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Assembly

Research and Information Service Bill Paper

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Private Tenancies Bill

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This paper has been prepared to inform consideration of the Private Tenancies Bill which was introduced by the Minister for Communities on 6 July 2021. The Bill consists of 11 substantive clauses and three schedules. The stated aim of the Bill is to make the private rented sector a safer and more secure housing option for a wider range of households. The Bill introduces a series of amendments to The Private Tenancies (Northern Ireland) Order 2006, which is the main legislative framework for the private rented sector in Northern Ireland.

Executive Summary

1. The [Private Tenancies Bill](#) was introduced to the Assembly by the Minister for Communities on 6 July 2021. During its [Second Stage](#), Minister Hargey highlighted that the Bill represents only the first stage of a longer-term programme of reform for the private rented sector in Northern Ireland.
2. The Bill is comprised of 11 substantive clauses and three schedules which provide for a series of amendments to [The Private Tenancies \(Northern Ireland\) 2006](#). The 2006 Order is the main legislative framework for the private rented sector in Northern Ireland.
3. The purpose of this paper is to inform consideration of the Bill by looking at the current law in Northern Ireland and how it operates; exploring the provisions of the Bill (as introduced) in further detail; providing comparisons with similar legislation and policy in Great Britain and Ireland; and, where relevant, identifying issues that may merit further consideration.

The Bill (as introduced)

Clauses 1&2: written statement of tenancy terms

4. **Clauses 1 & 2** of the Bill will provide both existing and future tenants with the right to a notice containing certain particulars and other details relating to their tenancy. The Bill's [Explanatory and Financial Memorandum](#) (EMF) indicates that regulations made by the Department may prescribe that the notice contains, for example, **the main terms of the tenancy**.
5. A duty on landlords to provide tenants with the written terms of the tenancy already exists in **Scotland** (for the newer '[private residential tenancy](#)'). In **England**, certain assured shorthold tenants have a right in law to request that the landlord provides, in writing, a statement of any terms of the tenancy.
6. There are also further developments in relation to tenancy terms in both Scotland and England. The Scottish Government has, for example, included [statutory terms](#) that must be included (relating to issues such as rent increases, ending the tenancy agreement, Notice to Quit etc). In both jurisdictions **easy-to-read guidance booklets** have been published by both the UK Government (see [here](#)) and Scottish Government (see [here](#) and [here](#)). The purpose of these guides is to help tenants understand not only the tenancy terms but also the rights and responsibilities of both landlord and tenant. They also signpost tenants to further sources of information and support. Landlords of certain tenancies in both England and Scotland are legally obliged to provide these documents to tenants, free of charge.
7. Additionally, both the UK Government and the Scottish Government have produced **model tenancy agreements** for landlords and letting agents to use (i.e. for shorthold tenancies in England see [here](#) and for Scottish private residential

tenancies see [here](#)). In Scotland, the model tenancy agreement can be used by landlords to fulfil their duties to provide the written terms of a tenancy. The Scottish model tenancy agreement is available in [digital format](#) and landlords can fill details online to generate an agreement specific to their tenancy. The Welsh Government has also recently [consulted](#) on the introduction of model written statements of tenancy terms and supporting explanatory guidance.

The information and details of the tenancy required to be included in the notices provided by landlords will be prescribed in regulations made by the Department. In anticipation of the regulations some issues that may merit further consideration. Exactly what information should be required in the notices? Will the statement of tenancy terms contain mandatory terms? If not, why not? Will the Department publish explanatory guidance to help landlords and tenants understand (a) the tenancy terms and (b) their rights and responsibilities? Similar to Scotland and England, should there be a duty on landlords to provide tenants with this explanatory information? Are there plans to develop model agreements to assist landlords and letting agents with the new requirements? If so, are there plans to develop a digital model agreement similar to that in Scotland (with the option for landlords and agents to use their own agreements if they so desire, providing they contain the required information)?

Clause 3: Rent receipt for cash payments

8. The Bill's EMF (as introduced) explains that the substitution of a new Article 5 in the 2006 Order will remove the requirement for landlords to provide tenants with a rent book. However, **Clause 3** aims to provide safeguards for tenants by requiring that the landlord provides the tenant, free of charge, with a **receipt for rent paid in cash**. The receipt must contain certain prescribed information.
9. The right to a receipt for rent paid in cash is already enshrined in housing law for private residential tenants in **Scotland**, and for private rented sector tenants in the **Republic of Ireland**. Whilst there are no similar obligations placed on landlords in England, many tenant and landlord representative bodies advise that a receipt should be issued by landlords, or requested by tenants, in case a dispute arises.

Issues that may merit further consideration - is the current complaints and redress mechanism sufficiently accessible and robust to deal with failures to comply with the potential new requirements in relation to rent receipts? Are their groups of tenants that may find it particularly difficult to make a complaint should a landlord fail to provide a receipt (e.g. tenants from black and minority ethnic communities, older tenants, tenants who are migrant workers etc.)? What additional support is, or should be, available to such tenants? How are, or could, such tenants be protected from 'retaliatory eviction' or intimidation should they request a receipt or raise a complaint in relation to the issue?

Clause 4: Limit on tenancy deposit amount (1 month's rent)

10. Affordability in accessing the private rented sector is a significant issue for low-income households and this has been exacerbated by the impact of the COVID-19 pandemic. Both the Department for Communities [website](#) and the NI Direct [website](#) provide information on the support available to households during the pandemic.
11. As rent levels continue to rise in Northern Ireland, so do tenancy deposit amounts given that they are typically equated to the monthly rental charge. There is currently no legislative provision that restricts the amount of deposit that can be required in relation to the vast majority of tenancies in Northern Ireland. **Clause 4** of the Bill will **limit the amount of deposit to no more than one month's rent**.
12. New [legislation](#) has just been implemented in the **Republic of Ireland** (July 2021) which similarly restricts deposits to **no more than the equivalent to one month's rent**. However, in addition to the restriction on deposits, an **advance payment of rent also cannot exceed one month's rent**. The limits on deposits and advance payments only apply to tenancies created from 9 August 2021 onwards and were introduced in response to the growing pressures on tenants resulting from the COVID-19 pandemic.
13. For 'private residential tenancies' in **Scotland**, a deposit equivalent of **no more than two months' rent** can be charged. In **England**, the amount of deposit for certain tenancies is linked to the total annual rent. For example, if the total annual rent of the property is less than £50,000, the maximum deposit a landlord or agent can require is capped at the equivalent of five weeks' rent. The UK Government has outlined an intention to introduce a [reform package for private renters](#) in England and stated that it will outline later this year proposals for a new "**lifetime tenancy deposit model**".

Tenancy affordability – upfront costs

14. The initial outlay at the beginning of a tenancy can be considerable (e.g. deposit, rent in advance, tenancy-related fees etc.). This paper looks at **initiatives, primarily in other jurisdictions, that assist tenants with the initial costs associated with the tenancy**. These include deposit bond schemes; rent guarantee schemes; employer rent and deposit loan initiatives; local authority and third sector private rented sector lease schemes; and the potential for "lifetime deposits".

Tenancy affordability – letting fees and wider issue around the regulation of letting agents

15. It should also be noted that the fees associated with renting a property can also contribute to affordability issues for households on low incomes. This can be particularly acute for benefit claimants and students. **Northern Ireland does not**

have a modern statutory regulatory framework for letting agents or for letting agent fees. Minister Hargey has indicated that this is an issue she will consider as part of the Department's longer-term programme of reform. A legislative framework for fees already exists in England, Scotland and Wales.

16. Other jurisdictions have also moved ahead in terms of developing a regulatory framework for letting and managing agents. The **Welsh Government**, for example, has introduced a [licensing system](#) for letting agents with mandatory training requirements. In **Scotland**, letting agents must follow a Scottish Government [Code of Practice](#). The Code outlines the minimum standards that are expected of letting agents operating in Scotland. Letting agents in Scotland must also be registered on the [Scottish Letting Agency Register](#) which involves [training and qualification requirements](#).
17. There is currently no overarching statutory framework for the regulation of letting agents operating in **England**. However, the UK Government established a **working group** chaired by Lord Best to look at the potential for an **independent property regulator** (the report of the group is available [here](#)). An independent steering group is also reported to have been established to develop an overarching [code of practice](#) for property agents.

Some points in relation to letting agent fees and the regulation of letting agents which may merit further consideration - The Minister for Communities and the Minister of Finance signed a [joint communiqué](#) relatively recently to reaffirm court rulings on the legality of particular fees. What impact has this communiqué had? Is there evidence that tenants are still being charged fees that the law does not permit to be charged? What is the anticipated timeframe for the development of proposals on a potential regulatory framework for letting agents and letting fees?

Clause 5: extending time limits in respect of tenancy deposit requirements

18. Tenancy deposits paid on or after 1 April 2013 must be protected with one of the three approved [Tenancy Deposit Scheme](#) administrators. Landlords are currently required by law to place the deposit in an approved scheme **within a period of 14 days** beginning on the date on which the deposit is received. Landlords must also provide tenants with **certain prescribed information** (e.g. details of the scheme the landlord is using, information on the dispute resolution mechanism). This information must be provided by the landlord within 28 days from the receipt of the deposit. Clause 5 contains provisions to extend the time limit for a deposit to be protected **from 14 days to 28 days** and for the prescribed information to be provided from the current 28 days to 35 days.
19. In **Scotland**, deposits must be submitted to the approved deposit scheme administrators within **30 working days of the beginning of the tenancy** and the tenants must also be provided with the prescribed information within **30 working days of the tenancy start date**. In England and Wales, a deposit must be placed

in an approved scheme within **30 days of it being received by the landlord** and the prescribed information must also be provided to tenants within 30 days of the receipt of the deposit.

Clause 6: Certain offences in connection with deposits to be continuing offences

20. **Clause 6** is intended to remove the current prosecution ‘time bar’ for certain offences relating to the Tenancy Deposit Scheme. An offence is committed under the current Private Tenancies (NI) Order 2006 where a landlord fails to protect a tenancy deposit or provide the prescribed information within the required timeframe. Clause 6 provides that these offences continue to be committed throughout any time period during which the failure continues. Thereby, removing the time barrier on prosecuting a person who fails to complete these requirements.

Some issues which may merit further consideration. How many successful prosecutions have been brought against landlords since the beginning of the introduction of the Tenancy Deposit Scheme? Is it possible to quantify how many potential cases were unable to proceed as a result of the current ‘time bar’?

