**ByrneWallace LLP Real Estate Horizon Report, Spring 2023**

Insert numbered table of contents

1. Welcome

Welcome to the first edition of the **ByrneWallace LLP Real Estate Horizon Report**.

We know that keeping up-to-date with new and upcoming legal, tax, policy and market practice developments is an ongoing challenge for businesses. We hope that you will find this horizon report a useful tool as you consider your plans for the year ahead.

In ByrneWallace LLP, we continually scan the horizon for new, upcoming and proposed developments that may impact upon our clients’ property portfolios and transactions. We are at the forefront of developments in property practice, both through our work advising a broad range of clients and our leadership roles in professional groups such as the Law Society Conveyancing Committee and the Irish Property Working Group of The Chancery Lane Project.

This Real Estate Horizon Report provides an overview of key legislation enacted, made or commenced in 2022 and draft or proposed legislation on the horizon that will impact upon Irish real estate in 2023 and beyond. We highlight a selection of judgments from the Irish courts and report on the latest developments in green lease clauses for Irish commercial leases.

If you would like to discuss any of the issues contained in this report, please contact [Alison O’Sullivan](https://byrnewallace.com/about-us/our-team/alisonosullivan.html), Partner and Head of our [Property Law team](https://byrnewallace.com/services/practice-areas/propertyreal-estate.html), [Michael Walsh](https://byrnewallace.com/about-us/our-team/michael-walsh.html), Partner and Chair of Property, [Mark Kavanagh](https://byrnewallace.com/about-us/our-team/mark-kavanagh.html), Partner and Head of our [Banking and Finance team](https://byrnewallace.com/services/practice-areas/banking-and-finance.html), [Anthony Smyth](https://byrnewallace.com/about-us/our-team/anthony-smyth.html), Head of our [Tax team](https://byrnewallace.com/services/practice-areas/tax.html) or any of the contacts on the back cover.

1. Planning and Development
	1. There was considerable focus on the Irish planning system in 2022. The Attorney General and a working group of planning experts completed a comprehensive, 15-month review of Irish planning legislation. While this review was ongoing, several planning issues arose which required more urgent intervention, resulting in the enactment of two planning Acts in 2022.
	2. Planning and Development and Foreshore (Amendment) Act 2022

The [Planning and Development and Foreshore (Amendment) Act 2022](https://www.irishstatutebook.ie/pdf/2022/en.act.2022.0047.pdf) was enacted on 20 December 2022, having been expedited due to the urgent need to appoint a new chairperson for An Bord Pleanala and the pressing need to boost housing delivery.

The Planning and Development and Foreshore (Amendment) Act 2022:

* + amends the Planning and Development Act 2000 (as amended) (the “**2000 Planning Act**”) in relation to the process of appointments to the Board of An Bord Pleanála
	+ amends the definition of foreshore in the Foreshore Act 1933, and
	+ temporarily disapplies the “Part 8” planning approval process in respect of housing developments by local authorities on local authority or State-owned land, subject to specified conditions.

**Commencement:** Partially commenced. Provisions disapplying the “Part 8” planning approval process have not yet been commenced.

* 1. Planning and Development, Maritime and Valuation (Amendment) Act 2022

The [Planning and Development, Maritime and Valuation (Amendment) Act 2022](https://www.irishstatutebook.ie/pdf/2022/en.act.2022.0029.pdf) was enacted on 24 July 2022. This Act deals with a variety of matters including:

* + Regulatory controls on the short-term letting of non-principal private residences in rent pressure zones
	+ Streamlining the substitute consent procedure to regularise existing developments
	+ Flexibility in planning applications
	+ Limited amendments to the judicial review provisions in the Planning and Development Act 2000
	+ Amendments to the Valuation Acts and the Maritime Area Planning Act 2021

**Commencement:** Partially commenced. Some provisions of the Act were commenced on enactment, with five commencement orders made to date.

The regulatory controls on short-term lettings came into force on enactment. Unusually, the [European Union (Planning and Development, Maritime and Valuation (Amendment) Act 2022) (Amendment) Regulations 2022](https://www.irishstatutebook.ie/pdf/2022/en.si.2022.0513.pdf) made on 13 October 2022 provide that section 3 is *“deemed not to have come into operation on passing of the Act and shall not come into operation until provided for pursuant to any Act or statutory instrument”*.

* 1. Maritime Area Planning Act 2021 commenced (in part)

The [Maritime Area Planning Act 2021](https://www.irishstatutebook.ie/pdf/2021/en.act.2021.0050.pdf) was enacted in 2021 to put in place a comprehensive and coherent planning system for the entire maritime area. Work is ongoing to implement this Act, with various commencement orders made during 2022. The Act has also been amended by the Planning and Development, Maritime and Valuation (Amendment) Act 2022.

The constituent elements of the maritime area planning system are:

* + A forward planning regime for the maritime area.
	+ A streamlined development management system for the maritime area incorporating consent for the occupation of the maritime area (Maritime Area Consents and licencing) and a new planning consent regime (to be implemented by coastal local authorities and An Bord Pleanála).
	+ The establishment of a new agency, the Maritime Area Regulatory Authority (“**MARA**”) to manage the occupation of the maritime area and to enforce the provisions of the new regime.

