

PRIVATE TENANCIES (CORONAVIRUS MODIFICATIONS) BILL

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. Given the urgency of this fast developing public health emergency this Private Tenancies (Coronavirus Modifications) Bill responds to the present outbreak of coronavirus in Northern Ireland. Due to the current uncertainty surrounding the coronavirus pandemic the Department wishes to protect tenants from eviction for a reasonable and specified period of time and provides that landlords must give their tenants at least 12 weeks’ notice to quit a dwelling house let under a private tenancy. Those people and families in the Private Rented Sector, who could be evicted during this pandemic, and may present as homeless, and would as others experiencing homelessness, be disproportionately affected by poor health and often face challenges accessing the health care and support they need. It is the intention of the Bill to reduce unnecessary pressures on the health care, social care and local authority systems that is caused by homelessness and will ensure that tenants are protected, particularly at times when their income streams may be vulnerable, and they will be worried about the health and well-being of themselves and their loved ones.
4. On 18th March 2020, the UK Prime Minister announced that the Westminster Government would pass legislation to protect private renters from eviction as the Covid-19 outbreak worsened. Existing legislation in NI does not contain grounds for eviction but merely instructs landlords to give appropriate notice to quit periods. Therefore NI is unable to replicate the approach taken by the Westminster Government.

5. As a high number of people will struggle to pay their rent and given the recent changes and restrictions of movement already underway some tenants are reporting that their landlords have already moved to evict them now they have lost their jobs.
6. The emergency measures announced by the UK Government including mortgage holidays for landlords will go some way to alleviate the concerns of landlords, who might be worried about meeting mortgage payments, and should therefore mean no unnecessary pressure is put on their tenants. Other measures have included an increase in the Local Housing Allowance (LHA), lower interest rates and the Government paying 80% of wages to staff affected by the crisis.
7. Public Health Advice is that everyone in Northern Ireland should now stay at home and do what they can to stop the virus spreading. Responding to this public health advice requires people to have a secure home to reduce the effects of the Covid-19 pandemic on both themselves, their families and others. This is a fundamental necessity to allow Government to properly manage this emergency situation. Social Distancing, self- isolation and quarantine are key ways of stopping the spread of infectious diseases. Letters have been issued from Health officials to 1.5m people in the UK (34K approx. in NI) who are vulnerable with underlying health conditions identified as high risk patients. This group must remain at home for the next 12 weeks ('shielding') and anyone living in their households should follow strict social distancing measures. The UK Government has also 'put the brakes on' the housing market until the coronavirus restrictions are over, telling people to restrict their movements as far as possible, delay home moves and not to allow viewings to avoid breaking the social distancing rules. This reduces opportunities for people to seek alternative accommodation. The Coronavirus Act 2020, Schedule 29 sets out in statute that notice to quit period could be no less than 3 months. Due to the current uncertainty surrounding the coronavirus pandemic the Department wishes to protect tenants from eviction for a reasonable and specified period of time. This legislation will mean no renter in private accommodation will be forced out of their home during this difficult time. This emergency legislation is urgent priority so that landlords will not be able to start proceedings to evict tenants for a 12 week period. As a result no renters need to be concerned about the threat of eviction.
8. The Private Tenancies (Northern Ireland) Order 2006 is the legislation governing the private rented sector. To begin the eviction process in Northern Ireland the landlord must issue the tenant with a notice to quit. The length of notice to quit varies depending on the length of tenancy. It is 4 weeks, if the tenancy has not been in existence for more than 5 years, 8 weeks, if the tenancy has been in existence for more than 5 years but not for more than 10 years and 12 weeks, if the tenancy has been in existence for more than 10 years. If the

tenant refuses to leave the landlord will have to obtain a court order which is subsequently enforceable by the Enforcement of Judgments Office.

9. The right of a private landlord to bring a tenancy to an end through service of a written notice to quit of a specified period is prescribed by Article 14 of the Order. The Bill seeks to temporarily modify the provisions of Article 14 during the emergency period to apply a 12 week notice to quit period to all tenancies, irrespective of the duration of the tenancy. The Bill provides that the emergency period commences on the day after Royal Assent and ends on 30 September 2020. However, this period may be extended up to 2 years from date of Royal Assent or shortened to a period specified by the Department. The Bill allows for the 12 week notice period to be altered to maximum period of six months. The Bill is not intended to have retrospective effect, so will not apply to notice served before Royal Assent.

CONSULTATION

10. Consultation was not necessary given the implications of COVID-19 and the NI Executive has been asked that proposals be brought forward urgently.

OPTIONS

11. In NI there is no legislation covering evictions. In response to the emerging public health crisis, consideration was given as to how tenants in the private rented sector could be protected as well as the social sector. It was felt the best way to achieve this was to extend the notice to quit period by 12 weeks. This was a proportionate response as it reflected both the position in GB and also the 3 month mortgage ‘holiday’ for landlords announced by Westminster.

OVERVIEW

12. The Bill has 6 substantive clauses. It temporarily modifies Article 14 of the Private Tenancies (NI) Order (‘the 2006 Order’), which prescribes the length of the notice to quit period by reference to the duration of the tenancy (i.e. “the relevant period”) to apply a 12 week notice to quit period for all tenancies during the “emergency period”. The effect of this means that for tenancies of: (i) less than five years; and (ii) more than five but less than ten, the respective notice to quit period for these tenancies has been increased by (i) 8 weeks; and (ii) 4 weeks. For tenancies of 10 or more years the notice to quit period remains the same. The Bill clarifies that the extension of the notice to quit period will only apply to landlords.

