



Bill Digest

Residential Tenancies and Valuation Bill 2020

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Abstract

The Residential Tenancies and Valuation Bill 2020 provides for certain emergency rental protection measures in the context of the ongoing Covid-19 pandemic. It proposes, in relation to “relevant persons”, a rent freeze and a moratorium on evictions for the period from the date of the enactment of the Bill to 10 January 2021. It also provides for revised periods of notice of termination during the emergency. It also provides for more permanent changes to the Residential Tenancies Acts; and also for a revised valuation period in relation to the rating authority area of Dún Laoghaire Rathdown County Council.

27 July 2020

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Summary

The [Residential Tenancies and Valuation Bill 2020](#) (the Bill) provides for emergency rental protection measures, including a moratorium on evictions and a rent freeze, and various other matters. It also provides for more permanent changes to the statutory framework, including revised notice periods for termination of a tenancy on the basis of rent arrears. It also creates a new obligation on landlords to inform the Residential Tenancies Board of a notice of termination for rent arrears, and a corresponding obligation on the RTB to inform the tenant of certain rights under the Residential Tenancies Acts. The new emergency period is defined in section 3 of the Bill as lasting from the passing of the Act to 10 January 2021.

Emergency rental protection measures - Part 2 of the Bill

The Bill provides for a new legislative basis for the moratorium on evictions and the rent freeze introduced by the [Emergency Measures in the Public Interest \(Covid-19\) Act 2020](#) (“the Emergency Measures Act”). However, in contrast to the Emergency Measures Act, the moratorium on evictions and the rent freeze will apply only to “relevant persons”. The new measures will last until the expiration of the emergency period (10 January 2021). In contrast to the Emergency Measures Act, no provision is made for the extension of this period by statutory instrument.

In order to avail of the protection of the rent freeze or the moratorium, a relevant person will be required to make a written declaration to the RTB that they are:

- (a) A “relevant person” within the terms of the Act; and
- (b) As a consequence thereof, there is a significant risk that the tenancy will be terminated by the landlord.

“Relevant person” is defined in section 4(5) of the Bill as a person who is not able to pay the rent due to:

- (a) Being unable, or having been unable, to work due to contracting Covid-19; or
- (b) Being in receipt of the temporary wage subsidy, or the supplementary welfare allowance; or
- (c) Being in receipt of any other payment out of public moneys introduced to alleviate the economic hardship brought about by the pandemic.

The Bill proposes that the making of a false or misleading declaration in this respect will constitute a criminal offence.

Section 5 of the Bill provides that a notice for termination shall not specify a termination date earlier than 11 January 2021. Section 5 also provides that, during the emergency period, a relevant person must be provided with at least 90 days’ notice of termination. Section 6 provides that no rent increase shall take effect during the emergency period, and that any increase in rent that came into effect before the 27 March 2020 shall not be payable during the emergency period.

Permanent changes to the statutory framework – Part 3 of the Bill

Section 10 of the Bill provides that, where a landlord is serving a notice of termination in relation to a failure to pay rent, the landlord must send a copy of the notice to the Residential Tenancies Board on the same day. Under the new section, the RTB is then required to notify the tenant in

writing of his or her right to refer the dispute to the RTB for resolution. It further provides that the said notice will not be valid unless the notice is also copied to the RTB.

Section 11 of the Bill provides for a 28-day period for notice of termination for failure to pay rent, and also for a warning notice of a failure to pay rent. It provides that a landlord must notify the tenant that rent has not been paid at least 28 days (it was previously 14 days) before issuing a notice of termination. A copy of the warning notice must be sent to the RTB. If the rent due has not been received by the expiration of this period, the landlord can then issue a 28-day notice of termination. It therefore operates as a two-step process – a 28-day warning letter, followed by a 28-day notice of termination. It should be noted that section 5 of the Bill directs that the reference to 28-days in respect of the notice of termination (the second step) be read as 90 days in respect of relevant persons, during the emergency period.

Section 11(c) further provides that the RTB must, on receipt of a copy of the warning letter, ask the tenant for his or her consent in obtaining advice and support for them from the Money Advice and Budgeting Service (MABS).

Background to residential tenancies in the State

- The number of Rent Supplement recipients has increased by 34.9% (5,479 people) from 19 March to 20 June 2020.
- At present, tenants in private rented accommodation will be protected from eviction if they cannot pay their rent.
- However, the arrears that accrue over this time will have to be paid by the tenant at the end of the emergency period, which has been extended until 01 August 2020. This Bill proposes a new emergency period, lasting from the passing of the Act to 10 January 2021.

