



The Law Reform Commission
AN COIMISIÚN UM ATHCHÓIRIÚ AN DLÍ

REPORT

THE LAW OF LANDLORD AND TENANT

(LRC 85-2007)

IRELAND

Law Reform Commission

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LAW REFORM COMMISSION

Background

The Law Reform Commission is an independent statutory body whose main aim is to keep the law under review and to make practical proposals for its reform. It was established on 20 October 1975, pursuant to section 3 of the *Law Reform Commission Act, 1975*.

The Commission's Second Programme for Law Reform, prepared in consultation with the Attorney General, was approved by the Government and copies were laid before both Houses of the Oireachtas in December 2000. The Commission also works on matters which are referred to it on occasion by the Attorney General under the terms of the Act.

To date the Commission has published 83 Reports containing proposals for reform of the law; eleven Working Papers; 46 Consultation Papers; a number of specialised Papers for limited circulation; An Examination of the Law of Bail; and 27 Annual Reports in accordance with section 6 of the 1975 Act. A full list of its publications is contained on the Commission's website at www.lawreform.ie.

The *Statute Law Restatement Act 2002* provides for the administrative consolidation of legislation, certified by the Attorney General. At the Attorney's request, and following a Government decision in May 2006, the Commission agreed to take over responsibility for this function from the Office of the Attorney General.

Subsequently, in December 2006 the Commission agreed to the Attorney General's additional request for the Commission to assume responsibility in 2007 for the maintenance of the Chronological Tables of the Statutes.

Membership

The Law Reform Commission consists of a President, one full-time Commissioner and three part-time Commissioners.

The Commissioners at present are:

<i>President:</i>	The Hon Mrs Justice Catherine McGuinness, former Judge of the Supreme Court
<i>Full-time Commissioner:</i>	Patricia T. Rickard-Clarke, Solicitor
<i>Part-time Commissioner:</i>	Professor Finbarr McAuley
<i>Part-time Commissioner</i>	Marian Shanley, Solicitor
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Landlord and Tenant Law Working Group

In July 2001, the Law Reform Commission established the Landlord and Tenant Project aimed at reform and consolidation of Landlord and Tenant Law. It engaged the services of Professor JCW Wylie as expert consultant and leader of a Working Group comprising legal practitioners with knowledge and experience of this area of the law and representatives of the Department of Justice, Equality and Law Reform and the Department of the Environment, Heritage and Local Government. Professor Wylie is the author of several standard texts on Irish property law, including *Irish Landlord and Tenant Law* (2nd ed Butterworths 1998). The other members of the Working Group who assisted in the preparation of the draft Bill appended to this Report were:

The Hon Mrs Justice Catherine McGuinness, President of the Law Reform Commission
Commissioner Patricia T Rickard-Clarke (Convenor)
John F Buckley, Solicitor (former judge of the Circuit Court)
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Áine Clancy was Secretary and Legal Researcher to the Group for the period during which the subject matter of this Report was under consideration.

The Law Reform Commission wishes to record its appreciation of the indispensable contribution which the members of this Working Group have made and continue to make, on a voluntary basis, to the Commission's examination of this area of the law.

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INTRODUCTION

1. This Report forms part of the Commission's *Second Programme of Law Reform 2000-2007* which includes the examination of land law and conveyancing law.¹ The Report builds upon two Consultation Papers published by the Commission in 2003 on landlord and tenant law, a *Consultation Paper on Business Tenancies*² and a *Consultation Paper on the General Law of Landlord and Tenant*.³ The Report contains the Commission's final recommendations concerning these aspects of landlord and tenant law,⁴ which are encapsulated in the draft *Landlord and Tenant Bill* set out in Appendix B. Detailed explanatory notes are attached to each of the Bill's sections.

