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Dr Janice Thompson
Communities Committee Clerk
Room 430
Parliament Buildings
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Belfast
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Dear Janice,

Deliberations on the Private Tenancies Bill – Suggested Amendment to Schedule 2

I am pleased to write to you with the suggested Departmental amendment to Schedule 2 of the Private Tenancies Bill. Officials discussed this with the Committee on 2 December.

Schedule 2 sets out the power for the Department to make regulations to detail the requirements for the energy efficiency of dwelling houses let under a private tenancy and what the minimum level any Energy Performance Certificate should be. The Department is proposing this amendment as, after the Committee's evidence sessions and other consideration, it was concerned that the powers that Schedule 2 contained as drafted would be too limiting in terms of the Regulations they would allow us to put into place.

The original powers were conceived when the Department was mainly concerned with fuel poverty. This legislation will now be a tool to drive the decarbonisation of a significant portion of the housing stock to deliver our climate change obligations. We will need to ensure that we can enforce a higher level of energy efficiency, which will be more intrusive and expensive.

The Schedule will still prohibit letting, or continuing to let, a dwelling house under a private tenancy of inadequate energy efficiency. This will be given effect by further Regulations, which will be subject to full consultation. Given the impact of these Regulations, the Department considers they should be draft affirmative.

Article 11G (3) provides that the Department may provide exemptions to that prohibition. This is augmented in the Amendment so that exemptions other than those relating to the fabric of the building can be made. In particular it provides for an 'improvement' exemption. The Amendment will also detail other areas the Regulations may cover including:

- Designating an authority to oversee the exemption process, and public access to lists of exemptions.
- More detail on exemptions, including the length of time they would last for.
- More detail on the offenses that may be created and how they might operate.
- Appeals, inspections, applications and other related issues.

The revised schedule will allow the regulations to have other features which will allow us to set up a system which can deliver the policy objectives:

- Much higher energy efficiency in the PRS over the period up to 2050,
- Reduction in fuel poverty; and
- Meeting our carbon reduction goals.

It will allow us to do this in a way which is deliverable and avoids shocks to PRS supply which would increase housing stress.

While this draft is well advanced, it may require some tweaks as it is scrutinised. Officials look forward to discussing this with Committee. If you require any further clarification, please feel free to contact me.

Yours sincerely,

Fionnbarr Dorrian

Departmental Assembly Liaison Officer

Schedule 2, page 16, line 10

Leave out sub-paragraph (a)

Schedule 2, page 16, line 16

Leave out paragraph (3) and insert –

‘(3) Regulations under paragraph (1) may provide for the granting to a person, in respect of a dwelling-house, of—

- (a) an exemption on the ground that the dwelling-house is of such description as is provided for in the regulations;
- (b) an exemption that is to have effect for a period of time and is subject to the condition that specified works or measures for improving efficiency in the use of energy in the dwelling-house are carried out within that period (an “improvement exemption”);
- (c) an exemption on such other grounds as may be provided for in the regulations.

(3A) In paragraph (3)—

- (a) “exemption” means an exemption from a prohibition imposed under paragraph (1);
- (b) “specified” means specified in the improvement exemption.

(3B) Regulations that provide for exemptions by virtue of paragraph (3) may include, in particular, provision—

- (a) for exemptions to be granted by a prescribed person or prescribed persons (the “authority”);
- (b) about the making of applications to the authority (including provision about the evidence which must or may be provided with applications);
- (c) for exemptions to have effect for a specified period of time (including provision for the authority to determine that period);
- (d) for a limit on the estimated cost of works or measures that may be specified in an improvement exemption (including a limit set by reference to the value of the dwelling-house or any other prescribed circumstances);
- (e) for the authority to maintain a publicly-accessible register of exemptions granted;
- (f) about appeals to a prescribed person or body against decisions regarding exemptions (including provision about how such appeals may be disposed of and the effect of any exemption pending the determination of an appeal);
- (g) about the inspection of dwelling-houses for the purposes of an application for an exemption or for the purposes of an appeal;
- (h) in a case where an application or appeal has been made under the regulations, for the applicant or appellant to be exempt from a prohibition imposed under paragraph (1)(b) in respect of the dwelling-house in question pending the determination of the application or appeal;
- (i) about the consequences of providing false or misleading information in an application to the authority or in proceedings on an appeal (including provision creating criminal offences or invalidating exemptions);
- (j) for a person who acquires an estate in a dwelling-house to be exempt from a prohibition imposed under paragraph (1)(b) in respect of that dwelling-house for a prescribed period of time.

(3C) Regulations may provide that if a person—
 (a) is granted an improvement exemption, and
 (b) complies with prescribed conditions regarding the giving of notice to any tenant of the dwelling-house, or with such other conditions as may be prescribed,
works or measures specified in the exemption are to be regarded, for the purposes of Article 12, as works that the person is under a duty to execute.

(3D) Regulations may also include such supplementary, incidental or consequential provision as the Department considers appropriate, including provision modifying any statutory provision.'

Schedule 2, page 16, line 32

Leave out 'an offence' and insert 'offences'

Schedule 2, page 16, line 36

At end insert –

'(1A) Regulations under Article 11G may provide that a person commits an offence if –
 (a) the person is granted an improvement exemption;
 (b) the person fails, without reasonable excuse, to carry out the works or measures specified in the exemption within the period of time so specified;
 (c) Article 11G(2) applies to the dwelling-house immediately after the expiration of that period of time; and
 (d) at any time during which the exemption had effect, the person –
 (i) granted a private tenancy of the dwelling-house; or
 (ii) continued to let the dwelling-house out under a private tenancy that was granted before the exemption had effect.