A brief overview of the key figures show:



307,348 private tenancies and 173,197 registered landlords



number of private renters doubled from 2006-2016



standardised average rent is €1,231 nationally (RTB Index: Q1 2020)



rent increased nationally by 5.4% year-on-year - (RTB Index: Q1 2019- Q1 2020)



rent arrears and the validity of termination notices are two of the most common disputes referred to the RTB

Key provisions of the Bill:**Key provisions of the Bill****Emergency rental protection measures**

- The Bill provides for a new moratorium on evictions and a new rent freeze for the duration of the emergency period. The new emergency period will last from the date of the Bill's enactment until **10 January 2021**.
- The new moratorium and rent freeze will **only apply to tenants who make a written declaration** to the Residential Tenancies Board. The written declaration **must state that they are a "relevant person"** and that, as a result, there is a significant risk that the landlord will terminate the tenancy.
- Relevant person is defined as a person who is unable to pay their rent due to
 - (a) Being unable, having been unable, to work due to contracting Covid-19; or
 - (b) Being in receipt of the temporary wage subsidy, or the supplementary welfare allowance; or
 - (c) Being in receipt of any other payment out of public moneys introduced to alleviate the economic hardship brought about by the pandemic.
- The making of a false or misleading written declaration will constitute a criminal offence.

Permanent changes to statutory framework

- The Bill provides for an increased warning period that a landlord must give where rent has not been received before issuing a notice of termination, from 14 days to 28 days. A copy of this warning must be sent to the RTB, who must then seek the tenant's consent in obtaining the assistance of the Money Advice and Budgeting Service (MABS).
- The Bill also provides that the landlord must send a copy of a notice to terminate for failure to pay rent to the RTB. A failure to send a copy to the RTB will result in the notice being invalid. The RTB will be required, on receipt of a copy of a notice to terminate for failure to pay rent, to inform the tenant in writing of his or her right to refer the matter to the RTB for adjudication.

Table of Provisions

Table 1 below summarises every section of the Bill

Section	Title	Effect
	Part 1	
1.	Short title and collective citations	This section provides for the short title of the Bill. It also provides for the collective citation of this Bill with the Residential Tenancies Act, and the Valuation Acts.
2.	Definition	This section provides for the definition of certain terms used in the Bill.
3.	Interpretation	This section provides for the interpretation of terms used in the Bill. Importantly, it provides that “emergency period” means the period lasting from the enactment of the Bill to 10 January 2021.
	Part 2	
4.	Application of Part	<p>This section limits the application of this Part, providing for emergency rental protections, to persons who make a written declaration to the RTB that they are a “relevant person”, and that as a result, there is a “significant risk” that the tenancy will be terminated by the landlord. The making of a false or misleading declaration will constitute a criminal offence.</p> <p>“Relevant person” is defined in section 4(5) as a person who is not able to pay the rent due to:</p> <ul style="list-style-type: none"> (a) Being unable to work due to contracting Covid-19; or (b) Being in receipt of the temporary wage subsidy, or the supplementary welfare allowance; or (c) Being in receipt of any other payment out of public moneys introduced to alleviate the economic hardship brought about by the pandemic.
5.	Notices of termination served during the emergency period	This section provides that, in respect of a person to whom this Part applies, a notice of termination shall not specify a termination date earlier than 11 January 2021, the day after the expiration of the emergency period.

		It further provides that a person to whom this Part applies is entitled to at least 90 days' notice of termination for failure to pay rent, as opposed to the 28 days (the ordinary period, provided for in section 11 of this Bill).
6.	Prohibition on rent increases during the emergency period	This section provides that, in relation to persons to whom this Part applies, no rent increase shall take effect during the emergency period, and that any increase in rent that came into effect before the 27 March 2020 shall not be payable during the emergency period.
	Part 3	
7.	Proceedings before Tenancy Tribunal under Act of 2004	This section provides that proceedings before the Tenancy Tribunal need not take place in public for the duration of the emergency period.
8.	Amendment of section 34 of Act of 2004	This section amends section 34 of the <i>Residential Tenancies Act 2004</i> to provide for a new ground of termination. It provides that a failure to pay rent within the 28-day period provided for under section 67(3) (inserted by section 11 of this Bill), will constitute a ground for termination.
9.	Amendment of section 35 of Act of 2004	This section provides for a consequential amendment to section 35 arising from the amendment in section 8 of this Bill.
10.	Referral of notice of termination to adjudicator under Act of 2004	<p>This section inserts a new section 39A into the <i>Residential Tenancies Act 2004</i>. It provides that, where a landlord is serving a notice of termination in relation to a failure to pay rent, the landlord must send a copy of the notice to the Residential Tenancies Board.</p> <p>Under the new section 39A(2), the RTB is then required to notify the tenant in writing of his or her right to refer the dispute to the RTB for resolution under section 76 of the Act of 2004.</p>
11.	Amendment of section 67 of Act of 2004	This section provides for a 28-day period for notice of termination for failure to pay rent, and also for a warning notice of a failure to pay rent.

