

Private Tenancies Bill

Call for Evidence

Response to Consultation

Key points

- **Tenancy Management**
- **Rental Payments**
- **Property Maintenance Standards**
- **Security of Tenure**

29 October 2021



ABOUT NIFHA

The Northern Ireland Federation of Housing Associations, formed in 1977, is the representative body for Northern Ireland's 20 registered housing associations.

Our members are all not-for-profit organisations. Together, supported by the Department for Communities and the Housing Executive, they provide just under 56,000 social and affordable homes.

Housing associations access private finance to effectively double the number of homes they could build with government housing association grant alone.

Housing associations also deliver high quality care and support to help people stay as independent as possible.

Working in partnership with other organisations, they also invest millions each year in community services and facilities.

Our sector employs more than 3,200 people and manages housing assets worth £4.5 bn.

NIFHA welcomes the opportunity to comment on Private Tenancies Bill- Call for Evidence

PART 1: SETTING THE CONTEXT

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. Almost half of those living in the private rented sector receive state financial support via Housing Benefit or Universal Credit to help meet housing costs.

Policy Objectives of the Bill

- Make the private rented sector a safer and more secure housing option for a wider range of households; and
- To ensure better regulation of the sector and offer greater protection to private renters

PART 2: CONSULTATION QUESTIONS

We agree that the Bill will meet its overall policy objectives to make the private rented sector a safer and more secure housing option for a wider range of households; and to ensure better regulation of the sector and offer greater protection to private renters.

This is achieved by setting out the obligations of both the landlord and the Private Rental Sector (PRS) tenant and also making it clear the standards that the PRS tenant can expect. This Bill gives greater protection to the tenant without fear of losing their home if they raise an issue of concern with their landlord. However, unless there are implications for Landlords not meeting these standards/ fines imposed there is the possibility some Landlords will not comply with the Bill. For example, there should be fines for Landlords not signed up to the Landlord registration scheme.

THEME 1: TENANCY MANAGEMENT: CLAUSES 1 AND 2

Clause 1 - Tenants to be given notice regarding certain matters

Clause 2 - Tenant to be given notice regarding certain past matters

Detail should be prescribed in the Bill so that Private Landlords are clear from the outset and all reference the same information. The information should be clear and not subjective, even if it evolves over time.

We agree that there should be letting agent regulations put in place but do not agree that they should not be able to fee for some of their services. Letting agent regulations should be clear on circumstances letting fees are payable.

Tenancy Management needs to provide absolute clarity on the expectations- we suggest maybe adding – it will clearly set out the obligations of both the tenant and the landlord making it clear who has responsibility for what and timelines etc for the landlord in discharge of the landlord's obligations

It also protects the tenant from fear of eviction if they raise an issue of concern which has often been the case in the private rented sector

CLAUSE 1

In both England and Scotland, landlords are required to provide tenant with an easy read guide or booklets to ensure tenant understand their tenancy terms. They also provide tenants signpost to sources of advice. Model tenancy agreement are available online which provides mandatory and discretionary terms. NIFHA recommends that these and other good practice examples are considered in the developing the detail of the notice of tenancy terms under Clause 1.

CLAUSE 2

We agree with clause 2 and the reintroduction of what the accidental appeal of Article 4 had done. We are not aware of any incidents of where it has had a negative impact. As a professional Landlords- Housing Associations provide tenants with clarity from the outset in the form of a Tenancy Agreement.

The time scale for dealing with past matters should be sufficient for a majority of private tenancies, however advocate organisations such as Housing Rights and Citizens Advice should also be canvassed for their views based on their real-life case experiences.

Clause 2: We have no other issues to raise regarding perceived issues in relation to tenancy management that are not in the Bill.

THEME 2: RENTAL PAYMENTS AND RENTAL DEPOSITS: CLAUSES 3, 4, 5, 6 AND 7

- Clause 3 - Tenant to be provided with a rent receipt for payment in cash
- Clause 4 - Limit on tenancy deposit amount
- Clause 5 - Increase in time limits for requirements relating to tenancy deposits
- Clause 6 - Certain offences in connection with tenancy deposits to be continuing offences
- Clause 7 - Restriction on frequency of rent increases

CLAUSE 3

We feel that the clause offers sufficient protection to tenants with regard to the provision of receipts for cash payments

A receipt should be company headed and be date stamped and signed by the recipient. This is standard good practice in our experience. Requirement to record remaining rent balance on the receipt is unduly onerous as in the circumstances where such payments are often made, access to live rent information may not be available at that time.

Ideally PRS tenants should receive at least a quarterly rent statement showing payments, charges and outstanding balances etc.

Clause 3: Particular types of tenants pay their rent in cash

In our experience very few people, pay by cash and based on past experience some students and or those on regulated tenancies. It is more likely to be those who are dealing with wider financial issues. Self Employed persons and those who rely on tips from their job are among groups who may have ready cash to pay rent. Rent payment cards are also provided for those unable/unwilling to set up direct debits/standing orders.