The new marine planning system will be underpinned by a statutory Marine Planning Policy Statement, guided by the [National Marine Planning Framework](https://assets.gov.ie/139100/f0984c45-5d63-4378-ab65-d7e8c3c34016.pdf).  The National Marine Planning Framework is the marine equivalent to the National Planning Framework.

**Commencement:** Partially commenced.

* 1. Planning and Development Regulations

There were 30 statutory instruments made in 2022 in relation to planning matters, including regulations creating planning exemptions (subject to conditions) for:

* + installation of solar panels
	+ conversion of former pubs into residential units
	+ temporary change of use of buildings, or parts of buildings, including schools, hotels and convention centres by the HSE for use as public vaccination or public testing centres
	+ temporary change of use of buildings and development of emergency accommodation and support facilities by or on behalf of a State authority for persons displaced by the Russian invasion of Ukraine.
	1. Planning and Development Bill

The [draft Planning and Development Bill 2022](https://www.gov.ie/pdf/?file=https://assets.gov.ie/245627/be71aebe-a594-4b3c-bffb-89ddf8e1ed95.pdf#page=null) was published on 26 January 2023. Pre-Legislative Scrutiny (“**PLS**”) of the draft Bill commenced on 7 February 2023 and further technical drafting is expected before the finalised Bill is published and begins the legislative process in the Oireachtas. The proposed Bill, when enacted, will be the most significant piece of planning legislation in Ireland in over 20 years.

The draft Bill sets out the processes of plan-making, consents, enforcement and the roles of various planning bodies, including An Bord Pleanála and the Office of the Planning Regulator. The main provisions proposed include:

* + Ministerial guidelines and policy directives will be upgraded to ‘National Planning Policy Statements’ and ‘National Planning Policy Guidance’, which will be approved by Government.
	+ Local Development Plans will be extended from six years to ten years, with a review after year five. Plans will be more strategic in nature, to help ensure that public engagement and major local debate is focused on the plan-making rather than planning application stage and to facilitate greater clarity and long-term visibility of planning outcomes.
	+ Mandatory statutory timelines will apply to all consent processes, including An Bord Pleanála decisions. Timelines will be introduced for appeals and consents applications made to An Bord Pleanála (including Strategic Infrastructure Developments), with penalties for failure to meet the timelines.
	+ There will be a number of changes to judicial reviews of planning decisions.
	+ An Bord Pleanála will be restructured and re-named An Coimisiún Pleanála. Its structures will be separated into the Planning Commissioners (a Chief Planning Commissioner and up to 14 full-time Planning Commissioners) the decision making body and a new Governing Executive (led by a Chief Executive), responsible for the organisation’s governance and organisation.

For further discussion of the draft Bill, see our [article](https://byrnewallace.com/news-and-recent-work/publications/historic-planning-breach-amnesty-is-glaring-omission-from-upcoming-bill.html) published in the Sunday Business Post.

**Status:** This Bill is listed for priority publication this session in the Spring 2023 Legislation Programme.

* 1. Land Value Sharing and Urban Development Zones Bill

The purpose of the proposed Land Value Sharing and Urban Development Zones Bill is to amend the 2000 Planning Act to introduce new provisions to deal with land value sharing and urban development zones. The [General Scheme of the Land Value Sharing and Urban Development Zones Bill 2021](https://assets.gov.ie/212112/317dd151-8881-476a-a7fb-dcdd3e08d116.pdf) was approved in December 2021.

This Bill is intended to respond to long-standing issues arising from the impact of ‘hope value’ in the land market, which leads to speculation that affects the value of land and as a result, the viability of building, both of which feed into the cost of housing.  The proposed measures are intended to address the situation whereby significant increases in land value arising from zoning and permitting development are not shared adequately with the State, and it is ultimately those purchasing or renting new homes, and new communities where the need for infrastructure and facilities is often greatest, who bear the cost.

The general scheme provides for: a) local authorities to secure a proportion of the increase in land values arising from public decisions and investment related to planning and development on land that is newly zoned for housing, or subject to an Urban Development Zone designation, and b) designation of Urban Development Zones which have potential for significant development for housing and other purposes.

The indications are that this proportion may be up to 30% of the uplift, in addition to Part V requirements.   The purpose of sharing a proportion of the uplift value is to provide public infrastructure to service the lands and community, including roads, public transport, schools, parks and community facilities and where required, may include social/affordable housing (over and above Part V) on the land.  It is proposed that all or part of the contribution (to be secured by condition of the planning permission) may be facilitated by financial contributions, land transfer, and/or the undertaking of infrastructural works by the developer, in a manner that will fund or provide for the necessary infrastructure to support the development of sustainable communities.

**Status:** This Bill is listed for priority publication this session in the Spring 2023 Legislation Programme.

1. Construction
	1. Regulation of Providers of Building Works and Miscellaneous Provisions Act 2022

The [Regulation of Providers of Building Works and Miscellaneous Provisions Act 2022](https://www.irishstatutebook.ie/pdf/2022/en.act.2022.0015.pdf) was enacted on 5 July 2022.  This Act puts the Construction Industry Register Ireland (CIRI), which had been operating on a non-statutory, voluntary registration basis since 2014, on a statutory footing.  The Act aims to benefit consumers and the general public by giving those who engage a registered builder the assurance that they are dealing with a competent and compliant operator.

