



Department for
Communities
www.communities-ni.gov.uk

An Roinn
Pobal

Department for
Commonities

From: The DALO

Level 9

Causeway Exchange

1-7 Bedford Street

Belfast

BT2 7EG

Telephone: (028) 9051 5234

e-mail:

assembly.section@communities-ni.gov.uk

Our ref: GM-1689-2021

Date: 15th December 2021

Dr Janice Thompson
Communities Committee Clerk
Room 430
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

Dear Janice,

Further Deliberations on the Private Tenancies Bill

Thank you for your letter dated 10th December in relation to Committee's remaining queries and comments following further deliberations the draft Private Tenancies Bill.

I have addressed each in turn using, where possible, the corresponding section reference in your letter.

For ease of reference I have not addressed the clauses and schedules where you have indicated that the Committee seems content (Clauses 1, 2, 4, 5, 6,12,13,14 and Schedule 1), and confirm that the Department has noted the Committee's position

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

Yours sincerely,

Fionnbarr Dorrian

Departmental Assembly Liaison Officer

Clause 3

1. Receipts for all cash payments in relation to the Tenancy

Committee Query/Comment

In response to the Department's letter of 7 December Committee has provided clarity that receipts for cash payments should include "*all payments related to the private tenancy that are paid in cash to the landlord or the agent*"

Departmental Response

I can confirm that the Minister will take an amendment to the clause or the insertion of a sub clause for a receipt to be provided for all cash payments arising under the tenancy.

The Department is developing the text of a proposed amendment and will forward this to Committee as soon as possible.

2. 5(3)(b) – “if that is not possible, as soon as reasonably possible after that time”

Committee Query/Comment

Committee indicated that it will likely be proposing an amendment to remove Clause 5(3)(b) from the Bill i.e. making it mandatory that a Landlord or Agent provides a receipt at the time of payment. The Committee asked the Department if the Minister would take that amendment forward.

Departmental Response

The Department's position remains that removing the text relating to 'or as soon as reasonably possible', means that an offence is automatically committed if the receipt is not provided at time of payment. The time of payment may be at the tenant's choosing, but the duty to provide a receipt is wholly dependent on the Landlord or their Agent. The scenario must be provided for if a tenant insists on payment being made even though the Agent or Landlord does not have the means to issue a receipt. It may also mean a Landlord or Agent having to refuse payment until they were in a position to provide a receipt at time of payment and tenants being in arrears of rent.

The Department, therefore, does not wish to take such an amendment.

3. Landlords solely requesting cash payments

Committee Query/Comment

The Committee proposes an alternative amendment that would prevent a landlord from requesting solely cash payments, it would seek an amendment that would place a statutory duty on a landlord to offer a choice (potentially from a list of agreed options) in the method of payment for rent and other payments related to the tenancy. Committee asked if Minister would be minded to make that amendment. In parallel the Committee will seek its own legal advice as outlined above in preparation for a potential Committee amendment in that regard.

Departmental Response

At the meeting on 9 December Officials summarised the initial advice that it received on this issue. The issue did not arise during the proposals for private rented sector reform and the Department currently has no detailed evidence to clarify the issue and the need for policy and legislative intervention.

In the timeframe available for the passage of this bill the Department would be unable to undertake:-

- an impact analysis of the current position, the types of payments and agreements between Landlords and Tenants;
- how and why a change in line with the Committee's proposed amendment would be beneficial and to whom;
- how any other legislative measures (existing and/or proposed) including contract law may interact and impact; and
- any comparative analysis of other jurisdictions where such arrangements are in place.

The Department, therefore, does not wish to take the amendment proposed by Committee.

The Department will, however, ensure that Department's guidance to Landlords and Tenants will reiterate that Landlords should offer a choice in the method of payment.

The Department would welcome a summary of the legal advice being provided when it is available

Clause 7

4. Name of the Clause

Committee Query/ Comment

After consideration of the Officials' response on the matter, I can confirm that the Committee no longer seeks a change to the name of the clause.

Departmental Response

The Department notes the Committee response and in particular that it is no longer seeking a change of name to the clause.

5. Time period in 5D(4) be increased to three months

Committee Query/Comment

At the 9th December meeting the Department advised it is content to look at increasing the notice period to three months and is discussing this with the Minister and drafters.

Departmental Response

I can confirm that the Department will prepare an amendment to increase the notice period in 5D(4) to 3 months, is developing the text of a proposed amendment and will forward this to Committee as soon as possible.

Clause 8

6. Fire, Smoke and Carbon Monoxide Alarms, etc.

Committee Query/Comment

The Committee requests that the Department finds out further information regarding the review of the building regulations on fire safety standards and advises the Committee on the timeframe and progress of the review.

Departmental Response

The Department of Finance (DoF) has provided a response which is set out below.