Clauses 7: Restriction on rent increases

21. Only a small number of tenancies in Northern Ireland are subject to rent control. Therefore, the vast majority of tenancies are not subject to rent regulation or caps set by government. The Department for Communities [2017 consultation](#) on the private rented sector in Northern Ireland considered the issue of rent control but maintained that it could act as a disincentive to investment in the sector. It proposed instead, to **restrict rent increases to once in any 12-month period**. It maintained that consultees had expressed concern about both the frequency of rent increases and inadequate advance notice of the increase provided to tenants.
22. This restriction is provided for in **Clause 7** (as introduced). Clause 7 also provides that tenants must be provided with a **written notice** specifying the date the increase will take effect and the rent payable after the increase. Clause 7 provides that the Department for Communities may make regulations prescribing circumstances in which the restriction will not apply e.g., where the property is renovated, refurbished, altered or extended.
23. There are restrictions on rent increases provided for in housing legislation in other jurisdictions. For private residential tenancies in **Scotland, rent can similarly only be increased once a year** and tenants must be provided with at least **three months’ written notice**. If a landlord sends the notice by post or email then the delivery time must be factored into the amount of notice given to the tenant.
24. There are different arrangements in the Republic of Ireland in respect of what are known as [‘rent reviews’](#) (a rent review being the process where a landlord or tenant seeks to change the amount of rent being charged to a property). The rent can

only be reviewed either **24 months** after the tenancy commencement date, or 24 months from the date of the last review. The tenant must be provided with at least **90 days' notice in writing** of a change in rent and the notice must also be in a prescribed format. This is applicable where the property is not in a Rent Pressure Zone (RPZ). More information on RPZs is provided below and in the main body of the paper.

Some issues that may merit further consideration in respect of rent increases and notices. There is [research](#) to suggest that landlords prefer a long-term stable tenant and not to uplift rent on a regular basis to keep that tenant. The Chief Executive of the Scottish Association of Landlords is [reported](#) to having suggested that a similar once yearly restriction of rent increases in Scotland has led more landlords to raise rents every 12 months after the provision came into force, whilst previously many didn't raise the rent for years. Could there be similar unintended consequences for long-term tenants in NI? When the landlord provides the notice of the rent increase to the tenant in writing, will delivery of that notice (e.g. if it is by post) be factored into the required timeframe for the notice to be served?

Issues that may merit further consideration regarding failure to comply with the new duties relating to rent increases. Is the current complaints and redress mechanism sufficiently accessible and robust to deal with failures to comply with the potential new requirements? Are there groups of tenants that may find it particularly difficult to make complaints should a landlord increase rent more than once within the 12-month period (e.g. tenants from black and minority ethnic communities, older tenants, tenants who are migrant workers etc.)? What additional support is, or should be, available to such tenants? How are, or could, such tenants be protected from 'retaliatory eviction' or intimidation should they make a complaint regarding a landlord failure to adhere to the new requirements in relation to rent increases?

Some points in relation to the affordability of tenancy upfront costs that may merit further consideration. The Irish Government has introduced legislation to limit a rent advance to the equivalent of one month's rent, what are the pros and cons of a similar provision in Northern Ireland? What support is, or what initiatives are, currently available to assist tenants with the upfront costs associated with tenancies? What scope is there to provide additional support? The paper provides an overview of schemes in other jurisdictions to assist tenants with upfront costs e.g. deposit bond schemes, deposit loan initiatives, rent guarantee schemes. Is there scope for such initiatives to be adapted for use in Northern Ireland? Is there potential for a 'lifetime deposit' to be developed in the longer term (what are the associated pros and constraints)? Is there any evidence that tenants in Northern Ireland are using high interest loans to pay for upfront costs?

Challenging "unreasonable" rent increases?

25. For the vast majority of tenants in Northern Ireland, there is arguably very limited formal recourse if the tenant feels that the rent or the rental increase is unfair. There is of course the consumer choice element; prospective tenants may choose not to take the property if the rent is perceived to be too high. If the rent is

increased, they may choose not to continue the tenancy after the period specified in their agreement. But consumer choice is considerably more constrained for lower income households and vulnerable tenants to exercise.

26. There is a mechanism for tenants in both Scotland and the Republic of Ireland to **challenge a rental increase** and to have it reassessed by a third party. In the Republic of Ireland, if a landlord is seeking to increase the rent during a [‘rent review’](#) they must include the rent amount for three comparable dwellings of a similar size, type and character, situated in a similar location (e.g. in the form of advertisements published within the previous four weeks). Should a tenant wish to challenge the rental increase or challenge the validity of a notice of rent review, they can take a dispute case to the [Residential Tenancies Board](#) (RTB). The RTB is a public body established by the Irish Government to support and develop the rental housing sector.
27. Tenants who have ‘private residential tenancies’ in **Scotland** also have a mechanism to appeal rent increases that they perceive to be unreasonable. Tenants can, within 21 days of receiving notice of the increase, request that a rent officer (within [Rent Service Scotland](#)) provide a rent adjudication. The rent officer has the power to vary the rental increase up or down. If the tenant or landlord disagree with this decision, they can appeal to the [First-Tier \(Housing and Property Chamber\)](#) who will make a final decision on the matter.

Rental control in high demand areas – legislation in other jurisdictions

28. Both **Scotland and the Republic of Ireland** have legislated for **Rent Pressure Zones (RPZs)** to control rising rent levels in certain high rent geographical areas that are causing affordability issues for tenants. An area (e.g. a local authority area) can be designated as RPZ and rental increases can be restricted according to a formula set by government. There are a number of [operational RPZs](#) in the Republic of Ireland (in six local authority areas and 48 Local Electoral Areas).
29. However, **no areas in Scotland have been designated RPZs as yet**, due in part to a lack of available data required to establish a case for them. However, [a new draft shared policy programme](#) recently published by the Scottish Government and the Scottish Green Party has indicated that options for rent control will be consulted upon with a view to implementing rent control by the end of 2025. There are no RPZs in **England and Wales**, although the Mayor of London has [expressed his support](#) for introducing some form of rent regulation in the capital.
30. The designation of areas for rental control is a very complex issue and as such the paper contains links to research on this issue to aid Members’ understanding. It is important to reiterate that the Department’s [2017 consultation](#) on the PRS in Northern Ireland was not in favour of rent control for all private tenancies. It was concerned that this could (a) act as a major disincentive to invest in the sector, and (b) could push some landlords out of the sector.

Some issues that may merit further consideration with respect to rent increases. Has the Department considered the mechanisms introduced in Scotland and the Republic of Ireland to provide adjudication where the tenant believes the rent increase to be unreasonable? If so, what are its views on this? What are the views of landlords and landlord representative bodies on this issue? What are the views of tenants and tenant representative bodies on this issue?

Some wider issues relating to affordability that may merit further consideration. What other safeguards, initiatives and incentives could be put in place to encourage landlords to keep rent and rental increases to an affordable level, particularly for lower income households? Note that the main body of the paper explores examples of initiatives in other jurisdictions that have been developed to improve access to the private rented sector and/or improve security of tenure for low income and vulnerable households. Such initiatives are relatively less commonplace in Northern Ireland, although the paper explores one such example (i.e. Smartmove).

Clauses 8, 9 & 10: property standards in the Northern Ireland private rented sector

31. Northern Ireland's first housing strategy '[Facing the Future: The Housing Strategy for Northern Ireland 2012-2017](#)' outlined a commitment to review the current housing Fitness Standard in Northern Ireland. As a first step in this process, the then Department for Social Development published a [discussion paper](#) in March 2016. The paper noted that the current statutory [Fitness Standard](#), which has been in place in its current form since 1992, has not kept pace with building standards as well as wider health and safety standards issues. The discussion paper sought views as to whether factors such as thermal comfort, fire safety, electrical safety and the prevention of falls should feature in a revised Fitness Standard.
32. The Department for Communities 2017 [consultation paper](#) on the PRS indicated that the review of the Fitness Standard was scheduled to produce proposals for public consultation in 2017. Whilst this consultation was never published, the Department has, however, indicated that there are a number of private rented sector issues that it needs to look at over a longer timescale (e.g. Fitness Standards, letting agent regulation and grounds for eviction).
33. Whilst the current statutory Fitness Standard remains under consideration, the Department has sought to move ahead with introducing new requirements in relation to fire, smoke and carbon monoxide detectors (**Clause 8**); energy efficiency standards (**Clause 9**); and electrical safety standards (**Clause 10**).

Regulatory frameworks for minimum housing fitness standards in other jurisdictions

34. Minimum property standards and statutory tools for dealing with properties that do not meet those standards are more developed in other jurisdictions. In **Scotland**, the [Tolerable Standard](#) is the basic statutory minimum standard for all housing. In

many respects it is similar to the NI Fitness Standard but has two important additions, i.e. properties must have satisfactory thermal insulation and have an electrical installation that is adequate and safe to use.

35. In addition to complying with the provisions in the Tolerable Standard, private landlords in Scotland are required by law to ensure that a rented property meets the [Repairing Standard](#) at the start of, and throughout, a tenancy. The Repairing Standard requires, amongst other things, that the property has a satisfactory mechanism for detecting and providing warning in the event of a fire (or suspected fire) and for giving warning if carbon monoxide is present in a concentration that is hazardous to health. To comply with the Repairing Standard, landlords must have regard to **three statutory guidance documents** published by the Scottish Government on [fire detection](#); [electrical installations and appliances](#); and the [provision of carbon monoxide alarms](#).
36. If, after a landlord has been notified of any problem, and has not attended to the issue satisfactorily then the matter can be referred to the [First Tier Tribunal \(Housing and Property Chamber\)](#). The Tribunal has the power to require a landlord to carry out work necessary to meet the required standards. It should be noted that [further changes](#) to the Repairing Standard have been proposed including standards relating to safe kitchens, fixed heating systems and the installation of residual current devices (a device to reduce the risk of electrocution and fire by breaking the current in the event of a fire).
37. The [Housing Health and Safety Rating System \(HHSRS\)](#), the main system for assessing and enforcing housing standards in **England and Wales**, has been in operation since April 2006. The HHSRS is a risk-based tool designed to help local authorities identify and protect against potential risks and hazards to health and safety in properties across all housing tenures. The [outcome of a scoping review](#) of the HHSRS was published by the Ministry of Housing, Communities & Local Government in July 2019. The review is still ongoing. In the meantime, the UK Government has published a '[How to Rent A Safe Home](#)' guide for tenants containing a checklist and advice on the main hazards that could be found in a rental property, landlords' duties and complaints processes.
38. In **England**, the [Homes \(Fitness for Human Habitation\) Act 2018](#) came into force in March 2019. The Act places an onus on landlords (both social and private rented sector) to ensure that their properties are fit for human habitation at the beginning of, and throughout, a tenancy. It requires landlords to remedy unfitness and provides tenants with a right to take action in the courts for a breach of contract where standards are not met. Local authorities in England can also continue to use their own enforcement powers to tackle poor and illegal practices in housing standards.

