

Private Tenancies Bill

[AS INTRODUCED]

LEGISLATIVE COMPETENCE

At Introduction the Minister for Communities had made the following statement under section 9 of the Northern Ireland Act 1998:

“In my view the Private Tenancies Bill would be within the legislative competence of the Northern Ireland Assembly.”

Private Tenancies Bill

[AS INTRODUCED]

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A

BILL

TO

Amend the law relating to private tenancies.

BE IT ENACTED by being passed by the Northern Ireland Assembly and assented to by Her Majesty as follows:

Tenant to be given notice regarding certain matters

1.—(1) The 2006 Order is amended in accordance with subsections (2) to (4).

(2) In Part 2, after the italic heading “*Particulars relating to the tenancy, etc.*” insert—

5 **“Tenant to be given notice regarding certain matters: grant of tenancy**

4A.—(1) This Article applies where a private tenancy of a dwelling-house is granted on or after the date on which section 1 of the Private Tenancies Act (Northern Ireland) 2021 comes into operation.

10 (2) The landlord under the tenancy must, within 28 days after the date on which the tenancy is granted, give to the tenant a notice—

(a) in the prescribed form, and

(b) containing the prescribed particulars and other prescribed information relating to the tenancy.

15 (3) A tenant must not be required to make a payment in respect of any notice under paragraph (2).

(4) A landlord who fails to comply with paragraph (2) is guilty of an offence under this Order.

Tenant to be given notice regarding certain matters: variation of certain terms

20 4B.—(1) This Article applies where, on or after the date on which section 1 of the Private Tenancies Act (Northern Ireland) 2021 comes into operation, a prescribed term of a private tenancy of a dwelling-house is

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varied; and it applies regardless of the date on which the tenancy was granted.

(2) The landlord under the tenancy must, within 28 days after the date on which the term of the tenancy is varied, give to the tenant a notice—

- 5 (a) in the prescribed form, and
(b) containing the prescribed information relating to the variation of the term.

(3) In paragraphs (1) and (2) “varied” includes varied by omission.

10 (4) A tenant must not be required to make a payment in respect of any notice under paragraph (2).

(5) A landlord who fails to comply with paragraph (2) is guilty of an offence under this Order.

Continued failure by landlord to provide notice under Article 4A or 4B after conviction or fixed penalty

15 **4C.**—(1) If a landlord is convicted of an offence under Article 4A(4) or 4B(5), and the failure continues for more than 14 days after the conviction, the landlord is deemed to have committed a further offence under that paragraph in respect of that failure.

(2) Paragraph (3) applies where—

- 20 (a) a landlord fails to comply with Article 4A(2) or 4B(2),
(b) the landlord is given a fixed penalty notice under Article 68A in respect of an offence under Article 4A(4) or 4B(5) on the grounds of that failure, and
(c) the landlord pays the fixed penalty stated in the notice.

25 (3) If the failure to comply with Article 4A(2) or 4B(2) continues for more than 14 days after the landlord pays the fixed penalty, the landlord is guilty of an offence under this Order.”.

(3) In Article 68(1) (prosecution and punishment of offences), after “Article” insert “4A(4), 4B(5), 4C(3),”.

30 (4) In Article 68A (fixed penalty for certain offences)—

(a) in paragraph (1), after “has committed” insert—

“(za) an offence under Article 4A(4) or 4B(5), except one deemed to have been committed by virtue of Article 4C(1);

(zb) an offence under Article 4C(3);”;

35 (b) in paragraph (8), after “under Article” insert “4A(4), 4B(5), 4C(3),”.

(5) Omit section 1 of the Housing (Amendment) Act (Northern Ireland) 2011.

Tenant to be given notice regarding certain past matters

40 **2.** Schedule 1 provides for the giving of notice regarding certain matters to the tenants of dwelling-houses that are let under a private tenancy on the date on which section 1 comes into operation—

- (a) where the tenancy was granted on or after 30 June 2011 but before the date on which section 1 comes into operation;

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- (b) where certain terms of the tenancy were varied on or after 30 June 2011 but before the date on which section 1 comes into operation.

Tenant to be provided with a rent receipt for payment in cash

3.—(1) The 2006 Order is amended as follows.

5 (2) For Article 5 substitute—

“Tenant to be provided with a rent receipt for payment in cash

5.—(1) This Article applies where the tenant of a dwelling-house let under a private tenancy makes any payment of rent in cash.

10 (2) The landlord must provide the tenant with a written receipt for the payment stating—

- (a) the date of payment;
- (b) the amount paid;
- (c) if any amount remains outstanding, that amount;
- (d) if no further amount remains outstanding, that fact.