		<p>It provides that a landlord must notify the tenant that rent has not been paid at least 28 days (it was previously 14 days) before issuing a notice of termination.</p> <p>A copy of the warning notice must be sent to the RTB. If no rent has been received by the expiration of this period, the landlord can then issue a 28-day notice of termination.</p> <p>It therefore operates as a two-step process – a 28-day warning letter, followed by a 28-day notice of termination. It should be noted that section 5 of the Bill directs that the reference to 28-days in respect of the notice of termination (the second step) be read as 90 days in respect of relevant persons, during the emergency period.</p> <p>Section 11(c) further provides that the RTB must, on receipt of a copy of the warning letter, ask the tenant for his or her consent in obtaining advice and support for them from the Money Advice and Budgeting Service (MABS).</p>
12.	Amendment of Act of 2020	<p>This section amends section 5 of the <i>Emergency Measures in the Public Interest (Covid-19) Act 2020</i> to re-define “revised termination date” so that it cannot expire any earlier than 10 August 2020.</p> <p>It also deletes subsection (7), such that Part 2 of that Act ceases to operate at the end of the emergency period prescribed under that Act, as extended by the relevant statutory instruments.</p>
13.	Application of section 25 of Valuation Act 2001	<p>Section 13 modifies the application of section 25 of the <i>Valuation Act 2001</i>. It extends from 10 to 12 years the period in which a valuation list in relation to the rating authority area of Dún Laoghaire Rathdown County Council.</p>

Introduction

Emergency legislative provisions relating to rent increases and evictions

The *Residential Tenancies and Valuation Bill 2020* follows on from the measures enacted by the [Emergency Measures in the Public Interest \(Covid-19\) Act 2020](#) (“the Emergency Measures Act”). The Emergency Measures Act provided for, among other measures, a moratorium on evictions and a rent freeze. These measures were to last until the expiration of the prescribed “emergency period”, a period of three months from the commencement of the Act.¹ However, section 4 of the Act empowered the Minister to extend the emergency period beyond this three-month period if, in his or her opinion, it was in the public interest having regard to:

- The threat to public health presented by Covid-19;
- The highly contagious nature of that disease;
- The need to restrict the movement of persons in order to prevent the spread of the disease among the population.

The Emergency Measures Act therefore empowers the Government, on the request of the Minister for Housing and following consultation with the Minister for Health and with the consent of the Minister for Public Expenditure and Reform, to extend the emergency period, and thus the rental protection measures, beyond the period prescribed in the Act, by way of statutory instrument. The Government exercised this power on 26 June 2020 to extend the emergency period by one month, until 20 July 2020.² The Government further extended the emergency period on 24 July 2020, until 1 August 2020.³

However, one commentator has noted that, as the country moves towards greater reopening, it could become increasingly difficult to satisfy the extension criteria set out in the Act.⁴ Professor Rachael Walsh of Trinity College Dublin observes that notably absent from the criteria is any mention of economic hardship and the consequent difficulty in meeting rent.⁵

The Emergency Measures Act premised the moratorium on evictions and the rent freeze, and any extension of those measures, on a need to keep persons sheltered in place in order to halt the rapid spread of the virus at that time. Having regard to the increasing free movement of persons in the State, this rationale may no longer fully justify the restrictions on property rights, and leave any extension of the measures vulnerable to constitutional challenge. While there is, at least arguably, a continuing justification for the restrictions of property rights, this justification lies more with the economic hardship wrought by the pandemic rather than the health impacts of the virus, or the need to contain its spread.

¹ Section 3 of the *Emergency Measures in the Public Interest (Covid 19) Act 2020*.

² *Emergency Measures in the Public Interest (Covid 19) Act 2020 (Section 4) Order 2020*, S.I. No. 224 of 2020.

³ *Emergency Measures in the Public Interest (Covid 19) Act 2020 (Section 4) (No. 2) Order 2020* S.I. No. 252 of 2020

⁴ Rachael Walsh, 'COVID-19's Silver Lining - Housing, the Constitution, and the Scope for Post-Crisis Reform' COVID-19 Law and Human Rights Blog (19 June 2020) available at <<http://tcdlaw.blogspot.com/2020/06/covid-19s-silver-lining-housing.html>>

⁵ Ibid.

Perhaps owing to this concern, the Government has decided to bring new primary legislation to underpin the latest extension of these particular emergency measures.

