

# **PRIVATE TENANCIES BILL**

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## **EXPLANATORY AND FINANCIAL MEMORANDUM**

### **INTRODUCTION**

1. This Explanatory and Financial Memorandum has been prepared by the Department for Communities (“the Department”) in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.

2. The Memorandum needs to be read in conjunction with the Bill. It is not, and neither is it meant to be, a comprehensive description of the Bill. Where a clause or part of a clause does not seem to require an explanation or comment, none is given.

### **BACKGROUND AND POLICY OBJECTIVES**

3. The private rented sector has grown over the past number of years to become the second largest type of housing tenure. It is now larger than the social housing sector and accounts for over 17% of all housing stock in Northern Ireland.

4. Almost half (48%) of those living in the private rented sector receive state financial support via Housing Benefit or Universal Credit to help meet housing costs. A breakdown of groups living in this tenure in 2016 was as follows<sup>1</sup>:

- 63,600 households with children under 16;
- 17,200 older households<sup>2</sup>;
- 15,500 retired persons who pay the rent on the property;
- 15,900 persons who are either permanently sick (disabled) or looking after someone (carers).

5. The private rented sector is helping to meet housing need and provides an important housing option for a range of individuals and families. As it has grown, there has rightly been an increased focus on how the private rented sector is regulated.

6. The Department for Social Development’s Private Rented Sector Strategy, *Building Sound Foundations*, which was launched in 2010, centred on delivering targeted improvements to the regulatory regime and included the introduction of the Tenancy Deposit and Landlord Registration Schemes.

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<sup>1</sup> Figures taken from the 2016 NIHE House Condition Survey

<sup>2</sup> A household is an older household if it has only one person in it and that person is of pensionable age (at least 65) or if it has only two persons in it (related or unrelated) and at least one of those persons is of pensionable age.

7. The Housing Strategy, *Facing the Future*, which was launched in 2012, set out a clear vision for housing in Northern Ireland. It was a vision focused on ensuring that everyone has the opportunity to access good quality housing at a reasonable cost.

8. The Housing Strategy Action Plan 2012-2017 committed the Department to undertaking a review of the private rented sector.

9. The key objectives of the review were to:

- assess the contribution the private rented sector currently makes to the housing market, and could potentially make in the future to increasing housing supply and meeting need and demand;
- identify the key enablers to support the current and potential future role of the private rented sector;
- evaluate the effectiveness of existing regulation of the private rented sector;
- ascertain if there are any unintended consequences in the current system and make recommendations on how these could be addressed; and
- assess the contribution the private rented sector does and could make to supporting the Northern Ireland Executive's *Together Building a United Community Strategy* which has a clear focus on encouraging more shared housing.

10. In delivering the objectives outlined above, the review also considered:

- the current role of the private rented sector in meeting housing need;
- the future role of the private rented sector and its potential for further growth;
- the opportunities and challenges that face those involved in the sector (including tenants, landlords and landlord representatives); and
- lessons learned from policy developments and regulatory frameworks in place locally, elsewhere in the United Kingdom and internationally.

11. The review also took into account policy and practice developments in related fields such as shared housing, housing supply, housing standards, empty housing and regeneration.

12. The aim of the review was to consider the current and potential future role of the sector and assess the effectiveness of current regulation, identifying where improvements could be made to help make the private rented sector a more attractive housing option.

## **CONSULTATION**

13. The Department carried out a review of the role and regulation of the private rented sector in 2 stages.

14. The first stage of the review was in the form of a discussion paper. The discussion paper contained a wide range of relevant issues impacting the private

rented sector and sought views of tenants, landlords and those who work in the sector. It focused on the existing situation and asked what, if anything, needed to change in order to make the sector a more attractive housing option. It also examined practice in other countries. The formal consultation on the discussion document ran from 12 November 2015 until 5 February 2016. This was followed by face to face engagement with a range of stakeholder groups.

15. The second stage of the review used the information obtained during the first stage. It presented the issues highlighted and set out recommendations for enhancing and improving the sector in the context of the housing strategy aim of making the private rented sector a more attractive housing option for a wider range of households.

16. The Department established a consultative working group which included representatives from Housing Rights, district council Environmental Health staff, the Landlords' Association for Northern Ireland, the Chartered Institute of Housing, the Northern Ireland Housing Executive, the Private Tenants Forum, the Association of Residential Letting Agents, the University of Ulster and the Royal Institute of Chartered Surveyors. The group met on four occasions and looked in detail at the key issues that had emerged from consultation on the discussion paper. This resulted in a proposals for change document.

17. The formal consultation on the *Proposals for Change* document ran from 10 January 2017 until 3 April 2017. The consultation document sought responses to a total of 16 proposals covering:

- Supply
- Affordability
- Security of Tenure
- Tenancy Management
- Property Standards
- Dispute Resolution

18. A total of 52 responses were received and the breakdown of those who responded is shown below:

- 11 Landlords/Landlord representatives
- 8 District Council representatives
- 7 Public Bodies
- 6 Housing Professionals
- 6 Charities
- 5 Letting agents
- 3 Consultants
- 2 Housing Associations
- 2 Other Government Departments
- 2 Tenant Representatives

19. The Department also received 36 responses from Environmental Health students from the University of Ulster who responded to the document as part of their degree course.