39. In the **Republic of Ireland**, private sector landlords must comply with the [minimum standards](#) set out in the [Housing \(Standards for Rented Housing\) Regulations 2019](#). The regulations contain standards in respect of fire safety and carbon monoxide, thermal comfort and electrical safety.

Some issues relating to the Fitness Standard that may merit further consideration. Is there an anticipated timeframe for the publication of proposals on a revised Fitness Standard? Are the elements of minimum standards in other jurisdictions that the Department and stakeholders would like to see implemented in Northern Ireland? Is the current complaints and redress process relating to Fitness Standards in the private rented sector in Northern Ireland effective? If not, what changes to the current system would stakeholders like to see? Retrofitting task forces have been established in other jurisdictions (e.g. Republic of Ireland and Manchester, to look at issues such as access to affordable finance to deliver low-carbon retrofitting). Are there plans, or should there be plans, for a retrofitting taskforce in Northern Ireland? How does a potential revised Fitness Standard factor into decarbonisation targets?

Clause 8: Fire, smoke and carbon monoxide alarms

40. There is currently no blanket requirement in law in Northern Ireland for private landlords to install and keep in good repair and working order fire, smoke and carbon monoxide detectors in Northern Ireland. However, some private rented sector properties may be covered by existing laws (e.g. the installation of smoke alarms in new build properties). Carbon monoxide alarms are a mandatory requirement for all homes where a new fossil fuel appliance is installed. Clause 8 provides for **new requirements on private landlords in relation to fire, smoke and carbon monoxide alarms** and the **duties on landlords and tenants with regards to these**.
41. Mandatory requirements in respect of smoke and carbon monoxide are already in place in England, Scotland and the Republic of Ireland (and being consulted upon in Wales). The Scottish Government has gone a step further by requiring, from **1 February 2022**, that **all houses in Scotland (regardless of tenure)** must have satisfactory provision for detecting and raising the alarm in the case of fire.

Some issues relating to Clause 8 that may merit further consideration – The clause enables the Department to make regulations setting out minimum standards. Will these standards specify the types of alarms that must be installed and the locations where they must be installed? Will the Department publish guidance for landlords on the new requirements? If so, will the guidance be statutory or non-statutory? The new requirements are applicable to private tenancies on or after the date in which Section 8 of the new Act becomes law. It will also apply to tenancies before that date but only from a “prescribed date”; what will this “prescribed date” be? How will compliance with the new duties be monitored and enforced? Will there be mechanisms established whereby information can be shared by the Fire Service and local councils in respect of potential failures to adhere to the new requirements?

Clause 9: energy efficiency

42. The 2016 NI House Conditions Survey highlights that approximately 22% of households in Northern Ireland are living in fuel poverty (down from 42% in 2011). However, fuel poverty continues to be unevenly distributed across the housing tenures. The tenure with the highest proportion of households in fuel poverty is the private rented sector (26% of households in fuel poverty) followed by the owner-occupied sector (23% of households in fuel poverty).
43. Research has shown that fuel poverty is a multi-dimensional concept and that factors such as thermal discomfort, mouldy and damp properties and social isolation create a self-perpetuating cycle of psychosocial stress and physical and mental ill-health. The Fuel Poverty Coalition's recently published '[Manifesto for Warmth](#)' argues that measures to tackle fuel poverty must include a particular focus on Northern Ireland's private rented sector.
44. **Clause 9** introduces Schedule 2 which provides the Department with the power to **make regulations that will make it obligatory for domestic private rented properties in Northern Ireland to have a minimum Energy Performance Certificate (EPC) rating**. There is currently very little information as to what the minimum rating will be, or if it will be accompanied by some form of financial assistance model to help landlords upgrade their properties. The Department has indicated that it will be working with experts in energy efficiency and the Department of the Economy (who are developing the Energy Strategy) and will bring forward proposals on an appropriate EPC standard; the timeframes for delivery; and proposals around exemptions for some properties.
45. Minimum energy efficiency standards have been introduced in **England and Wales** via the [Energy Efficiency \(Private Rented Property\) England and Wales Regulations 2015](#). All private rented sector properties must meet a minimum EPC **Band 'E' rating**. There are a number of **exempted properties** included within the legislation and a "**cost cap**" is applied to energy efficiency improvements. In September 2020, the Department for Business, Energy & Industrial Strategy launched a [consultation on proposals](#) to upgrade private rented sector homes to **EPC Band 'C' by 2030** where it is "*practical, cost-effective and affordable*".
46. The Scottish Government had set in place plans to introduce regulations (the [draft Energy Efficiency \(Private Rented\) Property \(Scotland Regulations\) 2019](#)). These appear **to have been paused by the Scottish Government due to the impact of the pandemic**. The draft regulations contained provisions to require all private rental properties to have a **minimum EPC rating of E by 31 March 2022** and to have a **minimum EPC rating of D by 31 March 2025**.
47. However, it should be noted that the [new draft programme](#) recently published by the Scottish Government and the Scottish Green Party outlines a potential additional direction of travel for energy efficiency across all housing tenures in

Scotland. It states that where “**technically and legally feasible and cost-effective**”, by **2033 all homes should meet an equivalent of EPC Band ‘C’**.

48. In the **Republic of Ireland**, the need for minimum energy efficiency standards was raised by several Senators during a recent Seanad Éireann [debate](#) on the private rented sector. The Irish Government are taking a number of steps towards improving energy efficiency across all housing tenures including a [Climate Action Plan](#) which contains a commitment to encourage around 500,000 homes to upgrade to a B2 Building Energy Rating (BER). It also includes the establishment of a [Retrofitting Taskforce](#) to look at developing a national retrofit delivery model including financing options with easy-payback methods.

Some issues relating to Clause 9 that may merit further consideration (bearing in mind that the detail will be contained in forthcoming regulations should this Clause 9 and Schedule 2 become law). What minimum EPC standard are appropriate for private rented sector properties in Northern Ireland? Should there be a staged approach to their introduction i.e. a lower minimum threshold set initially with a more ambitious target set for a later date? Should there be exemptions? If so, what should these be? Is there a tentative timeframe for the introduction of the new regulations? The Department has indicated that they will work with industry experts and the Department for the Economy to bring forward proposals in relation to the minimum EPC standard and exemptions. Has this work begun or, if not, when will it be taken forward? How effective are current schemes (e.g. Affordable Warmth) in incentivising landlords to make improvements to their properties? Are there examples of financial assistance models in other jurisdictions that could be adapted for use by tenants or landlords in Northern Ireland?

Clause 10: Electrical safety standards

49. There is currently no blanket requirement for private sector landlords (except in the case of HMOs) to ensure that periodic mandatory electrical safety checks are conducted by a suitably qualified professional. [Electrical Safety First](#), a consumer charity, have been campaigning for **mandatory five-yearly electrical safety checks** for all PRS properties in Northern Ireland. **Clause 10** of the Bill contains provision to provide the Department for Communities to make regulations concerning electrical safety standards in properties let under a private tenancy.
50. Schedule 3 of the Bill provides that the Department may make regulations **imposing duties on private landlords for the purposes of ensuring that electrical safety standards** are met during the period in which the property is let under the tenancy. Regulations may make provision about (a) **how and when checks are carried out** and (b) **who is qualified to carry out checks**. The regulations may also require the landlord to **obtain a certificate from the qualified person** confirming that standards have been met, and to **provide a copy of this certificate to the tenant** or any other person as may be specified in the

regulations. Schedule 3 also contains provisions in relation to offences, fines and penalty notices.

51. Again, much of the detail in relation to the minimum standards and mandatory electrical safety checks are not yet available and will be prescribed in the regulations. However, it is **possible to look to other jurisdictions**, particularly England and Scotland, where similar regulations have been introduced and detailed guidance on the regulations published.
52. In **Scotland**, landlords are required under the [Repairing Standard](#) to ensure that any installations in the property for the supply of electricity, electrical fittings and fixtures, and any appliance provided by the landlord is in a reasonable state of repair. Since **1 December 2015**, there is a duty on landlords under the Housing (Scotland) Act 2006 to ensure that electrical safety inspections are **carried out once every five years**. There are **two elements to the inspection** (a) an **Electronic Installation Conditions Report (EICR)** on the safety of the electrical installations and (b) A **Portable Appliance Test (PAT)** on portable appliances. Much of the detail of the legal requirements in Scotland is outlined in [guidance](#) published by the Scottish Government. The guidance is detailed and includes a definition of a “competent person”. Landlords must have regard to this statutory guidance in carrying out their duties.
53. Mandatory requirements in respect of electrical safety standards and 5-yearly inspections has also been introduced in **England** (from 1 June 2020) via the [Electricity Safety Standards in the Private Rented Sector \(England\) Regulations 2020](#). However, there are some notable differences to the Scottish regulatory requirements. For example, PAT testing is a requirement in Scotland, but appears to be a recommendation rather than a requirement in England. The Ministry of Housing, Communities and Local Government has also issued [guidance](#) to help landlords understanding their lawful duties in respect of electrical safety and electrical safety inspections.

Again, it should be noted that the details of the electrical safety standards requirements will be contained in regulations. However, some issues that may merit further consideration include – How often will periodic checks be required in PRS properties in NI? Is there a tentative timeframe in terms of when the regulations will become operational? Will the safety inspections involve one or two elements, i.e. just the Electrical Installations Conditions Report (EICR), or an EICR and a Portable Appliance Test (PAT)? Will there be detailed technical guidance provided in respect of the new requirements? Will this guidance be statutory? The Scottish Government guidance contains a section on ‘good practice’ which is not part of a landlord’s statutory duty but is recommended as good practice (e.g. annual visual inspections by the landlord to detect damage and wear and tear). Will similar good practice advice be part of guidance issued to landlords (and domestic property managing agents) in Northern Ireland? How long will landlords be given to organise inspections before the regulations come into

force? Are landlords likely to pass costs associated with new electrical safety standards onto tenants (e.g. in the form of rental increases or higher rents)?