A programme of work began in December 2019 to take forward changes to Part E (Fire safety) of the Building Regulations and associated guidance. Changes to the Building regulations are subject to normal policy

considerations and processes, including consultation with the public, the local Building Regulations Advisory Committee (NIBRAC) and the Statutory Committee and appropriate approvals.

DoF consulted on a first phase of proposed changes to the fire safety standards in relation to external fire spread requirements from August 2020 to October 2020.

It is hoped to bring forward a Statutory Rule (SR) before the end of this Assembly mandate to enact the changes proposed in that consultation. Changes to guidance in Technical Booklets B (Materials and Workmanship) and E (Fire safety) will accompany this regulatory change.

This initial amendment SR will form the first of a series of proposed legislative changes to fire safety requirements in the building regulations in the coming years. A second phase will involve addressing the issue of automatic fire suppression systems for certain buildings and the provision of fire safety information in Part E of the building regulations. DoF would hope to launch public consultation on this second phase in 2022, subject to the normal policy considerations and processes, as above.

Clause 9 (and Schedule 2)

7. Clause 9 and Schedule 2 – Energy Efficiency Regulations

Committee Query/Comment

The amended Schedule 2 was provided to the Committee on 9 December. The Committee requests that the Officials attend its meeting on 16 December to go through the Schedule. The Bill Office has advised the Committee that it is not obligated to come to a decision on the amended Schedule as it did not take evidence on it.

Departmental Response

Departmental officials will attend Committee meeting on 16 December to discuss Clause 9 and the amended Schedule 2.

Clause 10

8. Clause 10 and Schedule 3 – PAT testing

Committee Query/Comment

The Committee accepts that the frequency of electrical testing will be set out in the regulations and that the Department will consult with relevant stakeholders to determine an appropriate period for checks and that the appliances provided by the landlord are covered in the Bill. The Committee has decided not to pursue the PAT testing issue further.

Departmental Response

The Department notes the Committee response and in particular that it has decided not to pursue Portable Appliance (PAT) testing of tenant appliances.

Clause 11

9. Clause 11 – Notice to Quit - Amendment to 12 weeks

Committee Query/Comment

Given the potential implications of an amendment which could extend the notice to quit period to 6 months, the Committee is minded to consider bringing forward an amendment that changes the notice to quit period provided in the Bill from 8 weeks to 12 weeks (as is the case in the Private Tenancies (Coronavirus Modifications) Act 2021).

Departmental Response

The Department wishes to reserve its position on any amended notice to quit period until the outcome of its recently launched consultation which closes on 25 January 2022.

The Department would, however, like to explore further the Committee's consideration of an amendment similar to the Private Tenancies (Coronavirus Modifications) Act 2021.

In particular, does the Committee propose:

- That this would be applicable for all tenancies irrespective of length (or using tenancy length similar to that currently in the draft bill);
- The same period for both Landlords and Tenants (or notices given by Landlords only); and
- A universal 12 week period (i.e. no exempt cases or different notices for particular types of cases).

10. Clause 11 – Notice to Quit - Article 1 Protocol 1

Committee Query/Comment

The Committee is seeking the views of Assembly Legal Services as to whether amendments of the type proposed by the Committee would engage Article 1 of Protocol 1 of the ECHR and the potential consequences of this.

Departmental Response

The Department has been mindful of Article 1 of Protocol 1 of the ECHR in determining that the bill, as currently drafted, is within competence. That is it contains the 8 weeks' notice to quit period that a Landlord must provide for tenancies over 12 months duration and includes a power for the Department to change the period up to 6 months (or a period less than that) by amending the legislation when the Department assesses that this is appropriate and after adequate safeguards can be built in, for example a requirement to consult with bodies representing tenants and landlords and for the secondary legislation to be subject to draft affirmative resolution.

The Department notes that the Committee is seeking views from Assembly Legal Services and would welcome a summary of those views when they are available.

11. Clause 11 – Notice to Quit Consultation Timeline

Committee Query/Comment

The Committee requests that the Department provides a timeline showing how it intends to ensure that the responses from the consultation are available to the Committee and all MLAs in good time before the Consideration Stage of the Bill.

Departmental Response

It is difficult to provide a definitive response to the Committee's request for a timeline in advance of the outcome of the Notice to Quit consultation. The Department's consultation closes on 25th January 2022. It will take a number of weeks for the Department to consider the outcome of the consultation, determine if an amendment to the Bill is required, consult with Committee, obtain Executive approval and ensure that any changes remain with legislative competence including any impact on Article 1 of Protocol 1 of the ECHR. The Committee stage for the Bill completes by 28th January 2022. The remaining stages of the Bill – Consideration, Further Consideration and Final Scrutiny will need to be scheduled before the Assembly's is dissolved at end March 2022.