20. As representation from tenants had been low on the first discussion paper consultation the Department arranged for a tenant survey to be issued alongside the *Proposals for Change* consultation to ensure that tenant views on the proposals were captured. There were a total of 118 tenant responses of which 11% were from students. All of the proposals received a high level of support from the tenants who responded with percentages above 90% in support of the majority all proposals. Respondents and stakeholders agreed that existing regulation needed to be reformed and modernised and that there were areas that require clarification and greater regulation. In addition, it was agreed that improvements could be made to provide councils with increased powers in respect of the private rented sector to ensure that it provides a decent standard of accommodation for a growing number of families and individuals who make their home there.

21. It is the aim of this Bill, a result of the above mentioned work, to assist in addressing the aim of the review - to make the private rented sector a safer and more secure housing option for a wider range of households. This includes the most vulnerable in our society who, in part, due to limits on social housing provision, find themselves in this sector. These much needed changes will ensure better regulation of the sector and offer greater protection to private renters

## **OVERVIEW**

22. The Bill has 11 substantive clauses plus standard interpretation, commencement and short title clauses. It also contains 3 Schedules. In the main, the Bill consists of a series of amendments to the Private Tenancies (Northern Ireland) Order 2006 ('the 2006 Order'), the main primary legislation governing the private rented sector in Northern Ireland.

23. The 2006 Order is divided into 6 Parts. This Bill focuses on Parts 2 and 6. Part 2 describes the obligations of landlords and tenants in relation to rent books, tenancy deposits, repairs and maintenance, and other matters. Part 6 sets out a number of miscellaneous provisions including provisions relating to the service of notices and documents, the punishment of offences, fixed penalty notices and regulation making powers.

## **COMMENTARY ON CLAUSES**

### **Clause 1:**

#### **Tenant to be given notice regarding certain matters**

This clause inserts new Articles 4A, 4B and 4C into the 2006 Order.

New Article 4A requires the landlord of a private tenancy, within 28 days of granting it, to provide the tenant, free of charge, with a notice containing particulars and other detail relating to the tenancy that will be prescribed in regulations made by the Department. The regulation making power could be used, for example, to provide that the notice contain the main terms of the tenancy.

Article 4A(4) provides that any landlord who fails to give the required notice is guilty of an offence under the 2006 Order.

New Article 4B requires landlords, on the variation of a prescribed term of a tenancy (to be prescribed in regulations made by the Department), to provide the tenant, free of charge, with a notice containing certain information relating to the variation (which information will also be prescribed in the regulations). The landlord will be required to do this within 28 days of the variation.

Article 4B(5) provides that any landlord who fails to give the required notice is guilty of an offence under the 2006 Order.

New Article 4C concerns offences related to a continued failure by a landlord to serve a notice under Article 4A or 4B. Under paragraph (1), a landlord who fails to provide a notice required by Article 4A or 4B and is convicted in respect of that failure is deemed to have committed a further offence under that Article in respect of that failure where the failure continues for more than 14 days after conviction.

Under paragraphs (2) and (3), a landlord who receives a fixed penalty notice in respect of a failure to serve a notice and pays it but continues in that failure for more than 14 days after payment is guilty of an offence under the 2006 Order.

Subsections (3) and (4) of the clause amend Articles 68 and 68A of the 2006 Order respectively. The amendment of Article 68(1) ensures that the offences under Articles 4A(4), 4B(5) and 4C(3) (including where further offences under Articles 4A and 4B are deemed to have been committed) are punishable on summary conviction with a fine not exceeding level 4 on the standard scale. By providing that those offences are “offences under this Order”, they come within Article 68(3) and as such can be prosecuted by district councils.

The amendment of Article 68A provides that fixed penalty notices can be given in respect of the three offences, with the exception that a fixed penalty notice may not be given in respect of offences under Articles 4A(4) and 4B(5) where they are deemed to have been committed by virtue of Article 4C(1). In the latter case the only available option is summary conviction. The amendment also provides that the maximum fixed penalty amount is one-fifth of the maximum fine payable on summary conviction.

Subsection (5) of the clause omits the uncommenced section 1 of the Housing (Amendment) Act (Northern Ireland) 2011. That section repeals Article 4 of the 2006 Order (which requires a statement of tenancy terms to be given to a tenant within 28 days of the commencement of a tenancy) but is now redundant as the repeal Schedule to that Act has already (accidentally) repealed Article 4.

## **Clause 2:**

### **Tenant to be given notice regarding certain past matters:**

Clause 2 introduces Schedule 1. That Schedule will ensure that those tenants who would have received notices under Article 4 of the 2006 Order but did not do so

because of its accidental repeal, and who are still in a private tenancy on the date Clause 1 of the Bill comes into operation, receive notices from their landlords regarding certain past matters.