A GUIDING PRINCIPLES

2. In approaching the task of preparing the draft *Landlord and Tenant Bill* set out in Appendix B, the Commission took full account of the guiding principles set out in the Consultation Papers. It may be useful to reiterate them here:⁵

¹ Item 23 of the *Second Programme of Law Reform 2000-2007* commits the Commission to a general review of land and conveyancing law. The Commission has previously published a *Report on the Reform and Modernisation of Land Law and Conveyancing Law* (LRC 74 – 2005). Following this Report, the Commission agreed to work with the Minister for Justice, Equality and Law Reform on the drafting of the Government's *Land and Conveyancing Law Reform Bill 2006*, which is currently (November 2007) before the Oireachtas. The substantive reforms being made in the 2006 Bill form part of the Commission's wider eConveyancing project. In this context, the Commission has also published a *Report on eConveyancing: Modelling of the Irish Conveyancing System* (LRC 79-2006), and is engaged in the next stage of this project – the development of a road map for eConveyancing in Ireland – in conjunction with the Department of Justice, Equality and Law Reform. This has been incorporated into the Commission's *Third Programme of Law Reform 2008-2014*.

² LRC CP 21-2003. In the draft Bill in Appendix B, referred to as "BTCP".

³ LRC CP 28-2003. In the draft Bill in Appendix B, referred to as "BTCP".

⁴ As to other aspects of landlord and tenant law, see paragraph 9ff, below.

⁵ See *Consultation Paper on Business Tenancies* (LRC CP 21-2003), Introduction, para 5. Similar principles formed the background to the Commission's *Report on the Reform and Modernisation of Land Law and Conveyancing Law* (LRC 74 – 2005).

- (a) Removal of obsolete provisions, including ancient legislation;
- (b) Removal of legislative provisions which militate against commercial practice and operation of free market choice, so as to facilitate creation of agreements free of unintended and unforeseen consequences;
- (c) Recasting legislative provisions which create uncertainties or have proved to be ambiguous;
- (d) Introducing new provisions to meet what are perceived to be gaps in existing law;
- (e) Consolidating existing legislation (together with any new provisions to be introduced) in order to make the law much more accessible and easily understood.

B SCOPE OF REPORT AND DRAFT BILL

3. Reflecting the scope of the Commission's two Consultation Papers, the draft *Landlord and Tenant Bill* in Appendix B deals with the general law of landlord and tenant and also the specific subject of statutory rights relating to business tenancies.

C GENERAL LAW OF LANDLORD AND TENANT

4. The general law of landlord and tenant describes the key legal features of the relationship between landlord and tenant. One of the unique features of existing Irish law was the legislative attempt to revolutionise this concept some 150 years ago in the *Landlord and Tenant Law Amendment Act Ireland 1860*, commonly known as "Deasy's Act." The essence of the 1860 Act was that the relationship was no longer to be based upon the ancient feudal notion of tenure, but rather on the contract or agreement entered into by the parties.

5. In terms of the general law of landlord and tenant, the main elements of the draft Bill deal with:

- the formalities for creation of the relationship and subsequent dealings by the parties with their interests, such as assignments and surrenders;
- the position of successors in title to the original landlord and tenant, following such dealings;
- fixtures, which although a discrete topic is nonetheless very important in practice;

- obligations in general, in particular to what extent legislation should impose some obligations on the parties or provide “default” provisions to operate where the parties fail to make express provision in the lease or tenancy agreement;
- the landlord’s obligations;
- the tenant’s obligations, including rent, service charges, repairs and insurance, and enforcement of obligations;
- termination of the relationship,
- remedies for enforcement of obligations.

6. Enactment of this element of the draft Bill would result in the repeal and replacement of numerous pre-1922 statutes relating to landlord and tenant law. An obvious example would be “Deasy’s Act” – the *Landlord and Tenant Law Amendment Act Ireland 1860*, which would be repealed if the draft Bill became law. The Commission is conscious that further work in this respect will be required to complete the task of assessing, in particular, what pre-1922 Acts remain of relevance today.⁶

D BUSINESS TENANCIES

7. In terms of the discrete aspect of landlord and tenant law concerning business tenancies, the draft Bill in Appendix B seeks to replace, with reform, the current legislative scheme comprising the *Landlord and Tenant (Amendment) Acts 1980, 1984, 1989 and 1994*. In this respect, the draft Bill deals with: the consolidation of the current legislative scheme; entitlement to statutory rights; the position of the State; and restrictions on statutory rights and compensation provisions.