Rent arrears

Addressing the issue of rent arrears in the Dáil on 7 May 2020, the then Minister for Housing, Planning and Local Government, Eoghan Murphy T.D. stated:

“There are huge numbers of people who have difficulties paying rent. I have asked the ESRI to do a report on rent arrears to try to figure out over this period what kind of situation is building up for individuals who might be falling into rent arrears and how it might impact on them and on their landlords. That work by the ESRI will guide further decisions that may need to be made in this area.”

Threshold, the national housing charity, released a [press release](#) on 29 May 2020 in order to highlight an increase in tenants who have gone into rent arrears since the Covid-19 pandemic. Threshold called for an extension of the moratorium on evictions and rent increases. The press release states that most of Threshold’s callers are younger, single people living in house shares. Threshold report that 69% of their callers have lost their income as a result of Covid-19 public health measures. An analysis of rent supplement figures shows that between 19 March to 20 June 2020, the number of Rent Supplement recipients increased by 34.9% (5,479 people) and stood at 21,171 recipients.⁶

NESC (2020) state that tenants who accrue arrears during the emergency period are:

“exposed to a risk of landlords taking action to secure termination of the tenancy when the ban on evictions expires so it is important that it be extended.”⁷

⁶ For more information in relation to this, see the [L&RS Note on Rent Arrears and Covid 19](#).

⁷ NESC (2020). [The implications of Covid-19 for Housing in Ireland](#)

Background

Operation of *Residential Tenancies Act 2004*

The [Residential Tenancies Act 2004](#) (the '2004 Act') was introduced in an attempt to modernise the law regulating the private rental sector. The 2004 Act governs private residential tenancies, which include any tenancy that is agreed privately between a landlord and a tenant. This also covers tenancies made under the Housing Assistance Payment and the Rental Accommodation Schemes. Under the *Residential Tenancies (Amendment) Act 2019*, student tenancies are also covered by residential tenancies legislation and the same procedures around rent reviews must be adhered to.

Rent and rent reviews

Part 3 of the 2004 Act requires that rent may not be greater than the open market rate. In December 2016, the government introduced Rent Pressure Zones (RPZs) in an effort to create more certainty at a time of increasing rents. Within RPZs, rents may only be increased by up to 4% annually. The measures apply to the property rather than the tenancy and for this reason, limits to rent increases (in RPZs) apply to new tenancies, including if the property is sold to a new landlord.⁸ Rent may only be reviewed (upward or downward) once in any 24-month period and a 90-day notice period applies to any rent review. This rent certainty measure is in place until 31 December 2021. Any attempt by a landlord to increase rent before the 24 months have passed is invalid. However, where a property is subject to a new tenancy agreement and is located within a RPZ, the landlord may review the rent once every 12 months.⁹

Security of tenure

Part 4 of the 2004 Act creates a minimum period of security of tenure for tenants (a 'Part 4 tenancy'). Part 4 tenancies currently apply to tenancies of six months or more duration. Prior to the Part 4 tenancy taking effect, the landlord may terminate the tenancy without providing a ground for that termination.¹⁰

Where a tenant rents a property continuously for at least six months, he or she is entitled to remain in occupation of the dwelling for at least the prescribed period. For tenancy that commenced on or before 24 December 2016, the period is four years and for tenancy that started after that date the period is six years. In the case of a multiple occupancy property, the tenancy becomes a Part 4 tenancy on the earliest date at which one of the tenants has been in occupation for 6 months.

Termination of Tenancy by Landlords

The landlord may only terminate a tenancy and take back possession of a property subject to a Part 4 tenancy, where:¹¹

⁸ Department of Finance [Report of the working group on the tax and fiscal treatment of rental accommodation providers](#), 2017.

⁹ Section 20 of the 2004 Act.

¹⁰ <https://onestopshop.rtb.ie/ending-a-tenancy/how-a-landlord-can-end-a-tenancy/landlords-grounds-for-ending-a-tenancy/>

¹¹ Section 34 of the 2004 Act.

1. The tenant is in breach of the rental contract, and that breach is capable of being rectified but has not been rectified;
2. The property becomes unsuitable for the needs of the tenant(s) due to overcrowding;
3. The landlord intends to sell the property within nine months of the termination date (except where the landlord intends to sell 10 or more dwellings in a development within a six-month period);
4. The landlord requires the dwelling for their own occupation or that of a prescribed family member;
5. The landlord intends to significantly refurbish the property and requires the property to be vacated to do so; or
6. The landlord intends to change the use of the property.

