

REAL ESTATE

COVID-19 Practical Considerations: New legislation assists residential tenants but creates uncertainty for commercial property

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Emergency legislation enacted on 27 March 2020 puts government measures to assist renters on a statutory footing, but a late amendment to the legislation has created uncertainty for landlords and tenants of commercial property.

UPDATE: The emergency protections for residential tenants under this legislation have been extended until 20 July by Statutory Instrument.

The Emergency Measures in the Public Interest (Covid-19) Act 2020 (the "Act") was signed by the President last Friday evening, 27 March 2020. The text of the Bill as passed by the Houses of the Oireachtas is linked [here](#).

The Act, amongst other things, amends the Residential Tenancies Acts to introduce emergency measures to prevent the service of termination notices and rent increases during an emergency period (the "Emergency Period"). The Emergency Period was initially of three months' duration. However on 19 June 2020, exercising powers under section 4 of the Act, the Government extended it by Statutory Instrument until 20 July 2020. The Statutory Instrument is available [here](#).

In the course of Dáil debates on the Act, an amendment was approved to add a new subsection which appears to have been designed to protect particular residential tenants, but creates uncertainty around the ability of commercial landlords to terminate leases of commercial property.

Residential Property – Generally

The changes to the law relating to residential property and student accommodation as outlined below are quite specific. Save for those changes, tenants generally will be expected to

continue to pay rent and comply with all other tenancy obligations during the Emergency Period. The Act does not provide for rent reductions or holidays.

Absent further legislation, residential tenancies will revert to the current legislative arrangements when the Emergency Period ends.

Commercial Property & "Eviction"

An opposition amendment to the bill inserted section 5(7)(a) which provides that *"Notwithstanding any of the provisions in this section, all proposed evictions in all tenancies in the State, including those not covered by the Act of 2004, are prohibited during the operation of the Emergency Measures in the Public Interest (Covid-19) Act 2020."*

The prohibition of *"all proposed evictions in all tenancies in the State"* extends on first reading to commercial leases, although the context of the amendment as revealed by Dáil debates suggests that protection of local authority tenants and members of the travelling community was in the mind of the deputies who tabled the amendment.

It remains to be seen how a court will interpret this section, particularly in light of the fact that courts do not generally have regard to Dáil debates in interpreting statutes. If a court found the section to be

ambiguous, then there would be scope for a court to interpret it in the context of the intention of the overall Act, which is expressed in its long title to refer to residential tenancies only and, apart from the new section, deals exclusively with residential property.

For the moment, commercial landlords should exercise caution. The fact that 'eviction' is not defined in the Act may mean that instituting proceedings to terminate a commercial lease, or effecting a forfeiture under the terms of a commercial lease, might nonetheless be possible provided that the landlord takes no steps to physically take possession.

Of additional concern is the fact that the amendment operates *"...during the operation of the [Act]"* as opposed to the Emergency Period referred to elsewhere, and this perhaps is a clearer case for a more flexible interpretation to be taken.

Of course, at the time of publication, access to the courts is limited, and executing existing court orders for possession will be difficult in any event.

Residential Property – Termination Notices

The effect of the Act is that:

- notices terminating existing tenancies (including notices terminating tenancies

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on the grounds of anti-social behaviour or behaviour that threatens the fabric of a dwelling) cannot be served during the Emergency Period; and

- the notice periods under termination notices served before the Emergency Period are extended by the length of the Emergency Period (as well as any balance of the notice period outstanding on 27 March 2020).

Where a notice of termination was served before the Emergency Period on the ground that the tenant breached its tenancy obligations, and the notice specifies a termination date that falls during or after the Emergency Period, where the reason for service of that notice is disputed, the termination is effective only upon the expiration of 10 days from the making of a determination by an adjudicator or on the making of a determination by the Tribunal (on an appeal).

Tenants who received termination notices before the beginning of the

Emergency Period and who have remained in occupation of a dwelling beyond the expiration of the notice period, will be entitled to continue in occupation until the end of the Emergency Period unless a determination of an adjudicator or the Tribunal (on an appeal) finds that they must vacate.

The 14-day warning notice which landlords must issue to tenants where a non-Part 4 tenancy is being terminated for non-payment of rent is extended to 28 days by the Act. Accordingly, it appears that, in such cases, landlords can still issue warning notices during the Emergency Period but they cannot then serve the termination notice during that period. Similarly, the Act does not prevent landlords from serving warning notices in respect of breaches of Part 4 tenancies during the Emergency Period.

As matters currently stand, the Residential Tenancies Board will continue to run dispute resolution services during the Emergency Period, but the requirement

for Tribunal proceedings to be public has been removed by the Act.

Residential Property – Rent Increases

Rent increases due to take effect during the Emergency Period will not apply.

Residential Property – Renewal Rights

The Act ensures that tenants, notwithstanding extended periods of occupancy that may arise as a result of the measures, will not acquire Part 4 tenancy rights that they would not otherwise acquire if these emergency measures had not been introduced.

Student Accommodation Licences

The measures set out above relating to residential property also apply to licences of student accommodation.

The authors would like to thank Niamh Flynn for her contribution to this article.

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