

Private Tenancies Bill

- Brief overview of each clause
- Comparison to housing law and practice in other jurisdictions (Eng, Scot, Wales, Rol)
- Highlight issues that the Committee may wish to consider

Clauses 1 & 2

- **Clause 1 and 2** place a requirement on a landlord of a private tenancies to provide their tenant with a notice containing certain particulars and details relating to their tenancy (i.e. **a statement of tenancy terms**).
- **Clause 1** applies to *new* tenancies and **Clause 2** applies to *existing tenancies*.
- There will also be a requirement on landlords to give notice to tenants if a term in their tenancy is *varied*.
- Why isn't this already law?

Easy read guides and model tenancy agreements

- In both **Scotland and England** landlords are obliged to provide tenants with “**easy read**” **guides or booklets** to help tenants understand their tenancy terms. It also signposts tenants to sources of advice. These have been published by government.
- Both the UK Government and Scottish Government have produced **model tenancy agreements** that landlords and letting agents can use. These are voluntary. In **Scotland**, this is in **digital format** but the agreement **must contain the mandatory terms required by Scottish housing law**.

Some issues to consider

- What impact, if any, has the repeal of Article 4 of the PTO had on tenants and landlords?
- Clause 2: how easy will it be on a practical level for landlords to retrospectively provide tenants with a statement of their tenancy terms?
- How far along are the Department in developing proposals for the notice and have or will stakeholders be involved in this? What information will landlords be asked to provide in the notice?
- Will the statement of tenancy terms contain certain mandatory terms. If yes, what are these likely to be.
- Similar to other jurisdictions, will the Department produce easy to read guidance for tenants to help them understand their tenancy terms? If so, will landlords be obliged to either provide a copy to tenants or at least signpost them to where they can get a copy?
- Will the Department develop supporting guidance to landlords to help them understand their new obligations?
- Will the Department be producing a standardised voluntary model tenancy agreement? Are there plans to produce a digital version similar to that in Scotland.
- How does the Department propose to make tenants aware of their right to a statement of tenancy terms?
- Is the current redress mechanism sufficiently effective and accessible in relation to breaches of tenancy terms. If not, does the Department anticipate bringing forward changes in the second stage of reform?

Clause 3: Rent receipts for cash payments

- The Bill proposes to remove the current requirement for landlords to provide tenants with a **rent book**.
- However, clause 3 aims to provide **safeguards for tenants who pay rent in cash**. It requires the landlord to provide the tenant, free of charge, with a receipt for rent paid in cash.
- The receipt must contain certain **prescribed information**.
- The right to a receipt for cash payments is enshrined in law for private residential tenancies in **Scotland** and for private sector tenants in the **RoI**. However, there is no similar safeguard available to tenants in **England**.

Some issues to consider.....

- **The Bill proposes that landlords will be required to issue a receipt either at the time payment is made or, if that is not possible, “as soon as reasonably possible after that time”. How will “*as soon as reasonably possible*” be defined/assessed?**
- **Are there certain types of tenants who may be asked to pay their rent in cash (e.g. BME groups) or prefer to pay rent in cash (e.g. older people)? How will tenants be informed of their new rights in relation to cash payments?**
- **How easy will it be for tenants to make a complaint if the receipt is not issued or issued with the incorrect information?**
- **What measures are in place to protect tenants from “retaliatory evictions/action” should they make a complaint about a rent receipt?**
- **If a landlord continues to deny a tenant a receipt should this be a ‘red flag’ issue that something may be wrong with the tenancy (e.g. that the property is being illegally sublet or the property is overcrowded)? Are there mechanism in place for different agencies to share information in these cases (e.g. if a failure to issue a receipt is linked to benefit fraud)?**

Clause 4: Limit on tenancy deposit to 1 month's rent

- Private rented sector affordability is a significant issue in Northern Ireland. Rent + deposit + letting fees + moving costs = ???
- **E.g. typical two up, two down property terraced property in East Belfast with a rent of £575pm. Potential initial outlay:**
 - 1 month deposit + 1 month rent in advance = £1,150**
 - 1 month deposit + 2 months rent in advance = £1,725**
- Some tenants may be eligible for assistance with up front costs from the Social Fund but for many others there is limited financial support to assist with upfront costs.
- Family Resource Survey for NI indicates 37% of households here have no savings, 14% have savings/investments of less than £1,500 (pre-pandemic figures). Reinforces the need for a tenancy deposit scheme and financial support with deposits.

