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Dear Janice

### **Deliberations on the Private Tenancies Bill – Information request**

This response provides further information on the issues raised as queries on Clauses 6 to 14 during the public session on 30 November 2021 with Departmental Officials. I have also provided information on Clause 3 which was missed from our previous response. Your letter of 1 December 2021 refers.

If you require any further clarification, please feel free to contact me.

Yours sincerely

**Diane Mulligan**  
Departmental Assembly Liaison Officer  
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### **Clause 3 – Tenant to be provided with a rent receipt for payment in cash**

The Committee also queried whether the Bill should include that receipts should be provided to tenants for all payments made to a landlord in cash. The Officials responded that the Clause is to replace a section of the 2006 Order that is specific to rent payments only, however, agreed to consider what other payments the Bill could include.

**The Committee requests that the Department considers and responds on what other payments in cash the Minister would consider this Clause could cover in terms of a receipt being required, on the understanding that they must be payments in connection with the private tenancy.**

#### **Departmental Response**

The Department noted at the meeting of 2 December that the existing Clause 5 of the 2005 Order does say that a rent book can record other payments of cash.

The Department is content to explore the possibility of an amendment to this clause or the insertion of a sub clause to cover a requirement for a receipt to be provided for all cash payments relating to a tenancy. The Department would welcome the Committee's input on what types of other payments it envisages this might include, noting:

- There is already provision for notification of deposits (5B of the 2006 Order);
- The provision in New 5 (2) (c) and (d) that the receipt includes information on any outstanding amount, and whether this would be appropriate in all cases; and
- The need to consider consequential impacts on the rest of the clause, including 5ZB.

### **Clause 6 – Certain offences in connection with tenancy deposits to be continuing offences**

At the meeting the Committee requested clarification about what Clause 6 does in practice and why 11A was needed in Article 5B of the 2006 Order. Members also discussed a potential amendment to 5B proposed by Housing Rights to explicitly state that deposits protected under an insurance-based scheme must be renewed as needed.

The Committee was content with the explanations and that the Clause is solving an existing problem for tenants who have no recourse to complaint currently beyond six months and noted that the Officials felt that the Housing Rights proposed amendment strayed into operational matters and was not a necessary amendment.

**Please provide a short note of explanation re-stating the explanations given at the meeting about the operation of Clause 6 and the rationale for why the amendment proposed by Housing Rights is not required.**

## Departmental Response

Clause 6 amends Article 5B of the 2006 Order by inserting a new paragraph (11 A). Under paragraph (11) an offence is committed where a landlord fails to protect a tenancy deposit or give the prescribed information within the required time. This new paragraph provides that those offences continue to be committed throughout any period during which the failure continues. The result of this is there is no time barrier on prosecuting a person who fails to comply with the requirements of the Article.

It is for the individual Tenancy Deposit Schemes to decide on how they operate – either as a custodial scheme or an insurance-based scheme.

The amendment Housing Rights suggests is not necessary. It relates to landlords who fail to pay their deposit protection insurance premiums. In any such case this means that the deposit is no longer protected (the deposit has not been dealt with in accordance with an approved scheme). This would breach 5B of the 2006 Order, and those landlords can be prosecuted.

## **Clause 7 – Restriction on Rent Increases**

Discussion focused on the fact that landlords generally want to keep good tenants so do not raise rent unnecessarily, however there are cases where this has happened in an uncontrolled way, e.g. landlord finds out he can get a higher rent in a street and ups all rents suddenly.

The Committee was content to hear that guidance will lay out what the justifications are for an increase and that the Minister will be looking further at fair rents for all in the second stage of reforms.

**Please provide a short note of explanation re-stating the explanations given at the meeting regarding future work on fair rent for all, whether that will cover the controlled rent sector and what is planned for the guidance regarding this Clause.**

## Departmental Response

### **Future work on fair rents**

The Minister has committed to taking forward work in Phase 2 to ensure that rents in the private rented sector are fair. This will include:

- Research on rents in NI in absolute terms and in comparison to income, including an assessment of affordability, regional analysis and by sector.
- Research on yields for landlords here and elsewhere, and analysis of their costs.
- Research of comparable policy responses in other jurisdictions and the success of these.
- Development of possible policy responses for analysis and consultation.
- Consideration of possible unintended consequences from suggested policy responses.
- Stakeholder consultation throughout, including with tenants, landlords, letting agents and NIHE.

