

The profession has voted decisively in favour of a motion recommending that all law firms should pay a minimum rate of maternity pay to solicitors. The postal ballot arose from a motion put before the society's annual general meeting last November by Waterford solicitor Jean Rush.

The motion read: *'That the Law Society should make a recommendation to all member firms that all firms pay maternity leave at full salary for a minimum of 18 weeks to solicitors employed by them in accordance with the recommendations of the recent Gender injustice report featured in the July 2004 issue of the Gazette'*.

The AGM considered the motion and the then president, Gerry Griffin, used his powers to send the motion to a postal ballot in view of the importance of the issue. The postal vote was conducted throughout December and January.

The total number of votes cast was 3,046 and the total



number of valid voting papers was 2,966.

The motion was carried by 1,747 (59%) votes to 1,219 (41%).

It is anticipated that many employers will now follow the recommendation and, in doing so, it is recommended that careful consideration be given to the tax implications, as considerable savings can be made, depending on the manner of payment and the treatment of social welfare benefits and tax credits.

New definition for 'mortgage intermediaries'

If you arrange (or offer to arrange) for a mortgage lender to provide a housing loan, or if you introduce a consumer to someone who arranges this, in return for a commission or other consideration, you come within the new definition of 'mortgage intermediary', writes *Alma Clissmann*. This new definition is inserted into the *Consumer Credit Act, 1995* by section 33 of

the *Central Bank and Financial Services Authority of Ireland Act, 2004*, and came into effect on 1 January.

It means that you will require a mortgage intermediary's authorisation in your own right under section 116 of the *Consumer Credit Act, 1995*. This involves making an annual application to the director of consumer affairs, accompanied by

the appropriate fee. The director may refuse on grounds listed in the section and may require professional indemnity insurance.

The new definition of 'housing loan' is extended and includes the provision of credit to a consumer on the security of a house. 'Consumer' is defined as a natural person acting outside the person's business, and may be further defined by order.

- Not altering or improving the dwelling without the landlord's written consent, but such consent may not reasonably be withheld for repairing, painting and decorating
- Not using the dwelling for anything other than residence without written consent
- Notifying the landlord in writing of the identity of any persons other than other tenants who ordinarily reside in the dwelling.

Section 17 includes definitions of 'alter or improve' and anti-social behaviour, and section 18 provides that the main landlords' and tenants' obligations cannot be contracted out of.

Part 3

Part 3 deals with rent and rent

reviews. Rents for dwellings are not to be set above the market rate, either initially or on review. Generally, rent reviews should not take place more often than annually, and this cannot be contracted out of. The exception is if substantial change to the accommodation has been made, which would warrant a change in rent. If no provision for rent review exists, either party may request it. The landlord must give 28 days' notice to the tenant of a change in rent and any dispute must be referred to the Residential Tenancies Board, within a time limit. Any payments due under a tenancy may be recovered by the landlord under part 6. Section 24 sets out definitions for 'market rent' and rent review.

Part 6

Part 6 deals with dispute resolution and the procedures that will be followed by the Residential Tenancies Board set up in part 8. The board's main function is to assist with the resolution of disputes, taking them out of the ambit of the courts in most instances. Either party may refer 'any matter relating to the tenancy' to the board for resolution. A landlord may also refer cases to the board where a third party claims a right through the tenant. A licensee also has a limited right to involve the board, and a third party may refer cases to the board in which a landlord has not enforced conditions against his tenant, provided he has first tried to deal with the tenant directly. There are also provisions for sub-tenants.

Section 78 sets out a non-exhaustive list of the types of complaints that may be referred to the board. The board may extend time limits for referring of cases to it, for good grounds, with an appeal to the Circuit Court. A party may withdraw a matter previously referred to the board, and if the other party objects, the board may direct payment of costs and expenses.

If a fee is not paid, the board shall not deal with any matter referred to it, subject to rectification of the situation by the person concerned. The same goes for referral by a landlord of a dispute, if the tenancy is not registered. Subject to some exceptions, the status quo will continue pending determination of the dispute.

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