

Information Note

Draft Landlord and Tenant Law Reform Bill

The Minister for Justice and Equality, Mr Alan Shatter, T.D., invites written submissions from interested parties on the contents of the draft Landlord and Tenant Law Reform Bill. They should be submitted **before 31 May 2011** to:

Landlord and Tenant Law Reform Project,
Department of Justice and Equality,
Bishop's Square,
Redmond's Hill,
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or by email to: MMHolohan@justice.ie

1. Purpose of Bill

The purpose of the draft Bill is to update and reform the general law relating to the relationship of landlord and tenant. The Residential Tenancies Act 2004 has already updated the law relating to tenancies of dwellings and it now remains to update the general law of landlord and tenant, in particular in so far non-residential tenancies are concerned. The draft Bill is largely based on proposals made by the Law Reform Commission in 2007. It is a logical sequel to, and will complement, provisions in the Land and Conveyancing Law Reform Act 2009 which has already modernised the law relating to land ownership and conveyancing of land.

The proposed legislation will involve repealing about 35 pre-1922 statutes, as well as statutory provisions of more recent origin, and replacing them with a streamlined statutory framework containing provisions more suited to modern conditions. It will also give statutory effect to aspects of the extensive body of common law in this area.¹ An important objective will be to improve protection for tenants, in particular by clarifying the obligations on both landlords and their tenants. Ancient 'eviction' remedies available to landlords will also be abolished and replaced by an updated statutory redress scheme.²

2. Contents of Bill

Part I - Preliminary and General (Heads 1 to 9)

This Part contains standard provisions. Section 9 repeals, in whole or in part, numerous pre-1922 statutes, some dating back to the 17th century (see Appendix). The most notable repeal will be Deasy's Act (Landlord and Tenant Law Amendment Act, Ireland 1860) which provides the foundation for the current landlord and tenant code.

¹ For example, in a recent case, *Meagher v Healy Pharmacy Ltd* [2010] IESC 40, a key issue was whether the lessor had unreasonably withheld consent to an assignment of the lease by the lessee; having reviewed relevant common law, the Supreme Court concluded that current Irish law was to be found in *Treloar v. Bigge* [1874]. Heads 31 to 37 contain updated provisions in relation to a landlord's consent.

² For example, it is proposed to abolish the ancient remedy of 'distress for rent' (whereby a landlord could enter the rented premises and impound goods found there as security for overdue rent) and the action of ejectment for non-payment of rent. Part 7 will put a simpler redress mechanism in place.

Part 2 - Relationship of Landlord and Tenant (Heads 10 to 11)

This Part deals with the fundamental issue of when the relationship of landlord and tenant is established. Head 10 retains the idea that the relationship of landlord and tenant is based on the express or implied agreement of the parties. It makes clear that an obligation to pay rent is a requirement of the relationship and provides that in future a reversion is also necessary. Head 11 provides that in determining whether a tenancy has been created, the court should have regard to the express agreement of the parties and presume that each party had the benefit of independent legal advice. However, where it is established that a party did not have the benefit of such advice, the court may disregard an express provision if satisfied that it does not express the intention of that party and that its enforcement would be prejudicial to that party.

Part 3 - Formalities (Heads 12 to 14)

These provisions replace a number of provisions in Deasy's Act and repeal other 19th century provisions. The general rule is that a written document is needed for the creation of a tenancy. Limited exceptions are permitted, e.g., a tenancy for a fixed period not exceeding one year can be created orally. This Part also deals with assignments.

Part 4 - Successors in Title (Heads 15 to 19)

This Part replaces provisions in Deasy's Act and in the Conveyancing Act 1881. It clarifies the law; the basic idea is that the successors to both landlords and tenants step fully into the shoes of their predecessors in title in relation to both benefits and obligations. Head 19 clarifies the law in relation to concurrent tenancies.

Part 5 - Tenant's Property (Heads 20 to 22)

This Part updates and clarifies the law in relation to fixtures brought onto, erected upon, or installed in, on or under the rented premises by the tenant. It will replace all common law provisions in relation to fixtures. Head 21 deals with the tenant's removal rights while head 22 deals with those of the landlord.

