

Special Information Briefing
COVID-19 (No. 12):

Measures relating to residential leases foreseen in Royal Decree-Law 11/2020 of
31 March, adopting additional urgent social and economic measures to deal with
COVID-19

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1. Introduction

On 1 April 2020, Royal Decree-Law 11/2020 of 31 March was published in the Official State Bulletin, adopting additional urgent social and economic measures to deal with COVID-19 (“**RDL 11/2020**”). The RDL 11/2020 establishes a new range of measures, mainly of a social and economic nature, which expand upon and enhance those already adopted through the Royal Decree-laws approved in recent days, as well as Royal Decree 463/2020, of 14 March, which declared the state of alarm for the management of the health crisis caused by COVID-19, and its subsequent extension, approved by Royal Decree 476/2020, of 27 March.

The first block of measures regulated under RDL 11/2020 refers to those adopted in relation to residential leases and aims to protect and support the most vulnerable groups with respect to their primary residences. For these purposes, RDL 11/2020 contains a specific definition of economic vulnerability and establishes a procedure to prove that the tenant is in a situation of vulnerability.

The main measures in relation to residential leases foreseen in RDL 11/2020 are the following:

- (i) the suspension of eviction procedures;
- (ii) extraordinary extension of the term of leases of primary residences;
- (iii) possibility of deferring or partially reducing the rent payment; and
- (iv) public aid.

This Briefing discusses these measures, as well as the requirements for their implementation.

2. Scope of application

The first block of measures regulated under RDL 11/2020 is applicable to lease agreements of primary residences that are subject to Law 29/1994, of 24 November, on Urban Leases (“**LAU**”), when the tenant is in a proven situation of economic vulnerability as a result of the health crisis caused by COVID-19¹.

¹ With regard to the measure relating to the tenant's right to an extraordinary extension in the case of leases of primary residences, which is detailed in section 3 below, since it is not expressly indicated, it may be understood that it is not necessary for the tenant to be in a situation of vulnerability for this particular measure to apply.

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For the purposes of RDL 11/2020, a tenant is deemed to be in a situation of economic vulnerability when both of the requirements detailed in article 5 of RDL 11/2020, which are summarised below, are met:

- (i) That the tenant is a natural person who is unemployed, or who has suffered a Temporary Workforce Restructuring Plan (ERTE), or who has reduced their working hours to care for someone or has suffered a substantial loss of income, and that the total income of the family unit² is below the figures detailed in article 5(1)(a) of RDL 11/2020; and
- (ii) That the sum of the monthly rent together with basic expenses and supplies³ is more than 35% of the net income of the family unit.

Tenants who are directly, or indirectly through the members of their family unit, owners or usufructuaries of a dwelling in Spain that is available for use, are excluded from the situation of economic vulnerability described above.

The tenant must prove to the landlord that they are in a situation of economic vulnerability by submitting the documents listed in article 6 of RDL 11/2020. Once the state of alarm concludes, the tenant will have a period of one (1) month to provide any documents that were yet to be provide.

These measures will not be applicable to (a) tenants of real estate properties other than residences, even if their agreements are subject to the LAU, or (b) tenants of dwellings with agreements subject to the LAU who are not in a situation of economic vulnerability, as defined in RDL 11/2020.

3. Main measures relating to residential leases

- (i) Suspension of eviction procedures

Once the suspension of the procedural terms and deadlines has been lifted due to the end of the state of alarm, tenants who are in a situation of economic vulnerability caused by the COVID-19 crisis, and do not have an alternative housing arrangement, will be entitled to an extraordinary suspension of the eviction date.

If the date of the eviction has not been assigned due to the fact that (a) the ten (10) day period for vacating the dwelling has not elapsed, or (b) the hearing has not been held, the ten (10) day period for vacating the dwelling or the period for holding the

² The family unit is composed of the rent debtor, his or her spouse if they are not legally separated, or his or her registered partner, and the children residing in the dwelling.

³ Basic expenses and supplies include the costs of electricity, gas, heating oil, running water, fixed and mobile telecommunications services and contributions to the owners' association.

hearing, as the case may be, will be suspended until the measures deemed appropriate by the competent social services are adopted, up to a maximum period of six (6) months as from the effective date of RDL 11/2020, that is, from 1 April 2020.

In order for the suspension to be applicable, the tenant must submit a written request to the corresponding Court, justifying that they are in a situation of economic vulnerability, in accordance with the definition provided in RDL 11/2020. If the Court considers that the tenant is in a situation of economic vulnerability, it may order the suspension retroactively.