Tenancy deposit limit...other jurisdictions?

- For 'private residential tenancies' in **Scotland**, a deposit of no more than **two months' rent** can be charged.
- **Republic of Ireland** - significant PRS affordability issues, Irish Government has recent **restricted deposits to no more than one months' rent** and an **advance payment of rent can also not exceed one months rent**. Only applies to tenancies created from 9 August 2021 onwards.

Support for tenancy affordability?

- We have a limited number of schemes that help tenants with PRS affordability and also provide support throughout the tenancy (e.g. Smartmove).
- There are schemes to help with deposit affordability in other jurisdictions e.g. local authority bond schemes and employer backed loans (e.g. tenant receives an interest free loan from employer to cover first month's deposit and rent in advance) paid back over 12 months.
- England – “lifetime deposit” for private tenants in England – no details as yet as to what this will look like (e.g. a deposit ISA).
- Examples of different schemes in GB included in the Bill Paper.

Issues to consider.....

- **What support is available to PRS tenants to assist with affordability? Is it adequate? Do we need to think more innovatively?**
- **Is there evidence that tenants in NI are using high interest loans or other high costs credit methods to fund deposits? If so, what impact is this having (e.g. debt)?**
- **If deposits are limited to the equivalent of no more than one months' rent, will some landlord circumvent this by asking for more rent in advance or a larger first payment of rent?**
- **Has the Department considered restricting the amount of rent in advance (similar to RoI)? Or measures to prevent the landlord from 'front loading' the tenancy been considered e.g. requiring tenants to pay a larger sum in for the first rental payment'? If so, what was it's assessment of such measures? What are landlords views on such measures?**
- **What steps can tenants take to complain that a landlord is not comply with the requirements in relation to deposits (should the Bill become law)?**
- **A related issue - letting agent fees – Housing Rights has found that some letting agents are not complying with the law on fees, despite case law and the joint communique issued by the Ministers for Communities and Finance. What progress is the Department making on plans for a future framework for the regulation of letting agents?**

Clause 7 (restriction on rent increases)

- There are only a small number of tenancies in NI a form of rent control for the vast majority of tenancies landlords can set whatever rent they wish usually in accordance with market rental prices.
- Rent control is a very controversial issue, currently RoI is the only jurisdictions with operational **Rent Pressure Zones (RPZs)** in which rent for an area is capped. More about rent control in the Bill Paper including links to some research on the issue.
- DfC did consider the issue of rent control/capping in its 2017 PRS consultation but it was not in favour of it e.g. concerned that would cause some landlords to leave the market.
- Concerns of consultees that some landlords were imposing rent increases with little notice and in some cases more than once in a 12 month period. DfC proposed to **restrict rent increases to once in any 12 month period** (Clause 7).
- Clause 7 also provides that tenants must be provided with a written notice specifying the date in which the increase will take effect and the rent payable after the increase.

Other jurisdictions?

- **Scotland** – ‘private residential tenancies’ rent can only be **increased one a year** and tenants must be provided with at **least three months** written notice. If the notice is delivered by post or email then the delivery time must be factored in.
- **RoI** – ‘**rent review**’ – rent can only be reviewed either **24 months** after the tenancy commenced or 24 months from the date of the last review. Tenant must be provided with **90 days’ written notice** of a change in rent. This is applicable if the property is not in an RPZ.
- One notable difference between NI and ROI and Scot model – in Scot and RoI, if tenant’s feel the rental increase is not reasonable they can **apply to a third party to adjudicate** on the issue (rent officers in Scotland ; the Residential Tenancies Board in RoI).

Some issues to consider.....

- **Has the Department considered the mechanisms introduced in Scotland and RoI to provide adjudication for cases in which the tenant believes the rent increase to be unreasonable? If so, what are its views on this? What are the views of landlords and tenant representative bodies?**
- **What other safeguards, initiatives and incentives could be put in place to encourage landlords to keep rent and rent increases to an affordable level, particularly for lower income households?**

Property Standards in the PRS

- Commitment in the NI Housing Strategy 2012-2017 to **review the current housing Fitness Standard for NI.**
- First step was the **publication of a discussion paper in March 2016.**
- The paper noted that the current fitness standard has been **in place since 1992** and **has not kept pace** with issues such as thermal comfort and wider health and safety issues.
- Paper sought views as to whether factors such as **thermal comfort, fire safety, electrical safety** should be included in a revised Fitness Standard.
- The review is not completed – you may wish to consider asking the Department for an **update on the Fitness Standard review.**
- Bill Paper covers the Fitness Standard in more detail and includes some questions you might wish to consider around the issue of the Fitness standard (p12)

Property Standards in the PRS

- Whilst the Fitness Standards remains under consideration the Department wanted to move ahead in terms of introducing new requirements
 - **Fire, smoke and carbon monoxide detectors** (Clause 8);
 - **Energy efficiency standards** (Clause 9); and
 - **Electrical Safety Standards** (Clause 10).

