

Business Tenancies in Northern Ireland

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A new phase for Business Tenancies in Northern Ireland?

Business Tenancies in Northern Ireland are currently governed by the Business Tenancies (Northern Ireland) Order 1996 (the "Order"). The Order aims to provide security for business tenants by ensuring that the tenancy cannot be brought to an end except via the provisions as laid out in sections 5-8 of the Order. In short, if the landlord wishes to terminate the tenancy, they must serve a Notice to Determine in the prescribed form not less than 6 months or more than 12 months before the end of the tenancy. The Notice to Determine should state whether the landlord is willing to grant a new tenancy and if so, on which terms. The landlord can seek to oppose a new tenancy on certain limited grounds as specified in section 12 of the Order.

The situation in England and Wales is different, with parties to a business lease being able to "contract out" of the relevant legislation (The Landlord and Tenant Act 1954). Tenants do not have the statutory right to a lease renewal in this situation. The various reasons for this include the provision of greater flexibility to the commercial property market, the better management of landlord and tenant relations and the time (and money) saved by avoiding the requirements to obtain consent for agreements.

The prohibition on contracting out still stands in Northern Ireland. Many believed it was time for reform and the Northern Ireland Law Commission has recently published a Consultation Paper following the Consultation Period which ended on 30 September 2010. In addition to the reasons for contracting out as noted above, it was argued that it is unhelpful and commercially restrictive for the law in Northern Ireland to be different on such a vital issue from the law of England, Wales and the Republic of Ireland. In addition it can be submitted (perhaps less convincingly) that in view of the market conditions at present, the legislation is no longer required due to the arguably stronger position of the tenant.

The debate on business tenancies would be incomplete without a look at the main reasons which have been put forward against contracting out. The Order could be seen as being protective of the smaller and more vulnerable tenants in Northern Ireland (often with no legal representation), especially in a situation where an unscrupulous landlord is attempting to force a tenant to contract out. This would defeat what is the main purpose of the legislation at present; to protect vulnerable tenants from what could simply be used by landlords as an evasion of the law. Another possibility if contracting out was introduced in Northern Ireland would be that agents and legal advisers would protect the interests of their larger clients and the more vulnerable tenants would be left unrepresented (which would be unhelpful as most leases are weighted in favour of the landlord).

The prohibition on contracting out in Northern Ireland undoubtedly makes it slightly more difficult to carry out business here, as well as the issue of the law being out of sync with that of England and Wales. The Law Commission has decided that relaxation of the law on business tenancies to the extent provided for in England and Wales should not be supported. It has, however, proposed that market freedom should prevail in the case of leases which form part of a larger complex transaction,

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subject to agreement by the solicitors acting for each side. The Law Commission has now made its final recommendations to the government along with the provision of draft legislation. It is hoped that the changes proposed will have a positive impact on this economy by making it more straightforward for large business to establish themselves.

Please do not hesitate to contact a member of our experienced property team should you have any queries concerning how the business tenancies legislation affects you, either as a landlord or a business tenant.

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