15 (3) The receipt must be provided—

- (a) at the time the payment is made, or
- (b) if that is not possible, as soon as reasonably possible after that time.

20 (4) A tenant must not be required to make a payment in respect of the provision of the receipt.

(5) If the landlord under a private tenancy fails to comply with paragraph (2) or (3), the following are guilty of an offence under this Order—

- (a) the landlord, and
- 25 (b) any person appointed by the landlord to provide the receipt.

(But see Article 5ZB for a defence to this offence.)

Continued failure by landlord to provide rent receipt after conviction or fixed penalty

30 **5ZA.**—(1) If a landlord is convicted of an offence under Article 5(5) in respect of a failure to comply with Article 5(2), and the failure continues for more than 14 days after the conviction, the landlord is deemed to have committed a further offence under Article 5(5) in respect of that failure.

(2) Paragraph (3) applies where—

- (a) a landlord fails to comply with Article 5(2),
- 35 (b) the landlord is given a fixed penalty notice under Article 68A in respect of an offence under Article 5(5) on the grounds of that failure, and
- (c) the landlord pays the fixed penalty stated in the notice.

40 (3) If the failure to comply with Article 5(2) continues for more than 14 days after the landlord pays the fixed penalty, the landlord is guilty of an offence under this Order.

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(But see Article 5ZB for a defence to this offence.)

Controlled tenancies: defence to offences under Articles 5 and 5ZA

5ZB.—(1) This Article applies where, in the case of a controlled tenancy (within the meaning given by Article 40(4))—

5 (a) a person is charged with an offence under Article 5(5) and a receipt complying with Article 5(2)(a) and (b) was provided in accordance with Article 5(3), or

10 (b) a person is charged with an offence under Article 5ZA(3) and a receipt complying with Article 5(2)(a) and (b) was provided at any time before the end of the period of 14 days mentioned in Article 5ZA(3) (including before the fixed penalty notice was given).

(2) Paragraph (5) applies if either condition A or condition B is met.

(3) Condition A is that—

15 (a) no further amount in fact remained outstanding,
(b) the receipt stated that there was an amount outstanding, and
(c) that amount consists wholly of a sum that is irrecoverable by virtue of Article 50(1).

(4) Condition B is that—

20 (a) an amount in fact remained outstanding (“the true arrears”),
(b) the receipt stated as outstanding an amount that was more than the true arrears, and
(c) the difference between the stated amount and the true arrears consists wholly of a sum that is irrecoverable by virtue of Article 50(1).

25 (5) It is a defence for the person charged to prove that the landlord had a bona fide claim that the sum mentioned in paragraph (3)(c) or (4)(c) was recoverable.”.

(3) In Article 50 (tenancies subject to rent control: rent in excess of limit to be irrecoverable), after paragraph (3) insert—

30 “(4) In paragraph (2) “similar document” does not include a receipt under Article 5(2).”.

(4) In Article 66(1)(a) (service on an agent named in the rent book deemed to be service on the landlord), for “the rent book” substitute “a rent book”.

35 (5) In Article 68(1) (prosecution and punishment of offences), for “5(4)” substitute “5(5), 5ZA(3)”.

(6) In Article 68A (fixed penalty for certain offences)—

(a) in paragraph (1), after sub-paragraph (zb) (as inserted by section 1), insert—

40 “(zc) an offence under Article 5(5), except one deemed to have been committed by virtue of Article 5ZA(1);

(zd) an offence under Article 5ZA(3);”;

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(b) in paragraph (8), after “4C(3),” (as inserted by section 1) insert “5(5), 5ZA(3),”.

Limit on tenancy deposit amount

4.—(1) The 2006 Order is amended as follows.

5 (2) After Article 5ZB (as inserted by section 3) insert—

“Limit on tenancy deposit amount

Tenancy deposit limit of 1 month’s rent

5ZC.—(1) A person (A) must not—

10 (a) require the payment by another person of a tenancy deposit in connection with a private tenancy, or

(b) require that the person to whom a tenancy deposit would otherwise be repaid (B) consent to the retention of the deposit (by A or a third person) in connection with a private tenancy,

that is in excess of the amount of 1 month’s rent payable under the tenancy.

15 (2) For the purposes of paragraph (1)(b), A requires that B consent to the retention of a deposit if—

(a) a tenancy deposit is paid (at any time) in connection with a private tenancy (“the first tenancy”),

20 (b) a person proposes to grant, or has granted, a private tenancy of that or another dwelling-house (whether to the tenant of the first tenancy or to another person), and

(c) A requires that B consent to some or all of the deposit continuing to be held, on or after the ending of the first tenancy, in connection with the new tenancy.

