

ADVICE IN RELATION TO THE RETAIL LEASE ACT 2003

The Retail Lease Act 2003 came into effect on 1 May 2003.

It applies to any retail premises lease that is either:

- entered into after 1 May 2003; or
- renewed after 1 May 2003, whether the lease was entered into before or after that date (section 11).

Under the Act, "retail premises" means premises, or a part of premises, that under the terms of the lease relating to the premises are used wholly or predominantly for the sale or hire of goods by retail or the retail provision of services (section 4).

In general, the Act does not apply to leases of less than twelve months. However, if a number of preconditions are met then the Act may apply. If the term of a retail premises lease is less than one year AND as a result of either or both of the following:

- the lease being renewed (one or more times);
- the lease being continued

the tenant is continuously in possession of the retail premises for one year or more under the lease, the Act will apply to the lease from the day on which the tenant has continuously been in possession of the retail premises for one year (section 12).

In such a case all of the provisions of the Act will apply, except those relating to landlord's disclosure statement and there are also variations to the provisions regarding landlord's disclosure on renewal of lease.

Section 21 of the Act provides that the term of a retail premises lease, including any further term or terms provided for by an option for the tenant to renew the lease, must be at least 5 years. If the term remaining under any head lease under which the landlord holds the retail premises is 5 years or less, the term is the length of that remaining term less one day.

Subsection 21(4) provides that a lease that is entered into contrary to this section is not illegal, invalid or unenforceable because of that fact but the term of the lease is extended by the period that is necessary to ensure the lease complies with this section.

- For example, if a lease is entered into for a term of 3 years, its term is extended by 2 years to 5 years.
- If a lease is entered into for a term of 2 years with an option for a further 1 year after the initial 2 years, the term of the lease is extended to 4 years (with the option for a further 1 year after the initial 4 years).