



Bill Digest

Emergency Measures in the Public Interest (Covid- 19) Bill 2020

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Abstract

The *Emergency Measures in the Public Interest (Covid-19) Bill 2020* is emergency legislation which provides for wide-ranging measures including: a moratorium on rent increases and evictions; registration of retired health and social care professionals; amendments to the *Mental Health Act 2001* to allow for one-member, paper-based tribunals; amendments to the *Defence Act 1954*, to facilitate the re-enlistment of former enlisted members to fill certain critical positions within the Permanent Defence Force; the introduction of a temporary wage subsidy scheme; and amendments to the *Redundancy Payments Act 1967*.

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Summary

Provisions of the Bill

The [Emergency Measures in the Public Interest \(Covid-19\) Bill 2020](#) was published on 24 March 2020. There are nine parts to the Bill from six different Departments. These are: (1) Health (2) Justice and Equality (3) Defence (4) Social Protection (5) Housing, Planning and Local Government and (6) Finance.

The Bill, if enacted, would provide for a range of emergency powers to deal with the COVID-19 pandemic, such as:

Housing

- The Government, at the request of the Minister for Housing, Planning and Local Government, will have the power to disregard certain time periods and deadlines for a defined period which would otherwise be taken into account in the [Building Control Act 1990](#), the [Derelict Sites Act 1990](#), the [Planning and Development Act 2000](#), the [Urban Regeneration and Housing Act 2015](#) and the [Planning and Development \(Housing\) and Residential Tenancies Act 2016](#). This is to avoid statutory deadlines being breached and the planning and building control systems being compromised in the event of further impacts of Covid-19 on the community or workforce;
- amendments to the [Residential Tenancies Act 2004](#) to prevent the termination of residential tenancies and rent increases for the duration of the crisis;

Health

- amendments to the [Mental Health Act 2001](#) to facilitate the ongoing operation of the Mental Health Tribunals through the crisis. This includes modified procedures to allow for one-member paper-based tribunals and minimum personal interaction between relevant persons;
- a simplified restoration process to professional medical, nursing and other health professionals registers to facilitate the recruitment of retired health sector workers;
- an exemption from complaints to the Medical Council being investigated by the Council, due to a staffing shortage, where health practitioners are redeployed and assigned to tasks which may be outside their usual role;

Defence

- amendments to the [Defence Act 1954](#) to facilitate the re-enlistment of former enlisted members to fill certain critical positions within the Permanent Defence Force;

Social Protection

- amendments to the civil registration acts for the duration of the crisis extending the functions of an tArd Chláraitheoir with the purpose of minimising the risk of the spread of Covid-19;

- amendments to the [Redundancy Payments Act 1967](#) to extend the time-periods under which a person who has been laid off or kept on short-time due to Covid-19 can claim a redundancy payment from their employer. The financial impact of mass redundancies over a short period of time would have a serious impact on the potential for a business to recover;
- the introduction of a temporary wage subsidy scheme to be implemented and operated by the Revenue Commissioners to contribute to wage costs and to reduce the burden on the Department of Employment Affairs and Social Protection in an effort to maintain the viability of certain businesses, jobs and incomes until normal business resumes.

This Digest places greater focus on the amendments to the [Residential Tenancies Act 2004](#), as it was these measures which were announced on Thursday 19 March 2020. The short timeframe between publication of the Bill and second stage debate, combined with the wide-ranging measures of the Bill, has meant that it is not possible to provide policy context and analysis for all parts of the Bill.

Nevertheless, all parts of the Bill are summarised in the Digest and issues are highlighted where they have been identified.

Possible implications of the Bill and issues for debate

Possible implications of the Bill on the private rented sector (PRS), healthcare workers and patients in mental health facilities are identified below. Implications are not meant to be prescriptive and are provided purely as an aid to Members' scrutiny of the Bill.

PRS

While the Bill would put in place a moratorium on evictions and rent increases, these are emergency measures, rather than a response to broader concerns around rent certainty and housing affordability in Ireland. The moratorium is being introduced to support broader public health policy, by keeping people in their homes and maintaining social distancing.

Nevertheless, the emergency measures do take place in the context of historically high rents, with a growing proportion of Ireland's population renting.

A brief overview of the key figures show:



307,348 private tenancies & 173,197 registered landlords



number of private renters doubled from 2006-2016



standardised average rent is €1,243 nationally



rent increased nationally by 8.2% year-on-year - (Q3 2018- Q3 2019)



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

While the Bill, if enacted, would stop rent increases and evictions, tenants who were not able to pay will still be liable for the rent which was not paid during the crisis. Evidence shows that those living in the PRS are more likely to spend more of their income on housing costs. Some may struggle financially to pay this rent at the end of the period the moratorium takes effect.

While the Bill provides some security for tenants, licensees (e.g. people who are renting a room, in which the landlord lives), while they are defined as a tenant in the Bill, may be more vulnerable. Students living on campus accommodation are likely to lose out on fees paid for that accommodation, when the campus is closed but the accommodation remains open. Other student accommodation has closed.

Legal issues in relation to the PRS

The three main functions of the Bill, in relation to the PRS, are to establish a moratorium on evictions for tenancies of greater than six months, a freeze on rent increases, and an increase in the termination notice period of tenancies of less than six months from 28 to 90 days. These measures would remain in place for the duration of the Covid-19 emergency. The measures are not only designed to limit the effect of the emergency on homelessness, but also to ensure that individuals have the capacity to self-isolate and follow health protocols with respect to physical distancing – measures that have been deemed essential to limit the spread and potential effects of the Covid-19 virus.

If enacted, the Bill affords stronger rights to tenants, securing their capacity to remain in occupation of the rental property. The corollary is that these measures undermine the rights of landlords to

evict tenants, to secure vacant possession of their property, and to realise the potential market value of their investment.

The Bill proposes that the measures would stay in place for three months and may be extended by order. Although the Bill does not limit the period of extension, any order made in this regard would need to be placed before both Houses of the Oireachtas, each of which would have 21 sitting days in which to pass a motion of annulment for the order to be annulled.

Healthcare and social care workers

Data from the end of February 2020 has indicated that the probability of dying from Covid-19 increases dramatically with age.¹ Currently, health care professionals make up a relatively high proportion of Covid-19 patients. As of 21 March 2020, 208 of the 836 covid-19 cases were healthcare workers, or 25%. The Minister for Health said that priority testing for groups such as healthcare workers may be implemented.²

Given a high proportion of health care workers contract the virus, it may be dangerous to place potentially vulnerable people, such as retired medical professionals and health care workers, on the front line of efforts to deal with the Covid-19 emergency. Formal health screening of potential registrants could be introduced as a prerequisite for employment to ensure that new and existing HSE employees are not placed at higher risk.

Patients in approved mental health centres

Mental health tribunals

Under the *Mental Health Act 2001*, the Mental Health Commission must establish what are known as 'mental health tribunals'. These tribunals consist of 3 panel members, and their function is primarily to review the detention of any person who has been admitted to a hospital/facility against their will within those 21 days, or where such an involuntary detention has been renewed. In addition, the authorisation of a mental health tribunal is required in order for any form of psychosurgery to be performed on a patient. As stated by the Mental Health Commission in its 2018 Annual Report:

“This is a core requirement in protecting and upholding patients’ human rights”.

This Bill proposes to allow for **one-member, paper-based mental health tribunals**, until 9 November 2020, or if that period is extended, for the duration of the Covid-19 crisis. The implications of this would be the suspension of in-person hearings for these tribunals, with evidence being submitted entirely via written statement. As a result, the Bill suspends the ability of patients to cross-examine witnesses, or attend sittings of the tribunal.

This Bill would also **allow a tribunal to extend the time within which it must make a decision**

¹ [‘Age, Sex, Existing Conditions of COVID-19 Cases and Deaths’](#), *Coronavirus Worldometer*, 29 February 2020.

² [‘Coronavirus: Two more deaths, 219 new cases in Ireland’](#), *RTE News*, 24 March 2020.

on a person's involuntary detention. The question arises as to whether such an extension is compatible with Ireland's domestic and international human rights obligations, such as the right to liberty, even though it is for a limited period of time.

Psycho-surgery

This Bill proposes to remove the possibility of psycho-surgery until 9 November 2020, or if extended, for the duration of the national health emergency caused by Covid-19. Psycho-surgery is any surgical operation that destroys brain tissue or the functioning of brain tissue, in order to treat a mental disorder. This will have implications for patients in need of such surgery. However, it should be said that such surgery is very rare in Ireland.

Work of consultant psychiatrists

Section 17(4) of the *Mental Health Act 2001* provides that it is an offence for a person to obstruct, interfere with, or fail to comply with, a consultant psychiatrist attempting to carry out an assessment of a patient having been directed to do so by the Mental Health Commission. However the Bill proposes to create a new defence to this. The proposed new subsection (5) states that a person will have a defence if they can prove that their failure to co-operate was due to the current public health emergency. This would, for example, cover situations where a consultant was denied access to an approved centre due to the presence of Covid-19.