25 (3) “1 month’s rent payable under the tenancy”, where the rent under a private tenancy is not payable monthly, means—

(a) where the rent under the tenancy is payable for periods of whole months, the rent for a period divided by the number of months in the period;

30 (b) where the rent is payable for periods determined otherwise than by reference to whole months, the rent attributable to 1 day’s letting under the tenancy multiplied by 30.

(4) A person who contravenes paragraph (1) is guilty of an offence under this Order.

35 (5) Where a person—

(a) is convicted of an offence under paragraph (4), and

(b) has received or, as the case may be, retained a tenancy deposit in excess of the amount of 1 month’s rent payable under the tenancy,

the court may order the excess to be repaid to the person who paid it.

40 (6) In this Article—

“tenancy deposit”, in relation to a private tenancy, means any money intended to be held (by the landlord or otherwise) as security for—

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- (a) the performance of any obligations of the tenant arising under or in connection with the tenancy, or
 - (b) the discharge of any liability of the tenant so arising;
- “money” means money in the form of cash or otherwise.

5 **Breach of tenancy deposit limit: recoverability of excess**

5ZD.—(1) A tenancy deposit in relation to a private tenancy that has not been paid is irrecoverable to the extent that it exceeds the amount of 1 month’s rent payable under the tenancy (and this is so despite anything in any agreement).

10 (2) Where, in connection with a private tenancy—

- (a) a tenancy deposit has been paid or retained (as defined in paragraph (3)), and
- (b) at the time of payment or retention, or at any time thereafter, the deposit exceeds the amount of 1 month’s rent payable under the tenancy,

15 the excess is recoverable by the person who paid it.

(3) For the purposes of paragraph (2), if—

- (a) a tenancy deposit is paid (at any time) in connection with a private tenancy (“the first tenancy”),
- 20 (b) a private tenancy is granted of that or another dwelling-house (whether to the tenant of the first tenancy or to another person) or (where the first tenancy is a protected tenancy) a statutory tenancy comes into existence, and
- (c) on or after the ending of the first tenancy, some or all of the deposit

25 continues to be held in connection with the new tenancy, the deposit is retained in connection with the new tenancy.

(4) In this Article “1 month’s rent payable under the tenancy” and “tenancy deposit” have the same meaning as in Article 5ZC.”.

30 (3) In Article 68(1) (prosecution and punishment of offences), after “5ZA(3)” (as inserted by section 3) insert “, 5ZC(4)”.

(4) In Article 68A (fixed penalty for certain offences)—

- (a) in paragraph (1), after sub-paragraph (zd) (as inserted by section 3) insert—
“(ze) an offence under Article 5ZC(4);”;
- 35 (b) in paragraph (8), after “5ZA(3),” (as inserted by section 3) insert “5ZC(4),”.

(5) The following provisions (inserted by subsection (2)) have effect as follows—

- 40 (a) Article 5ZC(1)(a) prohibits the making of a requirement within that sub-paragraph on or after the commencement date;
- (b) Article 5ZC(1)(b) prohibits the making of a requirement within that sub-paragraph on or after the commencement date, regardless of the date on which the deposit was paid or the date on which the first tenancy ends;

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(c) Article 5ZD(1) does not prevent the recovery of a tenancy deposit under a legal obligation that existed before the commencement date (whether that obligation accrues before or after that date);

5 (d) Article 5ZD(2) has effect in relation to tenancy deposits that are paid on or after the commencement date except where the deposit was required to be paid under or in connection with a legal obligation that existed before the commencement date (whether that obligation accrues before or after that date);

10 (e) Article 5ZD(2) has effect in relation to tenancy deposits that are retained on or after the commencement date except where the deposit was liable to be retained under or in connection with a legal right that existed before the commencement date (whether that right accrues before or after that date).

(6) In subsection (5) “commencement date” means the date on which this section comes into operation.

15 **Increase in time limits for requirements relating to tenancy deposits**

5. In Article 5B of the 2006 Order (requirements relating to tenancy deposits)—

(a) in paragraph (3), for “14 days” substitute “28 days”;

(b) in paragraph (6)(b), for “28 days” substitute “35 days”.

Certain offences in connection with tenancy deposits to be continuing offences

20 6. In Article 5B of the 2006 Order (requirements relating to tenancy deposits), after paragraph (11) insert—

“(11A) A person who commits an offence by failing to comply with the requirements of paragraph (3) or (6) continues to commit the offence throughout any period during which the failure continues.”.

