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Private Tenancies Bill: follow-up information requested by the Committee

Following my presentation to the Committee on the Private Tenancies Bill on 21 October, Members requested further information on a number of issues, i.e.:

- Portable Appliance Testing requirements in other jurisdictions including landlord responsibilities for PAT;
- Protections in other jurisdictions for tenancies of under 12 months;
- Responsibility for fire, smoke and carbon monoxide alarms in 'common areas' such as hallways in blocks of flats;
- The definition of the landlord's "knowledge of disrepair" in relation to fire, smoke and carbon monoxide alarms including how other jurisdictions determine what constitutes a "landlord's knowledge";
- Responsibility for the repair and maintenance of heating appliances (e.g. gas and oil boilers) in private rented sector properties;
- Whether there will be any changes to the Landlord Registration Scheme;
- Time limits for tenancy deposits under the NI Tenancy Deposit Scheme;
- Rationale for different commencement dates in the Bill; and
- The tie-in between the Bill and current Houses in Multiple Occupation (HMO) legislation.

This paper provides a response to these issues. However, please note that some of points raised by the Committee require clarification or information from the Department. This has been requested and will be forwarded to the Committee when received.

1 Portable Appliance Testing (PAT) – requirements in other jurisdictions

What is the situation in other jurisdictions with regards to Portable Appliance Testing (PAT) in private rented sector properties? (Paul Frew)

As highlighted to the Committee during my presentation there are already electrical safety requirements placed on private rented sector landlords in both Scotland and England. This section explores the requirements of PAT testing of equipment in these jurisdictions and where the responsibility for PAT testing lies.

Scotland

In Scotland, a new duty on landlords to carry out electrical safety inspections came into force on 1 December 2015. Section 19A of the Housing (Scotland) Act 2006 requires that the landlords must ensure that regular electrical safety inspections are carried out in order to ensure that the property continues to meet the Repairing Standard. The Repairing Standard covers the legal and contractual obligations of private landlords to ensure that the property meets a minimum physical standard. The minimum standard is that an electrical safety inspection is carried out every five years.

To comply with the Repairing Standard in relation to electrical safety, landlords must have regard to the statutory guidance issued by Scottish Ministers on 'electrical installations and appliances in private rented property'. The guidance states that there are two separate elements to the electrical safety inspection in Scotland[1]:

1. An **Electrical Installation Condition Report (EICR)** on the safety of electrical installations, including a visual inspection of fixtures and fittings, plus a fixed electrical equipment test; and
2. A **Portable Appliance Test (PAT)** on portable appliances *provided by the landlord*. The guide states clearly that for *"..the avoidance of doubt, all portable appliances and fixed equipment provided by the landlord should be inspected and, if required, tested"*. For the purposes of the PAT, "appliances" means "movable electrical equipment".

Therefore, it appears that in Scotland only portable appliances **provided by the landlord must undergo Portable Appliance Testing**. The guidance sets out in further detail (on pages 7 to 10) the requirements in relation to PAT testing. Notably, it states that a PAT test must be completed by a "suitably competent person". The

[1] Scottish Government. Statutory guidance on electrical installations and appliances in private rented property. December 2016. www.gov.scot/publications/electrical-installations-and-appliances-private-rented-properties/

guidance indicates this testing can be carried out by the landlord if they have completed the appropriate training as a PAT tester. The guidance (in Annex C) sets out a list of organisations providing PAT training courses.

England

Private landlords in England must have the electrical installations in their properties inspected and tested by a qualified person at an interval of at least every five years. This is a legal requirement under The Electrical Safety Standards in The Private Rented Sector (England) Regulations 2020. The Regulations come into force on 1 June 2020.

The Department for Levelling Up, Housing & Communities has published guidance for landlords to assist them in understanding their duties under the regulations. The guidance states that the new Regulations do not cover electrical appliances, only the fixed electrical installations. However, the guidance recommends that *"landlords regularly carry out Portable Appliance Testing (PAT) on **any electrical appliance they provide** and then supply the tenant with a record of any electrical inspections carried out as good practice"*. The guidance clearly states that **tenants are responsible for making sure that any of their own electrical appliances are safe**[2]. The guidance refers landlords to further information on PAT testing provided by the Electrical Safety First website, entitled 'PAT Testing Explained'[3].

2 Private tenancies of less than 12 months

What protections are there in other jurisdictions for anyone with a tenancy of less than 12 months? (Kelly Armstrong, Paul Frew and Mark Durkan)

Due to time constraints this section of the paper concentrates on *security of tenure* in other jurisdictions for tenants with contracts of less than 12 months. Generally speaking, there is greater security of tenure for tenants in Scotland relative to other local jurisdictions. This is because the Scottish Government has introduced a type of new "open-ended" tenancy known as a 'private residential tenancy'. These apply to any new tenancies created on or after 1 December 2017. If a landlord wishes to evict a tenant with a private residential tenancy, they must use one of the 18 statutory grounds for eviction.

There is comparatively less security of tenure for tenants in England given that landlords can use what is known as a Section 21 'no fault' eviction notice to compel tenants (with tenancies of 12 months and over, under 12 months and tenancies that operate on a month-to-month basis) to leave the property[4]. This means that a landlord

[2] Department for Levelling Up, Housing & Communities. Guidance. Guide for landlords: electrical safety standards in the private rented sector. Updated 7 October 2021. www.gov.uk/government/publications/electrical-safety-standards-in-the-private-rented-sector-guidance-for-landlords-tenants-and-local-authorities/guide-for-landlords-electrical-safety-standards-in-the-private-rented-sector

[3] Electrical Safety First. PAT Testing Explained. www.electricalsafetyfirst.org.uk/find-an-electrician/pat-testing-explained/

[4] UK Government. Evicting tenants (England and Wales) www.gov.uk/evicting-tenants/section-21-and-section-8-notices

does not have to provide the tenant with a reason for providing the notice. Pre-COVID, Section 21 required the landlord to provide just two-months' notice to quit. However, the UK Government has committed to abolish Section 21 notices and will outline in a forthcoming White Paper a 'renters reform' package that may contain proposals for increased security of tenure in England. The Welsh Government has recently introduced legislation to increase its 'no fault' eviction notice from the current two months to six months with certain exceptions (e.g. purpose built student accommodation). This new legislation is also said to now provide the vast majority of private rented sector tenants in Wales with a minimum of 12 months' security of tenure. Further details on each jurisdiction are provided below.

Scotland

A new type of open-ended tenancy know as the 'Private residential tenancy' was introduced in Scotland for any new tenancies that started on or after 1 December 2017[5]. This means that a landlord can no longer ask a tenant to leave simply because their fixed term has ended (including tenants who initially only require the property on a short-term basis). The purpose of this type of tenancy was to improve security, stability and predictability for tenants and to provide safeguards for landlords, lenders and investors. If a tenant was already renting as an assured or shorthold tenant on or before 1 December 2017, this tenancy will continue and offers less security of tenure for the tenant.

(a) Private residential tenancies - if the tenant wishes to end the tenancy

The newer 'Private residential tenancy' can only be brought to an end if (a) the tenant wishes to leave the property' or (b) the landlord uses one or more of the 18 grounds for eviction. If the tenant wishes to leave the property, they must provide the landlord with at least 28 days' notice in writing. The notice to leave provided by the tenant will begin on the day the landlord receives the notice from the tenant. The notice must be given 'freely and without coercion", in other words the landlord must not have pressured or persuaded the tenant into leaving the property.

A different notice period can also be agreed between the landlord and tenant this agreement must be in writing. If a tenant provides the landlord with notice and then changes their mind before the notice period ends, the landlord can decide whether or not continue on with the tenancy. To end a joint tenancy, all joint tenants must agree to end the tenancy and sign the notice to leave. One joint tenant cannot terminate a tenancy on behalf of all the joint tenants[6].