All entities providing building services will be required to register with CIRI.  Employees of such building firms will not be required to register but sole traders will. Eligibility for registration can be achieved through qualifications, experience or a combination of both.

CIRI will be an online register, available for inspection free of charge by the public. The register shall be divided into different divisions for different categories of works to be prescribed by the Minister. It will contain the names and contact details of each registered person, the division in which the person is registered, details of any convictions or sanctions, and such other information such as suspension of registration, as the registration body considers appropriate.

**Commencement:** Partially commenced. The provisions in relation to the online register have not been commenced yet.

* 1. Licensing of Construction Activity Bill

The purpose of the Licensing of Construction Activity Bill is to establish a statutory licensing system for construction and quarrying and modernise and reform the existing accredited training model.  The main features of the Bill will be:

* + The introduction of statutory safety awareness requirements for workers in the construction sector
	+ The establishment of a licensing model for workers based on an assessment of competence, to replace the accredited training model
	+ The introduction of skills-based assessment with no distinction on the basis of environment, thus amalgamating the assessment and licensing process for construction and quarrying activities
	+ The establishment of a licensing regime for tutors
	+ The establishment of an approvals requirement for training organisations conducting certain reserved activities
	+ The creation of offences for failure to hold the appropriate licence and associated offences for contractors and employers.

**Status:** This Bill is listed for priority publication this session in the Spring 2023 Legislation Programme.

1. Housing
	1. Affordable Housing Act 2021 - Equity purchase scheme commenced

In 2021, the [Affordable Housing Act 2021](https://www.irishstatutebook.ie/eli/pdf/2021/en.act.2021.0025.pdf) empowered the Minister for Housing, Local Government and Heritage to provide funding to set up a special purpose vehicle for an equity share scheme to assist purchase of dwellings, but there was no detail at that time on how the scheme would work. In 2022, the [Regulation of Providers of Building Works and Miscellaneous Provisions Act 2022](https://www.irishstatutebook.ie/pdf/2022/en.act.2022.0015.pdf) inserted supplemental provisions into the Affordable Housing Act 2021, setting out the mechanics of the equity purchase scheme, now launched as the [First Home Scheme](https://www.firsthomescheme.ie/).

* 1. The Land Development Agency Act 2021 – Further commencements

While it was enacted and partially commenced in 2021, significant provisions of the [Land Development Agency Act 2021](http://www.irishstatutebook.ie/pdf/2021/en.act.2021.0026.pdf) came into force in 2022.

With effect from 31 March 2022, the Act replaced the existing statutory basis of the Land Development Agency (“**LDA**”) and introduced a new structure.  The Act confers functions on the LDA to develop and regenerate relevant public land for the delivery of housing and to develop and manage housing on that and other land, including with other persons or bodies.

This Act restricts certain public bodies (including all local authorities) from dealing with *“relevant public land”,* requiring them to first give notice to the LDA of their intention to dispose of the land, provide any information sought by the LDA and offer the land for sale to the LDA within the period of 12 months immediately prior to the proposed disposal. Disposal is given a broad definition, with the effect the LDA has a right of first refusal prior to any sale, lease, sub-lease, transfer or assignment of any interest in relevant public land (which includes buildings) by relevant public bodies.

During 2022, the LDA started the process of establishing a Register of Relevant Public Land to identify land in urban population centres that can be made available for housing. The Government may direct the LDA to acquire relevant public land owned by certain public bodies. The Act also grants the LDA compulsory acquisition powers in certain circumstances.

The Act requires a proportion of dwellings provided on relevant public land and former relevant public land to be made available on a cost rental basis, transferred to a planning authority or made available for affordable housing.

**Commencement:** Fully commenced.Provisions were commenced on 15 December 2021, 31 March 2022 and 1 January 2023.

* 1. Housing for All

The Government’s housing policy, [Housing for All - a New Housing Plan for Ireland](https://www.gov.ie/en/campaigns/dfc50-housing-for-all/) continues to underpin much of the legislative agenda for the property sector. This plan is based on four pathways, intended to create a more sustainable housing system:

* + Pathway to supporting home ownership and increasing affordability
	+ Pathway to eradicating homelessness, increasing social housing delivery and supporting social inclusion
	+ Pathway to increasing new housing supply
	+ Pathway to addressing vacancy and efficient use of existing stock

The Government recently published the [Housing for All Q4 2022 Progress Report](https://www.gov.ie/pdf/?file=https://assets.gov.ie/246609/0343f5b8-d7b6-4b91-8aa9-dc400ea9fff9.pdf#page=null). This report provides an overview of progress during the first full calendar year of the plan and details the status of actions due in Q4 2022. Key actions delivered include:

* + Increased funding through the Affordable Housing Fund and the Cost Rental Equity Loan to make cost rental homes available at affordable prices.
	+ Help-to-Buy Scheme extended to the end of 2024 and consideration being given to expansion of the First Home Scheme to cover self-build housing.
	+ Funding of €94 million provided to local authorities to address legacy land debts. Provision of this funding linked to the immediate development of a housing proposal, a commitment to use Modern Methods of Construction and construction to start in 2023/2024. Over 30 sites have been identified for acceleration, involving over 1,500 new social homes.
	+ Developed Vacant Homes Action Plan, with several incentives available for turning a vacant house or building into a permanent home. This plan was launched in January 2023.
	+ €500 Rent Tax Credit for rent paid in 2022 and protection for renters by deferring any ‘no fault’ tenancy terminations from taking place during winter 2022/2023.
	+ Publication of draft Residential Zoned Land Tax Maps as part of the implementation of the Residential Zoned Land Tax (RZLT).
1. Residential Tenancies
	1. Residential Tenancies (Amendment) Act 2021 – Tenancies of unlimited duration commenced

Provisions in the [Residential Tenancies (Amendment) Act 2021](https://www.irishstatutebook.ie/pdf/2021/en.act.2021.0039.pdf) introducing residential tenancies of unlimited duration, came into force on 11 June 2022.  All new tenancies created on or after 11 June 2022 will become tenancies of unlimited duration once the tenancy has lasted more than six months and no notice of termination has been validly served on the tenant. For tenancies created before this date, which end on or after 11 June 2022, on their expiry a new tenancy of unlimited duration will come into effect, unless valid termination notice has been served by either party.

**Commencement:** The provision for tenancies of unlimited duration came into force on 11 June 2022

* 1. Regulation of Providers of Building Works and Miscellaneous Provisions Act 2022 - Termination of Tenancies

The [Regulation of Providers of Building Works and Miscellaneous Provisions Act 2022](https://www.irishstatutebook.ie/pdf/2022/en.act.2022.0015.pdf) amends the Residential Tenancies Act 2004 by providing for an increase of the notice period for termination of certain tenancies, requiring landlords to serve a copy of any notice of termination on the Board, and enabling the Board to assist in providing contact details of tenants to landlords for the purpose of facilitating a re-letting offer.

**Commencement:** The amendments to the Residential Tenancies Act 2004 came into force on 6 July 2022.

* 1. Residential Tenancies (Deferment of Termination Dates of Certain Tenancies) Act 2022

The [Residential Tenancies (Deferment of Termination Dates of Certain Tenancies) Act 2022](https://www.irishstatutebook.ie/eli/2022/act/34/enacted/en/pdf) was enacted on 29 October 2022.  The Act defers “no fault” tenancy terminations that are due to occur during the “winter emergency period” (30 October 2022 to 31 March 2023 (inclusive)) from taking effect until after 31 March 2023.  Any person who had a valid ‘no fault’ notice of termination served prior to this legislation being enacted will not have their tenancy terminated during the winter emergency period. Notices of termination which have been issued will take effect on a phased basis between 1 April and 18 June 2023, based on the date that the notice was served and the duration of the relevant tenancy.  The legislation also covers licences/tenancies in student specific accommodation and student tenancies in the general rental market.

**Commencement:** All provisions came into force on enactment.

* 1. Residential Tenancies (Amendment) Act 2019 (as amended) - Annual registration of residential tenancies commenced

From 4 April 2022, landlords must re-register residential tenancies with the Residential Tenancies Board every year. This annual registration must be completed within one month of the anniversary of when the tenancy began.

**Commencement:** Commenced 4 April 2022.

1. Tax, duties and levies
	* 1. Finance (Covid-19 and Miscellaneous Provisions) Act 2022

The [Finance (Covid-19 and Miscellaneous Provisions) Act 2022](https://www.irishstatutebook.ie/pdf/2022/en.act.2022.0009.pdf) was signed into law by the President on 2 June 2022.  From a property perspective, this Act provided for the repayment of the excess stamp duty (where stamp duty was charged at the higher 10% rate for acquisitions of 10 or more residential dwellings, excluding apartments, in a 12 month period) for residential properties that are designated by the Minister for Housing, Local Government and Heritage as “cost rental dwellings” within six months after being acquired.

**Commencement:** Provision for repayment of stamp duty on cost rental dwellings came into force on 3 June 2022, but is replaced by new provisions in Finance Act 2022 (see below) from a date to be appointed.

* + 1. Finance Act 2022

The [Finance Act 2022](https://www.irishstatutebook.ie/pdf/2022/en.act.2022.0044.pdf) was enacted on 15 December 2022. The property related measures include:

* + **Vacant Homes Tax**

A new Vacant Homes Tax (“**VHT**”) will be introduced in 2023. The measure aims to increase the supply of homes for rent or purchase, rather than raise revenue. The VHT will be paid by property owners on long-term vacant, habitable, residential property that is subject to Local Property Tax (“**LPT**”). Subject to certain exemptions, a property will be considered vacant for the purposes of the tax if it is occupied for less than 30 days in a 12-month period. VHT will be self-assessed and administered by the Revenue Commissioners. The first chargeable period commenced on 1 November 2022, and owners of vacant properties will be required to file a return in November 2023. Payment of the tax will be due on 1 January 2024, at a rate equal to three times the property’s base LPT rate. The VHT will be paid in addition to the LPT.