Clause 11: Extension of Notice to Quit

54. Introduced at the start of the COVID-19 pandemic, the Private Tenancies (Coronavirus Modifications) Act (Northern Ireland) 2020 requires private rented sector landlords to give tenants a **12-week Notice to Quit** period before seeking a court order to begin proceedings to evict. The 12-week Notice to Quit period was due to expire on 30 September 2021 but has now been extended until 4 May 2022.
55. Pre-pandemic, the Private Tenancies (NI) Order 2006 sets out the relevant Notice to Quit period as follows:
- If the tenancy has been in **existence for less than 5 years**, then **4 weeks' Notice to Quit** must be given;
 - If the tenancy has been in existence for **more than 5 years but for not more than 10 years**, then **8 weeks' Notice to Quit** must be given; and
 - If the tenancy has been in **existence for more than 10 years**, then **12 weeks' Notice to Quit** must be given.
56. The Bill's EMF explains that **Clause 11** of the Bill (as introduced) contains provisions to amend the Notice to Quit periods for landlords as follows:
- **4 weeks' Notice to Quit** where the tenant has been in the property for a year or less;
 - **8 weeks' Notice to Quit** where the tenant has been in the property for **more than one year but not more than 10 years**; and
 - **12 weeks' Notice to Quit** where the tenant has been in the property **for more than 10 years**.
57. Clause 11 also provides that the notices will not be valid unless they are in a form, and contain the information, prescribed by the Department. It further provides the Department with the power, by regulations, to amend the Notice to Quit period in relation to tenancies over one year to periods that are up to six months.
58. For comparative purposes, the Bill Paper explores the Notice to Quit periods in other jurisdictions. It also examines legislative provisions in Scotland and the Republic of Ireland that aim to provide tenants with greater security of tenure by creating **longer-term tenancies**. In **Scotland**, tenants with one of the newer types of tenancy (i.e. the [private residential tenancy](#)) cannot be asked to leave the property at the end of the fixed term period unless the landlord successfully uses one or more of the [18 grounds for eviction](#) (there are both mandatory and discretionary grounds). During the second stage of the Bill, the Minister for Communities highlighted that grounds for eviction would be something that would be looked at in the longer-term programme for the PRS.

59. This paper also looks at wider issues around security of tenure. It provides a number of examples of **private rented sector access initiatives** that provide tenants with assistance at the start of their tenancy (e.g. finding a property, assistance with deposit affordability and benefit advice) and throughout the tenancy (i.e. advice and support to help them maintain their tenancy). The availability of such initiatives is currently limited in Northern Ireland, but they are comparatively more accessible in other jurisdictions.

Some issues that may merit further consideration - Minister Ni Chuilín indicated in her Ministerial Statement of 3 November 2020 that she wished to explore whether extending the Notice to Quit period to 6 months was possible. The Department states (in a [Departmental response paper](#)) that it has commenced a consultation process to gauge the implications of this and to seek the views of the sector. Are there any early indications as to the views of stakeholders on this issue? Are the Department looking at initiatives that could expand the availability of good quality, longer-term, affordable homes within the PRS? If so, what kind of initiatives are being considered and what stage in the development process are they at?

Other issues not within the remit of the current Private Tenancies Bill

Landlord Registration

60. This Bill paper also touches briefly on other issues that are not included within the Bill (as introduced) but are important to consider in relation to the PRS in Northern Ireland. The Landlord Registration Scheme in Northern Ireland, for example, is not currently linked to property fitness standards and/or mandatory or voluntary training or accreditation unlike in some other jurisdictions. The Department for Communities 2017 consultation on the PRS did contain a proposal to amend the Landlord Registration Scheme regulations to incorporate a fitness declaration at the point of registration.

61. The [Departmental response](#) paper highlights that a project group has been established with representatives from the 11 councils to explore the potential to transfer the landlord registration function from the Department to councils. It states that this would involve a reform of the system to include inspections and would be closely linked to a review of the current fitness standard. The Department also states that it is also exploring options around training for landlords and letting agents. For comparative purposes, the paper provides an overview of landlord registration and licensing regimes, including training and accreditation, in other jurisdictions.

Mediation, adjudication, and redress

62. Another issue considered briefly is the ease of access to mediation, adjudication, and redress for both landlords and tenants. Independent bodies dedicated to adjudication and redress on PRS-related matters have been established in other jurisdictions (i.e. the [Housing and Property Third Tier Tribunal](#) in Scotland, and the

[Residential Tenancies Board](#) in the Republic of Ireland). Notably the Department for Communities has provided funding for a [new mediation service](#) delivered by Housing Rights. Aside from this, tenants in Northern Ireland are reliant on other avenues to deal with complaints such as local councils and the small claims process via county courts. The Department for Communities [2017 consultation](#) contained a proposal to examine the financial case for establishing an independent housing panel for Northern Ireland. The Department's consultation [response paper](#) stated that the evaluation of the mediation service, the landlord helpline service and the project looking at the Landlord Register function are ongoing pieces of work that would inform the decision on a future housing panel.

63. The ease with which tenants and landlords have access to mediation, adjudication and redress may very well be critical to the successful implementation of the provisions of the Private Tenancies Bill (as introduced) and subsequent regulations.

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Introduction

The [Private Tenancies Bill](#) was introduced to the Northern Ireland Assembly by the Minister for Communities on the 6 July 2021¹. The [second stage](#) of the Private Tenancies Bill took place on 13 September 2021². The Private Tenancies Bill (as introduced) consists of 14 clauses (11 of these are substantive clauses) and three schedules. The Bill's [Explanatory and Financial Memorandum](#) states that the aim of the Bill is “*to make the private rented sector a safer and more secure housing option for a wider range of households*”. The Bill introduces a series of amendments to [The Private Tenancies \(Northern Ireland\) Order 2006](#)³, which is the main legislative framework regulating the private rented sector (PRS) in Northern Ireland.

In summary, the Bill (as introduced) contains the following provisions:

- **Clause 1:** places a requirement on a landlord of a private tenancy to provide their tenant with a notice containing particulars and other details relating to their tenancy (e.g. a **written statement of tenancy terms**). This will apply to new tenancies granted on or after the date in which this section of the new Private Tenancies Act becomes law.
- **Clause 2:** Closes an **existing loophole in the law** arising from a repeal to Article 4 of the Private Tenancies (Northern Ireland) Order 2006. This will require landlords to provide *existing* tenants with a notice containing particulars and other details relating to their tenancy (e.g. a **written statement of tenancy terms**).
- **Clause 3:** places a requirement on landlords to provide tenants with a **rent receipt for payments made in cash**.
- **Clause 4:** limits the tenancy deposit amount to the **value of no more than one months' rent**.
- **Clause 5:** **extends the time limit for a deposit to be protected** in an approved scheme from the current 14 days to 28 days. It also provides landlords with additional time in which to provide their tenant with **prescribed information about their deposit**, extending this from the current 28 days to 35 days.
- **Clause 6:** stipulates that there is to be **no time limit on prosecuting a person** who continues to fail to comply with the requirements in respect of deposits.
- **Clause 7:** **restricts rent increases to once in a 12-month period** (except in the case of controlled tenancies). It also stipulates that tenants must be given prior written notice of the increase.

¹ The Private Tenancies Bill (as introduced) and its Explanatory and Financial Memorandum are available to download at www.niassembly.gov.uk/assembly-business/legislation/2017-2022-mandate/primary-legislation---bills-2017---2022-mandate/private-tenancies-bill2/

² Northern Ireland Assembly. Official Report. 13 September 2021. <http://aims.niassembly.gov.uk/officialreport/report.aspx?&eveDate=2021/09/13&docID=348691>

³ The Private Tenancies (Northern Ireland) Order 2006. www.legislation.gov.uk/nisi/2006/1459/contents

- **Clause 8:** introduces a mandatory requirement on private landlords to keep in repair and proper working order **fire, smoke and carbon monoxide alarms**.
- **Clause 9:** provides an enabling power for the Department of Communities to introduce regulations establishing **energy efficiency standards** in private rented properties.
- **Clause 10:** provides an enabling power for the Department for Communities to make regulations establishing **electrical safety standards** in private rented properties.
- **Clause 11:** makes a number of changes to arrangements in respect of **Notice to Quit** (e.g. landlords must give 8 weeks' notice to quit where the tenant has been in the house for more than one year but not more than 10 years; and 12 weeks' notice to quit where the tenant has been in the house for more than 10 years).
The clause also contains provisions to permit the Department to make regulations to further amend the Notice to Quit period. *It is important to note that the Minister recently [announced](#) that the 12-week notice to quit period introduced at the start of COVID-19 pandemic, which was due to expire on 30 September 2021 has been extended until 4 May 2022⁴.*
- **Clauses 12, 13 and 14:** are the interpretation, commencement, and Bill's short title respectively.

It should be noted that the Minister for Communities has indicated that the Private Tenancies Bill is “*only the first part of a more substantive piece of legislation that needs to come forward*” and that in the longer term she intends to explore other private rented sector issues such as letting agent regulation, fitness standards and the introduction of grounds for eviction^{5 6}.

Background: the private rented sector in Northern Ireland and regulatory developments in other jurisdictions

The private rented sector continues to play a critical role in meeting housing need and demand in Northern Ireland. The latest available data (i.e. the 2016 NI House Conditions Survey, NIHCS) indicates that the private rented sector has taken over from the social housing sector as the second largest housing tenure. As Table 1 demonstrates approximately 17.4% of occupied dwellings are in the private rented sector, in comparison to around 15.6% in the social housing sector. Note that the next the next NIHCS survey has been postponed to 2022 due to the COVID-19 pandemic⁷.

⁴ Department for Communities. News Release. 'Hargey extends eviction protection until May 2022'. 31 August 2021.

www.communities-ni.gov.uk/news/hargey-extends-eviction-protection-until-may-2022

⁵ Department for Communities. News Release. 'Minister Hargey outlines plan to improve protections in private rented sector'.. 4 May 2021. www.communities-ni.gov.uk/news/minister-hargey-outlines-plan-improve-protections-private-rented-sector

⁶ Northern Ireland Assembly. Official Report. 13 September 2021.

⁷ Northern Ireland Housing Executive. Northern Ireland House Conditions Survey 2021. www.nihe.gov.uk/Working-With-Us/Research/House-Condition-Survey-user-engagement

Table 1: Northern Ireland's Dwelling Stock 1974-2016⁸

Tenure	1974	2006	2011	2016
Owner-occupied	212,200 (46.6%)	468,900 (66.5%)	469,100 (61.7%)	494,700 (63.4%)
Private Rented (and others)	72,200 (15.8%)	80,900 (11.5%)	125,400 (16.5%)	136,000 (17.4)
Housing Executive	153,500 (33.7%)	93,400 (13.3%)	110,800 (14.6%) ⁹	85,300 (10.9%)
Housing Association	-	21,500 (3.1%)		35,600 (4.6%)
Vacant	17,600 (3.9%)	40,300 (5.7%)	54,700 (7.2%)	28,500 (3.7%)

Source: Northern Ireland House Conditions Survey 2016, p18.