(b) Private residential tenancies - if the landlord wishes to end the tenancy

[5] Scottish Government. Private Residential Tenancy. www.gov.scot/policies/private-renting/private-tenancy-reform/
[6] Scottish Government. Private residential tenancy: information for tenants. April 2017. www.gov.scot/publications/private-residential-tenancies-tenants-guide/documents/

In Scotland, landlords can only end the tenancy using one or more of the **18 grounds for eviction**. Detailed information on the grounds are available here. The landlord must send the a 'Notice to Leave' stating clearly which of the grounds for repossession they are using. There are both mandatory and discretionary grounds. If there is a dispute over the landlord evicting a tenant, a Tribunal must award the landlord possession of the property if the *mandatory grounds* are fulfilled. If the grounds cited by the landlord are *'discretionary'* the Tribunal are free to decide whether an eviction order is reasonable. An overview of the grounds is provided in Table 1 below.

Table 1: Private residential tenancies: grounds for eviction[7]

Mandatory Grounds	Discretionary Grounds
Landlord intends to sell the property **Let property to be sold by a lender** (e.g. repossession) **Landlord intends to refurbish the property.** **Landlord intends to live in the property.** **Landlord intends to use the property for non-residential purposes** (e.g. a business). **Let property required for religious worker** (e.g. priest, nun, imam) but only if the property has been used for this purpose before. **Tenant has a relevant criminal conviction** (using the property for illegal reasons, crime committed in or near the property). Tenant is no longer occupying the let property as their main or only home (but does not apply if the tenant has moved out for their own safety or if the property is in serious disrepair).	**Landlord's family member intends to live in the let property**. Ground specifies which members this applies to. **Tenant no longer needs support accommodation**. **Tenant has breached a term of the tenancy agreement** (but doesn't apply to rent arrears as there is a separate ground for this issue). **Tenant has engaged in relevant anti-social behaviour** (e.g. harassment, caused nuisance or annoyance). The behaviour must have taken place within a year of the behaviour taking place unless there is a "reasonable excuse". **Tenant has associated in the property with someone who has a criminal conviction or is anti-social** (e.g. person could be a sub-tenant, lodger or someone the tenant has let in the property on more than one occasion. Behaviour or conviction must have taken place within a year unless there is a "reasonable excuse"). **Landlord has their landlord registration refused or revoked**. **Landlords HMO licence has been revoked**. **An overcrowding notice has been served on the landlord**.
Grounds which could be mandatory or discretionary	
Tenant is in rent arrears over three consecutive months: if a tenant still owes at least a month's rent by the first day of the Tribunal hearing the ground is mandatory and the Tribunal must issue an eviction notice. However, the Tribunal must also be satisfied that the arrears were not due to a delay or failure in the payment of a relevant benefit. If a tenant	

[7] Information in this table extracted from www.gov.scot/publications/private-residential-tenancies-tenants-guide/pages/grounds-for-eviction/

owes less than one month's rent or are no longer in arrears then the Tribunal has the power to use its discretion as to whether it is reasonable for an eviction order to be issued.

Tenant has stopped being, or has failed to become, an employee of the landlord: The Tribunal must give an eviction order if either the landlord applies within 12 months of the tenant no longer being an employee or the tenant never became an employee and the landlord applies within 12 months of the tenancy starting. However, the Tribunal can use its discretion in terms of awarding an eviction order if the landlord applies on or after the date of 12 months in both these cases.

In most cases the Tribunal will require a landlord to provide evidence of the ground that they are using to evict the tenant. For example, if the landlord states that they are intending to sell the property (a mandatory ground for eviction) they will be required to provide evidence to prove this such as a letter from a solicitor or estate agent. However, a presentation by Shelter Scotland in the recent Housing Rights *'Where to next for security of tenure in the private rented sector'* (September 2021) that I attended at the Committee's request, highlighted that there are some issues with the impact of this particular ground for eviction. The presenter highlighted that landlords in Scotland are tending to use the mandatory ground of 'landlord intends to sell the property' in order to persuade the tenant to move out. Some landlords may then relet the property and the former tenants may not be aware of this fact. They will have already moved out of the property and may see no point in pursing recourse. Shelter Scotland felt that particularly ground for eviction needed to be re-evaluated.

Private residential tenancies – Notice to Leave period

The amount of notice the landlord must give to tenants with private residential tenancies during the COVID-19 emergency procedures depends on the eviction ground used by the landlord. The notice period will either be six months, three months, or 28 days depending on the ground for eviction used by the landlord. For example, if the landlord used the ground that they intended to sell the property then the tenant is entitled to 6 months' Notice to Leave (if the notice was served on or after 7 April 2020)[8]. If a landlord is using the ground that the tenant is not occupying the let property, then a 28-day notice period is required. Note that the notice period may also depend upon when the notice to leave was served and the time the tenant has spent living in the property[9]. Further information on specific Notice to Leave periods that relate to each ground for eviction is available here[10].

Evaluation of the private tenancy reforms in Scotland

The Scottish Government has not yet carried out a formal evaluation of the private rented sector reforms that have been introduced in recent years including a review of

[8] Shelter Scotland. Grounds for eviction for private residential tenancy. https://scotland.shelter.org.uk/housing_advice/eviction/eviction_of_private_tenants/grounds_for_eviction_for_private_residential_tenancy_tenants

[9] See mygov.scot. Grounds for eviction. www.mygov.scot/private-tenant-eviction/grounds-for-eviction-private-residential-tenancies-if-your-landlord-starts-the-eviction-process-on-or-after-3-october-2020-and-on-or-before-31-march-2022

[10] Shelter Scotland. Grounds for eviction for private residential tenancy. https://scotland.shelter.org.uk/housing_advice/eviction/eviction_of_private_tenants/grounds_for_eviction_for_private_residential_tenancy_tenants

the newer 'private residential tenancy'. However, the Nationwide Foundation have commissioned a three-year study to learn from the experiences of private rented sector reform in Scotland. The baseline report for 2019/20 states that *"there is a high level of confidence amongst tenants to be able to stay in their property"*. However, the report states that there is a clear lack of awareness amongst tenants about exactly what their current tenancy is or their tenancy rights. The report recommends that more work is needed to raise awareness of rights and that this work should be led by the Scottish Government and involve wider advisory stakeholders. The report also notes that a minority of tenants that feel less secure in their tenancy are those with less financial power, i.e., those living in deprived areas, those on lower incomes and housing benefit[11].

England and Wales

Most tenancies in England are assured shorthold tenancies. These tenancies are usually fixed term (for a period of six or 12 months) or are periodic (with no fixed end date but rolling from month to month). Landlords can serve what is known as a Section 21 'no fault' eviction notice to end a tenancy for most tenants after the fixed term has ended or at anytime during a periodic tenancy. A Section 21 notice must give tenants two months' notice to leave the property (pre-COVID)[12]. Research has found evidence that some tenants are reluctant to exercise their rights to secure repairs and/or challenge rent increases due to the ease at which landlords can evict them[13]. Section 21 notices cannot be used if it is less than 4 months since the tenancy started or if the fixed term has not ended(unless there is a clause in the contract, known as a 'break clause', that enables the landlord to do this)[14].