**Commencement**: 15 December 2022

* + **Defective Concrete Products Levy**

As was announced in Budget 2023, Finance Act 2022 introduces a new levy to apply to a range of concrete types/products. Following widespread feedback on and criticism of the announcement a number of changes were made to the proposal in the Finance Bill. The levy was halved from the planned 10% to 5% and it will come into effect on 1 September 2023, as opposed to 3 April 2023, allowing more time to prepare for its introduction. The range of products to which the levy will apply has been reduced to pouring concrete (ready-mix) and concrete blocks under two harmonised EU standards. It will not apply to precast concrete products.

**Commencement:** 1 September 2023

**Extension of Residential Development Stamp Duty Refund Scheme**

The date by which projects must commence construction to be eligible for this scheme is extended from 31 December 2022 to 31 December 2025. Where land is purchased at the non-residential rate of stamp duty (7.5%) and dwellings are subsequently constructed on the land, the scheme entitles the purchaser to claim a refund of the stamp duty paid above 2% subject to certain conditions.

**Commencement:** 15 December 2022

* + **Additional reliefs from the 10% rate of stamp duty on the bulk acquisition of houses**

A 10% rate of stamp duty was introduced in 2021 in order to dis-incentivise the bulk acquisition of houses (10 or more in any 12-month period) and has contributed to a significant reduction in such activities. It has given rise to unintended effects on the acquisition of houses to be used for the provision of accommodation in the community for older persons, people with disabilities and for children in care.  Finance Act 2022 contains a provision designed to ensure that where houses are acquired for such purposes, and fall within the scope of the 10% rate, the person or body acquiring those can claim a refund of any stamp duty paid above the standard rate subject to the appropriate registration under the Health Act 2007 or Child Care Act 1991.

If the property ceases being used for such purposes within ten years after qualifying for a refund, there shall be a clawback of all or a proportionate amount of the refunded stamp duty, depending on the number of years which have passed. This clawback is also extended to the refund provisions for residential properties that are designated as “cost rental dwellings” within six months after being acquired, and properties that are subsequently leased to a local authority or approved body for the provision of social housing within 24 months of purchase. These reliefs will also be clawed-back if the properties cease to be used for such purposes within ten years of qualifying for a refund.

A new exemption is also provided for home reversion agreements, where these are provided by a Home Reversion Firm which is authorised by the Central Bank of Ireland.

**Commencement:** Not yet commenced, apart from the exemption for home reversion agreements which commenced on 15 December 2022.

* + **Stamp duty refund**

Where a residential property is acquired and then sold within 12 months of acquisition for the purpose of affordable home arrangements under the Affordable Housing Act 2021, the original purchaser may claim a full repayment of stamp duty, whether charged at the standard residential rate (1% or 2%) or the higher rate (10%) applicable to “bulk acquisitions”.

**Commencement:** Not yet commenced.

* + **Residential Zoned Land Tax**

Residential Zoned Land Tax (“**RZLT**”) was introduced in [Finance Act 2021](https://www.irishstatutebook.ie/eli/pdf/2021/en.act.2021.0045.pdf), with amendments introduced in [Finance Act 2022](https://www.irishstatutebook.ie/pdf/2022/en.act.2022.0044.pdf) to streamline the operation of this tax and add further exclusions. The Government indicated that the aim of the tax is to activate land for residential development, rather than to raise revenue. RZLT is intended to increase housing supply by activating zoned, serviced residential development lands (including mixed-use lands) for housing, including incentivising landowners to implement existing planning permissions.

Local authorities across Ireland published draft RZLT maps on 1 November 2022. These maps indicate the land identified by the local authorities as falling within scope of RZLT. RZLT will be charged from 2024 on land which satisfied the criteria to be included in the tax on 1 January 2022. For land which satisfies the criteria after 1 January 2022, there is a three year grace period after the criteria are satisfied before RZLT is charged. Where RZLT is due, it will be payable by the ‘owner’ of the land (which can include a person who holds an interest entitling them to carry out development on the land) on 1 February each year, at a rate of 3% of market value.

The tax will apply to land which is zoned suitable for residential development and is serviced, but has not been developed for housing. It will target land in areas which are zoned residential or which are zoned for a mix of uses, including residential, with no minimum size exclusion, to incentivise the development of small sites in town centres. There will be a number of exclusions from the tax such as: dwelling houses and their curtilage; land used for certain infrastructure or facilities; land liable for the Derelict Sites Levy; and land which is zoned for residential use, but is used to provide services consistent with a residential area, e.g. a corner shop.

Deferrals and abatements from the tax are also available subject to certain conditions, including where residential development is commenced on the land and is completed prior to the expiry of the planning permission period.

Where land is zoned for a mixture of residential and other uses, only land which is not integral to the operation of a business carried out on or beside it shall be included within the scope of the tax.

**Commencement:** The amendments to the RZLT provisions introduced by the Finance Act 2022 came into force on 15 December 2022 (although are generally not relevant until RZLT is chargeable from 2024).