25 **Restriction on rent increases**

7.—(1) The 2006 Order is amended as follows.

(2) After Article 5B insert—

“Rent increases

Restriction on frequency of rent increases

30 5C.—(1) This Article applies to any private tenancy except a controlled tenancy (within the meaning given by Article 40(4)).

(2) The rent payable under a tenancy to which this Article applies may not be increased—

35 (a) within the period of 12 months beginning with the date on which the tenancy is granted, or

(b) within the period of 12 months beginning with the date on which the last increase took effect;

but this is subject to regulations under paragraph (3).

40 (3) The Department may by regulations specify circumstances in which paragraph (2) does not apply.

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(4) Circumstances specified under paragraph (3) may include, in particular, circumstances in which the dwelling-house let under the tenancy is renovated, refurbished, altered or extended.

5 (5) The Department may by regulations amend paragraph (2)(a) or (b) so as to substitute, for the period that is for the time being specified there, a period that is 12 months or more but not more than 2 years.

Requirement to give written notice of increase

5D.—(1) This Article applies to any private tenancy except a controlled tenancy (within the meaning given by Article 40(4)).

10 (2) The rent payable under a tenancy to which this Article applies may not be increased unless the landlord gives written notice complying with paragraphs (3) to (5).

(3) The notice must specify—

- 15 (a) the date on which the increase in the rent will take effect, and
(b) the rent that will be payable after the increase.

(4) The date specified under paragraph (3)(a) must be not less than 2 months after the date on which the notice is given to the tenant.

(5) The notice must—

- 20 (a) contain such other information, and
(b) be in such form,
as may be prescribed.”.

(3) In Article 72 (provisions concerning regulations)—

- (a) in paragraph (3), after “5A,” insert “5C(3) or (5),”;
(b) after paragraph (4) insert—
25 “(5) Before laying a draft of regulations under Article 5C(5) before the Assembly, the Department must consult—
(a) such persons as appear to it to be representative of landlords,
(b) such persons as appear to it to be representative of tenants, and
(c) such persons as the Department considers appropriate (which may
30 include landlords or tenants).”.

Fire, smoke and carbon monoxide alarms, etc.

8.—(1) The 2006 Order is amended as follows.

(2) After Article 11 insert—

“Application of Articles 11B to 11F

35 11A.—(1) The provisions set out in Articles 11B to 11F apply in relation to—

- (a) any private tenancy of a dwelling-house granted on or after the date on which section 8 of the Private Tenancies Act (Northern Ireland) 2021 comes into operation, and

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(b) any private tenancy of a dwelling-house granted before the date on which section 8 of the Private Tenancies Act (Northern Ireland) 2021 comes into operation (but only from the prescribed date).

5 (2) For the purposes of paragraph (1)(b), a statutory tenancy is to be treated as if it were a private tenancy granted before the commencement of section 8 of the Private Tenancies Act (Northern Ireland) 2021 (regardless of when the dwelling-house in question became subject to the statutory tenancy).

Landlord's duties: fire, smoke and carbon monoxide alarms

10 11B.—(1) The landlord under a private tenancy must keep in repair and in proper working order—

(a) sufficient appliances for detecting fire or smoke, and for giving warning in the event that they are detected, and

15 (b) sufficient appliances for detecting whether carbon monoxide is present at levels that are harmful to people, and for giving warning if it is.

(2) The Department may by regulations set minimum standards for the purpose of determining whether the duties under paragraph (1) have been complied with.

20 (3) The standards that may be set under paragraph (2) include standards as to the number, type and condition of appliances that should be installed in circumstances specified in the regulations.

(4) A landlord who fails to comply with a duty under paragraph (1) is guilty of an offence under this Order.

Tenant's duties: fire, smoke and carbon monoxide alarms

25 11C. The tenant under a private tenancy—

(a) must take proper care of the appliances installed for the purposes of Article 11B as a good tenant;

30 (b) must make good any damage to those appliances wilfully or negligently done or caused by the tenant, by any tenant of his or hers or by any other person lawfully living in or lawfully visiting the premises.

Landlord's duties: private tenancy of part of a building

35 11D. Where a dwelling-house let under a private tenancy consists of a part of a building, the duties imposed on the landlord by Article 11B may require the landlord to position appliances in a part or parts of the building not comprised in the tenancy.

General qualification on landlord's duties

40 11E. The duties imposed on the landlord by Article 11B do not require the landlord to carry out works or repairs for which the tenant is liable by virtue of Article 11C.