The Private Tenancies Bill (as introduced) proposes to provide a four weeks' notice to quit period for tenancies that are under 12 months. The two-month notice to quit period provided by the Section 21 'no fault' eviction process in England appears to be comparatively more favourable in this regard for short term lease tenants. However, the UK Government has committed to abolish Section 21 notices in favour of exploring longer term tenancy options. Successive UK Governments have launched consultations on encouraging longer term tenancies in England. In 2018, for example, the Ministry of Housing, Communities and Local Government published a consultation on 'Overcoming the barriers to longer term tenancies in the private rented sector' that sought views on a new model tenancy agreement to encourage or prescribe longer agreements. The paper suggested:

[11] Indigo Housing. Rent Better. Research on the impact of changes to the private rented sector tenancy regime in Scotland. Wave 1 Baseline Report. Executive Summary 2019/20. https://rentbetter.indigohousegroup.com/wp-content/uploads/sites/3/2020/11/Rent-Better-Wave-1-Summary_print.pdf

[12] UK Government. Evicting tenants (England and Wales). www.gov.uk/evicting-tenants/section-21-and-section-8-notices

[13] Cited in Wilson, C. & Barton, C. The end of 'no fault' section 21 evictions (England). Housing of Commons. 29 July 2021. https://researchbriefings.files.parliament.uk/documents/CBP-8658/CBP-8658.pdf

[14] UK Government. Evicting tenants (England and Wales) www.gov.uk/evicting-tenants/section-21-and-section-8-notices

- A minimum term of three years, with a six-month break clause in which both parties can end the tenancy; and
- Setting a minimum notice period of two months if a landlord is selling the property.

The paper also suggested a financial incentive for landlords to use the model tenancy agreement. A survey by the Residential Landlords Association states that 43% of landlords felt that the three-year model with a 6-month break clause was workable but only 40% of landlords reported that they would be willing to offer the proposed model as it stood[15]. Plans for this longer three-year model tenancy agreement did not progress.

However, in April 2019, the UK Government announced that was proposing to abolish Section 21 'no fault' evictions in order to protect tenants from having to make frequent and short notice moves. The UK Government has also stated that it intends to reform the court process for housing cases to enable landlords to take possession of their property "swiftly and smoothly" where they had a legitimate reason[16]. The UK Government outlined its intention for a renters reform package for England in the Queen's Speech 2021. A White Paper detailing the reform package was due to be published in the autumn but is not yet available[17]. Until this paper is published it is unclear whether it will contain proposals to increase the security of tenure and provide other protections for those with tenancies of less than 12 months.

In Wales, as in England, most private rented sector tenancies are currently assured shorthold tenancies. However, under the new Renting Homes (Wales) (Amendment) Act 2021 landlords must provide tenants who have what is known as a 'standard contract' with additional security of tenure protection. Under the 2021 Act, the minimum period of notice that must be given by a landlord to end a standard occupation contract under the 'no fault' eviction is increased from two months to six months' notice. There are limited cases where a two-month notice period will still apply e.g. student accommodation provided by a higher education provider and supported housing[18]. Under the 2021 Act, people living in a privately rented home in Wales under a 'standard contract' will generally have a minimum of 12 months' security of tenure[19].

[15] Ibid.

[16] Ministry of Housing, Communities and Local Government. Consultation outcome overview: Overcoming the barriers to longer term tenancies in the private rented sector. 15 April 2019. www.gov.uk/government/consultations/overcoming-the-barriers-to-longer-tenancies-in-the-private-rented-sector

[17] Prime Minister's Office. The Queen's Speech 2021: Briefing Paper. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/986770/Queen_s_Speech_2021_-_Background_Briefing_Notes..pdf

[18] Cited in Wilson, C. & Barton, C. The end of 'no fault' section 21 evictions (England). Housing of Commons. 29 July 2021. https://researchbriefings.files.parliament.uk/documents/CBP-8658/CBP-8658.pdf

[19] Renting Homes (Amendment) (Wales) Act 2021. Explanatory Notes. www.legislation.gov.uk/asc/2021/3/notes/division/2

3 Fire, smoke and carbon monoxide alarms in "common areas"

What is the situation with regards to responsibility for fire, smoke and carbon monoxide alarms in "common areas" (e.g. communal hallways) in a block of flats in which there may be different landlords? (Kelly Armstrong)

Clause 8 of the Bill (as introduced) provides for the insertion of a new paragraph (11D) to the Private Tenancies Order (NI) 2006 entitled "*Landlord's duties: private tenancy of part of building"* which states that *"Where a dwelling-house let under a private tenancy consists of a part of a building, the duties imposed on the landlord by Article 11B may require the landlord to position appliances in part or parts of the building not comprised in the tenancy"*.

I have requested that the Department provides information on whether 11D covers communal/common areas of apartment blocks such as shared hallways etc. The response will be forwarded to the Committee once received.

4 Fire, smoke and carbon monoxide alarms and the landlords "knowledge of disrepair"

There may be a dispute between the landlord and tenant about the need for a repair, who arbitrates or makes a decision as to whether there is a need for repair? (Mark Durkan)

New section 11B of the Private Tenancies Bill (as introduced) places a duty on landlords to *"keep in repair and proper working order"* sufficient appliances for detecting fire, smoke and carbon monoxide. However, proposed new section 11F states that a *"landlord is not under a duty to carry out the works required by Article 11B unless the landlord has actual knowledge (whether because of notice given by the tenant or otherwise) of the need for those works".*

During my presentation to the Committee, I highlighted that the Committee might wish to consider requesting information from the Department as to what would constitute "knowledge" of the need for repair and whether the "notice" given by the tenant needs to be in writing. The Committee may wish to note that the Department may have used this particular terminology as it is already contained within a number of other Articles in the Private Tenancies (Northern Ireland) Order 2006. That is, Article 11 of the 2006 Order ("Standard of repair and knowledge of disrepair") also states that a landlord is not under a duty to carry out works by virtue of Articles 7 to 9 "unless he has actual knowledge (whether notice given by the tenant or otherwise) of the need for those works". Articles 7 to 9 of the 2006 Order deal with "landlord's duty to repair", "care of premises by a tenant" and "landlord's obligations under private tenancy of parts of building" respectively.

I committed to look further at other jurisdictions that have already implemented fire and carbon monoxide safety requirements for private rented sector properties (non-HMOs)

in order to ascertain what government guidance determines to be a landlord's knowledge that a repair or replacement of the fire and carbon monoxide equipment is required. In summary, legislation in the Republic of Ireland places the onus on the tenant to notify the landlord or their agent of any defect in the property. In England, guidance issued by the relevant Department places the responsibility of determining whether a landlord has had knowledge of the repair on local authorities. In Scotland, a landlord's duties in relation to fire, smoke and carbon monoxide will be determined on the basis of the extent to which the landlord has compiled with guidance issued by the Scottish Government. Further details are set out below.

Republic of Ireland

Private rented sector landlords must adhere to the minimum fire and carbon monoxide safety requirements contained within the Housing (Standards for Rented Housing) Regulations 2019[20]. There do not appear to be any similar provisions within the regulations or private tenancy legislation to those in Clause 8 (11F) of the Private Tenancies Bill (as introduced) that states that a landlord is not under a duty to carry out works unless they have actual knowledge of the need for those works.

However, Section 16(d) of the Residential Tenancies Act 2004 places an **obligation on the tenant** to **notify the landlord** or their agent of any defect that arises in the property to enable the landlord to comply with their obligations in relation to the property or the tenancy. The legislation does not appear to specify exactly what form this notification should take (e.g. in writing). However, the Private Residential Tenancies Board guide to the Residential Tenancies Act states that it is the responsibility of the tenant to keep a record of all repairs, payments and dealings with their landlord and that tenants "*should aim to have all correspondence with their landlord or agent in writing so that copies can be retained"*. Therefore, it appears that there is an onus on tenants to ensure that if they are, for example, reporting the need for repair, that they do so in writing and keep a copy of that correspondence. Local authorities are responsible for ensuring compliance of minimum standards including fire safety in the Republic of Ireland. If a tenant feels that their property is not meeting minimum standards (including fire and carbon monoxide safety standards) they can request that their local authority carries out an inspection.

