

A guide to Northern Irish property law and practice - as compared to England and Wales

PART 3 - Landlord and Tenant Law



Landlord and Tenant Law

Although the basic concepts of Northern Irish law remain the same as those operating in England, there are some important differences.

Since the last century, Ireland has had special legislation governing the relationship between landlords and tenants, e.g., Deasy's Act, 1860. As mentioned in our previous parts of this guide, much of this older legislation is still in force in Northern Ireland.

One feature of this is that, under that Act, a tenant can get rid of any continuing liabilities (e.g. for rent, service charges, etc.) once he has assigned his lease with the written consent of the landlord and served notice of assignment (Section 14 and Section 16). The consent has to be endorsed on the assignment deed itself. The landlord usually signs the assignment deed too, to prove that. This also deals with the requisite giving of notice, so there is usually no need for a licence to assign, and commonly one is not used in Northern Ireland.

The Landlord & Tenant Covenants Act 1995 ("1995 Act") does not apply to Northern Ireland. There is no equivalent of an "authorised guarantee agreement". So, as above, the assigning tenant is no longer liable for future breaches. It gets a full release.

By the same token (Section 14 of Deasy's Act), a successor landlord can only recover for lease breaches by the tenant during its actual time as landlord. So on an investment sale, in order to chase up any pre-completion arrears, such a landlord would need to have the benefit of the ability to do so assigned to it by its predecessor.

The effect of Sections 12 & 13 of Deasy's Act is that landlord covenants in agreements for lease do bind successors to the landlord in Northern Ireland. Unlike the 1995 Act in England, there is no specific provision setting out that such obligations can be said to be personal in order to avoid this. It is however best practice when acting for a developer to include such a provision, along with the usual developer's release mechanism, when developer works are involved (so as to end the covenants then in any event).

Other points to note under Deasy's Act are: Section 41 states that unless the lease provides otherwise the landlord is deemed to have good title (and will allow quiet enjoyment); and Section 42 implies a good and substantial repair covenant on the tenant unless the lease provides otherwise. This is an important point for tenants to note if their lease is silent on repair.

Northern Ireland also has some jurisdictional specific modification in this area. For example, the right of "distress" was abolished some time ago by Section 122 of the Judgments (Enforcement) Act (NI) 1969. Although, it is still possible to seek seizure of goods following a judgment through the Enforcement of Judgments Office.

More recently, the Business Tenancies (NI) Order 1996 enacted much of the English equivalent Landlord & Tenant Act 1954. With similar rights of renewal and landlord grounds for opposition available.

Commercial leases

For the most part, the Northern Irish practice involving commercial leases follows the English practice. Thankfully for investors, the legislation in Southern Ireland on downwards rent reviews does not apply to Northern Ireland.

The structure of a typical medium to long-term (10-25 years) commercial lease is the same as in England, involving extensive provisions for rent reviews, service charges, insurance, guarantees, etc. However, this must be viewed against the background of the Northern Irish Landlord & Tenant Acts. Some points to watch here are:

Quarter Days (often referred to as gale days) are 1 February, 1 May, 1 August and 1 November. So you would have to specifically adopt the English equivalents if you wanted to pay/receive rent on the same dates as in the other leases in your wider UK portfolio.

The Business Tenancies (NI) Order implies the words “not to be unreasonably withheld or delayed” into covenants which require landlords consent for alienation or alterations, as per the equivalent legislation in England. The Northern Ireland legislation is not as prescriptive, but it does state that the landlord can impose reasonable conditions to giving such consent. It is also not retrospective.

Protected rights apply under the Business Tenancies (NI) Order to leases granted for a 9 month term (or more) or where there was 18 months (or more) business occupation. It is not possible to contract out of that Order. The effect being that most business leases are protected; even short term leases. This is an important difference to bear in mind in NI.

It also means that agreements to surrender cannot contract out of such provisions, as they would be able to do under the 1954 Act in England. Therefore in Northern Ireland such agreements need the Lands Tribunal seal of approval if they are to be enforceable. This involves a Solicitor’s personal appearance at the Lands Tribunal.

Terrorism insurance was not really available in Northern Ireland. This is changing though, especially in the context of large retailers who may self-insure using a standard UK-wide policy. The position instead of this however was that the Government effectively acted as insurer of last resort under the Criminal Damage Compensation Northern Ireland Order 1977. It still applies.

Compensation is still available to both commercial landlords and tenants under the 1977 Order. But the tenant will usually want a rent suspension in such circumstances as well, so where the 1977 Order applies damage is treated as being caused by an Insured Risk in effect. This is acceptable to landlords as they can also claim for loss of profit and consequential loss.

Due to the 1977 Order, the concept of “uninsured” risks in commercial leases is not particularly developed in leases in Northern Ireland. Again, this is also changing as some retailers do seek to utilise their standard UK-wide terms.

4. Further information

For more information please contact us. Many of our solicitors have experience in working in both the English and Northern Irish jurisdictions, as well as other international jurisdictions, so we are able to compare and contrast the local system that you will be used to with the system that you will encounter in Northern Ireland.

In addition, if there is any guidance on any other elements of Northern Irish law and practice that you would like to receive please do let us know. For example, environmental law, planning law, licensing and debt recovery are all relevant areas with specific Northern Ireland differences where we would be happy to assist.

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This commentary is current as at 9 September 2013 and is intended for guidance only. Full legal advice should be obtained in relation to your particular circumstances and commercial objectives on a case by case basis.