### **Clause 3:**

#### **Tenant to be provided with a receipt for payment in cash**

Clause 3 inserts a new Article 5 into the 2006 Order in substitution for the current Article 5. The new Article introduces a requirement, where rent or any other obligations in respect of the tenancy are paid in cash, for the landlord, prospective landlord or former landlord of a private tenancy to provide the tenant, free of charge, with a written rent receipt detailing the payment date, what the payment is for, the amount paid, and, if any amount remains outstanding, that amount or, if the obligation is paid in full, that fact.

Article 5(3) requires that the receipt must be provided at the time the payment is made, or if that is not possible, as soon as reasonably possible after that time.

Article 5(4) provides that where it is not possible for the person giving the receipt to state with certainty the amount that was required to satisfy the obligation, then the amount outstanding (or that nothing remains outstanding) should be stated to the best of that person's knowledge and belief.

Article 5(5) provides that an offence is committed under the 2006 Order where a landlord fails to provide a notice with the correct information or provides a notice late. If the landlord has appointed a person to provide the receipt that person is also guilty in such circumstances (in addition to the landlord being guilty).

The clause also inserts new Articles 5ZA and 5ZB into the 2006 Order. The former concerns offences related to a continued failure by a landlord to give a written receipt under Article 5. Under paragraph (1), a landlord who fails to give a written receipt with the correct information and is convicted in respect of that failure is deemed to have committed a further offence under Article 5 in respect of that failure where the failure continues for more than 14 days after conviction.

Under paragraphs (2) and (3), a landlord who receives a fixed penalty notice in respect of a failure to give a written receipt with the correct information and pays it but continues in that failure for more than 14 days after payment is guilty of an offence under the 2006 Order.

New Article 5ZB provides a defence in certain circumstances, and in relation to payments of rent only, to a person charged with an offence under Article 5(5) or Article 5ZA(3) where the tenancy in the case is a controlled tenancy.

Where the person is charged with an offence under Article 5(5), if the written receipt was given on time, the only incorrect information on the receipt relates to the amount of rent outstanding, and the incorrectly stated outstanding amount reflects the

difference between the contractual rent and the rent limit, then it is a defence to prove that the landlord had a bona fide claim to that difference.

Where a person is charged with an offence under Article 5ZA(3), if the written receipt was given at any time before the end of the 14 day period beginning with the payment of the fixed penalty (including before the fixed penalty notice was given), the only incorrect information on the receipt relates to the amount of rent outstanding, and the incorrectly stated outstanding amount reflects the difference between the contractual rent and the rent limit, then it is a defence to prove that the landlord had a bona fide claim to that difference.

In consequence of the new Article 5 and new Articles 5ZA and 5ZB, this clause amends Articles 50 and 66 of the 2006 Order. Article 50(2) provides that where a landlord makes an entry in a rent book or similar document that shows the tenant as being in arrears of an amount that, on account of the rent limit, the tenant does not owe, the landlord is guilty of an offence (subject to a bona fide claim defence). Subsection (3) amends Article 50 to insert a new paragraph (4) that clarifies that “similar document” in paragraph (2) of that Article does not include a receipt under Article 5(2) (and thereby ensures that the prosecution and punishment of offences in relation to receipts for cash payments are carried out only under Articles 5 to 5ZB).

Article 66(1) includes provision that the service of a document, required or authorised to be served under the 2006 Order on a landlord, is deemed to be so served if it is served on any agent of the landlord named as such in the rent book. As the substitution of a new Article 5 removes the requirement for landlords to give tenants a rent book, it is no longer appropriate to refer in Article 66(1)(a) to “the rent book”; and therefore subsection (4) of this clause changes it to “a rent book” (acknowledging that certain landlords and tenants may continue to operate a rent book system voluntarily).

Subsections (5) and (6) of the clause amend Articles 68 and 68A of the 2006 Order respectively. The amendment of Article 68(1) ensures that the offences under Articles 5(5) and 5ZA(3) (including where further offences under Article 5 are deemed to have been committed) are punishable on summary conviction with a fine not exceeding level 4 on the standard scale. By providing that those offences are “offences under this Order”, they come within Article 68(3) and as such can be prosecuted by district councils.

The amendment of Article 68A provides that fixed penalty notices can be given in respect of the two offences, with the exception that a fixed penalty notice may not be given in respect of offences under Article 5(5) where they are deemed to have been committed by virtue of Article 5ZA(1). In the latter case the only available option is summary conviction. The amendment also provides that the maximum fixed penalty amount is one-fifth of the maximum fine payable on summary conviction.

## **Clause 4:**

### **Limit on tenancy deposit amount**

This clause inserts new Articles 5ZC and 5ZD into the 2006 Order.

New Article 5ZC(1) limits the amount of deposit that can be required to be paid or retained in connection with a private tenancy to no more than 1 months' rent.

Article 5ZC(2) explains what it means for a person to require the person to whom a tenancy deposit would otherwise be repaid to consent to the retention of the deposit.

Article 5ZC(3) provides a definition of 1 month's rent in cases where the rent under a private tenancy is not payable monthly.

Article 5ZC(4) provides that any landlord or other person who requires a tenancy deposit in excess of 1 month's rent to be paid or retained in connection with a private tenancy is guilty of an offence under this Order.

Under paragraph (5) where a person is convicted of such an offence and has received or retained a tenancy deposit in excess of 1 month's rent, the court that convicted the person has the power to order restitution of the excess to the person who paid it.