England

Fire and carbon monoxide safety for private rented sector properties in England are covered by the Smoke and Carbon Monoxide Alarm (England) Regulations 2015[21]. Landlords have a duty under the regulations to ensure that on or after the 1 October 2015 (when the regulations came into force) that checks are made by, or on behalf of the landlord, to ensure that each alarm prescribed by the regulations are in proper working order on the day the tenancy begins if it is a new tenancy (in other words at the

[20] Housing (Standards for Rented Houses) Regulations 2019. www.irishstatutebook.ie/eli/2019/si/137/made/en/print
[21] The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 www.legislation.gov.uk/ukdsi/2015/9780111133439/contents

start of each new tenancy). Guidance issued by the Ministry of Housing and Local Government on the regulations stipulates that after landlords have ensured all alarms are in working order at the start of the new tenancy…*"tenants should then take responsibility for their own safety by testing all alarms after that. Testing monthly is considered an appropriate frequency for smoke alarms"*[22].

There does not appear to be anything in the English regulations similar to the wording in Clause 8 of the Private Tenancies Bill (as introduced), i.e. that states that a landlord is not under a duty to carry the works unless they have actual knowledge (whether because of notice given by the tenant or otherwise) of the need for those works. Arguably the 2015 regulations are much less prescriptive and rather it could be argued that the English regulations and associated guidance largely places the onus on local authorities to determine whether or not a landlord is in compliance with the legislation including their repairing obligations.

The Department for Levelling Up, Housing and Communities guidance on the 2015 regulations does make some reference to the matter of landlord and tenant responsibility in relation to the fire and carbon monoxide equipment in the property. It states the following[23]:

> *"After the landlord's test on the first day of the tenancy, tenants should take responsibility for their own safety and test all alarms regularly to make sure they are in working order. Testing monthly is generally considered an appropriate frequency for smoke alarms. If the tenants find that their alarm(s) are not in working order during the tenancy, they are advised to arrange the replacement of the batteries or the alarm itself with the relevant landlord."*

The general guidance appears to be silent as to whether the tenant should make this request in writing or what proof they should retain that the landlord has been made aware of the need for repair, replacement of batteries etc.. However, guidance issued by the Ministry of Housing, Communities & Local Government **specifically for local authorities** states that if a local authority has "reasonable grounds" to believe that a landlord is in breach of their duties under the 2015 regulations the authority must serve a remedial notice on the landlord. The guidance states that the in *"the department's view, 'reasonable grounds' would include being informed by a tenant, letting agent or housing officer that the required alarms are not installed"*. Interestingly, the local authority guidance also states that *"the regulations do not require the enforcing*

[22] Ministry of Housing, Communities & Local Government. Guidance: The Smoke and Carbon Monoxide Alarm (England) Regulations 2015: explanatory booklet for local authorities. 4 September 2015. www.gov.uk/government/publications/smoke-and-carbon-monoxide-alarms-explanatory-booklet-for-local-authorities/the-smoke-and-carbon-monoxide-alarm-england-regulations-2015-explanatory-booklet-for-local-authorities

[23] Department for Levelling Up, Housing & Communities. Guidance: The Smoke and Carbon Monoxide Alarm (England) Regulations 2015. Q & A booklet for the private rented sector – landlords and tenants. September 2015. www.gov.uk/government/publications/smoke-and-carbon-monoxide-alarms-explanatory-booklet-for-landlords/the-smoke-and-carbon-monoxide-alarm-england-regulations-2015-qa-booklet-for-the-private-rented-sector-landlords-and-tenants

authority to enter the property or prove noncompliance to issue a remedial notice. This is intelligence led enforcement"[24].

The local authority guidance offers arguably limited direction for local authorities on whether or not a landlord has proof that they have followed the remedial notice and complied with the duties under the regulations. The guidance states that if a landlord does not prove they have taken all reasonable steps, it is up to the local authority to decide if they are in breach, by judging "on a balance of probabilities". The local authority may take into consideration evidence provided by the landlord such as dated photographs or installation records. The guidance for local authorities places the onus on individual local authorities to *"issue guidance on supplying evidence when a remedial notice is issued"*. However, it goes on to state that *"in the department's view, if a tenant informs the local authority that no remedial action has been taken it is reasonable for the local authority to be satisfied, on the balance of probabilities, that the landlord is in breach"*[25]. This is arguably an unsatisfactory way to determine compliance without the local authority checking whether the landlord has complied although landlords do have a right to appeal a remedial notice or penalty charge.

Scotland

Private rented properties in Scotland must comply with the Repairing Standard under the Housing (Scotland) Act 2006. The Repairing Standard sets out the legal and contractual obligations of private landlords to ensure that a property meets a minimum physical standard. One of the requirements of the Repairing Standard is that private rented sector properties in Scotland should have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire[26]. The Repairing Standard sets out the types of smoke alarms that the property must have and where these should be situated in the property. The Repairing Standard also requires the property to have adequate provision for the detection of carbon monoxide. The Repairing Standard sets a high benchmark for smoke and fire detection, matching the standards for new builds in Scotland[27].

To comply with the Repairing Standard, private landlords must also have regard to the guidance issued by Scottish Ministers on 'private landlords on satisfactory provision for detecting and warning of fires'[28] and 'the provision of carbon monoxide alarms in the

[24] Ministry of Housing, Communities & Local Government. Guidance: The Smoke and Carbon Monoxide Alarm (England) Regulations 2015: explanatory booklet for local authorities. 4 September 2015. www.gov.uk/government/publications/smoke-and-carbon-monoxide-alarms-explanatory-booklet-for-local-authorities/the-smoke-and-carbon-monoxide-alarm-england-regulations-2015-explanatory-booklet-for-local-authorities

[25] Ibid.

[26] Scottish Government. The Repairing Standard. www.gov.scot/publications/repairing-standard/#:~:text=The%20Repairing%20Standard.%20The%20Repairing%20Standard%2C%20contained%20in,below%29%20and%20notify%20tenants%20of%20any%20such%20work

[27] Scottish Government. Fire detection in private rented properties: guidance. February 2019. www.gov.scot/publications/fire-safety-guidance-private-rented-properties/

[28] Scottish Government. Fire detection in private rented properties: guidance. February 2019. www.gov.scot/publications/fire-safety-guidance-private-rented-properties/

private sector'[29]. There does not appear to be the same provision in Scottish legislation or in the guidance issued by Ministers as that contained in section 11F of the Private Tenancies Bill (as introduced) which states that a landlord is not under a duty to carry out the works unless they have "actual knowledge" of those works. Rather a breach of requirements or an assessment of whether a landlord has complied with his fire/carbon monoxide alarm and detection duties under the Repairing Standard appears to be determined on the basis of the degree to which the landlord has complied with Scottish Government's guidance for 'private landlords on satisfactory provision for detecting and warning of fires'. Notably the guidance recommends that as good practice landlords advise tenants to test alarms on a weekly basis and that landlords should advise tenants not to tamper with alarms. The guidance appears to be silent, however, on how issues such as how the need for repairs should be conveyed by the tenant to to the landlord.

5 Responsibility for heating appliances (e.g. boilers)

There was concern expressed about gas safety in private tenancies and we were asked if the maintenance of boilers (e.g. gas boilers and other forms of heating systems) will be covered in the new regulations in relation to electrical safety. (Paula Bradley)

The electrical safety standards regulations provided for in Clause 8 of the Private Tenancies Bill (as introduced) will outline the actual detailed requirements of electrical safety standards in private rented properties. Therefore, it is not clear at this stage exactly what those regulations will include. Guidance issued by the Scottish Government on their electrical safety standards for the private rented sector indicates that the Electrical Installation Condition Report (EICR) primarily relates to the electricity supply but does include a *"visual inspection"* of fixed electrical heating equipment such as storage or panel heaters as well as a *"visual inspection"* of boilers and other heat producing equipment[30].