Introduction

Background to the Bill

On Thursday 19 March the Government announced that they would bring forward legislation to provide for moratoriums on evictions, as well as rent increases. Moratoriums will last for the duration of the Covid 19 emergency:

“...to ensure people can stay in their homes during this period.”

The Government also announced that it was increasing the notice periods to end tenancies, of less than six months, from 28 to 90 days. The Government states that these measures should complement the announcement, on the 18 March 2020, by the five main retail banks (AIB, Bank of Ireland, KBC, Permanent tsb and Ulster Bank),³ to offer three month mortgage breaks for owners of buy-to-let mortgages, whose tenants have been impacted by the virus.

Other measures have been added to the [Emergency Measures in the Public Interest \(Covid-19\) Bill 2020](#), cutting across a number of Departments. However, as the provisions relating to the *Residential Tenancy Act 2004* were announced in advance of the Bill's publication, the Digest places greater focus on those provisions.

Nevertheless, the Digest does summarise all provisions contained in the Bill.

This is the second Bill introduced by the Government to tackle the consequences of the Covid-19 pandemic, following the passage of the [Health \(Preservation and Protection and other Emergency Measures in the Public Interest\) Bill 2020](#) through the Houses on the 19 and 20 March 2020. A Bill Digest on that Bill can be accessed [here](#).

A number of other countries and jurisdictions have taken steps to ensure that renters do not face rent increases or evictions during the COVID-19 pandemic. On 18 March 2020, the UK Prime Minister, Mr. Boris Johnson, announced that renters unable to meet their rent would be protected. In the US, similar measures have been announced in the cities of Los Angeles, Santa Monica, San Jose, San Francisco and New York.

The following table summarises the provisions of the Bill:

³ Banking and Payments Federation Ireland. [Banks set out joint plan to support businesses and personal customers impacted by the Covid-19 pandemic.](#)

Table of Provisions

Section	Title	Effect
1.	Short title, commencement and operation	<p>The Short Title is the Emergency Measures in the Public Interest (Covid-19) Act 2020.</p> <p>Part 3 shall come into operation on such day as the Minister for Housing, Planning and Local Government may appoint by order.</p> <p>Part 5 shall come into operation on 30 March 2020.</p> <p>Parts 8 and 9 shall be deemed to have come into operation on 13 March 2020.</p> <p>The amendments to and other modifications of the Mental Health Act 2001 effected by Part 5 continue in operation until 9 November 2020, and its operation may be extended by a resolution passed before 9 November 2020 by each House of the Oireachtas, specifying the new date.</p>
2.	Definition	Defines the term 'Covid-19'.
3.	Interpretation	Defines terms used in Part 2 of the Bill, including 'emergency period', which is defined as a period of 3 months commencing on the enactment of the Bill and any other period (if any) as may be specified by order.
4.	Extension of Emergency Period	Provides that the emergency period may be extended by an order of the Government.
5.	Notices of termination under the <i>Residential Tenancies Act 2004</i> (Act of 2004)	Prohibits landlords from serving a new notice of termination in relation to a tenancy during the emergency period and extends the termination date for notices of termination served before the emergency period.
6.	Prohibition on rent increases under Act of 2004	Makes any increase in rent during the emergency period invalid for the duration

		of that period.
7.	Proceedings before Tenancy Tribunal	Provides that section 106 of the Residential Tenancies Act 2004 providing that proceedings be held in public has no effect during the emergency period.
8.	Entitlement to remain in occupation of dwelling during emergency period	Establishes that a tenant has a right to occupy a dwelling for the duration of the emergency period.
9.	Calculation of time limits during emergency	Inserts a new section 251A into the Planning and Development Act 2000 to allow the Government to disregard certain time periods during the Covid-19 crisis to avoid breaching statutory deadlines in a number of Acts relating to planning and building development.
10.	Special measures registration having regard to Covid-19	Inserts a new section 69 into the Dentists Act 1985 to allow for the temporary re-registration of formerly registered dentists.
11.	Special measures registration having regard to Covid-19	Inserts a new section 98 into the Health and Social Care Professionals Act 2005 to allow for the temporary re-registration of formerly registered health and social care workers.
12.	Special measures registration having regard to Covid-19	Inserts a new section 77 into the Pharmacy Act 2007 to allow for the temporary re-registration of formerly registered pharmacists or pharmaceutical assistants.
13.	Amendment of Medical Practitioners Act 2007 – insertion of sections 110 and 111	Inserts new sections 110 and 111 into the Medical Practitioners Act 2007 to allow for the temporary re-registration of formerly registered medical practitioners and to provide that where a registered health practitioner carries out activities under the direction or control of a registered medical practitioner, that practitioner cannot be investigated by the Medical Council for performing those functions.
14.	Special measures registration having regard to Covid-19	Inserts a new section 108 into the Nurses and Midwives Act 2011 to allow for the temporary re-registration of formerly

		registered pharmacists or pharmaceutical assistants.
15.	Definition (Part 5)	Provides that 'Act of 2001' refers to the Mental Health Act 2001 .
16.	Exigencies of public health emergency	Inserts a new section 2A into the Mental Health Act 2001 defining the term 'exigencies of the public health emergency'.
17.	Amendment of section 17 of Act of 2001	Amends section 17 of the Mental Health Act 2001 allowing the Tribunal to direct a consultant psychiatrist to examine a patient and provide the Tribunal with a written report of his or her findings.
18.	Amendment of section 18 of Act of 2001	Amends section 18 of the Mental Health Act 2001 requiring the Tribunal to consult with a second psychiatrist before making a determination. The Tribunal may allowing the second psychiatrist to examine the patient remotely.
19.	Amendment of section 28 of Act of 2001	Amends section 28 of the Mental Health Act 2001 extends the period in which the Tribunal must make decisions on individual cases.
20.	Amendment of section 48 of Act of 2001	Amends section 48 of the Mental Health Act 2001 temporarily allowing reviews to be conducted by a single-member Tribunal.
21.	Amendment of section 49 of Act of 2001	Amends section 49 of the Mental Health Act 2001 temporarily allowing reviews to be made on the papers.
22.	Amendment of section 58 of Act of 2001	Substitutes section 58 of the Mental Health Act 2001 prohibiting the performance of psycho-surgery on a patient.
23.	Certain provisions of Act of 2001 not to have effect	Provides that certain subsections of section 17 and 49 of the Mental Health Act 2001 have no effect, allowing for more streamlined decision-making processes.
24.	Transitional provisions	Provides that where the Tribunal has already sat for the purpose of a review prior to this Part coming into effect, this

		Part will not apply to that Tribunal for the purposes of its determination.
25.	Amendment of <i>Defence Act 1954</i> : re-enlistment of formerly enlisted persons	Amends sections 19(b), 58(1) and 69 of the Defence Act 1954 and inserts a new section 53A into the Act to facilitate the re-enlistment of suitably-qualified formerly-enlisted members of the Defence Forces, to fill certain positions.
26.	Covid-19: temporary wage subsidy provisions	Provides for the introduction of a Temporary Wage Subsidy Scheme.
27.	Operation of section 12 – emergency period	inserts a new section 12A into the Redundancy Payments Act 1967 which provides that an employee who has been temporarily laid off or kept on short time will not be entitled to claim redundancy until a longer period has passed.
28.	Definition (Part 9)	Provides that ‘Act of 2004’ refers to the Civil Registration Act 2004 .
29.	Performance of functions of registrar and Superintendent Registrar by staff of Ard-Chláraitheoir in certain exceptional circumstances	Inserts a new section 8A into the Civil Registration Act 2004 allowing an tArd-Chláraitheoir and his staff to perform some of the functions of a registrar or a Superintendent Registrar in the event of the Registration Office being closed down temporarily.
30.	Alleviation of requirement on certain persons to appear in person under Part 3 of Act of 2004	Inserts a new section 19B into the Civil Registration Act 2004 that removes the obligation on a parent or a qualified informant to attend a registration office to register a birth or death.
31.	Alleviation of requirement on certain persons to appear in person under Part 5 of Act of 2004	Inserts a new section 37A into the Civil Registration Act 2004 that removes the obligation on a parent or a qualified informant to attend a registration office to register a birth or death.

Source: L&RS 2020

Principal Provisions

The short timeframe between publication of the Bill and second stage debate, combined with the wide-ranging measures of the Bill, has meant that it is not possible to provide policy context and analysis for all provisions of the Bill. This section provides a brief description of each provision and, where possible, provides background information and discusses possible implications.

Part 2

Operation of *Residential Tenancies Act 2004*

Background to the *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.

The 2004 Act is wide-ranging, the sections of the Act dealing with rent and rent reviews, security of tenure, and tenancy terminations are the most relevant to the current Bill.