The private rented sector provides a flexible tenure choice for many tenants, particularly young professionals. However, it also houses a considerable number of vulnerable households including households on low incomes, those that are homeless and threatened with homelessness, migrant workers, black and minority groups, a growing number of older people; and individuals with complex needs including drug and alcohol dependency. According to the Department for Communities, nearly half of those in the private rented sector are in receipt of some element of housing support, either through Universal Credit or Housing Benefit. In 2019/20, over £270 million was paid into the private rented sector either in Housing Benefit or through the housing costs element of Universal Credit¹⁰.

A series of reforms to the regulation of the private rented sector in Northern Ireland has been introduced over the past decade. This includes, for example, the mandatory [Landlord Registration Scheme](#)¹¹ which collects information on landlords and their properties and the [Tenancy Deposit Scheme](#) whereby landlords and agents are required by law to protect tenants' deposits in an approved scheme. Other developments include a new [regulatory framework and licensing regime](#) for Houses in Multiple Occupation (HMOs)¹² and longer Notice to Quit periods.

There has also been a drive towards providing information and advice to both landlords and tenants on their rights and responsibilities. A large proportion of work has been taken forward by Housing Rights in the form of the [Housing Advice NI](#) website (funded by the Housing Executive); the [advice helplines](#) for tenants and for landlords and letting

⁸ Northern Ireland Housing Executive. Northern Ireland House Conditions Survey 2016. Main Report. www.nihe.gov.uk/Documents/Research/HCS-2016-Main-Reports/HCS-Main-Report-2016.aspx

⁹ In 2011, "Housing Executive" and "Housing Association" were combined in the NI House Conditions Survey "due to small numbers". NIHCS 2016, p18. <https://www.nihe.gov.uk/Documents/Research/HCS-2016-Main-Reports/HCS-Main-Report-2016.aspx>

¹⁰ Department for Communities. News Release. 'Putting tenants at the heart of private rented sector – Minister Hargey'. 6 July 2021. www.communities-ni.gov.uk/news/putting-tenants-heart-private-rented-sector-minister-hargey

¹¹ For details on the Landlord Registration Scheme see www.nidirect.gov.uk/articles/landlord-registration-scheme

¹² See Belfast City Council, NI Houses in Multiple Occupation framework www.belfastcity.gov.uk/nihmo

agents; [Renting Rights](#) (a new specialist support service for young people aged between 18-25); and most recently, the [mediation service](#) (funded by the Department for Communities). It should be noted, however, that many other third sector bodies and indeed the constituency offices of MLAs, have also played a pivotal role in providing support and advice to tenants in the private rented sector on issues such as social security, welfare reform, homelessness and debt.

Whilst much progress has been made to reform the private rented sector in Northern Ireland, there is still much to be achieved in terms of both regulation and harnessing its potential. Northern Ireland's strategy for the private rented sector "*Building Sound Foundations*", published by the Department for Social Development in March 2010, is now over a decade old. The strategy had as its primary objective to (a) create the conditions in which the private rented sector contributes more fully to meeting rapidly changing house needs, and (b) to ensure the provision of good quality, well managed accommodation¹³.

The Minister for Communities has stated that she is "...committed to making our housing system better for people and families. The housing market has changed dramatically over the past few decades, so our legislation needs to keep up"¹⁴. As demonstrated throughout this Bill Paper, the policy and regulatory landscape for the private rented sector in other jurisdictions has changed quite significantly in many respects in comparison to that in Northern Ireland. For example, many of the provisions of the Bill relating to electrical safety standards and the provision and maintenance of fire, smoke and carbon monoxide detection are already in place in England and Scotland. Protections around the provision of receipts for rental payments in cash, to restrict deposit amounts and rental increases are in place in Scotland and have just recently been introduced in July this year in the Republic of Ireland.

Other jurisdictions have arguably taken a more ambitious approach to the regulation of landlords and letting agents. There are, for example, existing frameworks for the regulation of letting agent fees in England, Scotland and Wales (there is no similar modern regulatory framework for fees in Northern Ireland). Whilst both Scotland and Northern Ireland have Landlord Registration schemes, the Scottish scheme includes a 'fit and proper' person test and also has a voluntary Landlord Accreditation system for landlords and letting agents which also offers training courses. The Welsh Government has gone a step further and introduced mandatory licensing for private sector landlords (who manage their own properties) and for letting/managing agents. An individual must also complete either landlord or agent training in Wales depending on what type of individual licence they are applying for.

¹³ Ibid.

¹⁴ Department for Communities. News Release. 'Putting tenants at the heart of private rented sector – Hargey'. 6 July 2021. www.communities-ni.gov.uk/news/putting-tenants-heart-private-rented-sector-minister-hargey

In terms of security of tenure, Scotland has introduced a new ‘open ended’ [private residential tenancy](#) (applying to tenancies created on or after 1 December 2017) which is intended to last until a tenant wishes to leave the property or a landlord uses one or more of the 18 grounds for eviction. Longer tenancies have also been introduced in the Republic of Ireland (known as Part 4 tenancies) in which tenants can remain in the property for four or six years depending on when the tenancy commenced unless the landlord terminates the tenancy on certain specified grounds.

The Scottish and Irish Governments have also opted to legislate to create Rent Pressure Zones (RPZs) in which rental increases in a specific area (e.g. a local authority area) could be controlled in order to address affordability pressures in that location. A number of Rent Pressure Zones are currently in operation in the Republic of Ireland but there are currently none in Scotland. However, the Scottish Government recently published plans to consult further on the issue of rent control although there are no specific details on this as yet¹⁵.

The current minimum fitness standard for all housing tenures in Northern Ireland, including private rented sector properties, has been in place since 1992. The current housing Fitness Standard has been described as a physical standard, it is arguably outdated and does not sufficiently address issues such as thermal comfort, energy efficiency or home safety. A comparatively more modern and detailed regulatory framework for minimum standards in private rented properties has been in place in Scotland for some time (i.e. the [Repairing Standard](#)). New [minimum standards](#) for the PRS came into effect in the Republic of Ireland on 1 May 2019.

The Scottish Government has proposed [further plans](#) to modify the Repairing Standard which will come into effect from 1 March 2024 including e.g. a requirement to have “safe kitchens” (that is, safely accessible food storage and preparation spaces) and a fixed heating system. A review of the fitness standard and introduction of legislation to put in place an enhanced minimum standard across all housing tenures in Northern Ireland was part of the action plan of ‘*Facing the Future: Housing Strategy for Northern Ireland 2012-2017*’. The review of the housing Fitness Standard in Northern Ireland is still ongoing, a [discussion paper](#) on the review was published by the Department for Social Development in March 2016¹⁶.

It is also important to highlight that the issue of redress and adjudication in respect of issues in the private rented sector is also arguably easier to access in some other jurisdictions. In Northern Ireland, enforcement action can be taken forward by local councils through the courts and by tenants and landlords through the small claims court. However, specialist bodies have been established in Scotland (i.e. the First-Tier Tribunal (Housing and Property Chamber)) and the Republic of Ireland (the Residential

¹⁵ Scottish Government and Scottish Green Party. Draft Shared Policy Programme. Working Together to Build a Greener, Fairer, Independent Scotland. <https://tinyurl.com/2uuxk88j>

¹⁶ Department for Social Development. Review of the Statutory Minimum Housing Fitness Standard for All Tenures of Dwellings. Discussion paper. March 2016. www.communities-ni.gov.uk/sites/default/files/publications/communities/review-statutory-minimum-housing-fitness-standard-all-tenures-dwelling.pdf

Tenancies Board) and can be approached by both landlords and tenants to adjudicate on certain PRS issues.

Good policy making should involve innovative and creative thinking and part of this process is drawing upon the experiences of other jurisdictions in terms of what does and what does not work¹⁷. This Bill Paper is not at this stage advocating that any particular legislative and policy development in other jurisdictions should be implemented in Northern Ireland. These approaches require thorough research and evaluation in terms of how effective they are in meeting their aims and whether they could be applied within the context of the Northern Ireland housing market.

As previously highlighted, the Minister for Communities has stated that the Bill constitutes just the first step in the reform of the private rented sector and that she wishes to look in the longer term at a range of other issues¹⁸. One would anticipate that exploring the regulatory frameworks of other jurisdictions will form a critical part of this process. Striking an appropriate balance in any regulatory framework can be complex. Fortunately, there is now an emerging body of research looking at the different approaches in private rented sector regulation and enforcement within different UK jurisdictions. It focuses on what may work in practice in terms of improving compliance with PRS legislation (see for example recent [research](#) published by the UK Collaborative Centre for Housing Policy¹⁹).

Many important inferences for Northern Ireland can also be drawn from the comprehensive Rugg and Rhodes (2018) [review](#) of the contribution and potential of the PRS²⁰. This review recommended, for example, the development of a broad-ranging strategy for the PRS with co-ordinated interventions; a deconstruction of silos by developing cross-departmental and agency approaches to reform; prioritising the creation of an evidence base that will lead to a better understanding of the dimensions of the PRS; supporting skill development within the sector; and creating an efficient and equitable redress and reparation system that is more accessible to both landlords and tenants.

Impact of COVID-19 on the private rented sector

It is important to note that the COVID-19 pandemic has resulted in additional, or exacerbated existing, issues for both PRS tenants and landlords in Northern Ireland. The 'Stay at Home' message propelled into the spotlight the need to protect people who were homeless or threatened with homelessness. It also drew attention to the

¹⁷ Northern Ireland Executive. A Practical Guide to Policy Making in Northern Ireland. www.executiveoffice-ni.gov.uk/articles/policy-making

¹⁸ Department for Communities. New Release. 'Putting tenants at the heart of private rented sector – Minister Hargey'. 6 July 2021. www.communities-ni.gov.uk/news/putting-tenants-heart-private-rented-sector-minister-hargey

¹⁹ See for example, Harris, J.; Cowan, D. & Marsh, A. Improving compliance with private rented sector legislation. UK Collaborative Centre for Housing Evidence. 5 August 2020. https://housingevidence.ac.uk/wp-content/uploads/2020/08/200803_ComplianceReport_Final.pdf

²⁰ Rugg, J. & Rhodes, D. The Evolving Private Rented Sector: It's Contribution and Potential. 2018. University of York Centre for Housing Policy. <https://nationwidefoundation.org.uk/wp-content/uploads/2018/09/Private-Rented-Sector-report.pdf>

impact that poor housing standards and lack of internal and external space had on low-income tenants in all forms of housing tenure. There are many challenges ahead for the sector, the impact of which will become apparent in the months and perhaps even year ahead. Factors that are likely to impact on low-income renters include, for example, the end of the Coronavirus Job Retention Scheme (furlough scheme); the UK Government's announcement of the end of the £20 Universal Credit uplift; significant rises in local energy costs and food prices; and the scale and impact of rent arrears to list but a few.