1. Other legislation
	1. Remediation of Dwellings Damaged by the use of Defective Concrete Blocks Act 2022

The [Remediation of Dwellings Damaged by the use of Defective Concrete Blocks Act 2022](https://www.irishstatutebook.ie/pdf/2022/en.act.2022.0028.pdf) was signed into law on 23 July 2022, but has not yet been commenced.  The Act replaces regulations made for an earlier scheme of redress. It provides for the payment of grants for the remediation of certain dwellings damaged by the use of defective concrete blocks in their construction; recovery of grants in certain circumstances; charging orders for certain grants and their release; and includes a scheme to enable remediation of designated local authority and approved housing body owned dwellings.

**Commencement:** Not commenced yet

* 1. Electronic Signatures and Registered Land

The [Electronic Commerce Act 2000 (Application of sections 12 to 23 to Registered Land) Regulations 2022](https://www.irishstatutebook.ie/eli/2022/si/55/made/en/pdf) permits electronic signatures to be used on documents for the acquisition, disposal, creation and registration of interests in registered land. However, the Property Registration Authority (“**PRA**”) is not yet accepting electronic/digital signatures on Land Registry applications or forms.

The legal basis for recognition of electronic signatures in Ireland is the Electronic Commerce Act 2000 (the “**e-Commerce Act**”). With the exception of property contracts, the provisions permitting the use of electronic signatures did not previously apply to the acquisition, disposal, creation or registration of an interest (including a leasehold interest) in real property. Transactions involving unregistered title continue to fall outside the scope of the e-Commerce Act.

The legislation extending use of electronic signatures to property transactions involving registered land has been welcomed by both legal practitioners and the PRA. It removes a significant block on the road to e-conveyancing, but further steps are required before electronic signatures become a feature of registered property transactions.

Under the e-Commerce Act, the consent of a public body is required for use of electronic signatures and the PRA has not yet agreed to accept electronic signatures. The PRA has indicated that it intends, together with stakeholders, to explore the potential for the development of a paperless system of registration.

* 1. Tailte Éireann Act 2022

[Tailte Éireann Act 2022](https://www.irishstatutebook.ie/eli/2022/act/50/enacted/en/pdf) was enacted on 21 December 2022. This Act provides for a new centralised agency called Tailte Éireann to provide a property registration system, property valuation service, and national mapping and surveying infrastructure for the State, to be achieved through a merger of the Property Registration Authority, Valuation Office, and Ordnance Survey Ireland.

The PRA and Ordnance Survey Ireland will be dissolved on the establishment of Tailte Éireann and all of their functions will be transferred to Tailte Éireann, along with all of the functions of the (dissolved) Commissioner of Valuation and Boundary Surveyor.

**Commencement**: Not yet been commenced.

* 1. Historic and Archaeological Heritage Bill 2023

The [Historic and Archaeological Heritage Bill 2023](https://data.oireachtas.ie/ie/oireachtas/bill/2023/2/eng/initiated/b0223s.pdf) was published on 17 January 2023 together with an [explanatory memorandum](https://data.oireachtas.ie/ie/oireachtas/bill/2023/2/eng/memo/b0223s-memo.pdf). If enacted, this Bill will replace and modernise the National Monuments Acts 1930 to 2014 and related legislation going back to the 19th century, to establish a new Register of Monuments to replace multiple systems for monument protection and an integrated and streamlined licensing system for activities regulated under the Bill.

The Bill also provides for the State to ratify some key international conventions in the area of heritage protection, should the Government decide to do so. There are also proposals for innovative measures, such as legal protection for new finds of archaeological sites, a single integrated licencing system, statutory codes of practice, and a civil enforcement system to be used as an alternative to, or to supplement criminal proceedings.

**Status:** The Bill has completed first stage in Seanad Éireann.

* 1. Sale of Alcohol Bill

The [General Scheme of Sale of Alcohol Bill](https://assets.gov.ie/238056/5784267d-5c8d-4bd2-b4c5-19fec018a361.pdf) was published in October 2022, after almost two decades of calls for reform and codification of Ireland’s liquor licensing laws.   The Sale of Alcohol Bill, if enacted, will replace provisions in almost 100 Acts, including the Licensing Acts, Registration of Clubs Acts and the Public Dance Hall Act 1935. It is intended to reform and modernise licensing laws in Ireland. Proposals include:

* + Licences would continue to be issued by Revenue, with responsibility for court certificates and declaratory orders moving from the Circuit Court to the District Court. Where there are no objections to renewal of licences, online renewal would be possible.
	+ Creation of new annual permits for late bars and nightclubs, to replace the current system where a Special Exemption Order is required every time such a venue wants to open after normal hours
	+ Opening hours for late bars would remain at 2.30am and nightclubs would have the option to remain open until 6am, with sale of alcohol permitted up to 5am.
	+ Restricted Sunday opening hours would no longer apply to off licences. Off licences would be allowed to open from 10.30am to 10pm every day of the year, save for Christmas Day.
	+ Following a three year transitional period, the requirement to extinguish an existing licence when applying for a new seven day on licence will be removed.
	+ A retailer applying for a new off licence will still be required to extinguish an existing public house licence or off licence. After a transition period of three years, only public house licences granted prior to the new legislation may be extinguished.

**Status:** PLS commenced in January 2023 and further consultation is due to take place in the coming months, so these proposals are subject to change. The Bill is listed for priority drafting in the Spring 2023 session and the Minister for Justice intends to have the legislation enacted this year.