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.⁴ There are some exemptions to this, such as when a substantial change in the nature of the accommodation has occurred. In November 2017 the RTB published new guidelines for landlords and tenants on what constitutes 'substantial change' in rented properties.⁵ A list of all RPZs is available [here](#). Properties which are new to the market are also exempt.

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.⁶

⁴ Department of Finance [Report of the working group on the tax and fiscal treatment of rental accommodation providers](#), 2017.

⁵ Residential Tenancies Board [The Substantial Change Exemption in Rent Pressure Zone Areas](#), (2018).

⁶ Section 20 of the 2004 Act.

Security of Tenure

Residential tenancies generally begin as fixed-term tenancies (which are for a defined period, such as one year) or periodic tenancies (which run weekly or monthly and have no fixed end date).

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.⁷

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.

The tenant is expected to notify his or her landlord of his or her intention to stay in the property, between three months and one month before the expiry of a fixed-term tenancy. Where the tenant fails to notify the landlord, he or she will still be able to avail of the Part 4 tenancy, but the tenant may be liable for financial damages incurred by the landlord resulting from the failure to notify. A further Part 4 tenancy will arise on expiry of previous tenancy.⁸

Certain tenancy agreements are not subject to Part 4 of the 2004 Act, these include tenancy agreements for the rental of a room in the same property in which the landlord (or a family member) lives in and accommodation provided by approved housing bodies (see the section on licensees below). If the tenancy relates to a self-contained apartment located in the same property that the landlord (or a family member) lives, the landlord may opt out of the provisions of Part 4.⁹

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:¹⁰

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;

⁷ <https://onestopshop.rtb.ie/ending-a-tenancy/how-a-landlord-can-end-a-tenancy/landlords-grounds-for-ending-a-tenancy/>

⁸ Sections 41-45 of the 2004 Act.

⁹ Section 25 of the 2004 Act.

¹⁰ Section 34 of the 2004 Act.

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.¹¹

In general, the statutory notice periods for a landlord to terminate a tenancy are:¹²

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.¹³ 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.¹⁴

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.¹⁵

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

¹¹ Sections 35 and 35A of the 2004 Act.

¹² Section 66(3) of the 2004 Act.

¹³ Section 67(2) of the 2004 Act.

¹⁴ Section 67(3) of the 2004 Act.

¹⁵ Section 69 of the 2004 Act.

dwelling with or renting a room from the owner or a family member of the owner (unless the dwelling is self-contained).¹⁶

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.¹⁷

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.¹⁸

What does the Bill propose to do?

Section 3 (Interpretation) provides that the ‘emergency period’ runs for a period of 3 months commencing on the enactment of the Bill and any other period (if any) as may be specified by order. The proposed section provides that the terms landlord, tenant and tenancy refer respectively to a licensor, licensee and a licence of student specific accommodation established on or after 15 August 2019.

Section 4 (Extension of Emergency Period) provides that the emergency period may be extended by an order of the Government, if satisfied that the making of the order is in the public interest, having regard to the public health threat and highly contagious nature of Covid-19, leading to a need to restrict the movement of persons to prevent the spread of the disease.

¹⁶ See Residential Tenancies Board, [‘Licensees in Private Rental Accommodation’](#) (last accessed 23 March 2020).

¹⁷ Ibid.

¹⁸ See Residential Tenancies Board, [‘Student Specific Accommodation’](#) (last accessed 23 March 2020).

If an order is made under this section it must be laid before each House of the Oireachtas, allowing either house to annul the order by resolution within 21 sitting days.

Section 5 (Notices of termination under Act of 2004) provides that a landlord is prohibited from serving a new notice of termination in relation to the tenancy during the emergency period.

For notices of termination served before the emergency period where the notice specifies a termination date falling within or after the emergency period, the termination date will be revised. For the majority of termination notices including tenancies for a duration of less than 6 months, determining the revised termination date involves adding the duration of the emergency period to the notified termination date. However, where the notice of termination relates to a breach of the lease, and the matter has been referred to the Residential Tenancies Board, in the absence of an appeal to the Tenancies Tribunal within the specified period, the termination date will not be revised.

The section also proposes that during the emergency period, a breach for failure to rent requires the landlord give the tenant 28 days after a notice to pay, before a 28-day notice period could come into effect.

The emergency period must be ignored when calculating whether a 'Part 4 tenancy' applies.

Section 6 (Prohibition on rent increases under Act of 2004) would have the effect of making any increase in rent during the emergency period invalid for the duration of that period.

Section 7 (Proceedings before Tenancy Tribunal) provides that proceedings of the Tenancy Tribunal do not need to take place in public during the emergency period.

Section 8 (Entitlement to remain in occupation of dwelling during emergency period) provides that a tenant may continue to occupy a dwelling for the duration of the emergency period if he or she is in occupation of the dwelling as at the date of the commencement of the emergency period. The right to remain is subject to the same terms and conditions that applied in respect of the tenancy and is not affected by an existing notice of termination and it is not reliant on the consent of the landlord. However, the tenant does not acquire a right of occupation if he or she is required to vacate the dwelling under a determination of the Residential Tenancies Board or the Tenancies Tribunal.

The right of occupation during the emergency period must be ignored when calculating whether a 'Part 4 tenancy' applies.

Previous Private Members' Bills of relevance to these provisions

Anti-Evictions Bill 2018

The [Anti-Evictions Bill 2018](#) was sponsored by Deputies Ruth Coppinger, Paul Murphy and Mick Barry and was introduced into the Dáil on 29 November 2018. The Bill passed through second stage, but lapsed with the dissolution of the 32nd Dáil.

Under the Bill, landlords would have been required to pay compensation to tenants where the landlord terminates a tenancy on grounds that they required it for occupation by a member of his or her family. The compensation would have been the equivalent of 6 months' rent.

The Bill would also have removed 'selling a property' as a ground for termination of the tenancy, so that landlords would have to sell their property with the tenant in situ. Landlords could not therefore sell their property with vacant possession.

The relevant provisions of the Bill would have represented a notable shift in landlord-tenant relations, better securing long-term tenants' rights to remain in the rental property.

Rent Freeze (Fair Rent) Bill 2019

The [Rent Freeze \(Fair Rent\) Bill 2019](#) was sponsored by Eoin Ó Broin and Mark Ward. The Bill passed through the second stage of the Dáil, but lapsed with the dissolution of the 32nd Dáil.

The Bill would have implemented a rent freeze on all existing and new tenancies, other than those which were social housing supports, as of the date of enactment. This would mean that the rent of an affected tenancy would have been frozen at the applicable rate for a period of 3 years from the date of enactment of the Bill, and the rent of new tenancies would have been set by reference to the Residential Tenancies Board rent index, based on the rent payable for equivalent properties within the local electoral area.

The Minister for Housing, Planning and Local Government, Eoghan Murphy TD, claimed that the Bill would have the effect of driving landlords with small property portfolios out of the rental sector. The Minister also warned that the legislation could be deemed unconstitutional if it ended up in the courts.¹⁹

Constitutional Context

The Constitution affords dual protection of the right to private property, as a personal right and as an institutional right. Article [40.3.2°](#) requires the State to protect property rights from unjust attack while Article [43.1.2°](#) guarantees that the institution of private property will not be abolished.

The rights protecting private property are not absolute rights. [Article 43.2](#) of the Constitution recognises that the right to private property is regulated by the principles of social justice and permits the law to regulate private property rights in the interest of the common good.

It follows that any intrusion on the individual's rights to private property must be sufficiently justified as being in the interest of the common good and must be proportionate to the relevant social justice goal.

The [Rent Restrictions Act 1960](#) and [Rent Restrictions \(Amendment\) Act 1967](#) restricted the level of rent that a landlord could demand from a tenant of a specified dwelling. They also restricted evictions and the recovery of vacant possession of those controlled dwellings. The effect of the legislation was to limit rents on controlled dwellings to the rents payable in June 1966. By the early

¹⁹ Deputy Eoghan Murphy, Minister for Housing, Planning and Local Government, '[Rent Freeze \(Fair Rent\) Bill 2019: Second Stage \[Private Members\]](#)' *Dáil Éireann Debate*, 10 December 2019. Deputy Darragh O'Brien of Fianna Fáil noted in debates that landlords who own one or two rental properties account for approximately 80 per cent of the rental market.

1980s, the rent that could be demanded from tenants of controlled dwellings was highly disproportionate from market rents. The 1982 Supreme Court case of [Blake v Attorney General](#)²⁰ involved a challenge to the validity of the Rent Restriction Acts. The Court found that the provisions providing for security of tenure and rent control, without providing reasonable compensation for landlords, amounted to an unjust attack on the property rights of landlords. O’Higgins C.J. stated:²¹

[The] absence of any power to review such rents, irrespective of changes in conditions, is in itself a circumstance of inherent injustice which cannot be ignored ... the provisions of Part II ... restrict the property rights of one group of citizens for the benefit of another group.”