Knowledge of disrepair

11F. A landlord is not under a duty to carry out works by virtue of Article 11B unless the landlord has actual knowledge (whether because of notice given by the tenant or otherwise) of the need for those works.”.

5 (3) In Article 68(1) (prosecution and punishment of offences), after “5ZC(4),” (as inserted by section 4) insert “11B(4),”.

(4) Article 68A (fixed penalty for certain offences) is amended as follows.

(5) In paragraph (1)—

(a) at the end of sub-paragraph (a), omit “or”;

10 (b) after that sub-paragraph insert—

“(aa) an offence under Article 11B(4);”.

(6) In paragraph (8), after “5B(10)” insert “, 11B(4)”.

Energy efficiency regulations

15 **9.** Schedule 2 contains amendments to the 2006 Order enabling the Department for Communities to make regulations concerning the energy efficiency of dwelling-houses let under a private tenancy.

Electrical safety standards regulations

20 **10.** Schedule 3 contains amendments to the 2006 Order enabling the Department for Communities to make regulations concerning electrical safety standards in dwelling-houses let under a private tenancy.

Validity requirements for notices to quit given by landlords and tenants

11.—(1) The 2006 Order is amended in accordance with subsections (2) to (8).

(2) Article 14 (length of notice to quit) is amended in accordance with subsections (3) to (6).

25 (3) For paragraph (1) substitute—

“(1) A notice by a landlord to quit a dwelling-house let under a private tenancy is not valid unless—

(a) it is in the prescribed form and contains the prescribed information, and

30 (b) it is given not less than the relevant period before the date on which it is to take effect.”.

(4) In paragraph (1A)(a) and (b), for “5 years” substitute “12 months”.

(5) After paragraph (2) insert—

35 “(3) The Department may by regulations amend paragraph (1A) so as to provide that—

(a) in relation to a tenancy in existence for more than 12 months but not more than 10 years, the relevant period is a period that is more than 8 weeks but not more than 6 months;

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(b) in relation to a tenancy in existence for more than 10 years, the relevant period is a period that is more than 12 weeks but not more than 6 months.

(4) Regulations under sub-paragraph (a) or (b) of paragraph (3) may—

5 (a) provide that any amendments do not apply in relation to cases specified in the regulations;

(b) provide that the relevant period is different in different cases within that sub-paragraph described by reference to the period for which the tenancy has been in existence.

10 (But this is without prejudice to the application of section 17(5) of the Interpretation Act (Northern Ireland) 1954.)

(5) Any amendment made by virtue of regulations under paragraph (3) does not apply in relation to a notice to quit given before the date on which the amendment comes into operation.”.

15 (6) At the end of the heading to the Article add “: by landlords”.

(7) After Article 14 insert—

“Length of notice to quit: by tenants

14A.—(1) A notice by a tenant to quit a dwelling-house let under a private tenancy is not valid unless—

20 (a) it is given in writing, and

(b) it is given not less than the relevant period before the date on which it is to take effect.

(2) For the purposes of paragraph (1) the relevant period is—

25 (a) 4 weeks, if the tenancy has not been in existence for more than 10 years;

(b) 12 weeks, if the tenancy has been in existence for more than 10 years.

(3) Paragraph (1) applies regardless of the date on which the private tenancy was granted.

30 (4) The Department may by regulations amend paragraph (2) so as to provide that, in relation to a tenancy in existence for more than 12 months but not more than 10 years, the relevant period is a period that is more than 4 weeks but not more than 12 weeks.

35 (5) Regulations under paragraph (4) may provide that the relevant period is different in different cases within that paragraph described by reference to the period for which the tenancy has been in existence.

(But this is without prejudice to the application of section 17(5) of the Interpretation Act (Northern Ireland) 1954.)

40 (6) Any amendment made by virtue of regulations under paragraph (4) does not apply in relation to a notice to quit given before the date on which the amendment comes into operation.”.

(8) In Article 72 (provisions concerning regulations)—

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(a) in paragraph (3), after “5C(3) or (5),” (as inserted by section 7) insert “14, 14A,”;

(b) in paragraph (5) (as inserted by section 7), after “Article 5C(5)” insert “, 14 or 14A”.

5 (9) In consequence of subsection (3), omit section 3(2) of the Housing (Amendment) Act (Northern Ireland) 2011.

(10) The amendments made by this section do not apply in relation to a notice to quit given before the date on which this section comes into operation.

Interpretation

10 **12.** In this Act “the 2006 Order” means the Private Tenancies (Northern Ireland) Order 2006.