* 1. Registration of Short-Term Tourist Letting Bill

The Registration of Short-Term Tourist Letting Bill will, if enacted, require properties advertised for short-term letting, including through online platforms such as AirBNB, to register with Fáilte Ireland. This will apply to accommodation being offered for periods of up to (and including) 21 nights.

This legislation is intended to ensure that houses are used to best effect in areas of high housing demand.  Fáilte Ireland estimate that up to 12,000 residential properties could come back into the long-term rental or residential housing market as a result of this new registration requirement.  The register will also allow Fáilte Ireland to have a full picture of the stock of tourist accommodation in Ireland, enhancing its ability to promote tourism.

The key features of the Bill, as indicated by the [General Scheme of the Registration of Short-Term Tourist Letting Bill](https://assets.gov.ie/241663/87d8e87d-03d6-497d-9688-acc65e60c3ec.pdf) are:

* + The establishment of the new Short-Term Tourist Letting (STTL) register
	+ Changes to the existing Fáilte Ireland registers (for hotels, guesthouses etc.) to bring them into line with the new registration systems
	+ The introduction of authorised officers to oversee adherence
	+ Requirement for any person offering accommodation for periods of up to and including 21 nights to be registered with Fáilte Ireland
	+ An obligation on those advertising properties for short-term letting (including online platforms) to ensure that the properties have a valid registration number as provided by Fáilte Ireland
	+ Updated penalties for the enforcement of the registers. Fáilte Ireland may levy a €300 fixed payment notice on property owners who advertise their property without a valid FI registration number and also have the option to bring the case to the district court where the maximum fine is up to €5000.
	+ For platforms, Fáilte Ireland can levy fines of up to €5000 per invalid listing for advertising properties without valid Fáilte Ireland numbers.

**Status:** The Bill is listed for priority drafting in the Spring 2023 session.

* 1. Industrial Development (Miscellaneous Provisions) Bill

The Industrial Development (Miscellaneous Provisions) Bill is intended to provide that IDA Ireland would be permitted to establish and participate in corporate partnerships, with the sole purpose of developing critical industrial and commercial property in regional locations.

**Status:** Revised heads are in preparation.

* 1. Prescriptive Easements

The [Land and Conveyancing Law Reform Act 2021](https://www.irishstatutebook.ie/eli/pdf/2021/en.act.2021.0035.pdf) was enacted in November 2021 to remove a legal cliff edge in relation to certain property rights known as prescriptive easements and profits à prendre.

This legislation was intended to provide a short term fix. The Minister for Justice advised that she intended to have a review of the law of prescriptive easements commenced early in 2022 and concluded by summer 2022, with a proposal to follow to deal with prescriptive easements for the longer-term.

**Status:** We are still awaiting the outcome of this review.

1. Irish Green lease Clauses

Green leases are increasingly being sought by climate-conscious landlords and tenants, to promote a sustainable approach to the operation of buildings, often reflecting their corporate **ESG** policies. Green leases are leases incorporating provisions that promote the sustainable operation and management of buildings. Green leases generally encourage a co-operative approach between landlords and tenants, with the aim of improving energy efficiency, reducing waste and water consumption, and improving the environmental impact of buildings.

ByrneWallace LLP played a leading role in the development of a suite of Irish Green Lease Clauses for use in commercial leases, recently launched by [The Chancery Lane Project](https://chancerylaneproject.org/) (“**TCLP**”). TCLP is a collaboration of lawyers from around the world, working pro bono to develop new contract provisions to help fight climate change.

The suite of clauses is divided into three sets:

* + clauses promoting co-operation between landlords and tenants in relation to the environmental performance of buildings ([Odhran’s Clause](https://chancerylaneproject.org/climate-clauses/green-lease-clauses-for-irish-commercial-leases-promoting-co-operation-between-landlords-and-tenants-concerning-the-environmental-performance-of-buildings/));
	+ repair and alteration covenants, rent review assumptions and covenants for the protection of energy and sustainability ratings ([Emily and Tom’s Clause](https://chancerylaneproject.org/climate-clauses/green-lease-clauses-for-irish-commercial-leases-relating-to-1-sustainable-and-circular-economy-principles-in-repair-and-alteration-covenants-2-rent-review-assumptions-and-3-protecting-energy/)); and
	+ clauses incorporating circular economy and sustainability principles into a service charge regime, landlord’s regulations and landlord’s works ([Amélie and Lauri’s Clause](https://chancerylaneproject.org/climate-clauses/green-lease-clauses-for-irish-commercial-leases-incorporating-circular-economy-and-sustainability-principles-into-a-service-charge-regime-landlords-regulations-and-landlords-works/)).

TCLP clauses are named after children, recognising that our actions to combat the climate crisis will benefit future generations.

The clauses are drafted primarily for use in leases of new office premises in a multi-let building where the tenants contribute to the maintenance of the building common areas via a service charge regime. Some of the clauses may be suitable for use in leases of other types of premises. The clauses should be treated as a menu from which landlords and tenants, working with their solicitors and other professional advisors, can select and tailor clauses that are suitable for their premises and their sustainability goals.