The court did not suggest that rent control or a restriction on evictions was invalid in themselves, but that it can only be considered valid where a reasonable balance is struck between affected interests.²²

A subsequent attempt by the Government to introduce rent control measures through the [Housing \(Private Rented Dwellings\) Bill 1981](#) was equally found to amount to an unjust attack on the property rights of landlords. The Court found that the provision capping rents for an initial five-year phasing-in period would mean that landlords could only receive a rent that was substantially less than the market rent and this provision had no constitutionally-permitted justification.²³

Proportionality

Both the cases mentioned above examined whether the infringements on the right to private property were reasonable and proportional in the circumstances.

In its 1996 report the [Constitution Review Group](#) emphasised that where legislation regulating the exercise of private property rights had been found to be unconstitutional, this was invariably in circumstances where the legislation at issue was disproportionate, unfair or arbitrary.²⁴

In a human rights context, for a particular legislative provision to be regarded as proportionate, its objective must be one of sufficient importance to warrant over-riding a constitutionally protected right. Furthermore, the provision would need to be:

1. rationally connected to its objective (based in the common good) and not be arbitrary, unfair or based on irrational consideration,
2. impair the right as little as possible, and
3. be such that its effects on the constitutionally-protected right are proportionate to its objective.²⁵

²⁰ [1982] IR 117.

²¹ [1982] IR 117, p.139-140.

²² Cassidy, U. & Ring, J. (2010) *Landlord and Tenant Law-The Residential Sector* (Roundhall, Dublin) p.6.

²³ *In the matter of Article 26 of the Constitution and in the Matter of the Housing (Private Rented Dwellings) Bill 1981* [1983] 1 IR 181 at 191 per O’Higgins CJ.

²⁴ Constitution Review Group, (1996) “Report of the Constitution Review Group” p. 338.

²⁵ See *Heaney v Ireland* [1994] 3 IR 595 at 607 (a case involving alleged breach of rights under the European Convention on Human Rights. See also Threshold, ‘[Legislative Proposals for the introduction of Rent Certainty Measures](#)’, 2015, para. 10.

The argument for applying these principles to private property rights has been strengthened by the conclusions of the Commission on the Private Rented Residential Sector in 2002, that the reintroduction of a system of rent regulation would not be unconstitutional if it were not unfair or oppressive, and corresponded to the interests of the common good.²⁶

Part 3

Calculation of Time Limits Relating to Planning and Development

What does the Bill propose to do?

Section 9 (Calculation of time limits during emergency) would amend the [Planning and Development Act 2000](#) to give the Government power to disregard certain time periods specified in [Building Control Act 1990](#), [Derelict Sites Act 1990](#), the [Planning and Development Act 2000](#), the [Urban Regeneration and Housing Act 2015](#) and the [Planning and Development \(Housing\) and Residential Tenancies Act 2016](#). This would help the Government avoid missing the relevant statutory deadlines during the Covid-19 emergency. The Government must specify by order the date on which this provision ceases to have effect, and that date cannot be later than 9 November 2020.

According to the Explanatory Memorandum to the Bill, the provision is modelled on similar provisions in the planning laws that cover the Christmas period.

Part 4

Amendments to Certain Acts Regulating Health and Social Care Professions

On 17 March 2020, the Health Service Executive (HSE) launched a recruitment drive 'Be on call for Ireland'. The HSE appealed to healthcare professionals who are not currently working in the public health service, retired and student healthcare professionals, skilled workers, and volunteers, to be on call to help support the HSE response to the Covid-19 emergency. A dedicated registration page received over 60,000 applications. Staff of the HSE are currently trying to engage with all who registered.²⁷ The HSE has explained that its current priority is to build capacity to meet demand. However, as the situation is changing, the focus is on getting new staff ready for work, to allow them to meet demand, as it arises.²⁸

Data from the end of February 2020 has indicated that the probability of dying from Covid-19 increases dramatically with age and where the patient has a pre-existing condition. People aged

²⁶ Report of the Commission on the Private Rented Residential Sector (2002). See also, O'Sullivan, D. (2016) '[Rent, Regulation and the Public Interest in Ireland](#)', 4 *Conveyancing and Property Law Journal* pp 74-81.

²⁷ Health Service Executive, '[Be on call for Ireland recruitment drive](#)' (last accessed 24 March 2020).

²⁸ Sean Murray, '[60,000 people sign up for HSE recruitment drive as first interviews start for doctors and nurses](#)', *The Journal*, 23 March 2020.

between 0 and 60 have accounted for 2.7% of total deaths. People with no pre-existing condition are considered to have only a 0.9% chance of dying if infected by COVID-19.²⁹

Currently, health care professionals make up a relatively high proportion of Covid-19 patients. Spain has nearly 4,000 health workers infected with the coronavirus, more than one in 10 of total confirmed cases. In Italy, as of 20 March 2020, 4,268 health workers, had contracted the virus, according to the National Health Institute, almost 10% of cases who have tested positive for the disease.³⁰

In Ireland, this trend is even more pronounced. As of 21 March 2020, 208 of the 836 covid-19 cases were healthcare workers (25%). The Minister for Health said that priority testing for groups such as healthcare workers may be implemented and every effort would be made to protect healthcare workers, adding that there was personal protective equipment in Ireland and it was being distributed fairly.³¹

What does the Bill propose to do?

Section 10 (Special measures registration having regard to Covid-19) would allow previously registered dentists to apply to the Council to be re-registered. A person could not practice as a section 69 registrant if he or she has not practised dentistry in the State or elsewhere for 2 years or more. There would be no fee charged for the application or the registration process.

Unless the Minister by Order specifies a different date, a section 69 registration will only have effect until 31 July 2020. If an order is made under this section it must be laid before each House of the Oireachtas, allowing either house to annul the order by resolution within 21 sitting days.

Section 11 (Special measures registration having regard to Covid-19) would allow previously registered health and social care professionals to apply to the relevant registration board to become a member of that profession again as a section 98 registered professional. Health and social care workers include clinical biochemists, dietitians, medical scientists, occupational therapists, orthoptists, physiotherapists, podiatrists, psychologists, radiographers, social care workers, social workers and speech and language therapists. There would be no fee charged for the application or the registration process.

Unless the Minister by Order specifies a different date, a section 98 registration will only have effect until 31 July 2020. If an order is made under this section it must be laid before each House of the Oireachtas, allowing either house to annul the order by resolution within 21 sitting days.

The Bill also has similar provisions for the reregistration of pharmacists, medical practitioners, and nurses and midwives.

²⁹ [‘Age, Sex, Existing Conditions of COVID-19 Cases and Deaths’](#), *Coronavirus Worldometer*, 29 February 2020.

³⁰ Juliette Gash, [‘Medics: “We are not superheroes, we just do what we can do every day”](#)’, *RTE News*, 23 March 2020.

³¹ [‘Coronavirus: Two more deaths, 219 new cases in Ireland’](#), *RTE News*, 24 March 2020.

Implications

Given that a high proportion of health care workers contract the virus, it may be dangerous to place potentially vulnerable people such as retired health care workers and social care workers with a pre-existing condition, on the front line of efforts to deal with the Covid-19 emergency. Formal health screening of potential healthcare workers could be introduced as a prerequisite for employment to ensure that new HSE staff are protected.

Part 5

Provisions relating to the *Mental Health Act 2001*

Background to the *Mental Health Act 2001*

Only a person suffering from a mental disorder (as defined by section 3 of the [Mental Health Act 2001](#)) can be admitted and detained in an approved centre. This might happen in two ways. The person may be involuntarily admitted from the community, or they might be re-graded from being a voluntary patient to an involuntary patient.³²

The initial order ('the admission order') detaining a patient can be for a maximum of 21 days. But this can be renewed ('a renewal order'). The first renewal can be for up to three months. And the second can be for up to six months.³³

Under the 2001 Act, the Mental Health Commission must establish what are known as 'Mental health tribunals'. These tribunals consist of 3 panel members, and their function is primarily to review the detention of any person who has been admitted to a hospital/facility against their will within those 21 days, or where such an involuntary detention has been renewed. In addition, the authorisation of a mental health tribunal is required in order for any form of psycho-surgery (discussed below) to be performed on a patient. As stated by the Mental Health Commission in its 2018 Annual Report:

"This is a core requirement in protecting and upholding patients' human rights".

The importance of mental health tribunals was underscored by the Expert Group on the Review of the Mental Health Act 2001 in its 2014 report, which said:³⁴

"The fundamental value of the Tribunal system and the absolute need to give detained patients access to an effective review mechanism where their loss of liberty can be independently evaluated is not in question and is fully accepted by members of the Group."

