenance on properties is necessary to ensure that they continue to meet minimum standards and that they are in a suitable condition to rent. Planned maintenance over the lifetime of a property would normally include heating upgrades and/or and replacement of kitchens and bathrooms etc.

Examples of cyclical, (more regular) maintenance include electrical testing or rewiring, window servicing, servicing of heating systems, fire alarms and gutter cleaning.

In general, these types of on-going repairs and maintenance are not considered substantial refurbishment to the nature of the property and are part of a landlord's ordinary responsibilities.

7. What is required if a landlord wishes to end a tenancy to carry out a substantial refurbishment or renovation?

There are two important aspects to ending a tenancy on this ground:

- 1. The proposed works must be substantial and**
- 2. The works must require the property to be vacated.**

If an empty property is required and, where a Part 4 tenancy exists, the landlord would need to end the tenancy in accordance with the law by providing a valid notice of termination. There are sample notices of termination available on the RTB website.

The notice of termination should, along with other required elements:

- set out the grounds being relied on to end the tenancy, and
- provide the correct length of notice period for the tenant to leave (see www.rtb.ie)

The Residential Tenancies Act (as amended) requires a landlord to:

- set out the works that are being carried out;
- provide a copy of the planning permission or where planning permission is not required, provide the name of the contractor/builder, if any, hired to do the work;
- provide the tenant with the dates on which the works will be undertaken; and
- provide the tenant with the expected length of time it will take to finish the work.

The nature and duration of the work is an important consideration. If the property only needs to be empty for a short number of days, then it may not be an appropriate reason to end the tenancy where some form of compromise could be reached between the landlord and tenant to allow the works to proceed. This could be in the form of a refund of rent for a short period or payment to the tenant.

The landlord must confirm that the existing or current tenant has the option of commencing a new tenancy in the refurbished or renovated dwelling if it becomes available within 6 months from the end of the notice period given (or if there is an RTB dispute on the validity of the notice, within 6 months of the end of that dispute). The duty to offer a new tenancy arises where the tenant has provided contact details.



8. Setting the rent level following a substantial refurbishment or renovation

It is important to note that it will not always be the case that a substantial refurbishment will equal a substantial change and therefore the RPZ exemption would not automatically apply.

If the property does not meet the substantial change requirements, the new rent level will be subject to the maximum 4% RPZ limit, which will allow a pro rata adjustment from the last rent review based on the 4% formula (see RTB rent calculator on www.rtb.ie). If the property does comply with RPZ exemptions criteria, see the previous section.

In both scenarios, there is also an obligation on the landlord to provide:

- written information to the tenant on the amount of rent that was last set under the previous tenancy;
- the date that rent was last set; and
- a statement explaining how the rent was calculated considering the RPZ requirements.

This would mean that either:

- (i) the rent is being set on the basis of the maximum 4% permitted RPZ increase, or
- (ii) that the landlord is relying on the exemption to increase the rent above the RPZ limits.

Referring a dispute

If there is a dispute between a landlord and tenant on any of these issues, the RTB offer a range of dispute resolution services. These services include mediation, which is free, or adjudication where both parties present evidence to an independent adjudicator who makes a determination on the issue (s). It costs €15 to submit a dispute application for adjudication online and €25 for a paper application.

Further information

More information and a webchat service is available on the RTB One Stop Shop which can be accessed by clicking www.rtb.ie

Should you wish to contact the Residential Tenancies Board by phone, you can call anytime between 8:30am and 6.30pm Monday to Friday.

Lo-call on **0818 30 30 37**. This is a low cost number from all landlines, however some mobile providers may charge a premium rate.

Our local number is **01 702 8100**. This may be cheaper or free as part of some mobile providers packages.

Please check with your provider and the bill payer before dialling.

Useful questions

In what way has the nature of the property changed?

Will the property have to be vacant for a significant length of time?

Have structural changes been made?

Has the property been extended, reconfigured or modified in some way?

Is the work bringing the property up to minimum standards?

Is the work ongoing repairs and maintenance?

Is there a change in the letting value of the property as a result of the change?

What is the value of the works to be undertaken?

What is the value of the works compared to the annual rental value of the property?



Disclaimer

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Contact Details

Residential Tenancies Board

PO Box 12323, Dublin 2

01 702 8100/0818 30 30 37

info@rtb.ie

For more information on the RTB,
please visit **www.rtb.ie**



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