Clause 3: Suggestions on how tenants can be made aware of their right to be provided with a rent receipt for payments in cash.

It could be stated on their rent book. Alternatively, via website in payment methods/accepted sections, at sign up, handover, tenancy agreement signing stages by letting agents and Housing Association staff.

The bill could perhaps go further in terms of prescribing that landlord issue the tenant with a receipt for any payment of rent in cash and also in relation to the provision of rent statements.

Clause 3: How robust is the mechanisms currently in place for tenants to complain, should their landlord or agent refuse to issue a receipt for a cash payment.

Larger landlords will already have robust service level agreements, complaints processes and clear tenancy agreements. However, this is not always the case with smaller landlords or sole providers. The bill could articulate minimum requirements expected in relation to a defined complaints process.

Clause 4

Clause 4 Is it appropriate to limit to no more than 1 month's rent on the amount of deposit that is required in connection with a private tenancy?

This is acceptable. There are reasons for it being better to have more than one month's rent for both Landlords and Tenants. It gives the landlords comfort if a tenant has poor credit rating and also allows those who would otherwise be restricted from the PRS access to these units.

Clause 4: Additional comments on the affordability of tenancy deposits.

By limiting to no more than one month's rent this may restrict access to would-be private renters.

Tenants appear to be able to find a deposit. It is refundable and as long as returned promptly can be used for future tenancies. It shows an assurance to the Landlord of the tenant's commitment to the tenancy.

Clause 4: The Bill restricts Deposits to one month's rent. There is no specified restriction to limit the amount of rent in advance required.

Rent in advance is a separate point to deposit requirements

As a professional Landlord we seek only one month's rent in advance. The tenancy agreement then sets out the amount £ and date the monthly rent is to be paid in advance. Tenants should pay

minimum 1 months' rent in advance to protect landlords from arrears. This is an acceptable minimum for private lets. No maximum limit should apply.

Two months' rent would only be requested if a tenant has poor credit rating.

Clause 5

We feel that extending the time limits outlined in this clause are sufficient and necessary and welcome the extension of protection for approved deposit schemes to 28 days and additional time for a landlord to provide information to the tenant within 35 days.

CLAUSE 6

We are in favour of there being no time barrier on prosecuting a person who fails to comply with the set requirements of the amended Article.

CLAUSE 7

The Bill provides for restrictions on the frequency of rent increases (to any private tenancy except a controlled tenancy).

We agree with and welcome the restriction clause on rent increases which provides that there must be a minimum of 12 months between rent increases.

We also welcome the requirement to provide written notice of any increase specifying the date when it will take effect.

It would be useful to set out a timeframe for providing this written notice and build in a consultation period for the tenant to consider the rent increase proposal.

Clause 7: Rent increase only taking effect if a landlord gives the tenant a written notice that complies with certain requirements.

Provided the uplifted rent is no more than market rent we don't see a requirement that a Landlord would provide additional justification.

If rent increases are clearly stated in the tenancy agreement, to be applicable every 12 months, then written notice being received inside the designated timeframes should not be a necessity, more a courtesy. Factors outside of the landlord's control may influence the ability to deliver written notice inside the compliant requirements. Social landlord providers of private rental stock should also be mindful of potential affordability issues being created if rent increase were possible more frequently than on a 12-month cycle. Most tenancies and licences are set for a period of 12 months and would normally only provide for increases beyond that 12 month.

Clause 7: Should the Department will be given the power to specify circumstances in which the restrictions on rent increases will not apply (for example, if house is renovated/extended)?

Yes, some circumstances as those outlined. The Department's power to uplift rents to market value, we feel are not required.

Will the circumstances include demand? Private rent prices are determined regularly by demand. If this is not classified as a circumstance to allow an increase, then landlords may be restricted from increasing rent to match the market rates for their properties. On the flip side, this is fair on the tenants when the circumstance works – this ensures any works/renovations/extensions completed are sufficient to justify an increase being applied. This will help prevent minor works driving major increases. Will there be a hierarchy or scale for the value rent is increased or will it be based on facts, i.e., a renovation/extension took place, therefore regardless of the scale or cost, we can

increase rent by whatever value we deem appropriate? Turnaround times on any decision process here will need to be swift to ensure sufficient time is provided to update existing direct debit or recurring card payment routines.

THEME 3: PROPERTY MANAGEMENT STANDARDS: CLAUSES 8, 9 AND 10

Clause 8 - Fire, smoke, and carbon monoxide alarms, etc.

Clause 9 - Energy efficiency regulations

Clause 10 - Electrical safety standards regulations

CLAUSE 8

This clause meets its stated aim of reducing the risk of injury or death caused by fire, smoke, and carbon monoxide in private tenancies. The proposed amendments set forward what has been established HA practice for many years.