It is important to note that private landlords in Northern Ireland have a number of legal duties under other legislation in relation to heating systems in their rented properties. Subordinate legislation for gas safety states clearly that the private landlords in Northern Ireland are required to ensure an annual safety check is carried out on each gas appliance/flue in the property. However, the law in relation to oil boiler and associated equipment is arguably somewhat more open to interpretation in terms of defining who is responsible for regular maintenance and safety checks. Unlike gas appliances, landlords who let properties with oil boilers do not appear to be required to provide an annual service/safety check document/record to the tenant at the start of, or during, the tenancy. Some landlords may opt to arrange for an annual service to be

[29] Scottish Government. Carbon monoxide alarms in private rented properties: guidance. February 2021. www.gov.scot/publications/carbon-monoxide-alarms-in-private-rented-properties-guidance/
[30] Scottish Government. Statutory guidance on electrical installations and appliances in private rented property. www.gov.scot/publications/electrical-installations-and-appliances-private-rented-properties/

conducted in order to ensure the safety of their tenants and their property. It may also be a requirement of some home insurance policies.

Some landlords may opt to include within the tenancy agreement a clause that places responsibility for the daily maintenance of an oil boiler on the tenant. Landlords cannot contract out their legal responsibilities in relation to gas heating systems and appliances in the same manner. However, the Housing Rights Housing Advice website highlights that unless the tenancy agreement states something different, Article 7 of the Private Tenancies Act (NI) Order 2006[31] states that the landlord has responsibility for *"any installations for heating and hot water"*[32].

However, Article 11 of the 2006 Order states that the landlord is not under a duty to carry out such work *"unless he has actual knowledge (whether because notice has been given by the tenant or otherwise) of the need for those works"*. Therefore, unless the tenant has proof that they notified the tenant of the need for repair, there is arguably more scope for landlords not to carry out repair to the heating system. Article 8 of the 2006 Order also states that the tenant is responsible for taking "proper care of the premises" and making good any damage to those premises "wilfully or negligently done". This may potentially open up interpretation in terms of who is responsible for repairs to an oil heating system.

It is also important to highlight that the Housing (Northern Ireland) Order 1981 requires private rented sector properties to meet a "standard of fitness for human habitation" (the Fitness Standard). The Fitness Standard requires that the property has adequate provision for heating and ventilation. It must also be free "from serious disrepair". Arguably a dangerous and poorly maintained heating system could potentially be in breach of these requirements. However, it would be up to the local council in which the property is situated to determine whether the Fitness Standard has not been met. Many tenants are unlikely to be aware of the requirements of the Fitness Standard nor aware of the complaints process. The Committee may take evidence from local councils and may wish to ascertain how the Fitness Standard is assessed in terms of heating systems.

The following two sections outline landlords' responsibilities in relation to gas and oil safety and maintenance. Having considered these sections, the Committee may wish to consider whether the law is sufficiently clear as to where responsibility for the maintenance and safety of oil-fired boilers lies. It may wish to consider asking the Department for its interpretation of existing legislation in terms of where responsibility lies. The Committee may also wish to consider whether there is sufficient guidance for tenants and landlords on responsibilities in relation to the safety and maintenance of oil and solid fuel heating systems.

[31] Article 7 applies to any private tenancy granted after the commencement of the 2006 Order (i.e. 1 April 2007 or any protected or statutory tenancy which was regulated under the Rent Order immediately before the commencement of the 2006 Order.
[32] Housing Rights. Housing Advice NI. Liability for repairs. www.housingadviceni.org/advice-landlords/liability-repairs

Landlords' gas safety and maintenance duties

The Gas Safety (Installation and Use) Regulations (Northern Ireland) 2004 specifically deal with the installation, maintenance and use of gas appliances, fittings and flues in domestic premises. They place a duty on private landlords to ensure that gas appliances, fittings and flues provided for tenants are safe to use. The regulations require that landlords ensure:

- that any relevant gas fitting and any flue which serves a relevant gas fitting is **maintained in a safe condition**;
- that each appliance and flue referred to above is **checked for safety within 12 months of being installed** and **at intervals of not more than 12 months** since it was last checked for safety (whether such a check was made pursuant to the regulations or not); and
- that a **record of any appliance or flue that requires to be checked is made and retained** for a period of two years from the date of that check. The record must contain certain specified information (e.g. the date of the check, address of the premises, any defect identified, any remedial action taken; name of the individual who carried out the check). The person carrying out the check must be Gas Safe Registered.
- That a **copy of this record is given to each existing tenant** to which the record relates within 28 days of the date of the check.
- That a copy of the last record made in respect of each appliance or flue **is given to any new tenant of the property before the tenant occupies those premises**.

A short guide published by the Health and Safety Executive Northern Ireland (HSENI) on the Gas Safety (Installation and Use) Regulations (NI) 2004 states that when tenants vacate premises, landlords should ensure that gas fittings/appliances are safe before reletting and any unsafe equipment rectified or removed before a new tenancy begins. It also recommends that installation pipework is inspected and tested for soundness before the property is relet if it is suspected that any alteration has occurred, or the emergency control value has been operated. The HSENI guide also recommends that landlords instruct new tenants on the correct use of the gas appliance, provide the manufacturing instructions on the appliances, and to make tenants aware of what actions to take in the event of a gas escape and provide emergency contact details[33].

Landlords' duties in relation to properties fuelled by oil

Part L of the Building Regulations for Northern Ireland regulates combustion appliances and fuel storage systems for domestic properties (e.g. solid fuel and home heating oil

[33] Health and Safety Executive Northern Ireland. A guide to landlord's duties: Gas Safety (Installation and Use) Regulations (Northern Ireland) 2004. Reviewed July 2018. www.hseni.gov.uk/sites/hseni.gov.uk/files/landlord-duties-in-relation-to-gas-safety-2018.pdf

appliances). Section 73 of Part L states that any combustion appliance and any connected flue, flue pipe or chimney should be constructed and installed to ensure that they will not cause (a) burns to any person; or (b) damage to a building by heat or fire. Technical Booklet L published by the Department of Finance is intended to provide guidance on how to satisfy the requirements of Part L. A registered technician is required to install boilers and oil tanks in accordance with these building control standards. Technical booklet L states that the some of the requirements in relation to combustion and fuel storage systems could be met by adopting the relevant recommendations in British Standard 5410: Part 1[34]. Part 1 requires that oil fired appliances and equipment are serviced periodically in accordance with the manufacturer's instructions.

However, there does not appear to be a legal requirement for a private landlord to obtain an annual safety certificate for home heating oil equipment installed in their rented property nor to provide this record to the tenant. OFTEC, a 'not for profit' trade organisation for the heating industry in the UK and Republic of Ireland, outlines the position with regards to the responsibility for liquid based and solid fuel appliance maintenance in private rented sector properties as follows[35]:

> *"Unlike for gas appliances, there is no legal requirement in the United Kingdom or the Republic of Ireland for a landlord to obtain a landlord safety certificate for liquid or solid fuel heating equipment installed within a let property. However, all appliances still need to be installed in accordance with regional building regulations and should receive appropriate periodic servicing. In both cases this should be carried out by a competent person".*

OFTEC recommends that liquid and solid fuel heating systems are serviced at least annually by an OFTEC registered technician to ensure they are operating safely. It recommends that in liquid fuel heating homes, the boiler, fuel storage tank and pipework should be checked over regularly and any faults reported if they cannot be easily repaired. It states that solid fuel heating, including open fires, also need periodic maintenance and flues/chimneys swept periodically for both safety and insurance purposes. It recommends in instances where the tenancy agreement places the responsibility of appliance maintenance on the tenant, that the tenant uses a registered technician who will provide a copy of the appropriate service report to demonstrate that they have met the terms of the agreement. Many landlords may, as good practice, opt to ensure that they arrange and pay for an oil boiler service on an annual basis.