E OTHER ASPECTS OF LANDLORD AND TENANT LAW

8. As the Commission pointed out in the two Consultative Papers published in 2003, the law of landlord and tenant is a vast area, which can be

⁶ A similar task was undertaken by the Commission in the context of preparing the *Land and Conveyancing Law Reform Bill 2006*: see fn 1, above. In that respect, the Commission was greatly assisted by the pre-1922 Statute Law Revision project team in the Office of the Attorney General, whose general work led to the enactment of the *Statute Law Revision Act 2007*, which contains the first definitive list of pre-1922 Acts remaining on the statute book. In the context of landlord and tenant law, many of the pre-1922 statutes concern various aspects of the old land purchase scheme introduced during the 19th century for agricultural tenants. One task is to identify to what extent any of the provisions in this legislation (which includes numerous Land Acts enacted since 1922) remain of relevance today.

categorised in a number of ways.⁷ One method of categorisation is by reference to the nature of the property involved, for example, agricultural tenancies, residential tenancies and business tenancies. Another method refers to the scope of the relevant law, such as “Deasy’s Act” which describes the essential elements of the relationship regardless of whether it is business or residential in nature, or private rented dwellings legislation which deals with the arrangements in certain (formerly rent controlled) residential tenancies. The two Consultation Papers published in 2003, and this Report, deal with significant elements of both these categories of the law of landlord and tenant law. Nonetheless, the Commission recognises that the draft *Landlord and Tenant Bill* in Appendix B does not involve a complete consolidation of the entire law in this area. For a number of reasons, therefore, it is important to note briefly here some other aspects of the law of landlord and tenant which are not encompassed in this Report or the draft Bill. There are three such aspects.

9. The first is the general area of residential tenancies. This was the subject of a comprehensive Report of the Commission on the Private Rented Residential Sector,⁸ which was implemented by the *Residential Tenancies Act 2004*. Although the draft Bill in Appendix B is careful not to trespass upon ground covered by the 2004 Act, it does, of course, have an impact on residential tenancies. The draft Bill deals with much general law that applies to tenancies of all kinds of property and which the 2004 Act does not touch.

10. Second, the draft Bill does not deal specifically with agricultural tenancies as a discrete subject. Such tenancies, which were once very common in Ireland, are very rare nowadays. The Commission has taken the view that formulation of special provisions for such tenancies was not justified. Rather insofar as an agricultural tenancy would involve a business (which most farming would nowadays) it should be covered by the provisions in the Bill relating to business tenancies, which drop the requirement that the premises the subject-matter of the tenancy should comprise mostly buildings and limited unbuilt-on land. This view was taken on the basis that there would, in future, be a right to contract out of such provisions in the case of all business tenancies. A provision to this effect is contained in sections 57 and 58 of the *Civil Law (Miscellaneous Provisions) Bill 2006*, which is currently (November 2007) before the Oireachtas. This provision could be consolidated into the draft Bill if and when it was to be enacted by the Oireachtas.

⁷ See *Consultation Paper on Business Tenancies* (LRC CP 21-2003), Introduction, para 1.

⁸ *Report of the Commission on the Private Rented Residential Sector* (Department of the Environment and Local Government, July 2000).

11. A third area of the law not dealt with in the draft Bill concerns the ground rents legislation – the provisions giving certain tenants the right to acquire the fee simple and the related subject of reversionary leases. This is itself a complex area of the law in its own right and deserves a separate study. The Commission notes, for example, that the High Court has recently dealt with a constitutional challenge to the existing legislative provisions on ground rents⁹ and that the unsuccessful plaintiff in that case has appealed to the Supreme Court which, at the time of writing (November 2007), has yet to hear that appeal.

F RESPONSE TO CONSULTATION PAPERS

12. Finally, the Commission is most grateful to the bodies and individuals who responded to the provisional recommendations contained in the Consultation Papers. They are listed in Appendix A. This response has greatly assisted the Commission in coming to a final view on what to recommend with respect to a highly complex and technical area of the law. Notwithstanding its technical nature it is an area of the law which impacts substantially on the private and commercial world.

⁹ *Shirley v A. O'Gorman & Co Ltd* [2006] IEHC 27, High Court, 31 January 2006.

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APPENDIX B LANDLORD AND TENANT BILL