If the landlord affected by the extraordinary suspension is also in a situation of social or economic vulnerability as a result of the COVID-19 crisis and can prove it before the Court, the Court will take this situation into consideration for the purposes of calculating the duration of the suspension and adopting additional measures.

The first transitional provision of RDL 11/2020 provides that the aid granted under the scheme of assistance to persons in a situation of eviction from their primary residence maintains its effects for the total period and amount that was granted.

(ii) Extraordinary extension of the term of leases of primary residences

The tenant can request from the landlord an extraordinary extension of the term of the lease agreed for his or her primary residence, for a maximum period of six (6) months, when the mandatory extension provided for in article 9.1 of the LAU (i.e. 5 or 7 years depending on whether the landlord is a natural or legal person) or the tacit extension provided for in article 10 of the LAU (i.e. an extension by annual periods up to a maximum of 3 years) ends within the period between the effective date of RDL 11/2020 and the day on which two (2) months have elapsed since the end of the state of alarm.

The landlord is obliged to accept the extraordinary six (6) month extension, unless the parties agree to other terms and conditions.

In order for the extraordinary extension to be applicable, the property that is the subject of the lease agreement must be the tenant's primary residence. However, it would not appear be necessary for the tenant to be in a situation of economic vulnerability, since article 2 of RDL 11/2020 makes no express reference to this.

- (iii) Possibility of deferring or partially reducing the rent payment

When the landlord is a public housing company or entity, or a great property holder⁴

Tenants who are in a situation of economic vulnerability caused by the COVID-19 crisis, and who have not reached a prior agreement with their landlord in relation to deferring or reducing the rent payment, may request from their landlord, within one (1) month as from the effective date of RDL 11/2020, a temporary and extraordinary deferral of the rent payment.

In the event the parties do not reach an agreement, the landlord will have a period of seven (7) working days to inform the tenant of which of the following measures it has decided to apply:

- A 50% reduction of the monthly rent for the duration of the state of alarm, and for the following months, renewable on a monthly basis, if the previous period was not sufficient due to the situation of vulnerability caused by the COVID-19 crisis, up to a maximum of four (4) months.
- A temporary and extraordinary deferral of the rent payment for the duration of the state of alarm, and for the following months, renewable on a monthly basis, if the previous period was not sufficient due to the situation of vulnerability caused by the COVID-19 crisis, up to a maximum, in any case, of four (4) months. The deferred rent payments must be paid by the tenant, in instalments, during the three (3) years following the end of the situation of vulnerability caused by COVID-19 or the maximum period of four (4) months referred to above, and always within the period in which the lease agreement continues to be in force (including its extensions). The landlord may not apply penalties or charge the tenant interest for deferring the rent payment.

If the tenant has access to the transitional financing aid programme explained in (iv) below, the rent deferral will be suspended from the moment the tenant receives the first drawdown.

The measures included in this section will also be applicable to leases corresponding to the Social Housing Fund, regulated in RDL 27/2012 of 15 November, on urgent measures to reinforce the protection of mortgage debtors.

⁴ For the purposes of RDL 11/2020, a great property holder (“*gran tenedor de inmuebles*”) is understood to be a natural or legal person who owns more than ten (10) urban properties, excluding garages and storage rooms, or a constructed area of more than 1,500 m².

When the landlord is not a public housing company or entity, or a great property holder

Tenants who are in a situation of economic vulnerability caused by the COVID-19 crisis, and who have not reached an agreement with their landlord in relation to deferring or reducing the rent payment, may request from their landlord, within one (1) month as from the effective date of RDL 11/2020, a temporary and extraordinary deferral of the rent payment.

Upon receiving the tenant's request, the landlord will have a period of seven (7) working days to inform the tenant of the conditions of the deferral or split payment of the debt that they would accept or, failing that, the possible alternatives they propose. If the landlord does not accept the deferral or alternative measures, the tenant will have access to the transitional financing aid programme explained in paragraph (iv) below.

(iv) Public aids

Articles 9 to 15 of RDL 11/2020 set forth the public aid programmes, which will be established, modified or substituted by means of Orders of the Ministry of Transportation, Mobility and Urban Agenda, and which tenants in a situation of economic vulnerability can access:

- Transitional financing aid programme

Tenants who are in a situation of social and economic vulnerability caused by the COVID-19 crisis will be able to access a transitional financing aid programme, free of charge, which will consist of banks granting State-guaranteed credits, through the Official Credit Institute (ICO), which will enter into the relevant agreement with the Ministry of Transportation, Mobility and Urban Agenda.