[34] Ibid, p11.
[35] OFTEC. Home guide to liquid and solid fuel heating in rented accommodation. https://www.oftec.org/consumers/off-gas-grid-guides/home-guide-to-liquid-and-solid-fuel-heating-in-rented-accommodation

6 Landlord Registration Scheme

Is the landlord registration scheme likely to change in any way because of the Bill? (Paula Bradley)

I have submitted a request for information from the Department on this issue; the response will be forwarded to the Committee once received. The Committee may wish to note that the Departmental Response to its consultation on proposals for the private rented sector states that *"…work is already underway to improve the PRS through a proposal to transfer the registration of landlords to local councils. This would see councils being provided with additional powers to strengthen and provide local enforcement of the PRS, funded by registration fees"*.

The Department's 2017 consultation on proposals for the private rented sector included a proposal to amend the Landlord Registration Scheme to incorporate a fitness declaration at the point of registration. That Departmental response paper states there were 31 consultation responses to the proposal. 23 responses supported the proposal and eight were not in favour of the proposal. The Departmental response paper states that[36]:

> *"This recommendation from the 2017 review has somewhat been overtaken by recent developments. A project group has been established with representatives from all eleven councils to explore the potential to transfer the landlord registrar function from the Department to them. This would involve a reform of the system to include inspections and would be closely linked to a review of the current fitness standard".*

The Department indicated it would take forward the proposal on a fitness declaration at the point of registration as part of this current project. I would anticipate that the Department will provide an update on this project as part of its response for my request for information.

7 Holiday let accommodation

What about the regulation of standards in holiday let accommodation? Will the Bill cater for this type of dwelling? (Paul Frew)

Tourism accommodation such as holiday lets are regulated by Tourism NI. It is illegal to offer tourism accommodation in Northern Ireland without a certificate granted by Tourism NI (under The Tourism (Northern Ireland) Order 1992). Tourism NI identities nine different categories of accommodation that require certification i.e. hotels, guest houses, bed and breakfast, guest accommodation, self-catering, hostel, bunk

[36] Department for Communities. Consultation on the Review of the Role and Regulation of the Private Rented Sector. www.communities-ni.gov.uk/sites/default/files/consultations/communities/private-rented-sector-proposals-for-change-consultation-response.pdf

house/camping barn, campus accommodation, and camping/caravanning/glamping[37]. Self-catering accommodation in particular appeal to those who need accommodation on a longer term basis rather than a simple weekend/week-long short break. The Tourism NI website defines self-catering accommodation as *"a self-contained apartment, house, cottage, etc. which provides furnished accommodation for visitors including sleeping, dining and lounge areas and full catering facilities"*[38].

It may be helpful to briefly explore three key issues with regards to self-catering accommodation (a) the statutory inspection and certification process (b) accommodation standards (c) fire, smoke and carbon monoxide detection, and (d) gas and electrical safety. These are outlined in the next section of the paper. **However, a key issue to consider is when is a "holiday let" not a "holiday let" but rather a type of private tenancy?** Mr Frew highlighted that in some cases properties that are used as holiday lets in the summer months may be let for six or nine months outside of peak tourism time. I have asked the Departmental Bill Team for clarity on what circumstances would a holiday let be considered a tenancy and thereby covered under the provision of the Bill and wider tenancy law. I will forward the response to the Committee as soon as it is received.

In terms of the safety standards that a rented property must meet, the law is arguably somewhat clearer in Scotland where tenancies *"of less than 31 days for the purpose of a holiday will not be subject to the repairing standard"*. The Repairing Standard sets the legal and contractual obligations of private landlords to ensure that a property meets a minimum physical standard including issues such fire, carbon monoxide and electrical safety[39]. Therefore, it appears any property let for 31 days or more would be subject to the standards set out in the Repairing Standard.

An overview of the regulation of holiday let accommodation in NI

(a) Holiday Accommodation - the statutory inspection and certification process

The certification process involves a visit to the property from a member of Tourism NI's certification team who **will inspect the property** to ensure it meets certain certification requirements. If a certificate is issued, then it will be valid for four years. If the premises does not meet minimum standards the applicant will be advised and can either appeal the decision or make the necessary adjustments and reapply[40].

A **statutory inspection** of the premises will also be undertaken by Tourism NI every four years. The purpose of the inspection is to ensure that the accommodation

[37] For further information on the different categories of accommodation regulated by Tourism NI see www.tourismni.com/build-your-business/sector/accommodation/

[38] Tourism NI. What are the different accommodation categories? www.tourismni.com/build-your-business/sector/accommodation/accommodation-getting-started/what-are-the-different-accommodation-categories/

[39] Scottish Government. The Repairing Standard. www.gov.scot/publications/repairing-standard/

[40] Tourism NI. What you need to consider. www.tourismni.com/build-your-business/sector/accommodation/accommodation-getting-started/what-do-you-need-to-consider/

complies with minimum standards as set out in legislation. In each of the three years between statutory inspections tourist accommodation providers are required to provide Tourism NI with a brief **'self-review' statement**. This "self-review" process is designed to ensure that certified accommodation continues to comply with minimum legislation standards. Tourism NI also states that it carries out ad hoc inspections of certified accommodation as part of its monitoring remit and on the occasion of a complaint from visitors. Further information on the statutory inspection process is available here[41].

(b) Minimum accommodation standards

Tourism NI have published a number of guides for accommodation providers outlining what inspectors will be looking at and the types of standard that they will expect to see. Tourism NI does, however, reinforce that the requirements and recommendations set out are not comprehensive and are for guidance only. It states that during an inspection the applicant will be advised on other matters not included in the guide. Tourism NI further states that "*it is the responsibility of certified premise operators/owners to make every reasonable effort to ensure that visitors enjoy a secure and safe stay. As part of your duty of care to visitors you should remain vigilant of potential risk to visitors…*"[42].

Table 2: Tourism NI 'Basic Guide to Starting Self-Catering Accommodation' – summary of some of the minimum and recommended criteria[43]

Exterior of the property	Paintwork in good order and that the car parking areas, paths and grounds and well-maintained and safe.
Structural and safety requirements	Units should be of substantial and durable construction, structurally safe and in good repair throughout, and of suitable design. They should be in good decorative order and kept clean and well maintained. Access roads, paths, gardens and surrounding areas should be well maintained.
Car parking	Consider provision of parking with due regard to neighbours and traffic regulations.
Display of certificate and charges	Tourism NI certificate must be prominently displayed. Charges for extra facilities not included in the rate should also be displayed (e.g. electricity charges).
Lounge and dining	All areas must be clean and in good decorative order. The furniture should be in good condition and of good quality. There should be sufficient seating

[41] Tourism NI. Statutory inspection schedules. www.tourismni.com/build-your-business/sector/accommodation/accommodation-getting-started/legal-considerations/statutory-inspection-schedules/#:~:text=Statutory%20inspection%20schedules%20Tourism%20NI%20carries%20out%20statutory,as%20set%20out%20in%20the%20relevant%20tourism%20legislation.