The three panel members are:³⁵

³² Mental Health Commission Annual Report 2018, at page 32, available here: https://www.mhcirl.ie/File/2018_AR_Incl_OIMS.pdf

³³ Mental Health Commission Annual Report 2018, at page 32, available here: https://www.mhcirl.ie/File/2018_AR_Incl_OIMS.pdf

³⁴ Report of the Expert Group on the Review of the Mental Health Act 2001, December 2014, at page 42. Available here: https://www.mhcirl.ie/File/rpt_exproureview_mha2001.pdf

³⁵ Section 48(2)

- A barrister/solicitor (who acts as chairperson)
- A consultant psychiatrist (who is not the patient's own consultant psychiatrist)
- And a lay person.

The patient will have legal representation and the Mental Health Commission appoints an independent consultant psychiatrist to assess them. The Mental Health Commission notes that these reviews take place in the mental health unit where the patient is detained.³⁶

On the basis of that review the tribunal will either affirm the admission order (or the renewal of the detention) or revoke the order and direct that the person be discharged from hospital.³⁷ Where the Tribunal affirms the order, the patient has a right of appeal to the Circuit Court.³⁸

Section 49 of the Act sets out the powers of mental health tribunals. The tribunal will hold sittings and at those sittings may receive submissions or evidence as it sees fit. It can, among other things:

- Direct that the patient be facilitated by their consultant psychiatrist to attend the tribunal.
- Direct that any person appear before the tribunal to give evidence that is required, and to produce any document etc in their possession
- Direct any person to send to the tribunal and document or thing in their possession.

Failure to comply with directions from a Mental health tribunal would be an offence.

While the procedures for individual tribunals are generally determined by the tribunal itself, there are some general procedures to be followed, among those:

- The tribunal must notify the patient (or their legal representative) and their consultant psychiatrist of the date, time and place of the sitting of the tribunal.
- It must give the patient or their legal representative a copy of any report has been furnished to the Tribunal, as well as an indication of the nature and source of any relevant information which has come to notice in the course of the review.
- It must enable the patient and their legal representative to be present during the sitting and to present their case in person.
- It must allow the examination of witnesses, or the cross examination of witnesses by the patient or their representative.

Under section 48(11) a patient will not be required to attend a tribunal if, in the opinion of the tribunal, their attendance would be prejudicial to their mental health, wellbeing, or emotional condition.

³⁶ https://www.mhcirl.ie/for_H_Prof/Mental_Health_Tribunals/

³⁷ Section 18(1)

³⁸ Section 19

According to the Mental Health Commission, the following orders were made in 2018:

Admission orders from the community	1825
Admission orders by way of re-grading	610
Renewal orders for a period of up to 3 months	963
Renewal orders for a period up to 6 months	151
Renewal orders for a period up to 12 months ³⁹	104

In 2018, a total of 2,002 tribunals took place and 225 orders were revoked at hearing.⁴⁰

Composition of tribunals

In its final report in 2014, the Expert Group on the Review of the Mental Health Act 2001 considered the current three person composition of tribunals, and opted to look for evidence of the operation of one person boards elsewhere. They specifically reviewed England, Scotland, Victoria and New South Wales.⁴¹

“The suggestion put forward to the Group members was that single person Review Board with a high level legal qualification who perhaps would operate on a full-time basis might not just offer an alternative structure to the current one in operation, but would allow the sole person to develop particular ‘judicial’ expertise in this field while still having a medical report prepared for him/her by an independent Consultant Psychiatrist. While members saw certain merits in this proposal, the fact that the State of Victoria in Australia seems to be the only jurisdiction which as operated a one person Review Board system did not offer high hopes that this was the way of the future. Victoria, in fact, has recently decided to return to a three person model.”

The Expert Group concluded that there were no compelling reasons for changing the current composition of the tribunals, but did say that the question should be re-examined as part of any future review.

What does the Bill propose to do?

This Bill proposes to allow for one-member, paper-based mental health tribunals, until 9 November 2020, or if that period is extended, for the duration of the Covid-19 crisis.

Section 20 of the Bill amends section 48 of the Act of 2001. It inserts a new subsection 48(3A) which would allow the Commission to appoint a tribunal consisting of only **one member**. This would be done where a tribunal of three persons cannot be appointed in the regular manner due to the public health emergency. This one member must be a practising barrister or solicitor with at least 7 years’ experience ending immediately before their appointment. That person may request

³⁹ Such orders no longer exist following a 2018 court judgment and the enactment of the Mental Health (Renewal Orders) Act 2018.

⁴⁰ Mental Health Commission Annual Report 2018, at page 33, available here: https://www.mhcirl.ie/File/2018_AR_Incl_OIMS.pdf

⁴¹ Report of the Expert Group on the Review of the Mental Health Act 2001, December 2014, at page 45. Available here: https://www.mhcirl.ie/File/rpt_exproureview_mha2001.pdf

the Commission to appoint a consultant psychiatrist with whom they can consult for the purposes of the review.⁴²

Psycho-surgery

In the 2001 Act, psycho-surgery is defined as being “any surgical operation that destroys brain tissue or the functioning of brain tissue and which is performed for the purposes of ameliorating a mental disorder.”

Under section 58 of the Act, psycho-surgery must not be performed on a patient unless that patient gives their consent in writing, and the psycho-surgery is authorised by a tribunal. Where it is proposed to perform such surgery, and the patient has consented, their consultant psychiatrist must notify the Mental Health Commission and the Commission will then refer the matter to a tribunal.

The tribunal will authorise the surgery if it is satisfied that it is in the best interests of the patient's health to do so. If it were not satisfied, it would refuse to authorise the surgery. There is an option to appeal a decision of the tribunal the Circuit Court.

This Bill proposes to remove the possibility of psycho-surgery entirely, until the 9 November 2020, or if that period is extended, for the duration of the national health emergency caused by Covid-19. Section 22 of the Bill substitutes section 58 and simply states that psycho-surgery must not be performed on a patient.

Consultant psychiatrists

Under section 33(1) of the Act, one of the functions of the Mental Health Commission is to establish a panel of consultant psychiatrists to carry out independent medical examinations of patients who have been involuntarily detained.

Section 17 of the Bill proposes a number of amendments to s.17 of the Act of 2001, one of which allows a consultant psychiatrist not on the panel to be appointed to carry out that independent assessment on behalf of the Commission, thereby broadening the number of consultants available to the Commission for this purpose.

The proposed new subsection 17(6) provides that if a consultant psychiatrist is unable to carry out an examination of the patient (either in person or by other appropriate means) due to the public health emergency, they must set out their particular reasons in their report to the tribunal.

It further requires the Commission to direct that the consultant psychiatrist responsible for the care and treatment of the patient prepare and provide a written report to the tribunal setting out their opinion as to whether the patient continues to suffer from a mental disorder. A copy of this report must be given to the patient's legal representative.

Section 17(4) of the Act provides that it is an offence for a person to obstruct, interfere with, or fail to comply with, a consultant psychiatrist performing their functions under this section. However the

⁴² See the proposed subsection 49(12) to be inserted by section 21(d) of the Bill.

Bill proposes to create a new defence to this. The proposed new subsection (5) states that a person will have a defence if they can prove that their failure was due to the current public health emergency.

Section 18 of the Bill makes a number of amendments to section 18 of the Act of 2001. That section deals with the review of orders by a tribunal. It proposes to insert two new subsections, to account for a situation where a **one member tribunal** receives the two reports from the two consultant psychiatrists (i.e. the patient's own and the independent psychiatrist who conducted an assessment on behalf of the Commission) and those two opinions differ as to whether the patient has a mental disorder. In these circumstances, that one member tribunal must consult a third psychiatrist. They must also consult a third psychiatrist where they believe it to be in the best interests of the patient to do so. However, a new subsection (3B) also inserted by this section provides that none of this need be done if the tribunal is unable to do so as a result of the public health emergency.

Under section 18 of the Act, the tribunal is ordinarily required to make a decision within 21 days. However this can be extended by 14 days at the request of the tribunal or the patient, and by a further 14 days at the request of the patient only. This Bill proposes to allow the tribunal to extend the period by that second 14 day period if, having "due regard" to the interests of the patient, it is satisfied it is necessary as a result of the public health emergency.

Section 19 of the Bill proposes amendments to section 28 of the Act of 2001, and deals with situations in which a patient has been discharged by their consultant psychiatrist and a review of their detention by a tribunal had already commenced or had not yet commenced. Patients in these situations can request that the review in question be completed, and the usual time limit of 21 days would apply. This Bill would allow that 21 day time limit to be dispensed with in those circumstances, but the decision should be made "as soon as reasonably practicable" having regard to both the current health emergency, and the fact that the tribunal needs to prioritise those in detention.

Section 21 of the Bill amends section 49 of the Act of 2001, dealing with the powers of tribunals. It allows the tribunal to direct any person whose attendance would be ordinarily required to submit a written statement instead of attending, where they cannot due to the public health emergency.