New Article 5ZD makes provision concerning the recoverability of a tenancy deposit paid in excess of 1 month's rent. Paragraph (1) provides that a landlord or other person who has not been paid a tenancy deposit cannot recover that deposit to the extent that it exceeds 1 month's rent under the tenancy. Paragraph (2) provides that a tenant or other person who has paid a tenancy deposit or had a tenancy deposit retained can recover the deposit to the extent that it exceeds 1 month's rent.

Paragraph (3) explains when a tenancy deposit is retained in connection with a private tenancy.

Subsections (3) and (4) of the clause amend Articles 68 and 68A of the 2006 Order respectively. The amendment of Article 68(1) ensures that the offence under Article 5ZC(4) is punishable on summary conviction with a fine not exceeding level 4 on the standard scale. By providing that this offences is an "offence under this Order", it comes within Article 68(3) and as such can be prosecuted by district councils.

The amendment of Article 68A provides that fixed penalty notices can be given in respect of the offence. The amendment also provides that the maximum fixed penalty amount is one-fifth of the maximum fine payable on summary conviction.

Subsection (5) explains how certain provisions in Articles 5ZC and 5ZD are to have effect. Paragraphs (a) and (b) ensure that the offence in Article 5ZC(4) can only be committed where a "requirement" is made on or after commencement of the clause.

Paragraph (c) ensures that Article 5ZD(1) does not prevent the recovery of a tenancy deposit in excess of 1 month's rent under a legal obligation (for example a contractual



obligation) that existed before the commencement of the clause.

Paragraphs (d) and (e) limit the effect of Article 5ZD(2) to deposits paid or retained on or after the commencement of the clause, while also preventing recovery of deposits paid or retained on or after that time where they were paid or retained in connection with an obligation or right that existed before the commencement of the clause (such as a contractual obligation to pay the deposit or contractual right to retain the deposit).

#### **Clause 5:**

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

Clause 5 amends Article 5B of the 2006 Order. The amendments, firstly, extend the time limit for a deposit to be protected in an approved scheme by changing the time limit in paragraph (3) from 14 days to 28 days and, secondly, give additional time for a landlord to provide the prescribed information to the tenant by amending paragraph (6)(b) from 28 days to 35 days.

#### **Clause 6:**

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

Clause 6 amends Article 5B of the 2006 Order by inserting a new paragraph 11A. 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 that there will be no time barrier on prosecuting a person who fails to comply with the requirements of the Article.

#### **Clause 7:**

##### **Rent Decreases**

This clause secures a rent reduction and a subsequent 3 year rent freeze for tenants that have been in a tenancy for more than 6 months at Royal Assent. The policy rationale provided states that rents have significantly increased in Northern Ireland in the last 2 years and people are struggling to pay their rent month to month.

##### **Restriction on rent increases.**

This clause inserts new Articles 5C and 5D into the 2006 Order. New Article 5C applies to any private tenancy except a controlled tenancy and provides that the rent payable under a private tenancy may not be increased within the period of 12 months beginning with the date on which the tenancy is granted or within the period of 12 months beginning with the date on which the last increase began.

The Article also gives the Department the power to specify circumstances, such as where a house is renovated or extended, in which the restrictions on rent increases do not apply. The Department is also given the power to amend the time periods during which rent increases are prohibited to periods above 12 months, up to a maximum of 2 years.

New Article 5D applies to any private tenancy except a controlled tenancy and provides that a rent increase only takes effect if a landlord gives the tenant a written notice that complies with the requirements of that Article. The notice must specify the date of the increase and the amount of rent payable after the increase; the date specified must not be less than 3 months after the date the notice is given; and the notice must also contain such other information and be in such form as may be prescribed by regulations made by the Department.

Subsection (3) of the clause amends Article 72 of the 2006 Order. Article 72 contains provisions concerning the making of regulations under the Order. It is amended here to provide that regulations made under Article 5C that specify circumstances in which the restrictions on rent increases do not apply, or that amend that Article to change a time period during which rent may not be increased, are subject to the draft affirmative procedure.

It is also amended to provide that where the Department proposes to change a time period during which rent may not be increased it must, before laying the draft of the regulations before the Assembly, consult representatives of landlords, representatives of tenants and such other persons as it considers appropriate.

## **Clause 8:**

### **Fire, smoke and carbon monoxide**

Clause 8 is intended to reduce the risk of injury or death caused by fire, smoke and carbon monoxide in private tenancies.

This clause inserts new Articles 11A to 11F into the 2006 Order which set out new requirements on private landlords in relation to the provision of fire, smoke and carbon monoxide detectors and the duties on landlords and tenants with regard to these.

New Article 11A provides that the requirements and duties in Articles 11B to 11F apply to all private tenancies, whether granted before or after this clause comes into operation, but in respect of those tenancies granted before such commencement only from a date in the future to be prescribed by the Department in regulations.

New Article 11B requires landlords to keep in repair and proper working order sufficient appliances for detecting and warning of fire, smoke and carbon monoxide (at levels where the gas is harmful to people).