Commencement

13.—(1) The following provisions come into operation on the day after the day on which this Act receives Royal Assent—

- 15 (a) section 12;
(b) this section; and
(c) section 14.

(2) The following provisions come into operation on the day after the day on which this Act receives Royal Assent insofar as they confer power to make
20 regulations—

- (a) section 1;
(b) section 2 and Schedule 1;
(c) section 7;
(d) section 8;
25 (e) section 9 and Schedule 2;
(f) section 10 and Schedule 3; and
(g) section 11.

(3) The other provisions of this Act come into operation on such day or days as the Department for Communities may by order appoint.

30 (4) An order under this section may make such transitory or transitional provision, or savings, as the Department for Communities considers appropriate.

Short title

14. This Act may be cited as the Private Tenancies Act (Northern Ireland) 2021.

SCHEDULES

SCHEDULE 1

Section 2.

TENANT TO BE GIVEN NOTICE REGARDING CERTAIN PAST
MATTERS

5

*Tenancies granted on or after 30 June 2011 but before the coming into operation
of section 1*

1.—(1) This paragraph applies where—

10 (a) a private tenancy of a dwelling-house was granted on or after 30 June 2011
but before the commencement date; and

(b) the dwelling-house is let under that tenancy on the commencement date.

(2) The landlord under the tenancy must, within 28 days after the
commencement date, give to the tenant a notice—

(a) in the prescribed form, and

15 (b) containing the prescribed particulars and other prescribed information
relating to the tenancy.

(3) Where a landlord has, between the granting of the tenancy and the
commencement date, given the tenant a notice that substantially meets the
requirements of sub-paragraph (2), the landlord is to be regarded as having
20 complied with that sub-paragraph.

(4) A tenant must not be required to make a payment in respect of any notice
under sub-paragraph (2).

(5) A landlord who fails to comply with sub-paragraph (2) is guilty of an
offence.

25 *Variation of certain terms on or after 30 June 2011 but before the coming into
operation of section 1*

2.—(1) This paragraph applies where—

(a) on or after 30 June 2011 but before the commencement date, a prescribed
term of a private tenancy of a dwelling-house was varied; and

30 (b) the dwelling-house is let under that tenancy on the commencement date;
and it applies regardless of the date on which the tenancy was granted.

(2) In paragraph (1) “varied” includes varied by omission.

(3) The landlord under the tenancy must, within 28 days after the
commencement date, give to the tenant a notice—

35 (a) in the prescribed form, and

(b) containing the prescribed particulars and other prescribed information
relating to the tenancy.

(4) Where a landlord has, between the varying of the prescribed term and the commencement date, given the tenant a notice that substantially meets the requirements of sub-paragraph (3), the landlord is to be regarded as having complied with that sub-paragraph.

5 (5) A tenant must not be required to make a payment in respect of any notice under sub-paragraph (3).

(6) A landlord who fails to comply with sub-paragraph (3) is guilty of an offence.

Continued failure by landlord to provide notice under paragraph 1 or 2 after conviction or fixed penalty

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3.—(1) If a landlord is convicted of an offence under paragraph 1(5) or 2(6), and the failure continues for more than 14 days after the conviction, the landlord is deemed to have committed a further offence under that sub-paragraph in respect of that failure.

15 (2) Sub-paragraph (3) applies where—

(a) a landlord fails to comply with paragraph 1(2) or 2(3),

(b) the landlord is given a fixed penalty notice under paragraph 6 in respect of an offence under paragraph 1(5) or 2(6) on the grounds of that failure, and

(c) the landlord pays the fixed penalty stated in the notice.

20 (3) If the failure to comply with paragraph 1(2) or 2(3) continues for more than 14 days after the landlord pays the fixed penalty, the landlord is guilty of an offence.

Punishment and prosecution of offences under this Schedule

25 4. A person who is guilty of an offence under paragraph 1(5), 2(6) or 3(3) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

5. Proceedings for an offence under paragraph 1(5), 2(6) or 3(3) may be instituted by the appropriate district council.

Fixed penalty notices

30 6.—(1) This paragraph applies where on any occasion an authorised officer of a district council has reason to believe that a person (“P”) has committed—

(a) an offence under paragraph 1(5) or 2(6), except one deemed to have been committed by virtue of paragraph 3(1), or

(b) an offence under paragraph 3(3).

35 (2) The authorised officer may give P a notice in the prescribed form offering P the opportunity of discharging any liability to conviction for the offence by payment of a fixed penalty.