[42] Tourism NI. Basic Guide to starting a self-catering accommodation. www.tourismni.com/build-your-business/sector/accommodation/accommodation-getting-started/self-catering/overview/

[43] Information in the table extracted from Tourism NI. 'Basic Guide to Starting Self-Catering Accommodation'. www.tourismni.com/globalassets/business-development/quality-and-standards/accommodation-start-up-advice/self-catering/self-catering-accommodation-start-up-guide.pdf

	in both areas for the number of guests. Flooring must be of good quality and in good condition: wood, carpet or laminate.
Kitchen	Tourism NI recommends that the kitchen floor is washable i.e. tiles, laminate or vinyl. The kitchen should be fit for purpose, ideally with fitted units in good condition, a cooker with ventilation, refrigeration and a washing machine. Kitchen should be equipped with crockery, cutlery, saucepans and equipment. All should be in good condition with no cracks.
Bedroom	Should be clean, in good decorative order and have sufficient beds for the number of guests. The bedrooms should contain sufficient furniture for the hanging and storage of clothing. Each bedroom should contain good qualify future including a bed with a headboard, locker, lights, dressing table or chest of drawers. Flooring should be of good quality carpet, wood or laminate although some units may have vinyl. Bedroom windows much have curtains or blinds which exclude light.
Bathrooms	Bathrooms must be clean and should contain a bath or shower facilities with a toilet and sink, all in good condition with no chips or cracks. Bathroom must contain a toiletries cupboard and towel rail. Ideally the walls and floors should be tiled or have a suitable alternative fitting. There should be no discolouration on bathroom tiles or grouting or on bath and shower seals.
General Criteria	**Lighting** – each unit should have sufficient lighting in all areas, ideally all light fitting should have shades and there should be reading lamps and bedside lights. **Cleanliness** – the unit should be cleaned after each letting or on a weekly basis where a letting is more than one week. **Heating** – there should be a heating system in the unit capable of heating the unit to 18.5 degrees Celsius – this can be oil, electric, solar, gas or any other method of heating. Supervision – the accommodation should be under the supervision of a person capable of the efficient management of the unit.

In addition to these minimum standards, Tourism NI also offers a Star Quality Grading Scheme[44] (from one to five stars) to enable visitors to determine the quality of the accommodation. This scheme is voluntary, so accommodation providers do not have to use the scheme. The Quality Assurance Guidance for Self-Catering Accommodation is available to download here[45]. It contains very detailed advice on the standards that this type of accommodation will be required to meet in order to be granted a higher star rating.

[44] Tourism NI. Quality Grading Scheme. www.tourismni.com/build-your-business/sector/accommodation/accommodation-getting-started/quality-assurance/

[45] Tourism NI. Quality Assurance Guidance for Self-Catering. www.tourismni.com/globalassets/business-development/quality-and-standards/accommodation-quality-assurance/guidance--assessment-criteria/self-catering/guidance-notes-for-self-catering.pdf

(c) Fire Safety

Fire safety regulations apply to all business premises including the various forms of tourist accommodation. Under the regulations it is the responsibility of the business owner or anyone who is in charge of the premises to ensure fire prevention and risk reduction measures are in place[46]. The Department of Health, Social Service and Public Safety has published a detailed 178 page 'Fire Safety Risk Assessment: Sleeping Accommodation'. The guide applies to accommodation such as self-catering and guest accommodation but does not apply to domestic premises occupied as a single private dwelling.

The law requires that a **fire safety risk assessment** is carried for the property. A fire risk assessment should be undertaken by the business owner or someone appointed by them to carry out the assessment and who is considered competent, i.e. someone who has sufficient training and experience or knowledge. It does not have to be carried out by a consultant or fire safety company, but an accommodation provider may choose to use these services if they prefer[47]. The Northern Ireland Fire and Rescue Service (NIFRS) as the enforcing authority have the power to inspect premises to check that there is compliance with the legislation. They will also look for evidence that a suitable fire risk assessment has been carried out and that any significant findings of that assessment have been acted upon.

As well as offering advice on how to carry out a fire risk assessment, the 'Fire Safety Risk Assessment: Sleeping Accommodation' guide also offers detailed guidance on fire detection and warning systems; the recommended fire equipment; and escape routes. It states that:

- Virtually all premises that this guide applies to will need an electrical fire detection and warning system incorporating automatic fire detection, sounders and manually operated call points (break glass boxes).
- In simple premises of limited size/occupation e.g. ground floor and first floor with a small number of guests, an alternative system of interconnected smoke alarms or point detectors, incorporating interconnected manual call points, and where necessary, separate sounders may be acceptable.
- In case of purpose-built flats or maisonettes, built in accordance with modern building regulations it is assumed that a fire wall will generally be confined to the dwelling. This is because there is a high degree of compartmentation and a low probability of fire spread beyond the dwelling of origin.
- In simple premises, having one of two portable extinguishers of the appropriate type, readily available for use, may be all that is necessary. However, in more complex

[46] Tourism NI. Fire safety regulations for your business. www.tourismni.com/build-your-business/sector/accommodation/accommodation-getting-started/legal-considerations/fire-safety-regulations-for-your-business/
[47] Tourism NI. Fire safety regulations for your business. www.tourismni.com/build-your-business/sector/accommodation/accommodation-getting-started/legal-considerations/fire-safety-regulations-for-your-business/

premises, more portable extinguishers may be required and they should be sited in suitable locations e.g. on the escape routes at each floor level.

- States that it is good practice to ensure that the equipment is properly maintained (this may, for example, be a requirement of the properties insurance conditions). The guidance states that in most cases it will be necessary to consult a competent service engineer and that keeping records of maintenance will help demonstrate to the enforcing authority that you have complied with fire safety law.

(d) Gas and electrical safety

Tourism NI states that accommodation businesses, regardless of size, must comply with safety laws relating to gas and electricity. It further states that electrical safety laws apply to most electrical equipment in the accommodation (e.g. toasters, kettles, tvs, lamps etc.) and that *"if you are making the equipment available for your guests to use, you will be liable for their safety"*. It states that accommodation providers should regularly check and service the electrical goods supplied in the accommodation and that best practice recommends that regular Portable Appliance Testing (PAT) is carried out on the electrical system and appliances within the accommodation to identify repairs and upgrades[48].

With regards to gas safety, Tourism NI states that accommodation providers must have gas appliances, installation pipework or flues installed in accordance with manufacturer's instructions. These must be maintained in a safe condition and a Gas Safe engineer must inspect them at least once a year. It states that each type of premises may have additional requirements, depending on the type of accommodation. Further information on the legal requirements for fire, gas and electrical safety in tourism businesses is available from the NIBUSINESSINFO.CO.UK website here[49].

8 Tenancy deposit returns

Is there anything in legislation which determines when tenancy deposits must be paid back? (Kellie Armstrong)

The return of deposits to tenants under the Tenancy Deposit Scheme must comply with The Tenancy Deposit Scheme Regulations (Northern Ireland) 2012[50]. It is important to note that the explanatory memorandum to the 2012 Regulations states that **tenancy agreements** should set out the circumstances in which the deposit may be withheld by the landlord at the end of the tenancy. The landlord may decide to keep some or all of a deposit if it is required to pay for e.g. damage the tenant has caused to the property;

[48] Tourism NI. Gas and electricity safety in tourism business. www.tourismni.com/build-your-business/sector/accommodation/accommodation-getting-started/legal-considerations/gas-and-electricity-safety-in-tourism-business/

[49] NIBUSINESSINFO.CO.UK. Legal requirements for tourism businesses. https://www.nibusinessinfo.co.uk/content/fire-gas-and-electricity-safety-tourism-business

[50] The Tenancy Deposit Regulations (Northern Ireland) 2012. www.legislation.gov.uk/nisr/2012/373/contents/made

cleaning bills if the property has been left in poor condition; bills that are left unpaid; and any unpaid rent[51].

Tenancy deposits may be provided into two types of schemes, i.e. **custodial scheme** and **insurance scheme**. The rules regarding the return of the deposit at the end of a tenancy depend on two factors (a) the **type of scheme** that the landlord has opted to use and (b) whether or not **there is a dispute** over the return of the deposit. The rules regarding return of the deposit should be relatively straightforward if there is no dispute over the repayment amount.