Part 6 - Obligations (Heads 23-52)

This Part deals with the obligations on both landlords and tenants. It establishes a system of obligations out of which the parties cannot contract, i.e. 'overriding obligations' and a system of 'default' obligations which would operate in the absence of an express provision or agreement to the contrary. The former include the obligation of the landlord to give good title (Head 25) and to ensure quiet possession (Head 26) and the obligation on the tenant to pay rent (Head 38). Default obligations would include the obligation of the landlord to repair where the matter has not been settled between the parties and the obligation of the tenant to pay outgoings such as rates, electricity etc. Matters relating to repair obligations and insurance are also covered.

Chapter 3 (Heads 31 to 37) sets out a clear statutory framework which will apply when the landlord's consent is needed for the tenant to do something to the premises. Chapter 5 (Heads 47 to 52) deals with the enforcement of obligations.

The issue of 'upward only' rent reviews is being dealt with separately. However there is no statutory framework at present for conducting rent reviews in cases where the tenancy provides for such a review but contains no mechanism for carrying it out in a

transparent and fair manner.³ The draft Bill deals with this issue in Head 40 and Schedule 1. The latter contains 'default' provisions for the conduct of rent reviews which are based on guidelines approved by relevant bodies. Enactment would mean that the review procedure outlined in Schedule 1 would apply in all cases where the tenancy provides for a rent review but does not specify how it should be carried out.

Head 41 abolishes the ancient remedy of 'distress for rent' (whereby a landlord could enter the rented premises and impound goods found there as security for overdue rent). The statutory action of ejectment for non-payment of rent is also being repealed and will be replaced by the new provisions of Part 7.

Part 7 - Termination of Tenancies (Heads 53 to 79)

This Part deals with the various ways in which a tenancy may be terminated. Chapter 1 makes provision for surrender of a tenancy, while Chapter 2 deals with merger issues.

Chapter 4 contains provisions in relation to termination notices and also contains a provision which clarifies the law insofar as the minimum periods of notice required for different tenancies are concerned. Chapter 5 deals with forfeiture for breach of the tenant's obligations under the tenancy and reforms the way in which the tenancy is brought to an end. Subject to exceptions, the right will be available to the landlord where there has been a breach of the tenant's obligations. Where the tenant does not respond by remedying the breach or paying damages, the landlord may apply to court for a possession order under Chapter 6.

Possession proceedings under Chapter 6 may also be pursued by the landlord where a tenant 'overholds' or where the landlord wishes to recover possession of abandoned premises (Head 76) or from a 'permissive' occupant such as a caretaker or licensee (Head 78). In emergency cases Head 77 would allow the landlord to re-enter abandoned premises.

Part 8 - Statutory Rights (Heads 80 to 102)

This Part deals with the tenant's right to a new tenancy and to compensation for disturbance where a new tenancy is not granted for certain reasons. The right to a new tenancy is covered by Head 84, while Head 86 restricts the right in certain cases. The court's powers to grant a new tenancy are covered by Heads 89 to 92. Chapter 3 deals with compensation for disturbance.

3. Provisions not applicable to residential tenancies

Since the law relating to residential tenancies has already been updated in the Residential Tenancies Act 2004, the draft Bill has been structured in a manner which avoids undue interference with certain provisions of that Act.

Landlord obligations

Head 26 deals with the landlord's obligations concerning peaceful possession of the premises by the tenant. However, subhead (4) makes it clear that the provision in section 12(1)(a) of the 2004 Act which requires the landlord of a dwelling to allow the tenant to enjoy peaceful and exclusive occupation of the dwelling will continue to apply

³ Part 3 of the Residential Tenancies Act 2004 contains rent review mechanisms applicable to residential tenancies.

to residential tenancies. Moreover, while Head 27 requires a landlord to provide certain contact details to the tenant, this will not replace the obligations in section 12(1)(e) and (f) of the 2004 Act which require the landlord to notify the tenant of any authorised agent and to provide the tenant with contact details.

Insurance

Head 30 deals with the landlord's obligations with respect to insurance. However since section 12(1)(c) of the 2004 Act already requires the landlord of a dwelling to maintain an insurance policy in respect of the structure of the dwelling, head 30 will not apply to such dwellings. Head 46 deals with the insurance obligations on tenants where they arise. However, they will not affect the insurance-related obligations on the tenant of a dwelling under section 16(1)(i) and (j) of the 2004 Act.

Rent review

Head 40 requires tenants to pay rents which have been reviewed in accordance with the provisions of Schedule 1. This requirement will not apply to tenancies to which Part 3 (Rent and Rent Reviews) of the 2004 Act applies. Head 41 deals with the recovery of rent arrears but will not apply in cases coming within section 23 (and Part 6 (Dispute Resolution)) of the 2004 Act.