Clause 8: Fire, smoke and carbon monoxide alarms

- Clause 8 proposes to insert a number of new Articles in the PTO 2006 that will **set out new requirements on private landlords in relation to the provision of fire, smoke and carbon monoxide detectors** and the **duties of landlords** with regards to these.
- Duties are already in place for landlords in **England i.e. The Smoke and Carbon Monoxide Alarm (England) Regulations 2015**).
- In Scotland, PRS properties must comply with the '**Repairing Standard**' which sets out in detail the requirements in relation to the alarms, how many there should be, and where they should be placed in the property.
- One step further....from 1 February 2022 **all houses in Scotland** must have satisfactory provision for detecting and warning in relation to fires in the home. Response to Grenfell Tower tragedy.
- **RoI** – landlords must comply with the **Housing (Standards for Rented Housing) Regulations 2019** which sets out the requirement for alarms and detection.

Possible issues to consider.....

- **Clause 8 refers to duty on a landlord to “*keep in repair and working order*” does this include a duty to provide/supply fire, smoke and carbon monoxide alarms in the property? Does include specialist alarms e.g. for people who are deaf or those with hearing loss?**
- **Clause 8 enables Department to make regulations setting minimum standards:**
 - will the standards specify the types of alarms that should be installed and where they should be installed?
 - when does the Department anticipate these regulations will become operational?
 - will the Department publish guidance for landlords on their new duties (as is the case in other jurisdictions)?
- **Clause states that landlords are only under a duty to carry out such works (e.g. repairs) where they have knowledge of the need for those works. What would constitute “knowledge of those works” – does it have to be in writing, what proof would be needed?**
- **How will compliance with these new duties be monitored? Should/could serious failures to comply be linked to the landlord registration scheme (e.g suspension)?**
- **Requirements are applicable to private tenancies on or after the date in which section 8 of the Act comes into operation. It will also apply to tenancies granted before this date but only from the “prescribed date”. What will the prescribed date be?**

Clause 9: Energy Efficiency Regulations

- Paper looks at fuel poverty rates in NI and the implications of these for mental and physical health.
- 2016 House Conditions Survey, PRS had the highest proportion of households living in fuel poverty (26%).
- Fuel Poverty Coalition's 'Manifesto for Warmth' felt that more action was needed to encourage private landlords to upgrade their properties and that current schemes do not provide sufficient subsidy to attract landlords.

Clause 9

- Contains provisions to enable the Department for make regulations concerning the energy efficiency of PRS properties.
- Regulations will provide that a tenancy cannot be granted or a property continued to be let which falls below a certain EPC rating.
- Schedule 2 sets out that the forthcoming regulations will e.g.
 - define the EPC rating the property is expected to meet;
 - define the properties that this would apply to;
 - identify properties that would be exempt from the requirements;
 - provide a power to create an offence associated with non-compliance.

Other jurisdictions.....

- Already operational in **England and Wales (Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015**.
- Since 1 April 2018 PRS properties are expected to meet **EPC Band E**. But there are **exemptions** and a cap on the amount that landlords are expected to spend on energy efficiency improvements (no more than **£3,500**). More details in the paper!
- A new target? Sept 2020 the Department for Business, Energy & Industrial Strategy consultation – proposal to extend this to **EPC Band C by 2030**.
- Private Members Bill (Lord Foster) – to ensure all new PRS properties have met EPC band C from 31 Dec 2025. All existing properties to have EPC Band C rating from 31 Dec 2028 “*where practical, cost effective and affordable*”). Had first reading.

Other jurisdictions.....

- Scotland - Scottish Govt were intending to introduce the Energy Efficiency (Private Rented Property) (Scotland) Regulations 2019. But **progressed was paused due to pandemic**. The draft regulations set out minimum EPC standards for the EPC standards as follows:

By **31 March 2022** all private rented sector properties must have a minimum **EPC rating of E**.

By **31 March 2025** all private rented sector properties must have a minimum **EPC rating of D**.

