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4 November 2021

GM-1291-2021

Dear Janice

Private Tenancies Bill

Further to your request to provide Members with responses in respect of their review of the Hansard transcript of the second stage debate on the Private Tenancies Bill, please see annex A attached.

I hope this information is useful for the Members.

Yours sincerely

Diane Mulligan
Departmental Assembly Liaison Officer
Private Office



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Question Summary	Asked by	Departmental Response
Clause 3: whether there is scope for the requirement to cover any other cash payment.	A Allen MLA K Armstrong MLA	The Department will explore whether this provision can include other cash payments linked to a private tenancy.
Clause 3: what is meant in new article 5(3)(b) by "reasonably possible" with regard to receipts needs to be clarified. It would be preferable that a time limit of, for example, four weeks was put on the landlord to provide a receipt.	K Armstrong	The Department initially considered that a receipt be given at the time payment is made however this was considered impractical for a number of reasons for example the tenant is not present or payment is made by someone on his/her behalf. It was considered more practical to use 'as soon as reasonably possible after that time'. The term will be clarified in guidance to be read in conjunction with the relevant legislation
Clause 6: how a landlord who has continually offended in relation to tenancy deposits may have a restriction or even a bar placed on their ability to be a private landlord.	K Armstrong MLA	Previously where a landlord failed to protect a tenancy deposit or give the prescribed information within the required time those offences under the Tenancy Deposit Scheme could not be prosecuted. Clause 6 amends Article 5B of the 2006 Order. The new paragraph included in the Bill provides that those offences continue to be committed throughout any period during which the failure continues. The result is that there will be no time barrier on prosecuting a person who fails to comply with the requirements of the Article. The legislation is being amended to provide more protection to tenants.
Clause 7: Restriction of Rent Increases – the unintended consequences of Landlords effectively issuing annual rent increases, which they did not do beforehand – change needs to be communicated and marketed adequately to limit confusion and opportunism.	M Durkan MLA	The Department will ensure that the change and its policy rationale are communicated effectively.
Clause 7: to look at placing a cap on the size or scale of any annual rent increase.	M Durkan MLA	The policy intent in this clause is to provide a level of rent certainty and the Bill provides this in that it restricts any rent increase to once in a 12 month period which assists in making the private rented sector more affordable. It is anticipated that new provisions will provide stability for both tenants and landlords and the tenant

		<p>will be aware of the rental amount for the first year of the tenancy and then of the amount annually during the tenancy. The Landlord will be aware of a consistent income on an annual basis.</p> <p>For the second phase of work Minister has asked Departmental officials to explore further how the Department could ensure rents, including those in the private rented sector, are fair.</p>
Clause 7: Has Department considered a rent cap on private landlords	G Carroll MLA	<p>The policy intent in this clause is to provide a level of rent certainty and the Bill provides this in that it restricts any rent increase to once in a 12 month period which assists in making the private rented sector more affordable. It is anticipated that new provisions will provide stability for both tenants and landlords and the tenant will be aware of the rental amount for the first year of the tenancy and then of the amount annually during the tenancy. The Landlord will be aware of a consistent income on an annual basis.</p> <p>For the second phase of work Minister has asked Departmental officials to explore further how the Department could ensure rents, including those in the private rented sector, are fair.</p>
Clause 9 (and Schedule 2): how are Landlords supposed to meet the costs. We need to think about funding and supporting those private landlords to bring standards up, otherwise the tenants will face increased rents to meet landlords' needs.	K Armstrong MLA	<p>The Department will consult with the Department for the Economy, the Department of Finance, District Councils, landlords, tenants and others before making regulations concerning energy efficiency including any funding and support arrangements.</p> <p>There will be a considerable cost across all tenures for energy efficiency work required to achieve net zero.</p>
Clause 9: The ability of the Bill aims to alleviate Fuel Poverty	C Bailey MLA	<p>As the rates of fuel poverty are highest in the private rented sector the Department proposes to make this enabling power in primary legislation which will make it obligatory for any domestic private rented property in NI to have a minimum EPC rating. This will also be an important element of work to improve energy efficiency and to meet commitments to achieve net zero carbon by 2050. The</p>