- Consultation on policy options.

### **Will this future work include controlled tenancies?**

With regards to the controlled rent sector, given rents of controlled tenancies are currently set by the Department under Parts 48 and 49 of The Private Tenancies (Northern Ireland) Order 2006, the Department's focus will be on fair rents in the rest of the Private Rented Sector.

### **Guidance on this clause**

The Department will produce guidance on the requirements of Clause 7, to make clear and easily understood the new restrictions for tenants, landlords, the advice sector and other relevant parties. This will include the definitions of any exceptions made under 5C (3) (if any are made).

**A Member requested that the name of the Clause be changed to include the word 'frequency' – Committee was supportive of this – please advise if Minister will make this amendment.**

### Departmental Response

The Department is happy to explore this with Minister and drafters, however would note that Clause 7 also includes the new 5D (requirement to give written notice of rent increase), which does not relate to frequency of rent increases. Changing the title of the clause would have the potential to cause confusion.

**A Member requested that the time period in 5D(4) be increased to three months - Committee was supportive of this – please advise if the Minister will make this amendment.**

### Departmental Response

The Department is content to look at increasing the notice period to 3 months and will discuss this with Minister and drafters.

### **Clause 8 – Fire, smoke and carbon monoxide alarms, etc.**

The Committee is generally supportive of the Clause given its focus on improving tenant safety and protection of a landlord's asset. However, Members remain concerned at who is responsible in communal areas of a building where potentially multiple landlords own properties, as under health and safety legislation, a landlord is responsible for safe access and egress to and from the property. Officials felt that the responsibility lies in other legislation which is out of scope of this Bill.

**The Committee has written to the Departments of Health and Finance to seek clarification but requests that the Department for Communities also liaise with these Departments to follow up and ensure the Bill covers all that it should in this regard. The Committee may seek Ministerial assurance that she will engage with those Departments to ensure such communal areas are covered in law.**

## Departmental Response

Northern Ireland Building Control Advisory Committee (NIBRAC) Technical Booklet E covers such matters as fire alarms and means of escape from flats:

[buildingcontrol-ni.com](http://buildingcontrol-ni.com) [Technical Booklet E](#)

The Department is aware Northern Ireland Building Control Advisory Committee E sub-committee is currently reviewing the building regulations fire safety standards.

The Department notes that in flats the building owner or management company are responsible for access/ means of escape/ smoke detection etc. in communal areas. This does not fall into the scope of the Private Tenancies legislation (as defined in Section 3 of the 2006 Order).

A Member queried if 11F was covering the new 11A and Officials confirmed that was why 11F was needed in the Bill. The Member also queried whether 11E was sufficient defence for the landlord. After some discussion, Officials agreed that the model tenancy agreement template could cover issues regarding this Clause in terms of landlord and tenant responsibilities.

**Please provide a short note of explanation re-stating the explanations given at the meeting and confirming that the model tenancy agreement template will cover issues regarding this Clause in terms of landlord and tenant responsibilities.**

## Departmental Response

New article 11F limits the extents to which the duties under article 11B require the landlord to carry out works only where the landlord has knowledge of the need for the works.

11E clarifies that the duties imposed on the landlord by Article 11B do not require the landlord to carry out works for which the tenant is liable.

The new 11F relates in this clause to the new 11A. 11 (2) in the existing 2006 Order refers to Articles 7 and 9 in that order.

The Department will engage with stakeholders in determining the content of the Statement of Tenancy Terms and producing a model tenancy agreement template. The Department agrees that any Statement of Tenancy Terms should clearly set out the responsibilities of both the landlord and tenant with regard to maintenance of fire, smoke and carbon monoxide alarms, the importance of tenants taking care of these, reporting defects promptly and the duties of landlords.

## **Clause 9 and Schedule 2 – Energy efficiency regulations**

Although the Clause is welcomed by the Committee regarding the potential improvements it will bring to private tenants living conditions, there was discussion around the various issues of concern that have been brought to the Committee's attention.

This included the likely need for a substantial economic package to support private landlords to improve standards and avoid costs being transferred to tenants in rent increases; and the potential for landlords to use available grants to improve properties and then sell them on as the value has increased.