This Article also allows the Department to set minimum standards for the purpose of determining whether those duties have been complied with (which standards may

include standards as to the number, type and condition of appliances to be installed in certain specified circumstances), and provides that a breach of one of those duties is an offence under the 2006 Order.

Under new Article 11C the tenant under a private tenancy must take proper care of the detection appliances installed and must make good any damage wilfully or negligently done or caused to those appliances by the tenant or any other person lawfully on the premises.

New Article 11D deals with the situation where a tenancy is part of a building and provides that the duties under Article 11B may require the landlord to position appliances in a part or parts of the building not included in the tenancy.

New Article 11E clarifies that 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 as a result of Article 11C.

New Article 11F limits the extent to which the duties under Article 11B require the landlord to carry out works by providing that the landlord is only under a duty to carry out such works where the landlord has knowledge of the need.

New Articles 11B to 11F mirror many of the provisions in existing Articles 7 to 11 of the 2006 Order, and seek to apply the same rules, modified as appropriate, in the context of the provision of fire, smoke and carbon monoxide detectors.

Subsections (3) to (6) of the clause amend Articles 68 and 68A of the 2006 Order. The amendment of Article 68(1) ensures that a breach of a duty under Article 11B is punishable on summary conviction with a fine not exceeding level 4 on the standard scale. By providing that this offences is an “offence under this Order”, it comes within Article 68(3) and as such can be prosecuted by district councils.

The amendment of Article 68A provides that fixed penalty notices can be given in respect of the offence. The amendment also provides that the maximum fixed penalty amount is one-fifth of the maximum fine payable on summary conviction.

## **Clause 9:**

### **Energy Efficiency Regulations**

Clause 9 introduces Schedule 2 and notes that the Schedule gives the Department a power to make regulations concerning the energy efficiency of dwelling houses let under a private tenancy.

**Clause 10:**

**Electrical safety standards Regulations**

Clause 10 introduces Schedule 3 and notes that the Schedule gives the Department a power to make regulations concerning electrical safety standards in dwelling-houses let under a private tenancy.

**Clause 11:**

**Validity requirements for notices to quit**

Clause 11 makes a number of amendments to Article 14 of the 2006 Order as well as inserting a new Article 14A

It begins by substituting a new paragraph (1) into Article 14 which ensures that that Article will now only deal with notices to quit given by landlords (as opposed to dealing with notices to quit given by both landlords and by tenants) and provides that such notices will not be valid unless they are in the form prescribed by the Department, contain the information prescribed by the Department and are given a certain period of time before the notice is to take effect.

Paragraph (1A) (which sets out the periods of time before which the notice must be given) is amended as follows

- (a) 28 days, if the tenancy has not been in existence for more than 6 months;
- (b) 90 days, if the tenancy has been in existence for more than 6 months but not for more than one year;
- (c) 120 days, if the tenancy has been in existence for more than one year but not for more than 3 years;
- (d) 180 days, if the tenancy has been in existence for more than 3 years but not for more than 7 years;
- (e) 196 days, if the tenancy has been in existence for more than 7 years but not for more than 8 years; and (f) 224 days, if the tenancy has been in existence for 8 years or more.'

A new paragraph (3) gives the Department the power, by regulations, to amend the notice to quit periods in 6 tiers in relation to the length of tenancy up to a maximum of 224 days for tenancies in existence for 8 years or more.

A new paragraph (4) explains that any such regulations can specify cases to which any new notice to quit periods do not apply, and provide that the notice to quit period is different for different cases.

A new paragraph (5) ensures that any amendments made by the regulations are only relevant to those notices given after the amendment has come into operation. Notices already given will only have to comply with the rule in force at the time they were given.

Subsection (7) of the clause inserts a new Article 14A, which will deal with notices to quit to be given by a tenant, and provides that such notices will not be valid unless they are in writing and are given a certain period of time before the notice is to take effect.

Paragraph (2) of the new Article sets out the periods of time before which the notice must be given. 4 weeks' notice is required where the tenant has been in the house for ten years or less, and 12 weeks' notice in all other cases.

The Article also gives the Department the power, by regulations, to alter the notice to quit period in relation to tenancies that have been in existence for more than 1 year but not more than 10 years to period that is more than 4 weeks but not more than 12 weeks. Paragraph (5) explains that any such regulations can provide that the notice to quit period is different for different cases (e.g. 4 weeks for tenancies between 1 year and 2 years, 8 weeks for tenancies between 2 years and 5 years and 12 weeks for tenancies between 5 years and 10 years).

Paragraph (6) ensures that any amendments made by the regulations are only relevant to those notices given after the amendment has come into operation. Notices already given will only have to comply with the rule in force at the time they were given.

Subsection (8) amends Article 72 (provisions concerning regulations) of the 2006 Order to provide that any regulations made under Articles 14 or 14A are subject to the draft affirmative procedure and, before being laid, to consultation with representatives of landlords, representatives of tenants and such other persons as the Department consider appropriate.

In consequence of the new paragraph (1) in Article 14, subsection (9) omits section 3(2) of the Housing (Amendment) Act (Northern Ireland) 2011. That subsection is the provision that inserts the current version of paragraph (1).