1. Irish Judgments

The Irish courts continue to interpret and develop our laws, including those relating to real estate. We have highlighted a selection of judgments of interest to those dealing in or financing real estate transactions.

* 1. Due Diligence

The importance of due diligence on the letting history of residential properties has been highlighted by the recent Circuit Court judgment in *Wow Investments Limited v Residential Tenancies Board*. This was the first appeal of its kind to come before the courts on a decision by the Residential Tenancies Board regarding “improper conduct” by a landlord.

Wow Investments Limited, a property investment company, purchased a residential property from Permanent TSB. The purchaser relied on replies to Requisitions on Title that the property was vacant and *“the Vendor as Mortgagee is not aware of the terms of any previous letting, if any”.* The purchaser acquired the property and granted a tenancy in the genuine belief that there was no prior tenancy. It transpired that there had been a prior tenancy in the property within the previous two years and the rent set by the new tenancy represented an increase of 61% over a 24-month period, in breach of the restrictions applying to property in a rent pressure zone (RPZ).

The court stated that a lack of knowledge of prior tenancies is not a meaningful defence to breach of the residential tenancies legislation. The judge stated that a purchaser should insist on comprehensive replies to requisitions and details of previous tenancies and advised both vendors and purchasers to carry out searches against the property on the RTB website and with relevant letting agents, where known.

* 1. Possession Orders

During the past year among the several unsuccessful appeals to the High Court against possession orders granted by the Circuit Court, two cases were of interest:

In *Shoreline Residential DAC v Flannery and Flannery* [2022] IEHC 41, Phelan J held that, in respect of a housing loan, non-compliance with the Consumer Credit Act requirements did not affect the enforceability of the mortgage. Furthermore it was also held that the terms of the underlying loan agreement were not unfair within the meaning of the regulations giving effect to the EU's Unfair Contract Terms Directive. The High Court's finding will be a particular relief to lenders and their advisers who have inadvertently failed to comply with the Consumer Credit Act's requirements for housing loans.

The second interesting possession judgment was that of the Court of Appeal in *Allied Irish Banks plc v Fitzgerald and Daly* [2022] IECA 286. This judgment upheld a High Court decision to grant possession against a tenant occupying property under a 35 year lease from a mortgagor who had defaulted triggering enforcement of the mortgage. The lease had been granted without the Bank's consent - the Court of Appeal's decision followed the line set by several previous cases. However it does highlight that for post 1 December 2009 charges, a tenant can effectively over-ride enforcement of the mortgage against its lessor unless the tenant was actually aware of the mortgage at the time of entering into the lease. Section 112 of the 2009 Conveyancing Act may yet prove to be a real problem for enforcement of security by lenders, which itself may impact on their willingness to grant finance.

* 1. Lis Pendens

In perusing decisions of the Superior Courts, there is usually something for everyone having an interest in real estate law. In recent times, there have been several decisions on whether or not to remove a *lis pendens* which has been registered with the result that the sale of a property has been delayed. The historical development of a *lis pendens* is beautifully set out and explained by Butler J in *Fay and Fay v Promontoria (Oyster) DAC and anor.* [2022] IEHC 483.

* 1. Well Charging Orders

Another area of activity for the Courts were declarations of well charging orders. The High Court decision in *Promontoria (Oyster) DAC v O'Sullivan and Heaphy* [2022] IEHC 581 was instructive for lenders and their advisers. In that case Egan J declined to grant a well charging order on the basis of a solicitor's undertaking as the undertaking failed to identify the property but nevertheless granted the order on the basis that there was an agreement under the facility letter to create a charge over the property. This would be a common provision in a facility letter sanctioning a loan secured on property, but it is not often that the commitment in the facility letter (to create security) would be relied upon, subsequent to the advance of the loan, to effect the charge.

What happens where one co-owner, but not both co-owners, grants security over a jointly held property? This would be a rare event as the secured lender would almost invariably ensure that both co-owners charged the property even where the loan was being made to only one co-owner. In *Allied Irish Banks plc v Greene and Greene* [2022] IEHC 493 and 626, Simons J granted a well charging order against the borrower's interest in the property in respect of which her solicitor had given an undertaking; subsequent to the advance of the loan the borrower's husband gave a guarantee in respect of the loan, but no commitment had been given by him in respect of the jointly held property (which was not their family home). Despite the deficiency in securing the whole interest in the property, the lender was granted an order for sale but with half of the sale proceeds to be paid to the guarantor. There are two lessons here: firstly, a lender should ensure the entire interest in the secured property is charged for its loan; and secondly a co-owner can, without giving any commitment in respect of its ownership, be required to sell his or her interest in the property.

**CONTACTS**

Please list all Property Partners, Jim Moran, Sheena Beale and John Campbell.

Anthony Smyth, Lee Squires and Colin Bolger

[Banking contacts TBC]

**DISCLAIMER**

This document contains general information on selected legal, tax and administrative developments. It does not purport to be comprehensive and there will be other developments that are not included. The material herein is provided for general information purposes only and does not purport to cover every aspect of the subject matter discussed, nor is it intended to provide, and does not constitute, legal, tax or any other advice on any particular matter. The information contained in this document is accurate as at 14 February 2023, and the law is subject to change after that date. If you require any updates or more specific information on any items, please let us know.