These credits will be interest-free and will be intended and used for the payment of the rent, i.e. they will be paid directly to landlords to cover up to a maximum of six (6) monthly rent payments, to be paid back over a maximum period of six (6) years, which will be exceptionally renewable for a further period of four (4) years.

If the tenant has access to the transitional financing aid programme, any rent deferral measures that the tenant had agreed with the landlord will be suspended from the moment the tenant receives the first drawdown of the financing.

- Rental aid programme for primary residences

Individuals who are tenants of their primary residence, who are in a situation of social and economic vulnerability caused by the COVID-19 crisis and who have

temporary problems in paying part or all of the rent, may be eligible for direct grants of up to EUR 900 per month and up to 100% of the rent or, if applicable, up to 100% of the principal and interest of the loan they have taken out to pay the rent for their primary residence⁵.

This aid programme has been introduced in order to address the difficulty of repaying the transitional financing aid granted to vulnerable households if they do not recover from their situation of vulnerability and are therefore unable to pay it back.

- Replacement of the housing assistance programme

The programme shall apply to (a) victims of gender-based violence who have been evicted from their primary residence, are homeless or particularly vulnerable, and (b) public administrations, public companies and companies in the collaborative economy or similar entities, provided they are non-profit, whose aim is to provide a housing solution for the individuals mentioned in paragraph (a) above and on their behalf. The assistance will consist of providing an immediate housing solution to people who find themselves in any of the situations mentioned above.

- Modification of the promotion of rental housing programme⁶

Housing acquired individually or as a block by public administrations, public bodies and other public law entities, as well as public companies and non-profit third sector entities with the purpose of increasing the public housing stock for social rent or use, will be eligible to receive the grants under this programme. A new scenario will be added to the existing programme that will make it possible to allocate such grants to the purchase of housing in order to increase the public housing stock.

- State Housing Plan 2018-2021

- The Ministry of Transportation, Mobility and Urban Agenda may transfer 100% of the funds committed in the agreements for the execution of the State Housing Plan 2018-2021 for the years 2020 (i.e., EUR 346,637,200) and 2021 (i.e., EUR 354,255,600) to the Autonomous Communities and the cities of Ceuta and Melilla in advance.
- The Autonomous Communities and the cities of Ceuta and Melilla may use the funds committed by the Ministry of Transportation, Mobility and Urban

⁵ Each Autonomous Community and the cities of Ceuta and Melilla will determine the exact amount of the aids, within the limits set by RDL 11/2020.

⁶ According to the description of the current programme, its purpose is to promote both publicly and privately owned housing stock (new or from renovation) for rent or lease, for a minimum period of 25 years.

Agenda in the agreements for the execution of the State Housing Plan 2018-2021 and not committed for the granting of rental subsidies, through direct award in application of the new programme of rental aid for primary residences.

- The state funds that the Autonomous Communities and the cities of Ceuta and Melilla commit to the programme of rental aid for primary residences will not be subject to the regional co-financing established in article 6 of Royal Decree 106/2018 of 9 March, which regulates the State Housing Plan 2018-2021.

Under the fifth additional provision, the requirements to be met by the beneficiaries of any aid to cover rent payments for their primary residence, financed under the State Housing Plan 2018-2021, may be verified by the Autonomous Communities and by the cities of Ceuta and Melilla after the decision to grant the aid has been taken.

If the Autonomous Communities or the cities of Ceuta and Melilla, as a result of the verification of the requirements carried out after the decision to grant the aid and, if applicable, the total or partial payment thereof, detect non-compliance, they will cancel or suspend the granting of the aid from the date on which such non-compliance occurred and, where appropriate, request a refund or reimbursement in accordance with the applicable regulations.

4. Consequences of the tenant wrongly applying the residential lease measures

If a tenant benefits from a deferral of the rent payment, or from public aid, but does not meet the requirements in relation to economic vulnerability set out in RDL 11/2020, they will be responsible for any loss and damage that may have occurred, as well as for all the expenses⁷ incurred in the application of these relief measures, without prejudice to any other liabilities that the tenant's conduct may give rise to.

The information contained in this Legal Briefing is of a general nature and does not constitute legal advice. This document was prepared on 2 April 2020 and Pérez-Llorca does not undertake any commitment whatsoever to update or review its content.

⁷ The amount of damages and expenses may not be less than the benefit unduly obtained by the debtor from the wrongful application of the measure.