Finally, subsection (10) provides that any amendments made by the clause do not apply in relation to notices to quit given before the clause comes into operation. The effect of this is that if a notice to quit, given before such commencement, complies with the rules in force at the time it was given, it will be valid.

## **Clause 12:**

### **Payment options for tenants: power to make provision and duty to consult**

This clause inserts new Article 12 into the 2006 Order.

The Article places a duty on the Department to consult on methods of rent payment and other sums due in respect of the tenancy with district councils, such persons as appear to the Department to be representative of landlords and tenants and any other persons the Department considers appropriate. The Department must then prepare and lay a report before the Assembly within 18 months from the day on which this Act receives Royal Assent.

The Article also gives the Department power to make regulations on foot of that consultation to ensure that a tenant is given options as to the method of payment of rent and other sums in respect of the tenancy.

Paragraph (2) provides that regulations can impose duties on prospective landlords to provide specified information or documents before the terms of a tenancy are agreed; require that tenancy agreements or proposed tenancy agreements contain specified terms or if they are in writing that they should be in a specified form; specify methods of payments that must or must not be offered by a prospective landlord or may or may not be agreed by the parties for the purposes of payment of rent or other sums due in respect of a tenancy; make provision as to the rights of tenants or landlords to vary any term of the tenancy as to the method of payment including provision restricting or excluding any such right; make provision for the consequences of a failure to accept or a failure to tender payment by a method agreed under a tenancy including provision as to whether or not the tenant is to be regarded as being in arrears; provide for consequences of a breach of a prohibition imposed by the regulations or a failure to comply with a requirement imposed by them including provision that creates offences; amend any statutory provision within the meaning given by section 1 (f) of the Interpretation Act (Northern Ireland) 1954 and make such consequential, supplementary, transitory or transitional provision or such savings as the Department considers appropriate.

Any offence created under subsection (2)(f) is not to be triable on indictment or punishable with imprisonment; and is not to be punishable with a fine exceeding level 4 on the standard scale.

### **Clause 13:**

#### **Interpretation**

The Bill makes frequent use of the phrase “the 2006 Order” and this clause explains that it refers to the Private Tenancies (Northern Ireland) Order 2006.

### **Clause 14:**

#### **Commencement**

Subsection (1) provides that this clause and clauses 12, 13 and 15 come into operation the day after the day on which the Bill receives Royal Assent.

Subsection (2) ensures that the provisions of the Bill that contain regulation making powers come into operation on that day also, but only to the extent that they confer those powers. This will allow the Department to make regulations under the Bill in anticipation of the commencement of the substantive provisions of the Bill.

Subsection (3) provides that the other provisions of the Bill will come into operation on such day or days as the Department for Communities may by order appoint.

Subsection (4) provides that an order under the clause may make such transitional or transitional provision, or savings, as the Department considers appropriate.

## **Clause 15:**

### **Short title**

This provides that the Bill, should it be passed, may be cited as the Private Tenancies Act (Northern Ireland) 2021.

## **Schedule 1:**

### **Tenant to be given notice regarding certain past matters**

This Schedule deals with tenancies granted and variations to tenancy terms made between the repeal of Article 4 of the 2006 Order on the 30 June 2011 and the coming into operation of the new Articles 4A and 4B where the tenancy is still in existence on that coming into operation.

Paragraphs 1 and 2 of the Schedule provide for the giving of certain notices to the tenants of such tenancies. The tenant should be given a notice of prescribed particulars and other prescribed information relating to the tenancy and of any prescribed variations within 28 days of the commencement of clause 1.

Paragraphs 1(3) and 2(4) include a concession to landlords who have already given a notice that substantially meets the requirements of the Schedule at any time between granting the tenancy or, as the case may be, varying the prescribed term and the commencement of clause 1, such that they are to be regarded as having complied with the notice requirements in paragraphs 1 and 2.

Where a landlord fails to comply with a requirement under the Schedule to give a notice, the landlord is guilty of an offence. In addition, where a landlord is convicted of such an offence and the failure continues for more than 14 days after conviction, the landlord is deemed to have committed a further such offence in respect of the failure. If a landlord is given a fixed penalty notice in respect of a failure to give a notice under this Schedule and pays it but the failure continues for more than 14 days after payment of the penalty, the landlord is guilty of an offence.

A person guilty of an offence under the Schedule (including where a person is deemed to have committed a further offence after an initial conviction) is punishable on

summary conviction with a fine not exceeding level 4 on the standard scale. All offences under the Schedule can be prosecuted by district councils.

Paragraph 6 of the Schedule sets out a fixed penalty regime that applies to all offences under the Schedule (except in the case where a person has already been convicted and it is suspected that the failure to give the required notice continues). Where a person has already been convicted of an offence under the Schedule any continued failure to give the required notice is only punishable by summary conviction.

Paragraph 7 provides that regulations under paragraph 1,2 or 6 are subject to negative resolution.

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

## **Schedule 2:**

### **Energy Efficiency Regulations**

This Schedule inserts new Articles 11G and 11H into the 2006 Order.

New Article 11G(1) gives to the Department the power, by regulations, to prohibit persons granting a private tenancy of certain houses or continuing to let out certain houses already let on a private tenancy.

