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Dear Janice

### **Private Tenancies Bill deliberations**

This response provides further information on the issues raised as queries on Clauses 1 to 5 during the public session with Departmental Officials.

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

Yours sincerely

**Diane Mulligan**  
Departmental Assembly Liaison Officer  
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## **Theme 1 – Tenancy Management (Clauses 1 and 2)**

### **Clause 1 – Tenant to be given notice regarding certain matters**

A Member highlighted the need for the Department to publish clear guidance with links to supporting materials, for both landlords and tenants regarding these matters and for it to be available on NIDirect.

The Committee also requested that an easy to read version be made available and that a template be made available for landlords to use.

The Officials stated that it was the Department's intention to provide such guidance and templates.

**The Committee request, for the record, that the Department confirms these intentions in its response to this letter.**

#### **Departmental Response**

The Department confirms that comprehensive, accessible guidance will be provided and published to assist landlords and tenants with the new legislative requirements.

An online template will be provided for landlords to download and use.

A Communication Strategy will be developed to ensure that all Landlords, tenants, advisory groups and Councils will be informed of the requirements.

### **Clause 2 – Tenant to be given notice regarding certain past matters**

The Chair highlighted an issue raised in the evidence it had received regarding verbal agreements or otherwise between landlords and tenants, whereby a tenant has been paying an increased rent for years and proof is unavailable. In this case would the landlord be required to refund the increased amount due to any retrospective element in connection with this Clause.

The Officials stated that there was no retrospective action by virtue of this Clause but that it corrected an accidental appeal of Article 4 of the 2006 Order and that landlords and tenants would both have to stand over verbal agreements in place before the Bill is enacted.

**The Committee requests that the Department confirms this in its response.**

#### **Departmental Response**

The Department confirms that there is no retrospective action by virtue of this Clause; it simply provides protection for those tenants who would have received notices under Article 4 of the 2006 Order but did not do so because of its' accidental repeal.

## **Theme 2 – Rental Payments and Rental Deposits (Clauses 3 – 7)**

### **Clause 3 – Tenant to be provided with a rent receipt for payment in cash**

- a) **The Committee requests that the Department: Provides a written explanation in the response of the rationale behind the choice of using “as soon as ‘reasonably possible’...” in the Bill;**
- b) **Also responds on the consideration of the possibility of inserting a time period (for example 28 days as used in Clause 1) in the Bill for the receipt to be provided to the tenant. Please indicate if the Minister would be minded to do so if the Committee requested this.**
- c) **The Committee requests that the Department considers the relevant Consumer Law regarding receipts and includes the information in its response and whether it would be possible for the Minister to define ‘receipt’ more fully in the Bill.**
- d) **The Committee requests a short written brief on the process of complaint, including the fact that it is handled by the Council where the private rented property is situated.**

### **Departmental Response**

- a) Article 5(3) requires that a receipt is given for a cash payment at the time the payment is made or if that is not possible as soon as reasonably possible after that time. The policy intent is to accommodate those Landlord / Tenant relationships where, the tenant would give the rental payment to the Landlord in a more informal setting when the Landlord may not have the means to acknowledge the payment – for example using a receipt book.

Should a receipt not be produced the Landlord is subject to a penalty. Should a receipt be produced but the tenant feels this took too long, the Council can assess the Landlord’s reasoning for the delay and impose a penalty if required.

- b) By inserting a time period, the offence is then automatically committed if the receipt is not supplied within the time period. This would not allow for scenarios such as above or when emergency circumstances occur which prevent the receipt being given within the time period. For example as this is for rental payment (monthly) the Landlord would not have the opportunity to provide the receipt when reminded at the next payment if this was beyond 28 days.

Officials will seek the Minister’s view on this request and notify the Committee.

- c) The Department contacted Department for the Economy regarding consumer law for receipts and received the following information –  
There is no consumer protection legislation of prescribing a trader to issue receipts to a consumer. When consumers are looking to return goods because they are faulty they do not necessarily have to produce a receipt to the trader in order to avail of their statutory remedies. Some form of proof of purchase is sufficient such as bank/credit card statements or it might be the case that it was unlikely that the goods had been purchased elsewhere.