Where a tenancy is ended on the basis of grounds 4, 5 or 6 above, the landlord must offer the property back to the tenant if the relevant ground ceases to apply within one year of the tenancy ending (or within six months for tenancies which ended before 4 June 2019). The landlord is required to give formal notice which must include particular reasons for terminating a Part 4 Tenancy. A statutory declaration is also required if the landlord relies on grounds 3 or 4 above.¹²

In general, the statutory notice periods for a landlord to terminate a tenancy are:¹³

Duration of Tenancy	Notice Period
Less than 6 months	28 days
Not less than 6 months but less than one year	90 days
Not less than one year but less than 3 years	120 days
Not less than 3 years but less than 7 years	180 days
Not less than 7 years but less than 8 years	196 days
Not less than 8 years	224 days

However, where the tenancy is terminated by the landlord, by reason of the failure of the tenant to comply with any of the obligations of the tenancy, different notice periods apply. A 7-day notice period applies if the tenancy is terminated because of anti-social behaviour of the tenant or where the behaviour of the tenant threatens the fabric of the property or dwelling.¹⁴ Otherwise, a 28-day notice period applies. However, if the reason for the breach relates to a failure to pay an amount of rent due the 28-day notice period only applies after the tenant has been notified in writing by the landlord that an amount of rent due has not been paid and 14 days have elapsed from the receipt of that notice, without the amount concerned having been paid to the landlord.¹⁵

Shorter notice periods may apply as agreed by the landlord and tenant at, or after, the intention to terminate has been indicated to the tenant.¹⁶

¹² Sections 35 and 35A of the 2004 Act.

¹³ Section 66(3) of the 2004 Act.

¹⁴ Section 67(2) of the 2004 Act.

¹⁵ Section 67(3) of the 2004 Act.

¹⁶ Section 69 of the 2004 Act.

Licensees

A licence relating to property (be it oral or written) amounts to a permission to enter onto and/or occupy property. Hotel, hostel or guesthouse residents are licensees as is a person sharing a dwelling with or renting a room from the owner or a family member of the owner (unless the dwelling is self-contained).¹⁷

A tenant may take in a licensee to contribute towards the rent, but the tenant remains liable to the landlord for all conditions of the lease and is therefore fully responsible for the behaviour of a licensee. If an act of the licensee breaches the lease, the tenant is liable for that breach. During the existence of a Part 4 tenancy, any lawful licensee of the tenant/s may make a request to the landlord, to become a tenant of the tenancy. The landlord may not unreasonably refuse such a request and must give his/her acceptance in writing. All the rights, restrictions and obligations of a tenant will then apply to the former licensee except that the protection of the Part 4 tenancy will not apply until the former licensee has completed 6 months of continuous occupation counting time spent as a licensee and as a tenant.¹⁸

As licence arrangements are not covered by the legislation applicable to residential tenancies, licensees have limited statutory rights of residence. Subject to the obligation to provide reasonable notice, the termination of the licence arrangement will generally be at the discretion of the licensor. If the licence arrangement is governed by a written agreement, this agreement may provide a level of protection to the licensee.

A large proportion of student accommodation is occupied by way of licence. Under the [Residential Tenancies \(Amendment\) Act 2019](#) student-specific accommodation falls under the remit of the 2004 Act. Student-specific accommodation includes all housing built specifically for students or designated for the occupation of students.

The relevant provisions commenced on 15 July 2019, applying to student tenancies and licences entered into on or after 15 August 2019. It means that new student licences are now covered by residential tenancies legislation and these licensees have been given the same rights as private tenants. Students living in a licensee arrangement outside student-specific accommodation (for example, in a rent-a-room arrangement) do not receive any statutory protection under the 2004 Act.¹⁹

¹⁷ See Residential Tenancies Board, '[Licensees in Private Rental Accommodation](#)'.

¹⁸ Ibid.

¹⁹ See Residential Tenancies Board, '[Student Specific Accommodation](#)' (last accessed 23 March 2020).

Property rights and the Constitution

The approach adopted by the Government in drafting this Bill appears to have been informed by continuing debates as to the extent to which the constitutional property rights of landlords can be restricted in furtherance of housing reforms. It is therefore worth setting out a very brief summary of the constitutional protection of private property, and the outline of previous debates in this area.

The Constitution protects property rights in two separate articles, Article 40.3 and Article 43. Article 40.3 provides for a general protection of the personal rights of the citizen against “unjust attack”, and this extends to the protection of private property. This is further bolstered by Article 43, which provides specifically for the protection of the institution of private property, stating that “[t]he State acknowledges that man, in virtue of his rational being, has the natural right, antecedent to positive law, to the private ownership of external goods.” The interaction of these separate articles has been the subject of much debate and some confusion, but they are generally now considered together in a harmonious interpretation.²⁰

Constitutional articles affecting property rights:

ARTICLE 40

3 1° The State guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen.