COMMENTARY ON CLAUSES

Clause 1: Notice to Quit: private tenancies

This clause allows for modification during the emergency period of Article 14 of 2006 Order. Clause 1(3) means the Department has discretion to specify a shorter or longer period for the end of the emergency period. Any amendment of this period cannot result in the emergency period ending later than 2 years after the day it received Royal Assent. It may also amended to such a shorter period as the Department may want to specify by regulations, subject to negative resolution.

Clause 2: Power to alter notice period

This clause has a provision to alter the notice to quit period of 12 weeks during the emergency period by way of regulations by negative resolution. If the Department chose to extend the period exceptions will be made for landlords who need to live in their own property and cases of anti-social behaviour. This clause also provides the Department with the power to define the exceptions and level of proof needed in any future regulations made. The 12 week notice period can only be increased to a maximum period of 6 months.

Clause 3: Power to make further provision

This clause enables transitional, transitory, saving and consequential provisions to be made. The latter is in case any statutory provision needs to be modified. This will be done by negative resolution unless NI primary legislation is to be modified, in which case the procedure will be draft affirmative.

Clause 4: Interpretation

This defines the Department responsible for the Bill, the meaning of the emergency period and attracts the definitions used in the 2006 Order.

Clause 5: Commencement

This provides that the Act comes into operation on the day after the day it receives Royal assent and ensures no retrospectivity occurs.

Clause 6: Short Title

This cites the Bill as the Private Tenancies (Coronavirus Modifications) Act (Northern Ireland) 2020.

FINANCIAL EFFECTS OF THE BILL

13. The Bill will not give rise to any government expenditure. It provides protection for private renters from eviction as the Covid-19 outbreak worsens.

HUMAN RIGHTS ISSUES

14. Any interference with a landlord's rights under Article 1 Protocol 1 is justified and proportionate having regards to the emergency circumstances generated by coronavirus. Whilst it is recognised that the amendment to Article 14 of the Order arguably interferes with a landlord's peaceful enjoyment of his property by controlling the use of that property, it is considered that such interference is lawful and justified. The measures introduced by the Bill are in response to the public health emergency created by coronavirus; are designed to offer time limited protection to private tenants and help reduce strain on other public services. It is considered that the measures are clearly in the public interest; are proportionate and justified given that the:
- 12 week notice period can only be increased to a maximum period of 6 months;
 - The provisions are not retrospective and will only apply to notices to quit issued after the Bill comes into force;
 - Similarly if the 12 week notice to quit period is subsequently altered, this will not apply to any notice already issued (i.e. won't be retrospective);

The measures will only be in place as long as considered necessary; the emergency period in the Bill is time limited and will expire in 2 years or a shorter period as specified by the Department.

EQUALITY IMPACT ASSESSMENT

15. An Equality Screening was carried out on the Bill. This policy does not have any adverse impact on any group. Consideration has been given to these subsequent regulations to ensure compliance with Section 75 of the Northern Ireland Act 1998 and no further equality issues relating to designation have been identified. There is no Clause within the Bill which discriminates against any person or class of person on the ground of religious belief or political opinion contrary to Section 6(2)(e) of the Northern Ireland Act. The proposals will have the potential to impact any person in Northern Ireland who is living in the private rented sector or any landlord or agent working in the private rented sector. We know that younger households are more likely to be renting – according to the NI Family Resources Survey, around 40% of households aged 25-34 are renters, and one in five households aged 35-44 are renters. In addition, according to labour statistics for NI we know that 15% of the NI workforce is 'self-employed' and a further 6% are in 'temporary contracts' – this amounts to 50,000 workers who are also likely to be younger and renting. UK Ministers have confirmed that the three-month mortgage holiday will be extended to landlords whose tenants are experiencing difficulties due to the coronavirus situation. This is aimed at alleviating the concerns of landlords, who might be worried about meeting mortgage payments, and should therefore mean no unnecessary pressure is put on their tenants. The overall policy intent is to reduce unnecessary pressures on the health care, social care and local authority systems

that is caused by homelessness. We want to ensure that tenants are protected, particularly at times when their income streams may be vulnerable, and they will be worried about the health and well-being of themselves and their families.

REGULATORY IMPACT ASSESSMENT

16. A regulatory impact assessment is not considered necessary in view of the urgency required in order to protect private tenants from eviction and encourage self-isolation, thereby minimising the risks to public health arising from coronavirus.

PROGRAMME FOR GOVERNMENT

17. Due to the coronavirus emergency it has been necessary for the Department to take steps to introduce measures to help prevent or reduce significant numbers of households in NI becoming or being under threat of being homeless at a time of national crisis when housing, health and other public services are under extreme pressure and where there is significant risk to individuals to health and wellbeing as a result. It is in the public interest to introduce this legislation which conforms with outcomes 4 & 8 of the 2019/20 Outcomes Delivery Plan which impacts on reducing housing stress caring for others and helping those in need, to ensure the health safety and well-being of tenants at this time. It is considered that the Bill will reduce unnecessary pressures on the health care, social care and local authority systems particularly at this time when their income streams will be vulnerable.

LEGISLATIVE COMPETENCE

18. The Minister for Communities had made the following statement under section 9 of the Northern Ireland Act 1998:

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