The issue here is that the tenant is handing over cash and the option of a bank/credit card statement as proof of payment is limited should a dispute arise over payment.

Legislation that might be relevant is the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013. These Regs contain information requirements that a trader is required to provide to consumers for off premises and distance sales contracts etc.

Section 10 (2) of the Regs requires that 'The information and any cancellation form must be given on paper or, if the consumer agrees, on another durable medium'.

Durable medium is defined in S.5 of the Regs as ' "durable medium" means paper or email, or any other medium that –

- allows information to be addressed personally to the recipient,
- enables the recipient to store the information in a way accessible for future reference for a period that is long enough for the purposes of the information, and
- allows the unchanged reproduction of the information stored;

A receipt in a durable medium other than a paper receipt would could be considered sufficient proof of payment of the rent and would be of no less value than a paper receipt. It might also help to prevent landlords complaining about being burdened with paper work.

Officials have sought Departmental Solicitor's advice whether what is drafted in clause 3 is sufficient to satisfy the concerns raised by Committee and in particular if the fact that the clause states the landlord has to give a **written** receipt include a digital receipt. We will forward their response to Committee once received.

Officials would like to discuss this further with the Committee.

- d) Responsibility for the enforcement of the Private Tenancies (Northern Ireland) Order 2006 (PTO) lies with local councils. As the Private Tenancies Bill amends the PTO local councils will be responsible for enforcing this new legislation. If a landlord breaches any of his/her obligations under the new legislation a tenant can report it to the council where the private rented property is situated and the council have the power to prosecute either by way of fixed penalty notice or taking the landlord to court.

#### **Clause 4 – Limit of tenancy deposit amount**

The Committee raised the concern that a cap on the deposit amount may lead to increased advance rent being requested by landlords and that some landlords preferred to charge more than a month's 'rent as a deposit if tenants had a pet (for example).

The Officials stated that the Bill only dealt with deposits and that advanced rent payments (and other fees and charges) will be dealt with in the second stage of reforms. Officials also stated that there were no exemptions provided for in the Bill for any deposits larger than one month's rent.

- a) **The Committee requests that the response confirms those points.**

**A Member raised the issue of who had the legal liability for a deposit if a tenant paid the deposit to a letting agent, who in turn should have paid it into a tenancy deposit scheme but had not done so by the time the tenant was leaving the tenancy. The Officials agreed to provide a response to the query.**

- b) **The Committee requests a response to the query regarding the legal liability for the deposit in the above circumstances.**

**A Member queried the rationale for the time periods in this Clause and the Officials confirmed that the increases were chosen based on consultation responses from landlords.**

- c) **The Committee requests that the response confirms the explanation given at the meeting.**

### Departmental Response

- a) The Department confirms that the Bill only limits the amount of deposit that a landlord can charge and does not refer to rent in advance. This will be looked at along with the issue of letting agent regulation in a future phase of private rented sector reform.
- b) Article 5A(6) of the Private Tenancies (Northern Ireland) Order 2006 states:  
'In this Article and Article 5B references to a landlord in relation to any private tenancy include references to a person acting on behalf of the landlord in relation to the tenancy'.  
Article 5B contains the requirements relating to tenancy deposits and Article 5B(11) states that 'a **person** who contravenes this article is guilty of an offence and liable on summary conviction to a fine not exceeding £20,000.  
In the case above it would be the person acting on behalf of a landlord, the agent, who would be liable.
- c) In the 2017 proposals for change consultation the Department said it would amend legislation to allow landlords additional time (28 days) to protect the deposit and give required information to the tenant. The 13 respondents who answered this question were all in favour of this increase to 28 days from the 14 days in the legislation.  
When working with the Office of Legislative Counsel through this amendment it was decided that in a scenario where a landlord didn't protect the deposit until day 27 which was within their legal right he/she would then require additional time to get the information to the tenant. An extra week was legislated for to allow for this type of scenario.