2° The State shall, in particular, by its laws protect as best it may from unjust attack and, in the case of injustice done, vindicate the life, person, good name, and property rights of every citizen.

ARTICLE 43

1 1° The State acknowledges that man, in virtue of his rational being, has the natural right, antecedent to positive law, to the private ownership of external goods.

2° The State accordingly guarantees to pass no law attempting to abolish the right of private ownership or the general right to transfer, bequeath, and inherit property.

2 1° The State recognises, however, that the exercise of the rights mentioned in the foregoing provisions of this Article ought, in civil society, to be regulated by the principles of social justice.

2° The State, accordingly, may as occasion requires delimit by law the exercise of the said rights with a view to reconciling their exercise with the exigencies of the common good.

The Constitution therefore establishes very firmly the right to private property. However, the right is far from absolute and the Constitution provides for numerous qualifications to the right. The text of Article 43 provides that the right “ought, in civil society, to be regulated by the principles of social

²⁰ See *Re Article 26 and the Employment Equality Bill 1996* [1997] 2 IR 321.

justice” and should be reconciled with “the exigencies of the common good.” Similarly, in the language of Article 40.3, the measure complained of must constitute an “unjust attack” on the right. An example of legislation that was found to constitute an “unjust attack” on property rights was the *Rent Restrictions Act 1960*. The Act imposed strict rent controls on particular categories of dwellings. The Act was a consolidation of legislation going back to before the First World War, and as a result the scope of its application was somewhat arbitrary.²¹

In *Blake v Attorney General*,²² the Supreme Court took the view that the Act unjustly imposed the cost of achieving a social good for one section of society (low-income tenants) on another section of society (landlords within the scope of the Act). This was done without compensation, and without an opportunity for appeal or review, or regard to the financial situation of the individual landlord. The Court therefore held the Act to be unfair and arbitrary, and an unjust attack on the property rights of the landlords affected. The decision in *Blake* has sometimes been considered a bulwark against intervention by the legislature in the rental market. However, one commentator has argued that the Supreme Court struck down the legislation in *Blake* owing to some very particular characteristics:²³

“A few features of *Blake* are worth noting. First, the statutory scheme in question was very outdated, resulting in arbitrariness in its application. Second, it lacked features that would have enabled a proportionate response to the rent control issue, such as a scheme for review and a consistent, well-considered approach to rent-capping... Third, and most significantly, the rent control scheme was not designed in a way that responded to any clearly established need on the part of the benefiting tenants, or to any wider social need, whether temporary or permanent.”

The standard of review for “unjust attack”

The courts, in recent times, consider “unjust attack” in terms of a proportionality analysis. The proportionality test was first set out in *Heaney v Ireland*,²⁴ and was adopted in the property rights context by the Supreme Court in *Re Part V of the Planning and Development Bill 1999*.²⁵ The test is that where a legislative provision interferes with a constitutional right in furtherance of some collective good, the provision must:

- (a) Be rationally connected to the objective and not be arbitrary, unfair or based on irrational considerations;
- (b) Impair the right as little as possible;
- (c) Be such that [its] effects on rights are proportional to the objective.

²¹ The Act applied to dwellings erected before May 1941, within a particular rateable valuation, and required that rents be fixed, to some extent, by reference to the rent applicable in May 1941. The Act affected about 40,000 properties. It has been said that the rates the Act directed be applied rendered the dwellings a “wholly uneconomic asset for their owners”. Hogan, Whyte, Kenny and Walsh, *Kelly: The Irish Constitution* (5th ed. Bloomsbury, 2018) p. 2377.

²² [1982] IR 117.

²³ Rachael Walsh, Opinion on the Implications of Constitutional Property Rights for Responses to the Housing Crisis, Academia.edu, available at <https://www.academia.edu/41273377/Opinion_on_the_Implications_of_Constitutional_Property_Rights_for_Responses_to_the_Housing_Crisis>.

²⁴ [1994] 3 IR 593.

²⁵ [2000] 2 IR 321. In this case, the Supreme Court upheld planning legislation that required building developers to cede up to 20% of their land to local authorities for use as social and affordable housing.

Constitutional property rights and recent proposed reforms

A number of recent Bills before the Houses have been debated in the context of the extent to which property rights of landlords may be abridged in furtherance of reforms in the housing sector.²⁶

Rent Freeze (Fair Rent) Bill 2019

[The Rent Freeze \(Fair Rent\) Bill](#) was introduced by Sinn Féin in Dáil Éireann in December 2019. The Bill proposed a freeze on rents for all existing and new tenancies for a period of three years. It further directed the Minister for Finance to commission a report into introducing a refundable tax relief for all tenants in the private rental sector equivalent to 8% of annual rental costs.