Under section 49 in its current form, mental health tribunals must enable a patient and their legal representative to be present at the sitting of the tribunal and to present their case in person. Section 21 of the Bill replaces this requirement with one which states that the tribunal must enable the patient to present their case by representations in writing. This in effect means that a patient is no longer entitled to attend a hearing on their involuntary detention.

Section 23 of the Bill sets out a number of provisions of the 2001 Act **which will not have effect** while the modifications proposed in this Bill are in place. These provisions are:

- Section 17(2) – Allows a consultant psychiatrist to examine the patient in the approved centre and relevant records, and interview the psychiatrist caring for the patient.
- Section 49(2)(a) – Allows a tribunal to direct a consultant psychiatrist who is caring for a patient to attend the tribunal.

- Section 49(2)(b) – Allows a tribunal to direct any person whose evidence is required to attend before the tribunal and give evidence/produce any document or thing in their possession.
- Section 49(2)(c) – Allows a tribunal to direct any person attending a tribunal to produce any document or thing in their possession.
- Section 49(3) – Provides for the payment of reasonable expenses of witnesses attending before a tribunal to be paid by the Commission.
- Section 49(4)(a) – Provides that person who fails to attend a tribunal having been directed to do so commits an offence.
- Section 49(4)(b) – Provides that a person who refuses to take the oath or refuses to answer questions/produce a document/thing required by the tribunal commits an offence.
- Section 49(6)(f) – Obliges the tribunal to make provision for the examination/cross-examination by the patient of witnesses called by the tribunal.
- Section 49(6)(g) - Obliges the tribunal to make provision for the examination/cross-examination of witnesses called by the patient.
- Section 49(6)(h) – Obliges the tribunal to determine whether evidence given before it should be given on oath.
- Section 49(6)(i) – Obliges the tribunal to make provision for the administration of the oath to witnesses.
- Section 49(11) – Provides that a patient will not be required to attend a tribunal if that attendance might be prejudicial to their mental health, well-being or emotional condition.

Finally, **section 24** of the Bill states that where a tribunal was appointed, and held a sitting, but has not yet made a decision, before these amendments come into effect, the procedures set out in section 49 shall continue to apply as though these amendments were not made.

Part 6

Amendments to the *Defence Act 1954*: Re-Enlistment of Formerly Enlisted Persons

The defence forces have been heavily involved in the response to the pandemic, and have helped the HSE by offering naval ships as support hubs for testing centres.⁴³ Soldiers have also been used to transport vital supplies. The Department of Defence ran a programme last year to target former Air Corps pilots who had left for the private sector.

What does the Bill propose to do?

Section 25 (Amendment of Defence Act 1954: re-enlistment of formerly enlisted persons)

includes a number of amendments to the 1954 Act that would facilitate the re-enlistment of suitably-qualified formerly-enlisted members of the Defence Forces, to fill certain positions. The provisions would only apply to a member who had completed the full term of their original enlistment (including any required service with the Reserve Defence Force) or who had been discharged by purchase under the section 75 of the 1954 Act. Former members would only be enlisted for a specified period and for a specified purpose and would not be subject to the normal service requirements applicable to newly-enlisted persons. Any person enlisted would have to

⁴³ Irish Times, 24 March 2020, [Coronavirus spurs interest among ex-Defence Forces staff in rejoining.](#)

have particular skills and expertise required by the Defence Forces which could not be met through using existing military resources.

Part 7

Covid-19: Temporary Wage Subsidy Scheme

The objectives of COVID-19 wage subsidy schemes (or equivalent) which have been introduced or are proposed across the world are generally twofold:

1. to keep employees on the payroll of businesses which have temporarily suspended trading due to the pandemic; and
2. to provide income security to employees and maintain their existing wage/salary;

In Ireland, a COVID-19 Wage Subsidy Scheme⁴⁴ would represent an expansion of the existing Employer COVID-19 Refund Scheme. The Employer COVID-19 Refund Scheme⁴⁵, administered by the Department of Employment Affairs and Social Protection and operated by the Revenue Commissioners applies to eligible businesses which have temporarily ceased trading due to the pandemic. The Scheme facilitates the weekly payment of €203 (equivalent to the COVID-19 Pandemic Unemployment Payment) by these employers to an existing eligible employee through the normal payroll process. This amount is then reimbursed in full to the employer by the State. An eligible employee can only receive this payment where they have been temporarily laid off and remain on the employer's payroll (or were on the payroll during the period between 1 February and 15 March 2020).

Under the existing Refund Scheme, no additional payments may be made by the employer to the employee in receipt of the weekly payment, as additional payments (or benefits in kind, e.g. health insurance) would imply that the person is still in employment. On 20 March, the Minister for Employment Affairs and Social Protection, Regina Doherty confirmed⁴⁶ that the scheme would be shortly amended to allow employers engaged in the scheme to 'top up' the payment. This will, according to the Minister, "strengthen the viability of the scheme and ensure that many employers can provide some additional income above the basic social welfare payment for their workers".

On 24 March 2020, An Taoiseach Leo Varadkar announced⁴⁷ that the €203 weekly COVID-19 Pandemic Unemployment Payment and weekly reimbursable payment would be increased to €350 per week, and that the State would underwrite (or co-fund) 70% of an employee's salary (up to €410 per week, the equivalent of maintaining an employee on a gross salary of €38,000 per year). The scheme will operate for 12 weeks initially and employers may now provide top-ups. Eligible

⁴⁴ The proposed temporary wage subsidy scheme is not to be confused with the existing Wage Subsidy Scheme (WSS) which is an employment support operated by the Department of Employment Affairs and Social Protection (DEASP) to support persons with disabilities.

⁴⁵ <https://www.revenue.ie/en/news/articles/employer-covid-19-refund-scheme.aspx>

⁴⁶ https://merriestreet.ie/en/News-Room/News/Government_confirms_supports_for_employers_and_business_continuity.html

⁴⁷ <https://www.rte.ie/news/coronavirus/2020/0324/1126102-covid-19-wage-payments/>

employers would, however, be required to demonstrate a reduction in income of at least 25%, along with cash flow difficulties. The overall cost of the new Wage Subsidy Scheme is expected to be between €3.5bn and €4bn.

The treatment of what are classified by the UK Government as ‘furloughed’ employees differs in each country’s response to the COVID-19 pandemic. For example, the UK has introduced⁴⁸ a Coronavirus Job Retention Scheme whereby the employee remains on the employer’s payroll despite having no work. In return, the employer pays the employee’s salary (up to 100%), while claiming 80% of employment costs as reimbursement from the State (capped at £2,500 per month, or £625 per week).

Similarly, New Zealand has established⁴⁹ a different COVID-19 Wage Subsidy scheme with two rates:

- \$585.90 for people contracted to work 20 hours or more per week;
- \$350.00 for people contracted to work less than 20 hours per week.

That scheme is payable as a single lump sum to each eligible employer and covers 12 weeks per employee (three months).

What does the Bill propose to do?

Section 26 (Covid-19: temporary wage subsidy provisions) provides for the introduction of a Temporary Wage Subsidy Scheme. The scheme, which would be operated by the Revenue Commissioners, would see the Government contribute to eligible firms’ wage costs by paying them a wage subsidy to be passed on to the employee on a temporary basis. The scheme would cover all sectors and employers adversely affected by Covid-19 to a significant extent. An employer would be considered adversely affected where he or she is unable to pay to specified employee emoluments that would otherwise have been paid to the employee, and the employer has the firm intention of continuing to employ the employee, making best efforts to pay the employee some emoluments during the applicable period. The employer must also demonstrate to the satisfaction of the Revenue Commissioners that, by reason of Covid-19 and the resultant disruption to commerce, between 14 March 2020 to 30 June 2020 the employer will suffer at least a 25 per cent reduction either in the turnover of the employer’s business or in customer orders being received by the employer.

The wage subsidy would take the form of the Revenue Commissioners paying to the employer a percentage of the normal wages of employees and this sum must be passed on to employees. The wage subsidy to be paid shall be determined by reference to the weekly emoluments paid by employers to specified employees. The payments would be liable to income tax, taxable by review at the end of the year.

⁴⁸ <https://www.gov.uk/government/publications/guidance-to-employers-and-businesses-about-covid-19/covid-19-guidance-for-employees>

⁴⁹ <https://www.workandincome.govt.nz/products/a-z-benefits/covid-19-support.html#null>

This provision would commence on 26 March 2020 and run until the date specified by the Minister by Order.

PART 8

Amendment to Redundancy Payments Act 1967

What does the Bill propose to do?

Section 27 (Operation of section 12 – emergency period) provides that an employee would not be entitled to claim a statutory redundancy payment between 13 March 2020 and 31 May 2020 where he or she has been temporarily laid off or kept on short time due to the effects of measures required to be taken by his or her employer to comply with, or as a consequence of, Government policy to prevent, limit, minimise or slow the spread of Covid-19.

