

## Summary and impact of Ireland's Code of Conduct between Landlords and Tenants for Commercial Rents 2020

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The Irish government's new Code of Conduct between Landlords and Tenants for Commercial Rents was introduced on 1 October 2020 by the Department of Business, Enterprise and Innovation.

The Code was promised in the Programme for Government published in July and its purpose is to “facilitate discussions between landlords and tenants impacted by COVID-19.”

The Code will be in place until 31 July 2021 but there is scope for its extension if necessary.

### Legal status of the Code

Importantly, the Code is:

- Not official legislation

- Not binding

- Entirely voluntary

However, the Code may be persuasive and influential to landlords.

So what is the point of the Code? Essentially, the Code the Government’s wish list of behaviour desired from landlords when dealing with tenant arrears during the pandemic.

The Code creates a framework for engagement between commercial landlords and tenants.

### Overarching principles of the Code

There are four principles that are to guide interaction between landlord and tenant during the

pandemic under the Code: -

- **Expediency:** parties must act “in an open, honest and transparent manner” to recognise and address the impact of COVID-19 on the lease arrangement and to identify solutions to issues arising.
- **Collaboration:** parties should try to assist each other in dealings with other stakeholders such as the Government, utility companies, banks/financial institutions, etc.
- **Assistance:** parties must recognise that assistance provided by the State is to enable parties to meet their obligations. In this vein, the Code specifies that landlords should seek to share any benefit it receives with a tenant e.g., a deferred loan payment.
- **Mediation:** if agreement cannot be reached, the parties should consider the alternative dispute resolution mechanisms under the existing lease or alternatively mediation.

The Code expects landlords and tenants to act “in an open, honest and transparent manner”.

## Impact of the Code in real terms

### Service Charge and Insurance

The Code confirms that service charge and insurance payments are to be paid in full unless otherwise agreed.

### Rent Arrears

There is little doubt that the Code was introduced to avoid evictions of commercial tenants where those tenants fell into arrears. Essentially the Government is seeking to preserve the tenant in the leased premises during the pandemic despite rent arrears accruing.

The Government know full well that it could be held unconstitutional for the Government to rewrite the terms of commercial leases through legislation. For that reason, they are attempting to create a new suite of commercial behaviours through the Code.

They also know that a Code could become a deterrent for otherwise swift evictions. They also know that the Courts in considering any ejectment proceedings will have one eye on whether the landlord adhered to the Code in affirming the ejectment or otherwise of a tenant.

So, is a landlord expected to weather no-payment of rent for the duration of the pandemic? No, is the short answer.

Is the Government going to compensate a landlord for keeping a delinquent tenant in situ where the tenant has run up significant rent arrears? Absolutely not.

In real terms, the decision to evict a tenant for rent arrears will depend much more on the strength of the covenant, the tenant's history of payment of rent, service charge and insurance, the historical arrears, the cooperation of the tenant, demand for the property, the nature of the tenant's business and the sustainability of the tenant's business going forward, rather than the existence of the Code.

## What will the Code mean for landlords?

The Code does not mean the end of forfeiture of leases because of non-payment of rent and other outgoings. Most commercial leases allow a landlord to re-enter the demised premises terminating a lease, where rent or other sums due remain unpaid for 14 days after becoming payable (whether formally demanded or not). Furthermore, the landlord's right to re-enter and terminate the Lease does not prejudice its right to pursue the tenant for the arrears outstanding and/or any other breach under the lease.

It does mean that commercial landlords and their agents must engage meaningfully with their tenants on all options before exercising forfeiture under the lease. It means that the landlord or their agent should actively seek confirmation from the tenant of its financial status through the production of management accounts, cashflow and other financial statements.

A tenant seeking a concession is expected to provide full financial information on their business and the specific business unit the subject of the lease. If a landlord refuses the concession sought, it should provide an explanation for its decision referencing the information provided by the tenant and possibly their own duties and financial commitments which might render the concession unworkable.

Practically a landlord who can see the tenant's predicament through a review of the tenant's financial statements is more likely to arrive at a practical conclusion for the benefit of the tenant. At the back of the landlord's mind will be:

*"A bad tenant is better than no tenant."*

For further information on this topic please feel free to contact Maria Edgeworth via her contact details below.

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