Research published by Housing Rights entitled '[The Perfect Storm: The impact of COVID-19 on private renters in Northern Ireland](#)' argues effectively that the COVID-19 pandemic has disproportionately impacted upon low income households within the PRS in Northern Ireland²¹. It is important not to lose sight of the issues it raises, and the lived experiences of tenants, when considering not only the current Private Tenancies Bill and but also potential future reforms to the PRS in Northern Ireland. There appears to be an evidence gap in terms of published research on the impact of the pandemic upon landlords in Northern Ireland. It has not yet become clear exactly how much rent arrears have built up during this time and whether other factors such as rising house prices are likely to have a detrimental impact on the PRS in the long term. One should also be mindful of these factors in considering reform to the PRS in the short and long term.

The lead-up to the Bill: policy development and consultation

As previously highlighted, the strategic direction for the private rented sector in Northern Ireland was set out in two documents both published by the then Department for Social Development. Firstly, '*Building Sound Foundations*', published in 2010, centred on delivering targeted improvements to the regulatory regime and led to the introduction of both the Landlord Registration and Tenancy Deposit Scheme. Secondly, the Housing Strategy for Northern Ireland '[Facing the Future 2012-2017](#)', stated that its focus would be upon making the private rented sector a "*more attractive housing option for more people by improving standards and regulation*"²². A significant amount of time has now elapsed since the publication of both strategies.

"*Facing the Future*" notably contained a number of specific actions for the private rented sector. For example, to review the statutory fitness standard across all tenures (still in progress) and to improve the regulation of Houses in Multiple Occupation (HMOs) (a new legislative framework has been introduced). Action 2 of the Strategy's updated [Action Plan](#) (published in September 2015) contained a commitment to

²¹ McAuley, M. The 'Perfect Storm': The impact of Covid-19 on private renters in Northern Ireland. Housing Rights. November 2020. www.housingrights.org.uk/sites/default/files/policydocs/The%20impact%20of%20Covid-19%20on%20private%20renters%20in%20Northern%20ireland.pdf

²² Department for Social Development. Facing the Future: Housing Strategy for Northern Ireland 2012-17. www.communities-ni.gov.uk/publications/facing-future-housing-strategy-northern-ireland

“*review private rented sector regulation*” including a review of both the Landlord Registration and Tenancy Deposit Schemes.

As a first step to this review, the Department for Social Development published a [discussion paper](#) on the role and regulation of the private rented sector which outlined the key objectives of the review, i.e. to:²³

- Assess the contribution the private rented sector currently makes, and could potentially make, in the future to increase housing supply and meet 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 make, and could make, to supporting the Northern Ireland Executive’s Together Building a United Community Strategy which had a focus on encouraging more shared housing.

A [summary of the responses](#) to the discussion paper was subsequently published. In addition, the Bill’s Explanatory and Financial Memorandum highlights that the Department had also established a consultative working group which included representatives from Housing Rights, district council Environmental Health staff, 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 was said to have met on four occasions and looked at the key issues that had emerged from the consultation on the discussion paper.

The proposals for the way forward were set out in the second stage of the review which was a consultation paper entitled ‘[Private Rented Sector in Northern Ireland – Proposals for Change](#)’, published by the Department for Communities in January 2017²⁴. Within the consultation the Department set out a number of proposals relating to supply; affordability; security of tenure; tenancy management; property standards and dispute resolution. The consultation also contained a number of more detailed proposals in respect of changes to both the Tenancy Deposit scheme (see Annex B of the consultation, pp54-55) and the Landlord Registration Scheme (see Annex C of the consultation, p56). In more recent months the Department for Communities has published a [Departmental response](#) to the consultation outlining its way forward²⁵.

²³ Department for Social Development. Review of the Role and Regulation of the Private Rented Sector. November 2015.

www.communities-ni.gov.uk/sites/default/files/consultations/dsd/review-role-regulation-of-private-rented-sector-consultation.pdf

²⁴ Department for Communities. The Private Rented Sector in Northern Ireland – Proposals for Change. January 2017.

www.communities-ni.gov.uk/sites/default/files/consultations/communities/private-rented-sector-proposals-for-change-consultation.pdf

²⁵ Department for Communities. Departmental Response: Consultation on the Review of the Role and Regulation of the Private Rented Sector. 2021. www.communities-ni.gov.uk/consultations/private-rented-sector-northern-ireland-proposals-change

The 2017 proposals: What is in the Bill? What is not in the Bill?

For ease of reference Table 2 outlines (a) the 16 main proposals contained within the 2017 PRS consultation, (b) the Departmental response to the consultation, and (c) whether the provisions relating to the proposal are contained within the clauses of the current Private Tenancies Bill (as introduced). The information in the table has been extracted from the 2017 consultation paper and the Departmental response paper. As is evident from Table 1, some of the proposals are part of the Bill (as introduced); some are non-legislative proposals have already been actioned; and some proposals may be taken forward as part of the Department's next stage of reform. Details of the Departmental response to the proposed amendments to the Tenancy Deposit and Landlord Registration schemes can be found on pp20-24 of the [response paper](#).

Table 2: The 16 main proposals contained within the Department for Communities 2017 consultation on the Private Rented Sector and the Departmental response to those proposals

SUPPLY	
The 2017 Consultation Proposals	Does this proposal feature in the Bill (as introduced)?
Proposal 1: To commission work to gauge the appetite of institutional investors from Great Britain to invest in Northern Ireland.	This does not form part of the Bill (as introduced). DfC states that it worked with the Strategic Investment Board to commission research into establishing the need for Build to Rent²⁶ in Northern Ireland . The purpose of the research was to provide an evidence base as to whether Build to Rent was suitable for the local NI housing market and whether it could increase housing supply. DfC states that the final version of the report has been received and shared with relevant bodies and its findings are under consideration. DfC states that it continues to work with stakeholders through the 'Joint Regeneration Group' which has a focus on Belfast City Centre. One of its key strategic actions is to increase the residential population of Belfast . DfC further states that it will take forward discussions with other Departments and bodies as necessary. However, its focus will be on the protection of tenants in the PRS and increasing social and intermediate housing supply.
Proposal 2: To explore opportunities to use money available for shared housing through the Fresh Start Agreement to incentivise the development of more mixed tenure housing areas, including private rented accommodation, underpinned by a shared ethos.	No, this does not form part of the Bill (as introduced). DfC states that it is using Fresh Start funding to deliver additional shared housing and that Fresh Start funding will increase delivery (in 2020/21) from 200 units to approximately 400 units (design and planning for the additional schemes will determine the final number of units developed). Additionally, DfC intends to deliver shared/mixed tenure housing on the St Patrick's Barracks site in Ballymena, although it states that this will not be via Fresh Start funding.
Proposal 3: To scope opportunities with housing associations for greater involvement in the private rented sector.	No, this does not form part of the Bill (as introduced).

²⁶ Build to Rent is an industry term used to describe properties (e.g. a block of apartments) that have been purpose built to provide private rented accommodation to tenants.

	<p>DfC states that it held preliminary discussions with some Housing Associations and the Northern Ireland Federation of Housing Associations (NIFHA) to discuss their involvement in the PRS. DfC states that it is clear that increasing the supply of social housing is a priority for Housing Associations.</p> <p>DfC states that it has begun to explore the opportunities to establish a Private Sector Leasing (PSL) scheme in NI. Further focused engagement with landlords and housing providers will take place to progress this issue²⁷. DfC states it is exploring what a long-term leasing scheme would look like in an NI context and will seek views on developing and delivering a PSL scheme.</p>
AFFORDABILITY	
The 2017 Consultation Proposals	Does this proposal feature in the Bill (as introduced)?
<p>Proposal 4: To introduce legislation to stipulate that rents can only be increased once in any 12 month period.</p>	<p>Yes, this is provided for within Clause 7 of the Bill (as introduced).</p> <p>Note that the Bill also contains other provisions relating to affordability and rent that did not form part of the original consultation proposals. For example, Clause 3 requires landlords to provide tenants with a receipt for rent paid in cash. Clause 4 places restrictions on tenancy deposits to no more than the equivalent of one months' rent.</p>
SECURITY OF TENURE	
The 2017 Consultation Proposals	Does this proposal feature in the Bill (as introduced)?
<p>Proposal 5: To bring forward legislation to ensure all private tenants are issued with a written agreement which must contain mandatory terms regardless of the type or length of the tenancy.</p>	<p>Clauses 1 and 2 require that landlords provide both existing and new tenancies with a notice containing certain prescribed information about their tenancy. The Department will make regulations prescribing what information a landlord must provide the tenant. However, DfC's response paper states that it will make it mandatory that landlords will provide their tenants with a written statement of tenancy terms which will include prescribed information. It further states that it will repeal the requirement for a rent book and will introduce requirements for receipts where rent is made in cash. Both of these are provided for within the Bill.</p>
<p>Proposal 6: to amend the notice to quit period from four weeks to two months for tenancies lasting longer than 12 weeks</p>	<p>Yes, these provisions are included in Clause 11.</p> <p>The Minister for Communities, in a statement to the Assembly in November 2020, expressed her intention to explore extending the notice to quit period and to consider if it was possible to extend it to six months. DfC states that it had commenced a consultation process to gauge the implications of this and obtain the views of the sector around this proposal. Until this has been completed, DfC stated in the response paper that it will proceed with the proposal to extend the notice to quit period to 8 weeks' (e.g. for tenancies of over one year but not more than 10 years).</p> <p>Furthermore, a provision is made in the legislation to enable the Department to change the notice to quit period to 6 months or a period less than that. DfC states that this is to</p>

²⁷ Private Sector Leasing Schemes operate in other jurisdictions (e.g. by local authorities) whereby private rented properties are leased from the landlord for long periods. The properties often required to meet minimum property standards and are leased to tenants for periods of up to five years.