Paragraph (2) sets out that such rules will apply to all houses for which there is an energy performance certificate and that fall below such level of energy efficiency (as demonstrated by the certificate) as is provided for by the regulations.

The regulations can provide for houses of a description provided for in the regulations, which would otherwise come within the rules prohibiting the letting or continued letting of certain houses, to be exempt from such rules. The regulations can also provide for an exemption that is to have effect for a period of time and is subject to the condition that specified works or measures for improving efficiency in the use of energy in the dwelling-house are carried out within that period (an “improvement exemption”). The regulations can provide for exemption on such other grounds as may be provided for in the regulations.

Paragraph 3B provides that regulations can designate a prescribed person or prescribed persons (the “authority”) to make exemptions; that exemptions can have effect for a specified period of time (including provision for the authority to determine that period); that an improvement exemption may have a limit on the estimated cost of works or measures that may be specified (including a limit set by reference to the value of the dwelling-house or any other prescribed circumstances); for the authority to maintain a publicly-accessible register of exemptions granted; about appeals to a prescribed person or body against decisions regarding exemptions; about the inspection of dwelling-houses for the purposes of an application for an exemption or for the purposes of an appeal; for a person who acquires an estate in a dwelling-house



to be exempt from a prohibition in respect of that dwelling-house for a prescribed period of time.

Paragraph 3C sets out that that regulations may provide that if a person is granted an improvement exemption, and complies with prescribed conditions regarding the giving of notice to any tenant of the dwelling-house, that the works or measures specified in the exemption are to be regarded, for the purposes of Article 12, as works that the person is under a duty to execute. Article 12 allows a landlord, and persons authorise by him for the purpose, a right of entry to a premises comprised in the tenancy, for inspection and to carry out any works which the landlord is under a duty to execute.

Paragraph (4) provides that “energy performance certificate” has the meaning given by the Energy Performance of Buildings (Certificates and Inspections) Regulations (Northern Ireland) 2008 or, in case the system used for determining domestic energy efficiency changes, such other statutory document issued for the purpose of determining or recording the energy performance or efficiency of dwelling-house as may be prescribed by regulations made by the Department.

New Article 11H gives the Department the power to create offences for breaches of prohibitions imposed by Article 11G regulations. However, any offence created is not to be triable on indictment or punishable with imprisonment; and is not to be punishable with a fine exceeding level 5 on the standard scale.

Paragraph 3 of the Schedule amends Article 68(3) (prosecution by appropriate district council) of the 2006 Order to provide that district councils may prosecute any offence created by virtue of Article 11H.

Paragraph 4 amends Article 68A of the 2006 Order to provide that a fixed penalty notice may be given in respect of any offence created by virtue of Article 11H up to a maximum amount of one-fifth of the maximum fine payable on summary conviction.

Paragraph 5 amends Article 72 of the 2006 Order to provide that before making regulations under Article 11G the Department must consult the Department for the Economy, the Department of Finance, district councils, such persons as appear to the Department to be representative of landlords, such persons as appear to the Department to be representative of tenants and any other people the Department considers appropriate.

### **Schedule 3:**

#### **Electrical Safety Standards Regulations**

This Schedule inserts new Articles 11I, 11J and 11K into the 2006 Order.

New Article 11I provides that the Department may make regulations which impose duties on landlords which will make it obligatory for any domestic private rented property to meet prescribed electrical safety standards.

Paragraph (2) provides the Department with the regulation making power to prescribe those standards and provides that such standards will relate to the installations in a dwelling-house for the supply and use of electricity, and to electrical fixtures, fittings and appliances provided by the landlord.

Paragraph (3) provides that the duties imposed under the regulations may include duties to ensure that a qualified person has checked that the electrical safety standards are met; paragraph (4) provides that the regulations may make provision about how and when checks are carried out and who is qualified to do them; paragraph (5) provides that the regulations may require the landlord to undertake works as a result of checks carried out by the qualified person; and paragraph (6) provides that the regulations may require the landlord to obtain a certificate from the qualified person confirming the electrical standards are met, give a copy of the certificate to the tenant or any other person specified or, where the electrical safety standards are not met, obtain from the qualified person a written description of the works required to meet the standards.

New Article 11J gives the Department the power to create offences for breaches of duties imposed by Article 11I regulations. However, any offence created is not to be triable on indictment or punishable with imprisonment; and is not to be punishable with a fine exceeding level 5 on the standard scale.

New Article 11K sets out provision that the regulations may make for the purpose of enforcing any duty imposed by the regulations. That provision can include requiring the landlord to take remedial action and giving to district councils the power to arrange for remedial action to be taken with the consent of the tenant. Regulations may also make provision about procedure, landlord representations, appeals against proposed remedial action and the recovery of costs by district councils where they have arranged for remedial action (including for the recovery of costs from an agent of the landlord up to the total amount held by the agent for the landlord, and for the charging of land in relation to which the costs were incurred).

Paragraph 3 of the Schedule amends Article 68(3) (prosecution by appropriate district council) of the 2006 Order to provide that district councils may prosecute any offence created by virtue of Article 11J.