(3) A fixed penalty payable under this paragraph is payable to the district council whose officer gave the notice.

(4) Where P is given a notice under this paragraph in respect of an offence—

40 (a) no proceedings may be instituted for that offence before the expiration of the period of 14 days, or such other period as may be specified in the notice, following the date of the notice; and

(b) P may not be convicted of that offence if P pays the fixed penalty before the expiration of that period.

(5) A notice under this paragraph must give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence.

(6) A notice under this paragraph must also state—

(a) the period during which, by virtue of sub-paragraph (4), proceedings will not be taken for the offence;

(b) the amount of the fixed penalty; and

(c) the person to whom and the address at which the fixed penalty may be paid.

(7) The fixed penalty payable to a district council under this paragraph in respect of an offence under paragraph 1(5), 2(6) or 3(3) is an amount determined by the council, being an amount not exceeding one-fifth of the maximum fine payable on summary conviction of that offence.

(8) In any proceedings a certificate which—

(a) purports to be signed on behalf of the clerk of the council, and

(b) states that payment of a fixed penalty was or was not received by a date specified in the certificate,

is evidence of the facts stated.

(9) A district council may use amounts paid to it in pursuance of notices under this paragraph only for the purposes of its functions under this paragraph, the 2006 Order or such other of its functions as may be prescribed.

(10) In this paragraph “authorised officer”, in relation to a district council, means an officer of the council who is authorised in writing by the council for the purposes of this paragraph.

Supplementary and interpretation

7. Regulations under paragraph 1, 2 or 6 are subject to negative resolution.

8. In paragraphs 1 and 2 “the commencement date” means the date on which section 1 comes into operation.

9. Any expression that is used in both this Schedule and the 2006 Order has the same meaning in this Schedule as in that Order.

SCHEDULE 2

Section 9.

ENERGY EFFICIENCY REGULATIONS

1. The 2006 Order is amended as follows.

2. After Article 11F (as inserted by section 8) insert—

*“Energy efficiency***Energy efficiency of dwelling-houses let under a private tenancy**

11G.—(1) The Department may by regulations provide that a person may not—

- 5 (a) grant a private tenancy of a dwelling-house to which paragraph (2) applies;
- (b) continue to let out under a private tenancy a dwelling-house to which paragraph (2) applies.

(2) This paragraph applies to a dwelling-house—

- 10 (a) that is of such description of dwelling-house as is provided for by the regulations,
- (b) in relation to which there is an energy performance certificate, and
- (c) that falls below such level of energy efficiency (as demonstrated by the energy performance certificate) as is provided for by the regulations.
- 15

(3) The regulations may provide that a dwelling-house that is of such description as is provided for by the regulations is exempt from such prohibitions imposed by the regulations as are prescribed in the regulations.

20 (4) In this Article—

“private tenancy” does not include a protected tenancy or a statutory tenancy;

“energy performance certificate” means—

- 25 (a) an energy performance certificate within the meaning given by the Energy Performance of Buildings (Certificates and Inspections) Regulations (Northern Ireland) 2008, or
- (b) such other statutory document issued for the purpose of determining or recording the energy performance or efficiency of a dwelling-house as may be prescribed.

30 (5) In paragraph (4) “statutory document” has the meaning given by section 1(e) of the Interpretation Act (Northern Ireland) 1954.

Private tenancy energy efficiency regulations: power to create an offence

35 11H.—(1) Regulations under Article 11G may provide that a person who breaches a prohibition imposed under paragraph (1) of that Article is guilty of an offence.

(2) Any offence created by virtue of paragraph (1)—

- (a) is not to be triable on indictment or punishable with imprisonment;
- (b) is not to be punishable with a fine exceeding level 5 on the standard scale.”.
- 40

3. In Article 68(3) (prosecution by appropriate district council), after “this Order” insert “(including any offence created by virtue of Article 11H)”.

4. In Article 68A (fixed penalty for certain offences)—

(a) in paragraph (1), after sub-paragraph (aa) (as inserted by section 8) insert—

“(ab) an offence created by virtue of Article 11H; or”;

5 (b) in paragraph (8), after “or 65A(4)” insert “or an offence created by virtue of Article 11H”.

5. In Article 72 (provisions concerning regulations), after paragraph (5) (as inserted by section 7) insert—

10 “(6) Before making regulations under Article 11G, the Department must consult—

(a) the Department for the Economy and the Department of Finance,

(b) district councils,

(c) such persons as appear to the Department to be representative of landlords, and

15 (d) such other persons as the Department considers appropriate (which may include landlords).”.