Clause 8 gives the Department the power to set minimum standards for the purpose of determining whether the duties of this clause have been complied with.

This is a welcome development although the proposed amendments do not refer to circumstances where a device is positioned in a part of the building that is not part of the tenancy with specific regard to any requirement for that device to be connected to the wider fire safety systems or any systems not under the control of the landlord where the landlord is not the ultimate owner of the premises

The Bill could also perhaps define a minimum relatable standard along with a servicing schedule to ensure property is decent and in a safe condition and the landlord discharging their duty

Minimum standard need to clearly defined by the Department ensuring clarity especially where current legislation may be considered unclear.

Clause 8: The landlord's 'knowledge of disrepair'

This clause is fair because some tenants do not report repairs.

This is a very specialist area and an area which is perhaps open to interpretation. The tenant for example may not be aware of a latent defect in the design of a system or in a specific device or in the design of the communication between various parts of the system.

A relatable standard could assist here if it was part of the remit of the bill and set the minimum acceptable standard of repair across the private rented stock.

Clause 8: In respect of tenancies granted before this clause comes into operation – the requirements and duties of the clause only apply from a date in the future to be prescribed by the Department in regulations.

We think this is fair. It would be good to have one absolute rule on timing.

CLAUSE 9

Clause 9 introduces Schedule 2 and will enable the Department to make regulations concerning the energy efficiency of dwelling houses let under a private tenancy.

We welcome this energy efficiency clause. The benefits are obvious however there should be some check or balance regarding capital expenditure required to meet said regulations where it is not

economically viable from an investment point of view to enhance the property to the level of the regulations

But we welcome the ambition to drive up the energy efficiency of the PRS sector where some of the conditions are amongst the poorest in the NI housing stock – this will also help with fuel poverty and those who rent in the private rented sector are among the financially marginalised

Clause 9: this clause and related schedule future-proof the legislation sufficiently with regard to energy performance certificates (EPC) however more clarity is needed on minimum energy rating for PRS units.

Clause 9: We are aware of minimum bandings in Britain, and we would welcome guidance from the Department regarding what minimum EPC banding should be applied.

We suggest this should be SAP rating C.

The minimum banding should reflect the age and type of the property – differing construction methods were prevalent in different era, and this should be reflected in the minimum banding for example a property constructed in the 1930's is likely to be markedly different in building fabric and technology from a property constructed in the 1970's which will be equally divergent in fabric and technology from a C rated property constructed in 2010's

A rating of C for existing properties as a guide or aspiration and SAP rating B for all new properties built since 2012 with perhaps a more ambitious rating for newly constructed properties

Clause 10

This clause introduces Schedule 3 and enables the Department to make regulations concerning electrical safety standards in private tenancies.

We welcome this electrical safety clause. Current guidance may be considered very unclear. The Department needs to clearly set out what electrical certificates are required in private rented properties, for example are EICR certificates legally required?

Electrical safety is achieved by reference to the NICEIC Certification of an installation – it may be worth referencing this certification but perhaps requiring that certification more frequently.

Clause 10 Compliance with the standards

Compliance with the standards should be monitored and enforced. However, clarity on types of safety certificates and frequency is welcomed.

Perhaps a quarterly return to the regulating body matching number of private rentals held to NICEIC certificates issued and remedial actions raised may be helpful.

THEME 4: SECURITY OF TENURE; CLAUSE 11

CLAUSE 11

Clause 11 amends Article 14 of the 2006 Order so that the Article will only deal with notices to quit given by landlords and that they must be in a certain form and contain certain information.

We welcome this clause to extend the mandatory notice to quit period for landlords to provide 8 weeks' notice until the tenancy is 10 years old. This seems reasonable and appropriate. It also provides the tenant with a certain level of protection.

Clause 11

We suggest the range of time periods regarding notices to quit are depending on how long the tenant has been in the house.

We acknowledge that having bands could be confusing and create opportunities for challenge, especially when landlords have changed over time. Therefore, a standard timeframe may be more equitable and if this is adopted then we would suggest 2 months as a maximum is reasonable.

Clause 11 The Department has power, by regulations, to alter notice to quit periods in some tenancies.

This should only be in clearly defined exceptional circumstances and the alteration period should not be in excess of three months.

CLAUSES 12-14

- Clause 12 - Interpretation
- Clause 13 - Commencement
- Clause 14 - Short title

Clauses 12 (Interpretation), 13 (Commencement) or 14 (Short title).

We have nothing to add

VIEWS ON OFFENCES. ANY OTHER COMMENTS

The Bill creates a number of offences and penalties.

There should be a defined appeals process linked to offences and penalties and the clock should be paused in relation to penalties until the outcome of the appeal is made.

Finally, we feel training should be offered to Landlords/ managing agent to ensure full understanding of roles and responsibilities.

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