Paragraph 4 amends Article 68A of the 2006 Order to provide that a fixed penalty notice may be given in respect of any offence created by virtue of Article 11J up to a maximum amount of one-fifth of the maximum fine payable on summary conviction.

Paragraph 5 amends Article 72 of the 2006 Order in two ways. Firstly, it inserts a new paragraph (3A) that provides that where regulations under Article 11I(1) contain provision for the charging of land in respect of district council remedial costs, such regulations are subject to the draft affirmative procedure.

Secondly, it inserts a new paragraph (7) that provides that regulations under Article 11I must first be consulted on with district councils, representatives of landlords, such persons as appear to the Department to be representative of tenants and such other persons as the Department considers appropriate. A new paragraph (8) explains that

where regulations under Article 11I are subject to the draft affirmative procedure the consultation must take place before the regulations are laid before the Assembly.

## **FINANCIAL EFFECTS OF THE BILL**

24. The Bill should not give rise to any government expenditure. However, rates of fuel poverty are highest in the private rented sector and improving energy efficiency in these homes is a prerequisite to meeting our carbon emission targets. Given the nature of the sector we will have to carefully consider the need for grants or funding in this sector as part of wider energy/zero carbon work.

## **HUMAN RIGHTS ISSUES**

25. The right to housing is recognised in Article 25 of the Universal Declaration of Human Rights and Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and various other fundamental pieces of human rights law. A good home is the foundation of social, physical and mental well-being and is central to addressing our most pressing societal challenges, including poverty and inequality. Houses are homes. Everything that we do must be based on that fundamental principle. It is a basic human right for individuals and families to have a safe and secure home.

26. The Private Tenancies (Northern Ireland) Order 2006 is the main primary legislation governing the private rented sector. In order for a landlord to gain possession of the property, the landlord must issue the tenant with a notice to quit. The length of notice varies depending on the length of tenancy. This Bill will extend that notice period, which will engage A1P1 rights<sup>3</sup> in that it controls the use of property, which a person, generally, has a right to peaceful enjoyment of. The extension of the notice period by this Bill must be done in a proportionate way to ensure the Bill remains within competence. Amendments to clause 7 and 11 tabled and duly carried at Consideration stage have raised some concerns regarding possible infringement of A1P1 rights. The Department is currently seeking legal advice on these amendments.

## **EQUALITY IMPACT ASSESSMENT**

27. An Equality Screening was carried out on the Bill as laid and the Department did not consider that the policy changes had any adverse impact on any group. On initial screening of the tabled amendments (duly carried by the Assembly) there appears to be no adverse impact on any protected group. There may be unintended consequences which, given time constraints, have not been fully investigated. The Department intends to explore these further. The overall policy intent is to ensure that the private rented sector is a more attractive option for a range of households and that tenants' security is protected. In taking forward the Bill, regulations and associated guidance, the Department will improve the standards and conditions for those who live in the sector. As such it does not present any risk to the Department's obligation to have due regard to the need to promote equality of opportunity.

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<sup>3</sup> Article 1 of Protocol No. 1 to the European Convention on Human Rights (Protection of Property) entitles every natural or legal person to the peaceful enjoyment of his possessions.

## **REGULATORY IMPACT ASSESSMENT**

28. The Department has not conducted a Regulatory Impact Assessment as the Bill is not anticipated to have any impact on businesses, charities or the voluntary sector. The Bill gives the Department the power to prevent the rental of houses that do not meet certain levels of energy efficiency which, when the power is used, will have potential implications for landlords. It is considered some landlords will face costs associated, in particular, with the installation of energy efficiency measures however at this stage it has not been possible to quantify what impact this may have as further research is underway. The Bill contains a regulation making power to introduce mandatory energy efficiency standards, the detail of which will be provided in the regulations. A detailed Regulatory Impact Assessment will be conducted at that point.

## **RURAL NEEDS IMPACT ASSESSMENT**

29. The provisions of the Bill have the potential to impact any person who is living in the private rented sector or any landlord or agent working in the sector throughout Northern Ireland with any measures also impacting people in rural areas. The Department concluded that no Rural Needs Impact Assessment was required.

## **PROGRAMME FOR GOVERNMENT**

30. The draft Programme for Government sets out the key role of housing in improving the lives and wellbeing of our people. Housing is a key priority area for the following outcomes:

- i. We live and work sustainably – protecting the environment;
- ii. We have a caring society that supports people throughout their lives; and
- iii. People want to live, work, and visit here.

31. It is also a contributor for others, for example ‘We have an equal and inclusive society where everyone is valued and treated with respect’

32. This Bill will improve the safety, security and quality of the private rented sector and help to improve the well-being of those living and working in the private rented sector. For instance it will enable energy efficiency improvements in private rented homes and reduce homelessness by improving quality and tenancy security.

## **LEGISLATIVE COMPETENCE**

33. At Introduction the Minister for Communities had made the following statement under Section 9 of the Northern Ireland Act 1998.

*This Memorandum refers to the Private Tenancies Bill as Amended at Consideration Stage in the Northern Ireland Assembly on 23 February 2022 (Bill 32/17-22)*

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