SCHEDULE 3

Section 10.

ELECTRICAL SAFETY STANDARDS REGULATIONS

20 1. The 2006 Order is amended as follows.

2. After Article 11H (as inserted by Schedule 2) insert—

“Electrical safety standards

Electrical safety standards for dwelling-houses let under a private tenancy

25 11I.—(1) The Department may by regulations impose duties on the landlord of a dwelling-house let under a private tenancy for the purposes of ensuring that electrical safety standards are met during the period when the dwelling-house is let under the tenancy.

30 (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.

35 (3) The duties imposed on the landlord may include duties to ensure that a qualified person has checked that the electrical safety standards are met.

(4) The regulations may make provision about—

(a) how and when checks are carried out;

(b) who is qualified to carry out checks.

40 (5) The regulations may require the landlord to undertake works as a result of checks carried out by the qualified person.

- (6) The regulations may require the landlord—
- (a) to obtain a certificate from the qualified person confirming that electrical safety standards are met;
 - (b) to give a copy of the certificate to the tenant, or a prospective tenant, or any other person specified in the regulations;
 - (c) where the electrical safety standards are not met, to obtain from the qualified person a written description of the works required to meet the standards.

(7) Regulations under this Article are referred to in Articles 11J and 11K as “electrical safety standards regulations”.

Electrical safety standards regulations: power to create an offence

11J.—(1) Electrical safety standards regulations may provide that a landlord who fails to comply with a duty imposed under Article 11I(1) is guilty of an offence.

- (2) Any offence created by virtue of paragraph (1)—
- (a) is not to be triable on indictment or punishable with imprisonment;
 - (b) is not to be punishable with a fine exceeding level 5 on the standard scale.

Electrical safety standards regulations: other enforcement

11K.—(1) Electrical safety standards regulations may make provision, for the enforcement of a duty imposed under Article 11I(1)—

- (a) under which a landlord may be required to take remedial action;
- (b) under which a district council may, with the consent of the tenant, arrange for a person to enter the dwelling-house and take remedial action.

(2) Regulations made by virtue of paragraph (1) may include, in particular, provision about procedural matters.

(3) Regulations made by virtue of paragraph (1) that make provision in connection with paragraph (1)(a) may include, in particular, provision enabling the landlord to make representations against any requirement to take remedial action.

(4) Regulations made by virtue of paragraph (1) that make provision in connection with paragraph (1)(b) may include, in particular, provision—

- (a) about appeals against any proposed remedial action;
- (b) enabling a district council to recover from the landlord any costs incurred by it in taking remedial action (“remedial costs”);
- (c) enabling a district council to recover from any agent of the landlord any remedial costs, up to the total amount of money held by the agent on behalf of the landlord;
- (d) under which any remedial costs due under the regulations are deemed, until recovered, to be charged on and payable out of the estate of the landlord in the land in relation to which the costs were

incurred and the estate in that land of any person deriving title from the landlord;

(e) about the enforceability and registration of any charge created under the regulations;

5 (f) about the application of costs recovered.”.

3. In Article 68(3) (prosecution by appropriate district council), after “11H” (as inserted by Schedule 2) insert “or 11J”.

4. In Article 68A (fixed penalty for certain offences)—

10 (a) in paragraph (1)(ab) (as inserted by Schedule 2), after “11H” insert “or 11J”;

(b) in paragraph (8), after “11H” (as inserted by Schedule 2) insert “or 11J”.

5. In Article 72 (provisions concerning regulations)—

(a) after paragraph (3) insert—

15 “(3A) Regulations under Article 11I(1) that contain provision mentioned in Article 11K(4)(d) must not be made unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.”;

(b) after paragraph (6) (as inserted by Schedule 2) insert—

“ (7) Before making regulations under Article 11I(1), the Department must consult—

20 (a) district councils,

(b) such persons as appear to the Department to be representative of landlords, and

(c) such other persons as the Department considers appropriate (which may include landlords).

25 (8) In the case of regulations that contain provision mentioned in Article 11K(4)(d), the consultation must take place before the draft of the regulations is laid before the Assembly.”.

Private Tenancies Bill

[AS INTRODUCED]

A Bill to amend the law relating to private tenancies.

Introduced by: Ms Deirdre Hargey, Minister for Communities

On: 06 July 2021

Bill Type: Executive Bill

ACCOMPANYING DOCUMENTS

**An Explanatory and Financial Memorandum is printed separately as
NIA Bill 32/17-22 EFM.**



Northern Ireland
Assembly

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ISBN: 978-1-78619-439-8