The then Minister for Housing, Eoghan Murphy TD, stated that the Bill was unconstitutional. The Minister stated:²⁷

“Any simple constitutional reading of this Bill would tell one that it does not pass the proportional treatment test but one wonders if Fianna Fáil even read it before it gave its support to it. Where is the evidence that it would work? Where is the evidence that it is constitutional?”

The Minister’s analysis of the constitutionality of the Bill was the subject of criticism by some commentators. Writing in the Journal.ie, Dr David Kenny of Trinity College Dublin argued that “the potency of property rights in the Constitution is often exaggerated” and that “[t]here is a good chance that, in deference to the Oireachtas’ judgment and the scale of the housing crisis, that the courts would uphold the Bill.”²⁸ The Bill lapsed with the end of the 32nd Dáil.

Anti-Evictions Bill

[The Anti-Evictions Bill](#) proposed to ban the sale of property as a ground for eviction, and ban renovation as a ground for eviction. It also proposed that, in the case of a landlord wishing to evict to move a family member into the property, the landlord would have to compensate the tenant. The Government opposed the Bill on the basis of property rights concerns. The then Minister of State at the Department of Housing, Planning and Local Government, Mr Damien English TD, responding to the Bill in Dáil Éireann, said:²⁹

“The flip side of this is that landlords have constitutionally protected property rights that can be delimited only in a proportionate manner to achieve a legally justifiable social common good. In recent years we have improved security of tenure for tenants while maintaining the property rights of landlords as much as possible. I spoke before about trying to get that balance. We are trying to balance the rights of tenants with the property rights of landlords

²⁶ For a full discussion of Bills proposing reforms in the housing sector that have been opposed on the basis of property rights concerns see Finn Keyes, *The Invocation of Property Rights in Opposition to Housing Reform Bills in the Oireachtas 2009-2019*, Academia.edu – available at <https://www.academia.edu/41274657/The_Invocation_of_Property_Rights_in_Opposition_to_Housing_Reform_Bills_in_the_Oireachtas_2009-2019>

²⁷ [Rent Freeze \(Fair Rent\) Bill 2019: Second Stage](#) (December 10 2019).

²⁸ David Kenny, ‘[Column: It’s not so simple, Minister, the proposed rent freeze bill could work under the Constitution](#)’, The Journal.ie (December 12, 2019).

²⁹ [Anti-Evictions Bill 2018: Second Stage \[Private Members\]](#) (12 December 2018).

in all legislation. It is not easy to achieve. We would say the Deputies' Bill is a little extreme and goes too far but we do want to achieve the same things, though perhaps in different ways.”

The Anti-Evictions Bill lapsed with the end of the 32nd Dáil.

Principal Provisions

What does the Bill do?

The Bill is divided into three parts: Part 1 - Preliminary and General includes provisions in relation to the short title and interpretation of the Bill. Part 2 -Protection of tenants during the emergency period includes new provisions relating to the rent freeze and moratorium on evictions. Part 3 - Miscellaneous, which contains a number of consequential amendments following the provisions in Part 2, provision for increased notification periods in relation to terminations for failure to pay rent, as well as new provision for the notification of tenants as to their rights under the Residential Tenancies Acts, and a new provision amending the *Valuation Act 2001*.

Part 1

Part 1 provides for the short title, commencement and interpretation of the Bill. Importantly, section 3 provides that the emergency period will last from the passage of the Bill until 10 January 2021.

Part 2

This Part provides for emergency rental protection measures. It provides for the revised basis for the moratorium on evictions and the rent freeze. The new emergency period for this purpose will run from the date of the Bill's enactment to 10 January 2021.³⁰

Notably, section 4 limits the application of this Part to persons who make a written declaration to the RTB that they are a “relevant person”, and that as a result, there is a “significant risk” that the tenancy will be terminated by the landlord. “Relevant person” is defined in section 4(5) as a person who is not able to pay the rent due to:

- (d) Being unable to work due to contracting Covid-19; or
- (e) Being in receipt of the temporary wage subsidy, or the supplementary welfare allowance; or
- (f) Being in receipt of any other payment out of public moneys introduced to alleviate the economic hardship brought about by the pandemic.

Thus, in order to avail of the protections outlined in this Part, a tenant will have to make a “written declaration” to the Residential Tenancies Board that he or she is a “relevant person” within the definition of the Act, and as a consequence there is a significant risk that he or she will be evicted by his or her landlord. Under section 4(2), the making of a false or misleading declaration to the RTB will constitute a criminal offence.