The period that this provision would remain in effect may be extended by an order of the Government. If an order is made under this section it must be laid before each House of the Oireachtas, allowing either house to annul the order by resolution within 21 sitting days.

PART 9

Amendments to Civil Registration Act 2004

What does the Bill propose to do?

Part 9, incorporating **sections 28 to 31**, includes provisions that would amend the Civil Registration Act 2004 to extend the functions of an tArd-Chláráitheoir and his (or her) staff to perform some of the functions of a registrar or a Superintendent Registrar in the event of the Registration Office being closed down temporarily because of the Covid-19 pandemic. It also removes the obligation on a qualified informant (usually next-of-kin) to attend a registration office to register a birth or death for the duration of this public health emergency.

Current policy context - Private rented sector in Ireland

In 2016, the Government published a [Strategy for the Rental Sector](#), which was the first ever strategy for the private rental sector in Ireland.

The strategy contains three core objectives:

1. **Moderating rental and purchase price inflation**, particularly in urban areas;
2. **Maturing the rental sector** so that tenants see it as one that offers security, quality and choice of tenure in the right locations and providers see it as one they can invest in with certainty;
3. **Ensuring housing's contribution to the national economy is steady** and supportive of sustainable economic growth.

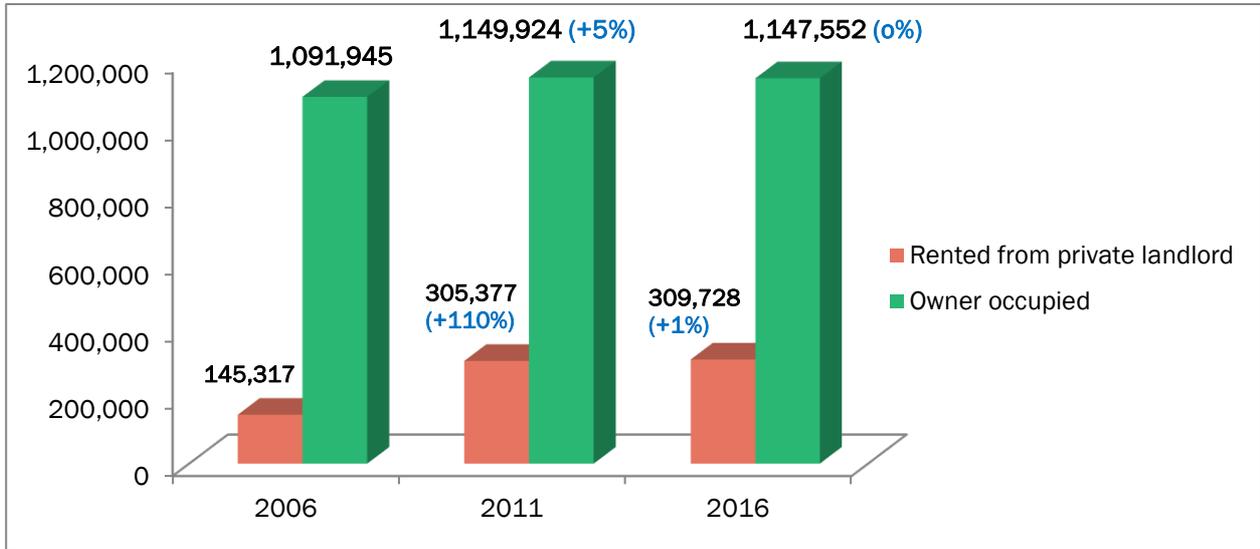
Households in the private rented sector compared with those that are owner occupied

Since 2006 the number of households living in private rented accommodation has more than doubled. According to the Census, in 2016 there were 309,728 renting accommodation from a private landlord, compared with 145,317 in 2006 (a 113% increase). Most of this increase occurred between 2006 and 2011. By comparison, the number of households which are owner-occupied increased by 5% in the period between 2006 and 2011, before falling slightly.

In 2017 it was estimated that households renting from a private landlord represented 18.2% of all households.⁵⁰

⁵⁰ Department of Finance. (2017). [Report of the working group on the tax and fiscal treatment of rental accommodation providers](#).

Figure 1: Growth in the number of households in the private rented sector, compared with those that are owner-occupied.



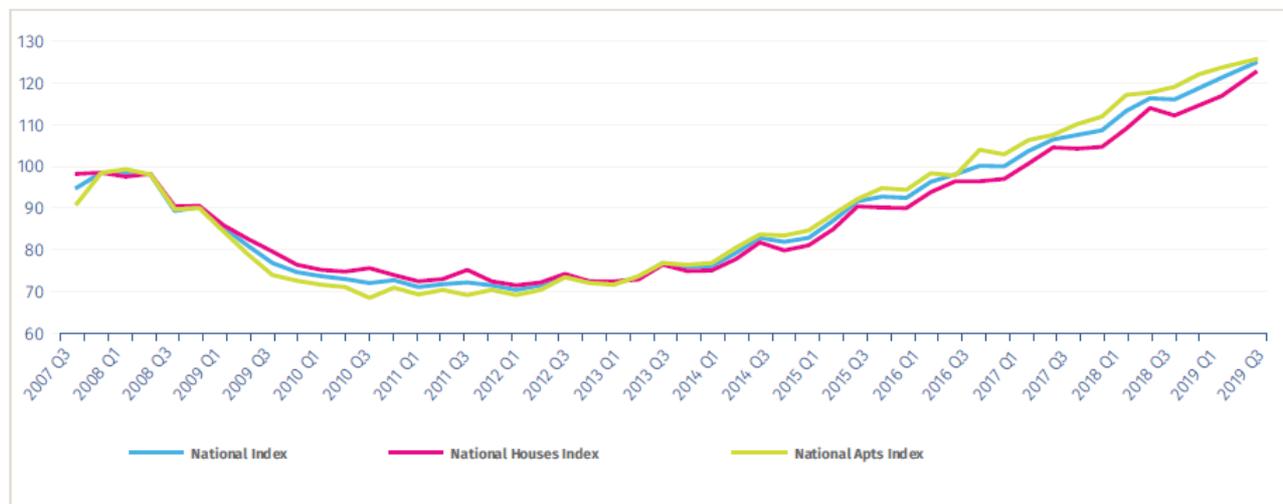
Source: Oireachtas L&RS (2019) based on [census data](#)

The RTB 2018 annual report shows that despite high demand in the PRS, the number of tenancies is beginning to contract. There was a decline of over 5,600 registered tenancies between the end of 2017 and the end of 2018.

Rental costs in Ireland

Figure 2 is taken from the RTB Rent Index 2019 and tracks the index from its development from Q3 2007 to Q3 2019. The blue line shows the national index, the pink line represents the national houses index and the green line represents the national apartments index.

The chart shows that rents began increasing in late 2012 and have been increasing in most quarters since. The standardised average national rent as of Q3 2019 was €1,243, reflecting a year on year growth rate of 8.2%. Standardised average national rents increased by 3.3% from the previous quarter. The standardised average rent in Dublin increased by 7% year on year.

Figure 2: Cost of rents Q3 2007 - Q3 2019

Dublin is the largest rental market in the country, accounting for more than two in every five tenancies that were registered with the RTB.⁵¹ The RTB (2019) report the following average rents as of Q3 2019:

- Dublin city - €1,725 (€1,762 in Dublin overall)
- Galway city - €1,252
- Cork city - €1,192
- Limerick city - €973
- Waterford city - €839

Annually, of the cities above, average standardised rents in Waterford city increased by the most (16.4%). The second largest annual increase was in Galway (8.3%), followed by Limerick City (7.2%) and Dublin City (7%). Rents in Cork City grew at the slowest rate (1.4%).

New tenancies versus renewals

Figure 3, taken from the RTB rent index Q3 report, shows the difference in average rents between new tenancies and renewal tenancies (i.e. leases which have been renewed after 4 to 6 years), since 2013. The chart shows that the gap between new (represented by the blue line) and renewal tenancies (represented by the pink line) has been increasing since 2013. In Q3 2019 the standardised average rent for new tenancies was €1,294 per month as compared to €1,026 for renewals. The year-on-year growth for new tenancies was 7.4%, as opposed to 6.3% for renewals.

⁵¹ [RTB Rent Index 2019 Quarter 3 report](#)

Figure 3: Average rents for new and renewal tenancies, 2013 – 2019 (Q3)

The RTB Annual Report 2018 states that the RTB rent index has shown that rent inflation has grown beyond 4% in Rent Protection Zones (RPZs). The RTB states that, because of the exemptions (for example, new developments) to RPZ measures, it would not expect these areas to keep in line with the 4% growth.

A 2019 paper by the Economic and Social Research Institute (ESRI),⁵² which examined affordability of housing costs in Ireland, found:

“We find that throughout the period under evaluation (2006-2016), low income households (bottom 25 per cent of the income distribution) who are in the private rental sector have always faced high housing payments. While rental price inflation has been high in the very recent period, the fact that low income households in the private rental market always faced high average rental costs suggests affordability challenges are structural rather than cyclical in nature. The recent increases in rental prices are likely therefore to have exacerbated a structural issue.”