Repairs

Head 45 contains provisions relating to the obligations of tenants regarding repair of premises. However, the obligations on tenants of dwellings set out in section 16 of the 2004 Act will continue to apply to such tenants.

Termination and forfeiture

Head 62 provides that Chapter 4 (Notice of Termination) of Part 7 (Termination of Tenancies) does not apply to a tenancy of a dwelling. Part 5 (Tenancy Terminations – Notice Periods and Other procedural Requirements) of the 2004 Act contains extensive provisions in relation to the termination of such tenancies. Head 67 provides that Chapter 5 (Forfeiture) of Part 7 does not apply to a tenancy of a dwelling. The same applies to Head 72 (Possession Orders).

New tenancy

Head 84 contains provisions dealing with a tenant's entitlement to a new tenancy. However, it will not affect the operation of section 192 (Long occupation equity (prospective abolition of entitlement to it)) of the 2004 Act.

**Department of Justice and Equality
April 2011**

Appendix

Repeals

Pre-Union Irish Statutes

Session and chapter (1)	Short title (2)	Extent of repeal (3)
9 Hen. 7	Distress Act 1493	The whole Act
10 Chas 1 sess.3 c.13	Forcible Entry Act 1634	The whole Act
7 Will.3 c.22	Distress for Rent Act 1695	The whole Act
6 Ann. c.10	Administration of Justice Act 1707	Sections 9 and 10
11 Ann. c.8	Distress for Rent Act 1712	The whole Act
4 Geo.1. c.2	Distress for Rent Act 1717	The whole Act
8 Geo.1. c.5	Distress for Rent Act 1721	The whole Act
15 Geo 2. c.8	Distress for Rent Act 1741	The whole Act
25 Geo 2. c.13	Distress for Rent Act 1751	The whole Act
36 George 3. c.38	Distress Act 1796	The whole Act

Statutes of England

5 Ric. 2. St.1 c.7	Forcible Entry Act 1381	The whole Act
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Statutes of United Kingdom of Great Britain and Ireland 1801 to 1922

57 Geo 3. c.93	Distress (Costs) Act 1817	The whole Act
7 Geo 4. c.29	Assignment and Sub-Letting of Land Act 1826	The whole Act
4&5 Will 4. c.22	Apportionment Act 1834	The whole Act
8&9 Vict c.106	Real Property Act 1845	Section 9 [only remaining section following repeals in 2009 Act]
8&9 Vict c.124	Leases Act 1845	The whole Act
9&10 Vict c.111	Ejectment and Distress (Ireland) Act 1846	The whole Act

9&10 Vict. c.112	Leases (Ireland) Act 1846	The whole Act
12&13 Vict. c.26	Leases Act 1849	The whole Act
13&14 Vict. c.17	Leases Act 1850	The whole Act
14&15 Vict. c.25	Landlord and Tenant Act 1851	The whole Act
19&20 Vict. c.65	Cottier Tenant (Ireland) Act 1856	The whole Act
23&24 Vict. c.154	Landlord and Tenant Law Amendment Act, Ireland 1860 (Deasy's Act)	The whole Act
33&34 Vict. c.35	Apportionment Act 1870	The whole Act in so far as rent is concerned
39&40 Vict. c.63	Notices to Quit (Ireland) Act 1876	The whole Act
43 Vict. c.4	Relief of Distress (Ireland) Act 1880	The whole Act
43&44 Vict. c.14	Relief of Distress (Ireland) Amendment Act 1880	The whole Act
44&45 Vict. c.41	Conveyancing Act 1881	Sections 10, 11, 12, 13, 14, (and possibly 65)
45&46 Vict. c.39	Conveyancing Act 1882	Possibly section 11 (linked to section 65 of 1881 Act)
51&52 Vict. c.47	Law of Distress and Small Debts (Ireland) Act 1888	The whole Act
54&55 Vict. c.57	Redemption of Rent (Ireland) Act 1891	The whole Act
55&56 Vict. c.13	Conveyancing and Law of Property Act 1892	Sections 2, 3, 4 and 5
56&57 Vict. c.36	Law of Distress and Small Debts (Ireland) Act 1893	The whole Act
8 Edw. 7 c.53	Law of Distress Amendment Act 1908	The whole Act
1&2 Geo. 5. c.37	Conveyancing Act 1911	Section 11