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**AN BILLE UM BEARTA AIRGEADAIS ÉIGEANDÁLA AR
MHAITHE LE LEAS AN PHOBAIL (ATHBHREITHNITHE
AR CHÍOSANNA TRÁCHTÁLA) 2009**

**FINANCIAL EMERGENCY MEASURES IN THE PUBLIC
INTEREST (REVIEWS OF COMMERCIAL RENTS) BILL 2009**

*Mar a tionscnaíodh
As initiated*

ARRANGEMENT OF SECTIONS

Section

1. Interpretation.
 2. Power of Government to make orders in relation to rents for commercial premises.
 3. Effect of order under section 2.
 4. Short title.
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5 **FINANCIAL EMERGENCY MEASURES IN THE PUBLIC
INTEREST (REVIEWS OF COMMERCIAL RENTS) BILL 2009**

BILL

entitled

10 AN ACT, IN THE PUBLIC INTEREST, TO PROVIDE FOR THE
IMPOSITION BY WAY OF GOVERNMENT ORDER OF A
REQUIREMENT THAT LANDLORDS CHARGE
MARKET RENTS ONLY IN RESPECT OF COMMERCIAL
PREMISES, AND TO PROVIDE FOR RELATED
MATTERS.

15 WHEREAS a serious disturbance in the economy and a decline
in the economic circumstances of the State have occurred, which
threaten the well-being of the community;

AND WHEREAS the viability of many businesses that are
tenants of commercial premises is also threatened, with the threat of
a consequent loss of employment in the State;

20 AND WHEREAS in current circumstances leases of commercial
premises providing for the periodic review of rents by way of
increase only are inequitable, because they result in an unjust distri-
bution of the economic burdens facing the community;

25 BE IT THEREFORE ENACTED BY THE OIREACHTAS AS
FOLLOWS:

1.—(1) In this Act—

Interpretation.

30 “commercial premises” means a building or structure which is in use
for the purposes of a retail trade, business or profession, but does
not include any part of a building or structure in use as or as part of
a dwelling house;

“lease” means an instrument in writing, whether or not under seal,
containing a contract of tenancy in respect of a premises;

35 “market rent”, in relation to the tenancy of commercial premises,
means the rent which a willing tenant not already in occupation
would give and a willing landlord would take for the premises, in
each case on the basis of vacant possession being given, and having
regard to—

- (a) the other terms of the tenancy, and
- (b) the letting values of premises of a similar size, type and character to the premises and situated in a comparable area to that in which it is situated;

“tenancy” includes a periodic tenancy and a tenancy for a fixed term and, where the context so admits, includes a sub-tenancy and a tenancy or sub-tenancy that has been terminated.

(2) References in this Act to a review of a rent include references to—

- (a) any procedure (however it is described) for determining whether, and to what extent, a reduction or increase in the amount of the rent for the time being payable under the tenancy concerned ought to have effect, and
- (b) the effect of the operation of a provision of a lease providing that, by reference to any formula, happening of any event or other matter whatsoever (and whether any act, decision or exercise of discretion on the part of any person is involved or not), such a reduction or increase shall have effect.

(3) References in this Act to the setting of a rent, in the context of a review of rent, are references to—

- (a) the oral agreeing of the rent,
- (b) the oral or written notification of the rent, or
- (c) in the case of a provision of the kind referred to in *subsection (2)(b)*, the rent being set by virtue of the operation of that provision.

Power of Government to make orders in relation to rents for commercial premises.

2.—(1) If the Government is of the opinion that, arising from a serious disturbance in the economy and a decline in economic circumstances in the State, tenants of commercial premises cannot fairly be expected to pay rents at the rates that were previously prevailing, the Government may make an order under this section.

(2) An order under this section may—

- (a) limit the application of the order to a class or type of commercial premises,
- (b) apply to the whole State or to a particular geographical area in the State,
- (c) provide for any incidental or ancillary matter that the Government considers necessary or expedient to give full effect to any provision of the order or to secure compliance with it.

(3) An order under this section, unless it is earlier revoked—

- (a) remains in force for such term (not exceeding 24 months from the date that the order is made) that the Government thinks proper and specifies in the order, and
- (b) expires at the end of the last day of the term specified.

3.—(1) So long as an order under *section 2* is in force, any lease of commercial premises to which the order applies shall be construed and have effect as if it prohibited the setting of a rent, as a result of a review of rent payable under the tenancy, at an amount greater than the amount of the market rent for that tenancy at that time.

Effect of order
under *section 2*.

(2) No provision of any lease or other agreement (whether entered into before, on or after the passing of this Act) may operate to vary, modify or restrict in any way this section.

4.—This Act may be cited as the Financial Emergency Measures in the Public Interest (Reviews of Commercial Rents) Act 2009.

Short title.



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FINANCIAL EMERGENCY MEASURES IN THE PUBLIC
INTEREST (REVIEWS OF COMMERCIAL RENTS) BILL 2009**

EXPLANATORY MEMORANDUM

Purpose of Bill

The purpose of the Bill is to recognise the serious burden placed on businesses throughout the State, arising from the current decline in the economy, when faced with “upwards only” commercial rent reviews.

As stated in the Preamble to the Bill—

- a serious disturbance in the economy and a decline in the economic circumstances of the State have occurred, which threaten the well-being of the community;
- the viability of many businesses that are tenants of commercial premises is also threatened, with the threat of a consequent loss of employment in the State; and
- in current circumstances leases of commercial premises providing for the periodic review of rents by way of increase only are inequitable, because they result in an unjust distribution of the economic burdens facing the community.

The Bill accordingly empowers the Government, in the public interest, by order to grant temporary relief from the operation of upwards only rent reviews by providing that such reviews cannot result in a rent higher than the current market rent.

Provisions of Bill

Section 1 contains definitions of terms used in the Bill. “Commercial premises” means buildings or structures used for the purposes of a retail trade, business or profession, but does not include any part of a building or structure in use as or as part of a dwelling house.

“Market rent”, in relation to the tenancy of commercial premises, means the rent which a willing tenant not already in occupation would give and a willing landlord would take for the premises, in each case on the basis of vacant possession being given. Regard must

be had to the other terms of the tenancy and to the letting values of premises of a similar size, type, character and location.

“Rent review” is defined as meaning any procedure (however it is described) for determining whether, and to what extent, a reduction or increase in the amount of the rent for the time being payable under a tenancy ought to have effect, including references to any formula, happening of any event or other matter whatsoever, regardless as to whether any act, decision or exercise of discretion on the part of any person is involved or not.

Section 2 provides that, if the Government is of the opinion that, arising from a serious disturbance in the economy and a decline in economic circumstances in the State, tenants of commercial premises cannot fairly be expected to pay rents at the rates that were previously prevailing, it may make an order under this section.

An order may be limited to a class or type of commercial premises or to a particular geographical area in the State and it may provide for any incidental or ancillary matter that the Government considers necessary or expedient to give full effect to any provision of the order or to secure compliance with it.

An order will, unless it is earlier revoked, remain in force for no longer than 24 months.

Section 3 provides that, so long as a Government order is in force, any lease of commercial premises to which the order applies shall be construed and have effect as if it prohibited the setting of a rent, as a result of a review of rent payable under the tenancy, at an amount greater than the amount of the market rent for that tenancy at that time.

Further, no provision of any lease or other agreement (whether entered into before, on or after the passing of this Bill) may operate to vary, modify or restrict in any way this section.

Section 4 provides for the short title of the Bill.

*An Teachta Ciarán Lynch,
Meitheamh, 2009.*