	allow time for further policy development and a public consultation process around the 6 months to quit period.
Proposal 7: Seek to introduce a Fast Track Eviction Scheme which may include mandatory grounds for possession and provide appropriate safeguards to ensure fairness.	<p>No, this does not form part of the Bill (as introduced). DfC states that it has been gathering more evidence on the proposal and has carried out further research on the fast track eviction process in England and Wales. It states that it will put this proposal on hold for now as it indicates that evidence is difficult to obtain (e.g. DfC highlighted that there is a lack of statistics on PRS evictions in NI; a lack of evidence that a new process is required; and a lack of evidence that fast track eviction is effective).</p> <p>DfC states that as a “long term aspiration” it will explore ways of collating the necessary evidence. It will also consider the outcome of the Housing Rights pilot mediation service and will work with DoJ to explore the potential use of the mediation service to resolve disputes, thus preventing cases progressing to court.</p> <p>DfC also states that as part of a programme of longer term work, it will consider the possibility of creating grounds for eviction and that stakeholders will be consulted on this.</p>
TENANCY MANAGEMENT	
The 2017 Consultation Proposals	Does this proposal feature in the Bill (as introduced)
Proposal 8: To review the impact of the Chartered Institute of Housing training course (for landlords and letting agents) and explore funding options for an extension to the course.	<p>No, this does not form part of the Bill (as introduced). The Chartered Institute of Housing NI delivered ‘Learning to Let’ training courses to registered private landlords and letting agents between April 2016-March 2019 (with 335 landlords and letting agents participating). This was partly subsidised by DfC.</p> <p>DfC states that an evaluation of the training showed that the impact was limited and the training has been discontinued. It has indicated that it will continue to work with CIHNI to consider further options.</p>
Proposal 9: To fund a pilot dedicated landlord advice line. This would ensure that landlords get advice and information from professionally qualified advisors.	<p>No, this is non-legislative but progress on this proposal has been made.</p> <p>DfC states that prior to the restoration of the NI Executive, it funded a pilot landlord helpline service which was delivered by Housing Rights. Following an evaluation of the pilot, the service was procured, and a contract awarded for delivery of the scheme on a permanent basis.</p>
Proposal 10: To develop a tenant information pack which a landlord must provide to the tenant at the commencement of the tenancy.	<p>No, this does not form part of the Bill (as introduced). DfC states that whilst developing a written statement of tenancy terms it became apparent that information required for the statement would be duplicated in a tenant information pack. Therefore, DfC indicates that the information in a tenant information pack will be subsumed into the proposals for a written statement of tenancy terms and that it will be signposting tenants to further information in the “Smart Renter” website.</p>
Proposal 11: To amend the Landlord Registration regulations to incorporate a fitness declaration at the point of registration. Sample checks could be carried out by councils on these declarations. Options for meeting the costs of these checks would need to be explored.	<p>No, this does not form part of the Bill (as introduced). DfC indicates that this proposal from 2017 has been somewhat overtaken by recent developments. It states that a project group has been developed with representatives from all 11 councils to explore the potential to transfer the landlord registrar function from the DfC to councils. DfC</p>

	indicates that this would involve a reform of the system to include inspections and would be closely linked to a review of the current fitness standard.
Proposal 12: To introduce a regulatory framework for all letting agents including bringing forward legislation to ban letting agent fees.	<p>No, this does not form part of the Bill (as introduced)</p> <p>However, the Minister for Communities has indicated that she would like to explore this issue as part of the next stage of reform.</p> <p>Letting agent fees - DfC and DoF issued a joint communique²⁸ in March 2020 outlining the findings of a court judgment made in 2017 and reaffirming the court rulings.</p> <p>Letting agent regulation – the 2017 consultation stated that the Department would not only ban letting agent fees but would also introduce a regulatory framework for letting agents. However, DfC indicates that given the cross cutting nature of both issues, further detailed work with colleagues in other Departments would need to be carried out and therefore this would be an issue pursued in the longer term.</p>
PROPERTY STANDARDS	
The 2017 Consultation Proposals	Does this proposal feature in the Bill (as introduced)?
Proposal 13: To introduce legislation as soon as practicable to make it mandatory for private landlords to provide smoke and carbon monoxide detectors and to carry out periodic electrical checks.	Yes, provisions are made in Clause 8 of the Bill (as introduced) in relation to smoke and carbon monoxide alarms . Provision is made in Clause 10 and Schedule 3 of the Bill to provide DfC with the power to make regulations concerning electrical safety standards and checks .
Proposal 14: To introduce legislation around Energy Performance Certificate (EPC) ratings similar to that in England. Consideration should be given to exempting certain types of property where the costs of making sufficient energy efficiency improvements would be prohibitive.	Yes, this issue is provided for in Clause 9 and Schedule 2 of the Bill (as introduced). Schedule 2 provides DfC with the power to make regulations concerning energy efficiency in private rented sector properties. There is, as yet, no details regarding what the minimum rating will be or exemptions. This may be included within the new regulations.
Proposal 15: To amend legislation so that all unfit properties built before 1956 are subject to rent control.	No, this does not form part of the Bill (as introduced). DfC states that it is undertaking a review of the fitness standard and maintains that the proposal to transfer landlord registration to councils will “drive improvements” in PRS fitness levels. However, the response paper states that it is the intention of DfC to amend the date in the Prescribed Dwelling-house Regulations (NI) 2007 from 1945 to 1956. The Department indicated that this will be done in parallel to the Bill being delivered in this mandate.
Proposal 16: To examine the financial case for establishing an independent housing panel for Northern Ireland.	No, this does not form part of the Bill (as introduced). DfC states that ongoing projects and pilots (e.g. the mediation service, landlord advice helpline, transfer of the Landlord Registrar function) will be vital to informing future decisions around a Housing Panel (e.g. such as the scope, functions and cost of a panel).

²⁸ See www.communities-ni.gov.uk/publications/joint-dfc-and-dof-communique-letting-agency-fees

Purpose and structure of the Bill Paper

This Bill paper has been prepared to inform consideration of the Bill. It will now turn to explore the 11 substantive clauses of the Bill on a clause-by-clause basis. For each of these clauses, the paper:

- Provides some contextual and background information on how the law currently operates with regards to that clause;
- Explores the provisions of the clause (as introduced) in further detail;
- Looks at how other jurisdictions (i.e. England, Scotland, Wales and the Republic of Ireland) have either legislated for, and/or developed policy, in respect of similar issues; and
- Identifies issues that may merit further consideration or clarification.

2 The Clauses of the Bill

Clause 1 & 2: Tenant to be given notice regarding certain matters and certain past matters

A brief overview of the Clauses 1 & 2

Clause 1 is entitled “**Tenant to be given notice regarding certain matters**”. It places a requirement on a landlord of a private tenancy to provide the tenant with a notice containing particulars and other details relating to their tenancy. This must be provided free of charge and within 28 days after the date on which the tenancy is granted. The particulars and details will be prescribed in regulations made by the Department for Communities. The Bill’s Explanatory and Financial Memorandum (as introduced) explains that the regulation making power could be used, for example, to provide that the notice contains the main terms of the tenancy (i.e. **a statement of tenancy terms**).

It also places a requirement on landlords to give notice to tenants if a term in the tenancy is varied. Clause 1 applies to tenancies granted on or after the date on which section 1 of the Private Tenancies Act (Northern Ireland) 2021 comes into operation. The clause also provides for enforcement measures should a landlord fail and/or continue to fail with their obligations.

Clause 2 is entitled “Tenant to be given notice regarding certain past matters”. The purpose of this clause is to close a loophole in the current law that arose due to the repeal of Article 4 of the Private Tenancies Order (NI) 2006. The repeal has meant that for current tenancies there is no requirement on the landlord to provide this information since the repeal. Clause 2 aims to rectify this situation by introducing Schedule 1. The purpose this is to ensure that those tenants who would have received notices under Article 4 of the 2006 Order, but did not do so because of the

repeal, and who are still in a private tenancy on the date the provisions in Clause 1 becomes operational, receive notices from their landlords regarding certain past matters. It also places a requirement to provide notice to the tenant where certain terms of the tenancy were varied on or after 30 June 2011 but before the date on which section 1 of the new Act becomes operational. Clause 2 also provides for enforcement measures should a landlord fail and/or continue to fail with their obligations.

What is the current law in Northern Ireland?

When first enacted, **Articles 4 and 5** of [The Private Tenancies \(Northern Ireland\) Order 2006](#) placed a duty on the landlord to provide the tenant with (i) a “notice regarding certain matters” and (ii) a rent book:

- **Article 4:** under the heading of “tenant to be given notice regarding certain matters” introduced a requirement for the landlord of a private tenancy to provide the tenant, free of charge, with a notice in such form and containing such particulars or other information as may be prescribed (e.g. written terms of the tenancy). This notice had to be provided within 28 days of the granting of the tenancy. Furthermore, should the terms of the tenancy be varied, the landlord was required to give the tenant information on the variation and notice of the variation, within 28 days after the granting of the tenancy; and
- **Article 5:** required the landlord to provide the tenant with a **rent book** free of charge.

The provision of **written terms of the tenancy** was felt necessary because before the enactment of the 2006 Order, tenancies of one year or less could be agreed verbally. Therefore, it was felt that this could lead to difficulties in the event of a dispute between the landlord and tenant (for example, disagreements over repairs to the property)²⁹. The purpose of Articles 4 and 5 of the Order, therefore, were to provide landlords and tenants with safeguards and rights in respect of proof of rental payments and the terms of the tenancy.

The repeal of Article 4

Article 4 of the Private Tenancies (Northern Ireland) Order **was subsequently repealed** by [Article 1 of the Housing \(Amendment\) Act \(Northern Ireland\) 2011](#) (the Article 1 is entitled “abolition of statement of tenancy terms”). The rationale for the abolition was an attempt by the Department to consolidate the information that landlords were required to provide tenants. As previously highlighted, the 2006 Order required landlords to issue two documents to the tenants (a) the rent book and (b) the written terms of the tenancy. The Department felt that requiring landlords to issue a rent book that also contained the written terms of the tenancy would consolidate the

²⁹ Private Tenancies (Northern Ireland) Order 2006. Explanatory Memorandum. www.niassembly.gov.uk/assembly-business/legislation/2017-2022-mandate/primary-legislation---bills-2017---2022-mandate/private-tenancies-bill2/www.legislation.gov.uk/nisi/2006/1459/notes/data.pdf

process and require only one document to be issued by the landlord. The [Explanatory Memorandum](#) to the 2011 Amendment Bill explains³⁰:

“Existing legislation requires private landlords to provide their tenants with a range of documentation. While the Bill aims to simplify this requirement, the Department intends to balance that aim with the need for the tenants to be properly informed. The bill would therefore repeal the requirement for statements of tenancy terms to be given to every tenant, while the Department will make subordinate legislation to require landlords to include all necessary information about the terms of the tenancy in the tenant’s rent book. While this requirement would, in theory, apply to all private tenancies³¹ created on or after 1 April 2007, the Department recognises that landlords of such tenancies need not be required to issue new rent books when the subordinate legislation comes in operation, provided that they have already given their tenants a statement of tenancy terms in the existing format.”