³⁰ Section 3 of the Bill.

In contrasting this with the provisions of the Emergency Measures Act, it would appear that this new regime both limits the scope of both moratorium and the rent freeze, and places the onus on the tenant to avail himself or herself of the rights afforded in the Statute. The rationale for this would appear to be to limit the encroachment on the property rights of landlords to the minimum extent necessary to secure the interests of those who have been impacted financially by the pandemic. The Minister for Housing, Darragh O'Brien T.D, has indicated this is the rationale behind the approach taken:³¹

“I need to make sure that the most vulnerable people during this pandemic are actually protected, balancing that with the rights of property owners too... And I'm pretty happy that this Bill will achieve that.”.

However, it could be argued that those who have suffered financial hardship as a result of the pandemic is not limited to those who have either been laid off due to ill-health, or have been in receipt of the wage supplement payment, or would be entitled to that supplement.

The requirement that a tenant make a declaration that they are a relevant person also may prove problematic insofar as many may not be aware of the requirement, and suffer prejudice as a result. Concern has also been expressed about the capacity or ability of some persons to make the declaration.³² Similarly, the threat of criminal sanction hanging over the making of the declaration may deter tenants from applying. As discussed, the rationale for these more limited rental protection measures appears to be a concern that the existing measures could be vulnerable to constitutional challenge from affected landlords.

Moratorium on evictions

Section 5 of the Bill provides for the moratorium on evictions. It provides that a notice of termination served during the emergency period shall not take effect on a date that falls earlier than 10 January 2021. This is a somewhat different framework from that established in the Emergency Measures Act insofar as it allows a landlord to serve a notice of termination within the emergency period, but provides that it cannot take effect until the expiration of the emergency period. It further provides that a person to whom this Part applies is entitled to at least 90 days' notice of termination for failure to pay rent, as opposed to the 28 days (the ordinary period, provided for in section 11 of this Bill).

No rent increase

Section 6 provides that no rent increase shall take effect during the emergency period, and that any increase in rent that came into effect before the 27 March 2020 shall not be payable during the emergency period.

Amendments in Part 3

Part 3 contains a number of consequential amendments to those contained in Part 2, but also a

³¹ Irish Examiner, [‘Renters financially impacted by Covid-19 can apply for eviction exemption’](#) (26 July 2020)

³² Sinn Féin, [Renters Bill in needs of substantial amendment – Eoin Ó Broin TD](#) (24 July 2020)

number of more permanent changes to the legal framework. Section 7 provides that proceedings before the Tenancy tribunal do not need to take place in public for the duration of the emergency period.

Section 10 inserts a new section 39A into the *Residential Tenancies Act 2004*. It provides that, where a landlord is serving a notice of termination in relation to a failure to pay rent, the landlord must send a copy of the notice to the Residential Tenancies Board. Under the new section 39A(2), the RTB is then required to notify the tenant in writing of his or her right to refer the dispute to the RTB for resolution under section 76 of the Act of 2004.

Section 11 of the Bill provides for a 28-day period for notice of termination for failure to pay rent, and also for a 28-day warning notice of a failure to pay rent. It provides that a landlord must notify the tenant that rent has not been paid at least 28 days (it was previously 14 days) before issuing a notice of termination. A copy of the warning notice must be sent to the RTB. If the rent due has not been received by the expiration of this period, the landlord can then issue a 28-day notice of termination.

It therefore operates as a two-step process – a 28-day warning letter, followed by a 28-day notice of termination. It should be noted that section 5 of the Bill directs that the reference to 28-days in respect of the notice of termination (the second step) be read as 90 days in respect of relevant persons, during the emergency period.

Section 11(c) further provides that the RTB must, on receipt of a copy of the warning letter, ask the tenant for his or her consent in obtaining advice and support for them from the Money Advice and Budgeting Service (MABS).

Amendment of *Valuation Act 2001*

Section 13 modifies the application of section 25 of the *Valuation Act 2001*. It extends from 10 to 12 years the period in which a valuation list in relation to the rating authority area of Dún Laoghaire Rathdown County Council. The Valuation Office states on its website that:³³

“Due to the impact of COVID-19, the Minister for Housing, Planning and Local Government agreed with the Commissioner of Valuation that the Commissioner will defer the revaluation of rateable properties in the Dún Laoghaire-Rathdown County Council area until 2021.”

This will bring Dún Laoghaire-Rathdown County Council into line with the publication of new valuation lists for Local Authorities of Clare, Donegal, Galway, Kerry and Mayo County Councils and Galway City Councils.

³³ Valuation Office, [Dún Laoghaire Rathdown Revaluation](#) (15 May 2020)



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