		Department will work with experts in the area of energy efficiency alongside colleagues in the Department for the Economy who are developing the Energy Strategy to bring forward proposals on appropriate EPC.
Clause 11: A 12 week Notice to Quit to be applied to all tenancies over one year	M Durkan MLA	The Department will consider and consult soon on further extending the notice to quit which may need to be different in different circumstances
Clause 11: Shorter term tenancies should go to 8 weeks rather than 4.	M Durkan MLA	In the absence of a written tenancy agreement or after the expiry of the contractual term, any private tenant (other than a protected or statutory tenant) is effectively subject to a 4-week tenancy as a landlord can end the tenancy by serving 4 weeks' notice to quit. Evidence from the Tenancy Deposit administrators report that most tenancies in Northern Ireland end within 18 months – 2 years. It is the Department's view that the enhanced Notice to Quit period should only apply to private tenancies which are 12 months or more because it would be excessive to expect someone in a very short tenancy (for example a 3 or 6 month tenancy) to be required to give 2 months' notice. Often people choose a short tenancy (less than 12 months) as an interim measure which suits their needs including the ability to terminate the tenancy quickly if their circumstances change. A longer Notice to Quit could stop landlords offering such tenancies.
Clause 11: Notice to Quit requirements may create a practice whereby some landlords may curtail the length of tenancies, thus exploiting a potential loophole in the legislation to avoid enhanced notice to quit.	M Durkan MLA	We would note that given the time to change tenancy (during which no rent is received), and the cost of change of tenancy (COT) works, that doing this would have financial implications for the Landlord.
Clause 11: Eight weeks does not go far enough, however, and we need to look at how much further we can extend that.	A Allen MLA	The Department will consider and consult soon on further extending notice to quit which may need to be different in different circumstances

<p>Clause 11: Need to ensure that the definition of homelessness, which is covered by different legislation, will be brought into line with whatever the agreement is on the minimum notice that a landlord must give</p>	<p>K Armstrong MLA</p>	<p>The Department is reviewing the existing homelessness legislation to make sure it is fit for purpose and expect to have that review completed before the end of this mandate.</p>
<p>Clause 11: Clarification as whether the notice period relates to the date on the notice or the date on which the tenant receives the notice</p>	<p>K Armstrong MLA</p>	<p>The Department's view is that the Notice to Quit must be received by the tenant before the required notice period commences to ensure a full period of notice is given.</p>
<p>Clause 11: Under clause 11, it would be useful to know why the notice given by landlords is different to that being asked of tenants. Why is that not the same? Can we not have a minimum and a maximum period for tenants in the same way as it is broken down for landlords?</p>	<p>K Armstrong MLA</p>	<p>The purpose of a Notice to Quit is different for a landlord and tenant and there is no policy reason for equivalence.</p> <p>The notice period for a tenant to quit a tenancy will depend on how long they have stayed in the property. The Bill provides that a tenant must give the following notice to quit:</p> <ul style="list-style-type: none"> • 4 weeks, if the tenancy has not been in existence for more than 12 months; • 4 weeks, if the tenancy has been in existence for more than 12 months but less than 10 years; and • 12 weeks, if the tenancy has been in existence for more than 10 years; <p>It is important to note that the majority of tenancies are ended by the tenant and allowing 4 weeks' notice to quit for the majority of tenancies works in the best interests of both Tenant and Landlord.</p>
<p>Clause 13: commencement date/ time frame needs to be placed on the introduction of this vital legislation</p>	<p>M Durkan MLA K Armstrong MLA</p>	<p>Clause 13 provides that this clause and clauses 12 and 14 come into operation the day after the day on which the Bill receives Royal Assent as they do not require any significant lead-in work.</p> <p>With the exception of the clauses mentioned above the Bill creates a number of regulation making powers that also come into operation on that day which will allow the Department to make the</p>