(1B) The regulations may provide for inspections of a dwelling-house in respect of which an exemption has been granted by virtue of Article 11G(3)(b), for the purpose of investigating whether an offence created by virtue of this Article has been committed.

(1C) The regulations may set out circumstances in which a person is, or is not, to be regarded as having a reasonable excuse for the purposes of an offence created by virtue of paragraph (1A) (including circumstances where a person ceases to hold an estate in the dwelling-house).'

Schedule 2, page 16, line 37

Leave out 'virtue of paragraph (1)' and insert 'regulations under Article 11G'

Schedule 2, page 16, line 40

After 'scale' insert '(but, in the case of an offence in respect of a prohibition imposed under Article 11G(1)(b), this is subject to paragraphs (3) and (4))'

Schedule 2, page 16, line 40

At end insert –

'(3) Where regulations under Article 11G create an offence in respect of a prohibition imposed under Article 11G(1)(b), they must provide that where –

- (a) a person is convicted of such an offence (“the initial conviction”),
- (b) the letting that was the occasion of that offence continues after the initial conviction, and
- (c) the person is convicted of such an offence in respect of the letting that continues after the initial conviction (“the continuing offence”),

the continuing offence is to be punishable with a fine not exceeding one-hundredth of level 5 on the standard scale for every day or part of a day for which the letting continues after the initial conviction (and, accordingly, the fine may exceed level 5 on the standard scale).

(4) Where regulations under Article 11G create an offence in respect of a prohibition imposed under Article 11G(1)(b), they must provide that where –

- (a) a person breaches such a prohibition,
- (b) the person is given a fixed penalty notice under Article 68A in respect of such an offence on the grounds of that breach,
- (c) the person pays the fixed penalty stated in the notice,
- (d) the breach continues after payment of the fixed penalty, and
- (e) the person is convicted of such an offence in respect of the breach that continues after payment of the fixed penalty (“the post-payment offence”),

the post-payment offence is to be punishable with a fine not exceeding one-hundredth of level 5 on the standard scale for every day or part of a day for which the breach continues after payment (and, accordingly, the fine may exceed level 5 on the standard scale).’

Schedule 2, page 16, line 42

Leave out ‘virtue of Article 11H’ and insert ‘regulations under Article 11G’

Schedule 2, page 17, line 4

Leave out ‘virtue of Article 11H; or’ and insert ‘regulations under Article 11G (but this is subject to paragraph (1A));’

Schedule 2, page 17, line 4

At end insert –

‘(aa) after paragraph (1), insert –

“(1A) This Article does not apply where--

- (a) an authorised officer has reason to believe that P has committed an offence created by virtue of Article 11H(1) in respect of a prohibition imposed under Article 11G(1)(b) (“the continuing offence”),
- (b) P has previously been convicted of such an offence (“the initial offence”), and
- (c) it appears to the authorised officer that the continuing offence has been committed by P continuing, after that conviction, the letting that was the occasion of the initial offence.”;

Schedule 2, page 17, line 5

Leave out sub-paragraph (b) and insert

‘(b) after paragraph (8) insert –

“(8A) The fixed penalty payable to a district council under this Article in respect of an offence created by regulations under Article 11G is an amount determined by the council, being an amount not exceeding one-fifth of the amount prescribed in accordance with Article 11H(2)(b) (but this is subject to paragraph (8B)).

(8B) Where –

- (a) an authorised officer has reason to believe that P has committed an offence created by virtue of Article 11H(1) in respect of a prohibition imposed under Article 11G(1)(b) (“the continuing offence”),
- (b) P previously breached a prohibition imposed under Article 11G(1)(b) (“the initial breach”),
- (c) P was given a fixed penalty notice under this Article on the grounds of that breach,
- (d) P paid the fixed penalty stated in the notice, and
- (e) it appears to the authorised officer that the continuing offence has been committed by P continuing, after that payment, the letting that was the occasion of the initial breach.

the penalty payable is an amount determined by the council, being an amount not exceeding one-five-hundredth of the amount prescribed in accordance with Article 11H(2)(b), for every day or part of a day for which it appears to the officer that the letting has continued after payment (and, accordingly, the fine may exceed one-fifth of level 5 on the standard scale).”.’

Schedule 2, page 17, line 7

After ‘regulations’ insert –

‘(a) in paragraph (3), before “14” (as inserted by section 11) insert “11G,”;’

Schedule 2, page 17, line 14

Leave out ‘and’ and insert –

‘(ca) such persons as appear to the Department to be representative of tenants, and’

Schedule 2, page 17, line 16

After ‘landlords’ insert ‘or tenants’

Schedule 3, page 19, line 6

Leave out ‘11H’ and insert ‘11G’

Schedule 3, page 19, line 7

Leave out ‘11J’ and insert ‘11I’

Schedule 3, page 19, line 9

Leave out sub-paragraph (a) and insert –

‘(a) after paragraph (1)(ab) (as inserted by Schedule 2) insert –

“(ac) an offence created by regulations under Article 111; or”;

Schedule 3, page 19, line 11

Leave out from ‘after’ to end and insert –

“or 65A(4)” insert “or an offence created by regulations under Article 111”.’

Schedule 3, page 19, line 12

At end insert –

‘(za) in paragraph (2), for “paragraph (3)” substitute “paragraphs (3) and (3A)”;

Schedule 3, page 19, line 22

Leave out ‘and’ and insert –

‘(ba) such persons as appear to the Department to be representative of tenants, and’

Schedule 3, page 19, line 24

After ‘landlords’ insert ‘or tenants’