

IRELAND ABOLISHES UPWARDS ONLY RENT REVIEWS

On 1st December 2009 the Irish Minister for Justice, Equality & Law Reform signed an Order bringing into effect Section 132 of Ireland's Land & Conveyancing Law Reform Act 2009, with effect on 28th February 2010.

Any lease of business premises in the Republic of Ireland granted on or after that date, except pursuant to an agreement for lease entered into previously, is to be construed as if any rent review provisions provide for the rent payable following the review to be fixed at an amount which is less than, greater than or the same as the amount of rent payable immediately before the review date - in other words, up/down rather than upwards only. This statutory implication will apply notwithstanding any provision to the contrary contained in the lease or agreement.

In the case of a mixed use property, this provision will only apply to that part of the land demised by the lease in which business is allowed to be carried on.

Quite apart from the horror engendered by the very concept of abolishing upwards only rent reviews, it must be observed that the drafting of this provision is quite appalling, particularly since the word "review" is not defined. Dictionaries define "review" as "assessment", "evaluation" or "appraisal". If that approach to the meaning of "review" applies, then hopefully this legislation will be confined to open market and similar review clauses and will not prevent the use of fixed stepped rents, indexed rents, or other non-evaluative formulae for increasing rent such as turnover rents.

One may hope that the British government does not decide to follow the lead taken by the Irish here, either as to the principle of outlawing upwards only rent reviews or by adopting their legislative drafting.

The Code for Leasing Business Premises in England and Wales was promulgated largely with a view to heading off legislation of that kind, but earlier this year the University of Reading published an interim report stating that the 2007 Code was not reaching many tenants in the market. A final review of the impact of the Code is yet to be carried out, but is unlikely to paint a much better picture and the possible abolition of upwards only rent reviews may be back on the cards if there is no change of government in the meantime.

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IMPORTANT: This briefing note is only intended as a general statement of the law and no action should be taken in reliance on it without specific legal advice. Release Date: 24 June 2010

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