Where the **amount is in dispute** then the process becomes relatively more complex and there are established deadlines within the regulations as to the procedures which must be followed and the specified timeframes in which certain actions must be taken by the landlord and tenant. Rather than repeat those here, each of the three approved tenancy administrators has published guidance on deposit repayment processes in which this information is provided. I include hyperlinks to those guides in the table below, some contain useful procedural flow charts, and you may find these helpful when assisting constituents with issues relating to tenancy deposit returns and disputes. The websites also contain a range of other useful publications including guides for students, advice on submitting evidence to support a claim, and Frequently Asked Questions for landlords, tenants and letting agents.

Table 3: Tenancy deposit scheme guides on repayment of deposits

Tenancy Deposit Scheme TDS NI	Custodial Scheme: How to request repayment of the deposit (tenants) Insurance Scheme: How to raise a dispute (Tenants) Deposit Disputes: How the dispute resolution mechanism works
Letting Protection Service (LPS) Northern Ireland	How to reclaim a deposit The essential guide to dispute resolution
mydeposits Northern Ireland	Tenants: how do I get my deposit back? The dispute process

The Committee may wish to note that recent research compiled by Housing Rights (published September 2020) indicates that some tenants are continuing to experience

[51] The Tenancy Deposit Regulations (Northern Ireland) 2012. Explanatory Memorandum. www.legislation.gov.uk/nisr/2012/373/pdfs/nisrem_20120373_en.pdf

difficulties with securing a return of their deposit or the deposit not being protected at all. The report states that[52]:

> *"Although it could be assumed that the deposit is a payment which will eventually be returned to the tenant, the experience of those interviewed was that substantial efforts were made on the part of landlords to retain as much of the deposit as possible, and this was all the more prevalent before the introduction of the requirements for deposits to be protected. Even considering the requirement for deposits to be protected, deposits were thought to be something of a lost cause by a few of the interviewees because some landlords were not registered and therefore did not participate in the deposit protection scheme. However, even with deposits protected, experiences varied with regard to deposits being returned at the end of the tenancy."*

The Committee will take evidence from the Tenancy Deposit Scheme administrators and may wish to raise this issue with them and ascertain their position of the efficacy of procedures in relation to deposit returns.

Tenancy Deposit Scheme – proposal for change consulted upon

The Committee may also wish to note that the Department for Communities consultation document on 'Private Rented Sector in Northern Ireland – Proposals for Change' (published January 2017) contained nine proposals for changes to the Tenancy Deposit Scheme. Two of these proposals are being taken forward in the Private Tenancies Bill, i.e. Clause 5 (increasing time limits for requirements relating to tenancy deposits) and Clause 6 (certain offences in connection with tenancy deposits to be continuing offences). For information purposes the remaining seven proposals are outlined in Table 2 and the Departmental response to those proposals is also provided. The Committee may wish to be cognisant of these issues during its consideration of evidence relating to the Tenancy Deposit Scheme.

Tenancy Deposit Scheme – 2017 Consultation Proposals	Outcome of consultation and Departmental response[53]
Retrospective Protection "The current scheme only requires deposits taken on or after 1 April 2013 to be protected. The Department recommends that retrospective protection be introduced so that all private rented	The Department states that there were 15 responses to this proposal of which 7 (47%) supported the proposal and 8 (53%) were not in favour of it. The Department response paper states that *"There was a mixed response to the proposal to introduce retrospective protection. Some of those against cited that it would be*

[52] Housing Rights. Preventing homelessness and sustaining tenancies in the Private Rented Sector. Scoping Project. September 2020. www.housingrights.org.uk/sites/default/files/policydocs/Preventing%20Homelessness%20and%20Sustaining%20Tenancies%20in%20the%20PRS.pdf

[53] Information extracted from the Departmental Response paper www.communities-ni.gov.uk/sites/default/files/consultations/communities/private-rented-sector-proposals-for-change-consultation-response.pdf

deposits will be protected irrespective of the date the tenancy started. This will mean that all tenants will benefit from the protection the Scheme brings and will have access to the dispute resolution mechanism."	*impossible to determine, at the point of protecting the deposit, the condition of a property that had been rented 10 or more years ago".* **Conclusion/Departmental Response:** *"At the time of the consultation in 2016 it seemed reasonable that since the Tenancy Deposit Schemes had come into operation that deposits prior to this date should also be protected. However, due to the passage of time and by the time legislation is brought forward it will be nearly 10 years since the Tenancy Deposit Schemes commenced. Recent evidence from the Scheme Administrators shows an average tenancy lasting 18 months therefore we see little value in taking this proposal forward.* *The Department will not implement this proposal as part of a PRS Bill delivered in this mandate."*
Fixed Penalty "Currently any monies paid as a result of fixed penalties (up to three times the amount of the deposit) is paid to councils. The Department will seek to amend legislation to allow part of the penalty to be paid to the tenant."	The Department states that there were 12 responses to this proposal of which three supported the proposal and nine were not in favour of it. Those against stated that the tenant would not be disadvantaged as their deposit would now be protected. **Conclusion/Departmental Response:** *"The Department will not implement this proposal. Councils will still be entitled to all fixed penalty monies to assist with the implementation of the Private Tenancies Order".*
Court Decisions "Currently a judge can issue a fine of up to £20,000 and there is no obligation for any monies to be returned to the tenant and the landlord is not ordered to protect the deposit in an approved Tenancy Deposit Scheme unlike Article 65A(7) where a court must order a landlord to register. The Department will seek to change the legislation."	The Department states that there were 10 responses to this proposal of which nine supported the proposal and one was not in favour. **Conclusion/Departmental Response:** *"The Department will work with the Department of Justice and amend the Private Tenancies Order to ensure this proposal can be implemented".*
Monies in designated accounts "The Department will explore the feasibility of allowing scheme administrators to use monies in designated accounts to work with Housing Associations to invest in affordable housing."	The Department states that there were 11 responses to this proposal of which 10 fully supported the proposal and one was not in favour (stating that monies should remain with the scheme administrator to reduce the cost of the insurance scheme). **Conclusion/Departmental Response:**

	The Department will explore how scheme administrators should use monies in designated accounts.
Proactive approach by Council Environmental Health Officers "The Department will take action to encourage all councils to be more proactive and use the legislative powers available to them to prosecute for non compliance".	The Department states that there were 11 responses to this proposal of which nine fully supported the proposal and two were not in favour of it. Those opposing did not agree that councils should be using resources to pursue minor non-compliance issues. **Conclusion/Departmental Response:** "*The Department will continue to encourage all councils to be more proactive and use the legislative powers available to them to prosecute for non-compliance".*
Correspondence address "Amend para 1(d) of Schedule 1 to the Tenancy Deposit Scheme Regulations (Northern Ireland) 2012 to "change Northern Ireland" to "United Kingdom"."	The Department states that there were 10 responses to this proposal of which nine fully supported the proposal and one was not in favour. **Conclusion/Departmental Response:** *"The Department will implement this proposal"*.
Transfer between schemes "Amend Regulation 14 to insert a timeframe for transfer of a deposit and protection between schemes".	The Department states that there were 9 responses to this proposal with all 9 supporting the proposal. **Conclusion/Departmental Response:** *"The Department will implement this proposal".*

9 Bill Commencement dates

There was some concern about the commencement dates for the provisions in the Bill, i.e., not everything will commence at the same time. Is there any reason why this is the case? (Kellie Armstrong)

I have requested information from the Department and will forward the response on to the Committee once received.

10 Tie-in with HMO legislation

What sort of read across or tie-up is there between the Bill and existing HMO legislation to ensure consistency across the board? (Mark Durkan)

I have requested information from the Department and will forward the response on to the Committee once received.