It is generally accepted that households should not spend more than 30% of their income on housing payments. The ESRI paper found that while 16% of households paid more than 30% of their income on housing payments in 2015-2016, twice as many households in the private rented sector did so.

Rental costs in Ireland compared with other countries – one measure

The [European Quality of Life Survey 2016](#)⁵³ found that lack of “absolute housing security”⁵⁴ is highest for those renting on the private market (45%), with the lowest proportions for homeowners. Compared to the EU average of 3%, Ireland has a higher percentage of people (4%) who answered that they would be “rather likely or very likely” to need to leave their accommodation due to affordability.⁵⁵

⁵² ESRI. (2019). Policy paper: exploring affordability in the Irish Housing Market.

⁵³ Eurofound. (2017). [European Quality of Life Survey 2016: Quality of life, quality of public services, and quality of society](#). Publications Office of the European Union, Luxembourg.

⁵⁴ Participants were asked: “How likely or unlikely do you think it is that you will need to leave your accommodation within the next 6 months because you can no longer afford it?”

⁵⁵ https://www.eurofound.europa.eu/data/european-quality-of-life-survey?locale=EN&dataSource=EQLS2017NC&media=png&width=740&question=Y16_Q26&plot=crossCountry&cou

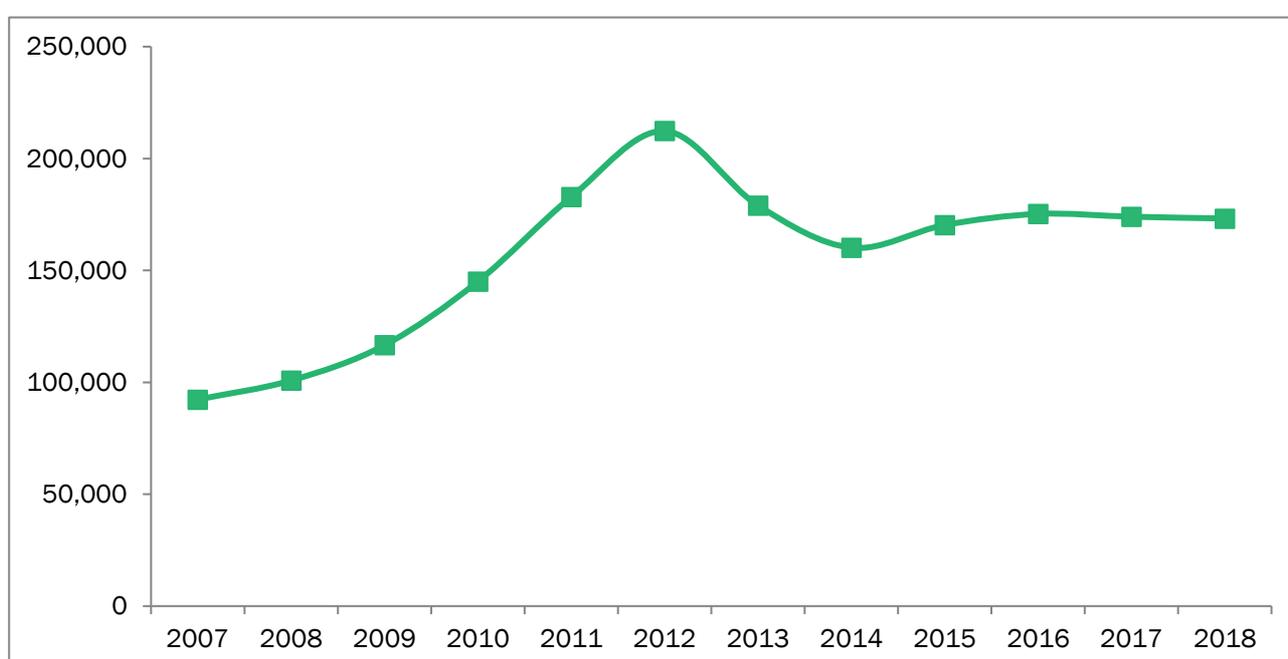
Overview of landlords in Ireland

A large majority of landlords in Ireland have one or two properties for rent - 70% of landlords manage one tenancy, while 16% manage two tenancies.⁵⁶ Only 0.5% of landlords manage more than 20 tenancies. These may represent large-scale professional landlords.

Private landlords in Ireland must, by law, register any tenancies on their property with the Residential Tenancies Board (RTB). If they do not, they risk a criminal conviction which could lead to a €4,000 fine and/or six months imprisonment.⁵⁷

Data provided in the RTB's annual report for 2018 is represented in Figure 4. The data show an increase in the number of landlords registering since 2007, when there were 92,301 registered landlords. Registrations peaked in 2012 when there were 212,306 registered landlords. In 2018, there were 173,197 landlords registered with the RTB, a fall of 804 from the previous year.⁵⁸

Figure 4: Number of landlords registered with the RTB 2007 – 2018



Source: Oireachtas L&RS based on RTB annual report 2018.

Reasons behind notices of termination by landlords

According to the Residential Tenancies Board (RTB),⁵⁹ in cases where the RTB made a determination, rent arrears was the most common reason for landlords serving a notice of termination⁶⁰ in 2018. Overall, the most common reasons were:

[tryGroup=linear&subset=Y16_Agegroup&subsetValue=All&country=IE&countryB=EuropeanUnion](#) (last accessed 24 March 2020)

⁵⁶ Ibid.

⁵⁷ Residential Tenancies Board. (2019). [Annual Report 2018](#).

⁵⁸ Ibid.

⁵⁹ RTB 2017 Annual Report is available at this link https://onestopshop.rtb.ie/images/uploads/Comms%20and%20Research/RTB_Annual_Report_2017.pdf

- rent arrears (37%, n = 355)
- landlord intended to sell their property (23%, n = 221),
- landlord intended to use the property for their own or family use (10%, n = 96)
- landlord intended to substantially refurbish or renovate the property (7%, n = 67)
- breach of tenant obligations (5%, n=48)
- terminating a tenancy before a Further Part 4 tenancy commences (4%, n = 38)
- 28 Day Notice of Termination for Anti-Social Behaviour (3%, n = 29)
- reason for Notice of Termination not specified (3%, n = 29)
- 7 Day Notice of Termination for Anti-Social Behaviour (2%, n = 19)
- terminating a tenancy in the first six months (not applicable to a fixed term lease) (3%, n = 29)
- termination by tenant — no reason required (1%, n = 10)
- terminating because the dwelling is no longer suitable to the accommodation needs of the tenant (1%, n= 10)
- terminating because the Landlord Intends to Change the Use of the Dwelling (1%, n = 10)

The RTB report shows that, of the 969 cases reviewed in 2018, 58% involved valid notices of termination and 42% were deemed to be invalid. The latter represents a reduction on previous years.

Number of buy-to-let residential mortgages in arrears

The Central Bank [Residential Mortgage Arrears and Repossession Statistics Q3 2019](#) published in January 2020 show that there were 106,130 residential mortgage accounts for buy-to-let (BTL) properties, to a value of €17.4 billion. Of these 14,744 (13.9%) were in arrears of more than 90 days. There were 10,861 BTL mortgage accounts in arrears of more than 720 days (10.2% of all BTL mortgage accounts). The Central Bank report shows that, at the beginning of Q3 2019, there were 965 BTL properties within the banks' possession.

⁶⁰ There were 959 Notices of termination received by the RTB in 2018

Stakeholder reaction and media commentary in relation to the proposed moratorium on evictions

Irish Property Owners' Association

Stephen Faughnan, chairman of the Irish Property Owners Association, said it is unfair to assume that:

“...property owners will immediately move to evict tenants in financial difficulty.”⁶¹

Mr. Faughnan also called on the government:

“...to move quickly to put in place the rental supports necessary to allow the tenants to continue to pay their rent.”⁶²

Threshold

On the 13 March 2020, prior to the Government's announcement, [Threshold](#) (a national housing charity) called on landlords to show flexibility when dealing with tenants who have reduced income due to COVID-19.

Students

There have been a number of media articles reporting the closure of some student specific accommodation due to Covid-19. On one campus, students have complained that they are expected to continue to pay for accommodation, while the University is closed.⁶³

⁶¹ <https://www.irishtimes.com/news/politics/coronavirus-temporary-bans-on-evictions-and-rent-increases-proposed-1.4207015>

⁶² <https://www.thejournal.ie/ban-on-evictions-and-rent-freeze-coronavirus-ireland-5051498-Mar2020/>

⁶³ <https://www.irishexaminer.com/breakingnews/ireland/landlord-firm-refuses-rent-refund-for-students-who-returned-home-due-to-virus-988730.html>



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