		<p>necessary regulations. Presently there is no definitive day for their commencement.</p> <p>The Department's preference, if possible, would be that regulations are approved and made as soon as possible after the Act obtains Royal Assent. However the Department will need to consult with the Department for the Economy & Department of Finance, district councils and stakeholders before agreement on the content of those regulations and confirmation of the date when the new changes can become operational. As some of the regulations are subject to the draft affirmative procedure it is also important to note that the statutory rules will need to be laid before the Assembly and made available for the Committee for effective scrutiny to take place.</p>
<p>Schedule 3: The schedules need to have clarity on electrical standards. For instance, what qualification will the electrician need when inspecting an alarm or the processes involved? Who will be required to inspect the premises to make sure that the alarms work? If that falls to our councils, will they charge landlords or tenants for the inspection, or will they be funded by Communities to carry out that role? The electrical safety industry has also said that there should be a confirmed period within which alarm and electrical safety inspections are carried out. Some have suggested that that should be every five years, and I am keen to know if the Minister would add a specific time frame to the safety inspections.</p>	<p>K Armstrong MLA</p>	<p>The Bill contains a new enabling provision that will impose duties on landlords to carry out a periodic electrical check for any domestic private rented property. As a result landlords will be prevented from commencing a new lease without the certification of an electrical check from an approved person. The detailed administration of the new arrangements on which work remains to be done will be set out in future regulations with the appropriate stakeholders having the opportunity to consider the issues.</p>

<p>Schedule 3: Can tenants' voices be added to the list of consultees in schedule 3(5),</p>	<p>K Armstrong MLA</p>	<p>Minister has committed to Tenants being at the heart of consultation. Schedule 3 paragraph (7)(c) provides that the regulations must be consulted on with such other persons as the Department considers appropriate which will allow us to capture this essential group. The Department can consider this as a proposed amendment to add this specific group if required.</p>
<p>Linked to Clause 11: Local Housing Allowance (LHA) rates must be removed</p>	<p>K Armstrong MLA</p>	<p>Minister wrote to Therese Coffey, Secretary of State for the Department for Work and Pensions (DWP) to express her disappointment that the LHA rates have been frozen at the rate determined at 31st March 2020 and that LHA rates will remain at these levels in future years.</p> <p>Discretionary Housing Payments provide financial assistance with housing costs for those who face a shortfall in meeting the cost of the contractual rent where some form of restriction, such as a claim being assessed under Local Housing Allowance rules applies. A payment can be considered, where, in the opinion of the administering authority, the Northern Ireland Housing Executive, financial assistance with housing costs is required.</p>
<p>Linked to Clause 11: Local Housing Allowance (LHA) cap must be removed</p>	<p>M Durkan MLA</p>	<p>Minister wrote to Therese Coffey, Secretary of State for the Department for Work and Pensions (DWP) to express her disappointment that the LHA rates have been frozen at the rate determined at 31st March 2020 and that LHA rates will remain at these levels in future years.</p>
<p>Letting Agents/Fees: Assurance that the issue of letting fees will be dealt with in the second piece of legislation.</p>	<p>K Armstrong MLA</p>	<p>Minister has confirmed that as some of the proposals from the Department's review of the private rented sector are more detailed, cross cutting proposals they will form part of a second phase bill in the future. This includes Letting Agent Regulation.</p>
<p>Unlawful Letting Agent Fees: There is nothing in the Bill to stop the unlawful charging of letting agents' fees. It seems</p>	<p>C Bailey MLA</p>	<p>At present, the charging of fees by letting agents for services carried out on behalf of the landlord is unlawful and should cease. Minister Hargey and Minister Murphy issued a joint communiqué to this effect in March 2020. Any tenant who has been asked to pay</p>

<p>remiss not to use this vehicle to bring forward that simple change.</p>		<p>such a fee should contact the Housing Rights Helpline. The legislation used in the court judgements is the responsibility of the Department of Finance. In addition DfE has responsibility for estate agents, many of which are also letting agents.</p>
<p>Unlawful Letting Agent Fees: What are the plans for tackling letting fees.</p>	<p>G Carroll MLA</p>	<p>Further research and consultation is required in this area. The first step is to engage with the other Departments ahead of developing proposals about the best way to regulate Letting Agents.</p>
<p>PRS and HMO Standards: That the Bill will go some way towards ensuring that all properties in the sector are held to the same standards.</p>	<p>C Bailey MLA</p>	<p>The Bill will ensure that those renting privately have access to good quality housing with peace of mind over the safety and security of their home. Minister has indicated previously that this is just the beginning of her plans for the reform of the housing system. In the longer term it is the Department's intention to address other issues such as letting agent regulation, grounds for eviction and fitness standards.</p>