- But, **draft shared policy statement** between the SNP and Green Party outlines a potential future direction of travel – all homes to meet **EPC Band C by 2033** where “technically and legally feasible and cost effective”

Some issues to consider....

- **Department stated it will work with industry experts and Dept Economy officials working on the energy strategy to bring forward proposals for the EPC. What progress has been made to date?**
- **Could an indication be provided to the Committee for what minimum EPC standards will be applied for PRS properties?**
- **What types of exemptions will there be, will there be a cap on the amount a landlord has to spend?**
- **Will there be a tiered approach to improving energy efficiency i.e. a lower EPC rating set followed by a higher rating at a further date?**
- **Is there an indication of when the regulations will become operational?**
- **Could more be done to attract landlords to schemes such as Affordable Warmth?**

Clause 10: Electrical Safety Standards regulations

- The Bill proposes to introduce new Schedule 3 into the PTO to enable the **Department to make regulations** concerning electrical safety standards in PRS properties.
- Duties include **ensuring that a ‘qualified person’ has checked the electrical safety standards** are met. Regulations will also set out **how and when checks** will be carried out and who are qualified to carry out those checks.
- Regulations may require the landlord to **obtain a certificate** from the qualified person and provide a copy of that certificate to the tenant or other person set out in the regulations.
- **Provides for an offence** if they landlord does fails to comply with a duty imposed under the new regulations.

Other jurisdictions.....

- **Scotland** – new on private landlords to carry out electrical safety inspections came into force in Scotland on **1 December 2015**. Applied to tenancies that began on or after 1 December 2005.
- Scottish Gov publishes quite **detailed statutory guidance for PRS landlords** on their statutory obligations in relation to electrical installations and appliances. There are two elements to the inspection:
 - (1) An **Electrical Installations conditions report (EICR)** and
 - (2) a **Portable Appliance Test (PAT)** on portable appliances.
- Inspections required to be carried out at **least once every five years**.
- **England**, has relatively recently introduced similar requirements (including five yearly checks). Difference is PAT test appears to be optional but recommended.

Issues to consider.....

Much of the detail will be contained in regulations. However, committee may wish to consider:

- How often the electrical safety checks should be carried out (this is not identified in the Bill) e.g. every five years similar to England and Scotland.
- Do the Department have an indicative timetable of when the regulations will become operational?
- Will the Department be publishing guidance for landlords on the new electrical safety requirements for the PRS (guidance has been produced by the Scot Gov and UK Govt Dept). Should the guidance be statutory or non-statutory?
- Will landlords be provided with a transitional period before the requirements become law?
- How easy will it be for tenants to report a failure to adhere to the new electrical safety requirements? Are local councils adequately prepared/resourced to take inspection and enforcement action arising from the new requirements on electrical safety?

Clause 11: Notice to Quit

Note: current NTQ period is 12 weeks' extended to 4 May 2022.

Current NTQ for both landlords and tenants

- If the tenancy has been in existence for **less than 5 years**, then **4 weeks' Notice to Quit** must be given;
- If the tenancy has been in existence for **more than 5 years but for not more than 10 years**, then **8 weeks' Notice to Quit** must be given; and
- If the tenancy has been in existence for **more than 10 years**, then **12 weeks' Notice to Quit** must be given.

Clause 11 (for landlords only)

- **4 weeks'** Notice to Quit if the tenancy has not been in existence **for more than 12 months**;
- **8 weeks'** Notice to Quit if the tenancy has been in existence for **more than 12 months but not for more than 10 years**; and
- If the tenancy has been in existence for **more than 10 years**, then **12 weeks' Notice to Quit** must be given.
- Clause 11 also provides DfC with the power to amend the NTQ period in relation for periods up to 6 months or less.

Some issues to consider.....

- Ministerial Statement on housing 3 Nov 2020. Minister indicated that she wished to explore **whether extending the NTQ period of up to 6 months was possible**. The Department response to the PRS consultation paper stated it had **commenced a consultation** to gauge views on this. Committee could consider requesting an **update on that consultation process** and the **types of views that are emerging**.
- If the provisions in Clause 11 become law, **how will landlords and tenants be informed of the changes to NTQ?**
- Department has stated that it will be consulting on exploring the **possibility of developing grounds of eviction** (Scotland has grounds for eviction). Has any progress been made on this piece of work?
- Scotland has created a new form of tenancy 'the private residential tenancy' which **is open-ended** and can be brought to an end via specific grounds for eviction? Is there any appetite for a similar longer-term tenancy in Northern Ireland?