The Departmental Officials confirmed they would consult widely and carefully on the regulations and be guided by the Energy Strategy for NI and that it was accepted that there would need to be an incentives package for landlords.

**NB - The discussions have been overtaken due to the fact that the Officials are to brief the Committee on Thursday 2 December regarding significant improving amendments to this Clause, that should assist in dealing with issues of concern.**

### **Departmental Response**

The Department is proposing Amendments to Schedule 2. A draft amendment is being finalised with OLC as a priority and we will pass to the Assembly Bill Office as soon as possible.

## **Clause 10 and Schedule 3 – Electrical safety regulations**

The Committee discussed the potential for electrical safety checks to run in accordance with the landlord registration timeframes, either every three, six or nine years and proposed that six years would seem a suitable timeframe.

A Member expressed concerns over the lack of PAT testing in the Bill and understood that it would be difficult to legislate for. Officials confirmed that it would be difficult as if, for example, electrical safety checks were carried out every five or six years – several tenants could have been in the property over that timeframe.

The Committee also considered the need for electrical testing of appliances provided by the landlord and not just fixed wire testing.

**Please provide confirmation that the Minister would be willing to include an amendment for electrical testing at a six-year interval.**

### Departmental Response

The frequency of electrical testing will be set out in the regulations, the Department will consult with relevant stakeholders to determine an appropriate period for checks.

**Please confirm whether the Minister would include an amendment to cover electrical testing of appliances provided by the landlord.**

### Departmental Response

This is already covered in the Bill. Paragraph 2 of Schedule 3 of the Bill sets out the requirement for testing of appliances provided by the landlord:

(2) “Electrical safety standards” means standards specified in, or determined in accordance with, the regulations in relation to—

(a) the installations in the dwelling-house for the supply and use of electricity, or

(b) electrical fixtures, fittings or appliances provided by the landlord.

**The Committee has not yet determined its position on the issue of PAT testing.**

### **Clause 11 – Validity requirements for notices to quit given by landlords and tenants**

The Committee highlighted a number of concerns to Officials around the notice to quit periods proposed in the Bill, including potential for longer notices for families and issues around shorter tenancies e.g. for students.

The Officials advised that they were going out in the next day or so with a short, sharp consultation on this Clause as the Minister had determined it was insufficient and it would cover the issues for students and shorter lets and also reminded Members that the 12-week period was still in place until May 2022 due to the Coronavirus legislation.

**The Committee welcomed the consultation that, although belated, showed that the Department was responding to the concerns of stakeholders. However, as the outcome would not be known until after the end of the Committee Stage, it would now have to consult with the Assembly Bill Office regarding its options on this Clause.**

### Departmental Response

The Department launched a consultation on notice to quit periods on 1 December 2021, the consultation will close on 25 January 2022. The Department is happy to engage with the Committee on this matter further.

## **Clause 12 – Interpretation**

There were no specific issues raised with Clause 12

## **Clause 13 – Commencement**

The Committee raised the issue of the costs of enforcement of the new duties and want to know who the costs will fall to and queried whether it would fall to councils who may be under resourced to deal with this. Also, concern was raised about the landlord registration fees and to which council this money went.

**Please respond to the issues raised in connection with this Clause and provide further information on the registration schemes and models that the Department stated it was considering for the second stage of reforms.**

### **Departmental Response**

Article 65A of the private tenancies (Northern Ireland) Order 2006 requires the Department to provide for the registration of landlords of dwelling-houses let under a private tenancy.

The current landlord registration scheme has approximately 39,000 landlords registered. Each landlord is required to pay a £70 fee which covers a 3 year period.

Using the current data, this equates to approximately £800k income annually. The fee can only be used to pay for the running of the scheme and for access to advice and guidance and links to information about the private rented sector. A landlord is exempt from payment if they have a HMO licence.

Councils are responsible for taking enforcement action against landlords who refuse to comply with the law, and can issue fixed penalty notices and prosecute landlords.

In March 2020 a project group consisting of Councils and the Department started work to explore the potential transfer of the landlord registration function to Councils. A research report was subsequently commissioned and the group is taking forward work in line with the report, which included various models, whereby Councils could operate the landlord registration scheme, with the associated income, at neutral cost, to allow them to carry out their statutory duties and thus begin to professionalise the private rented sector.

## **Clause 14 – Short Title**

There were no specific issues raised with Clause 14.