In evidence to the Committee, the Department at that time explained that:

“Clause 1 would repeal article 4 of the Private Tenancies (Northern Ireland) Order 2006. It would effectively remove some existing duplication and would ensure the amalgamation of the relevant information into a single place for the benefit of the private landlord and tenant. The same amount of information will continue to be provided, but in a much more straightforward way. The Department will subsequently make new rent book regulations that will set out exactly what information must be provided, together with the detail that this required”.

The [report](#) of the then Committee for Social Development (on the Bill) stated in relation to the clause on the abolition to the statement of tenancy terms³²:

“The Committee noted stakeholder concerns that the abolition of the statement of tenancy terms may lead to a reduction in the information available to tenants. However the Committee accepted Departmental assurances that the Bill as drafted would allow the provision of information to private tenants to be subject to Assembly scrutiny by the negative resolution procedure.”

The Committee therefore agreed that it was content with clause 1 as drafted.”

³⁰ Housing (Amendment) (No.2) Bill. Explanatory and Financial Memorandum.

http://archive.niassembly.gov.uk/legislation/primary/2009/niabill32_09_efm.htm

³¹ Northern Ireland Assembly. Committee for Social Development. Report on the Housing (Amendment) (No.2) Bill. NIA 32/09.

http://archive.niassembly.gov.uk/social/2007mandate/reports/2010/report_30_10_11r.htm

³² Northern Ireland Assembly. Committee for Social Development. Report on the Housing (Amendment) (No.2) Bill. NIA 32/09.

http://archive.niassembly.gov.uk/social/2007mandate/reports/2010/report_30_10_11r.htm

Article 4 of the 2006 Order (requiring the landlord to provide the tenant with notice regarding certain matters, i.e. the terms of the tenancy) was repealed by Article 1 of the [Housing \(Amendment\) Act \(Northern Ireland\) 2011](#) although Article 5 (the requirement to provide the tenant with a rent book) remains in place. The inclusion of the tenancy terms within rent book regulations did not occur. Article 4 remains repealed meaning there continues to be no legal requirement for landlords to provide tenants with the written terms of their tenancy since the repeal. Clauses 1 and 2 of the new Private Tenancies Bill (as introduced) aims to rectify this situation.

As the final section of this part of the Bill Paper explores, some jurisdictions are comparatively well advanced in terms of establishing mandatory tenancy terms and conditions. In Scotland, for example, it is a legal duty for landlords to provide their tenants with a written tenancy agreement (with the Scottish Government producing a [model tenancy agreement](#)) for landlords and letting agents to use if they wish. There is also an obligation on landlords and agents to provide the tenant with **supporting information** to help them understand not only their tenancy agreement but also their rights and responsibilities in respect of the tenancy. This is either in the form of a [‘Tenant Information Pack’](#) (for tenancies created before 1 December 2017) or an easy-read guide, the [‘Private Residential Tenancy Statutory Terms Supporting Notes’](#) (for the new open-ended private tenancies created on or after 1 December 2017).

The next section of the paper will provide a more detailed overview of Clauses 1 and 2 of the Bill (as introduced) before going on to look more closely at how other jurisdictions approach the issue of mandatory tenancy agreements and mandatory tenancy terms.

Discussion Points:

The Bill’s EMF (as introduced) states that Article 4 of the Private Tenancies Order was repealed accidentally. The 2011 Bill’s Explanatory Memorandum³³ indicates that it was the Department’s intention to repeal the requirement for a separate statement of tenancy terms and instead make subordinate legislation to require landlords to include all necessary information about the terms of the tenancy in the tenant’s rent book. The Department was unable to make these regulations. Has there been any negative repercussions arising from the repeal of Article 4 of the 2006 Act?

Clauses 1 and 2: What are the provisions in the Bill?

Clause 1: Tenant to be given notice regarding certain matters

Clause 1 of the Private Tenancies Bill (as introduced) contains provisions to amend the The Private Tenancies (Northern Ireland) Order 2006 by **inserting three new Articles** (i.e. Articles 4A, 4B and 4C).

³³ Housing (Amendment) (No.2) Bill. Explanatory and Financial Memorandum. http://archive.niassembly.gov.uk/legislation/primary/2009/niabill32_09_efm.htm

New Article 4A is applicable to tenancies **granted on or after the date in which section 1 of the new Private Tenancies Act (Northern Ireland) 2021 comes into force**. It provides that the landlord of these tenancies must, within 28 days of granting the tenancy, provide to the tenant a notice in the “prescribed format” and containing “prescribed particulars” and other “prescribed information” relating to the tenancy. A landlord who fails to provide this will be guilty of an offence under the 2006 Order. The clause also states that the notice must be provided free of charge. The Financial and Explanatory Memorandum to the Bill (as introduced) states that “the particulars and other details relating to the tenancy” will be prescribed in regulations made by the Department. It states this regulation making power could be used, for example, to provide that the notice contains the main terms of the tenancy.

New Article 4B is also applicable to tenancies granted on or after the date in which section 1 of the new Private Tenancies Act (Northern Ireland) 2021 comes into force. It provides that where the landlord **varies a prescribed term in the tenancy**, the landlord must give the tenant notice in (a) a prescribed format and (b) containing the prescribed information relating to the variation in the term. The notice must be provided to the tenant free of charge and the landlord must do this within 28 days after the date on which the term of the tenancy was varied. New Article 4B also provides that “varied” includes “varied by omission”.

New Article 4C concerns offences relating to a failure to comply with the requirements.

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

Clause 2 introduces a **new Schedule 1**. The purpose of Clause 2 is to ensure that those tenants that should have received notices (e.g. about the terms of their tenancy) under Article 4 of the 2006 Order but did not do so because of its repeal. This is applicable to private tenancies:

- Where the tenancy was granted **on or after 30 June 2011** but before the date on which section 1 comes into operation and the property is let under the tenancy on the commencement date; and
- 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.

Similar to Clause 1, the landlord must provide the notice in a prescribed form, containing prescribed particulars and prescribed information relating to the tenancy. The notice must be free of charge, and this must be provided within 28 days after the commencement date.

Clause 2 also provides for enforcement action in respect of landlords who fail to comply with new requirements and for those who continue to fail to comply.

Discussion Points:

In respect of clause 2, on a practical level, how easy will it be for landlords to retrospectively provide tenants with information on their tenancy terms?

New Article 4B requires landlords to inform tenants if there has been a variation in certain terms in their tenancy. The Bill provides that “varied” also includes “variated by omission”. Are there illustrative examples of tenancy term being varied by omission?

What is the position in other jurisdictions?

Scotland

There are several different types of tenancies in Scotland, the most recent being the introduction of the “[private residential tenancy](#)”³⁴. This applies to tenancies that commenced on or after 1 December 2017 and is “open-ended”. That is, it can last until the tenant wishes to leave the property or until the landlord uses one (or more) of the [18 grounds for repossession](#)³⁵ (e.g. landlord intends to sell the property, the tenant has a relevant criminal conviction (is using the property for illegal reasons), or the tenant is failing to keep the property in good order). The aim of this newer type of tenancy was to offer tenants greater security of tenure and to provide more safeguards for landlords, lenders and investors³⁶.

The private residential tenancy was created under the [Private Housing \(Tenancies\) \(Scotland\) Act 2016](#). This requires landlords to provide the tenant with a written copy of all the terms of their tenancy. To assist landlords, the Scottish Government has made a digital [model agreement](#)³⁷ for private residential tenancies available online which contains standardised mandatory and discretionary tenancy terms. The Scottish Government states that this online tool can be edited to allow landlords to put together an agreement suitable for their specific property. The form contains two sets of terms, i.e. “must include terms” and “extra terms”. “Must include” terms include, for example, the rights of tenants and landlords and legal rules that both must follow. “Extra terms” are terms the landlord can choose to include in the tenancy agreement. The tenancy agreement must include details of all the tenants living in the property, property address, start of the tenancy, rent details, deposit details and details of any letting agent that manages the property etc.³⁸. The tenancy agreement can be signed in person or signed electronically by typing names into the electronic document and sending it by email³⁹.

³⁴ For further information on the private residential tenancy see www.gov.scot/publications/private-residential-tenancies-landlords-guide/pages/grounds-for- eviction/

³⁵ Scottish Government. Private residential tenancy: information for landlords. 26 April 2017.

www.gov.scot/publications/private-residential-tenancies-landlords-guide/pages/grounds-for- eviction/

³⁶ Ibid.

³⁷ See www.mygov.scot/tenancy-agreement-scotland

³⁸ Mygov.scot ‘Creating a tenancy agreement’. www.mygov.scot/tenancy-agreement-scotland

³⁹ Scottish Government. Private residential tenancy: information for landlords. <https://www.gov.scot/publications/private-residential-tenancies-landlords-guide/documents/>

Landlords are also required by law to provide tenants, who have a private residential tenancy, with either the '[Easy read notes for the Scottish Government model private residential agreement](#)'⁴⁰ (which must be given to tenants by landlords using the Scottish Government's model tenancy agreement) or the '[Private Residential Tenancy Statutory Terms Support Notes](#)'⁴¹ (which must be given to tenants where the terms of the tenancy are contained in an agreement drafted by the landlord). These have been produced by the Scottish Government to help tenants understand their rights and responsibilities during the tenancy. These are available in a range of languages. Provision has also been made for tenancies that are not private residential tenancies (i.e. for tenancies that commenced before 1 December 2017). For these tenancies landlords must provide the tenant with a '[Tenant Information Pack](#)'⁴².

These private residential tenancy supporting documents make tenants aware of the **nine statutory terms** which the landlord must include in the written terms of the tenancy (outlined in the box below). However, they also provide information on a wide range of other issues such as:

- Notice to Leave (a notice to end the tenancy which must be on one more of the 18 groups set out in legislation) and the correct amount of notice that must be given; details of the 18 grounds that allow landlords to end a tenancy;
- mandatory and discretionary eviction grounds;
- unlawful eviction and wrongful termination;
- regulation in respect of letting agents;
- rent and deposit information;
- minimum property standards in the private rented sector;
- home safety such as landlords obligations in respect of gas and electrical safety and smoke and heat alarms;
- the obligations of landlords in respect of energy efficiency standards;
- rights and obligations in respect of anti-social behaviour;
- equality and data protection rights; and
- a list of useful contact details (e.g. Citizens Advice Scotland)

Private Residential Tenancies – Summary of the nine statutory terms that landlords must include in a tenant's written tenancy terms⁴³:

Statutory Term 1: Rent receipts

⁴⁰ Scottish Government, Private residential tenancy model agreement: easy read notes. 10 July 2020.

www.gov.scot/publications/easy-read-notes-scottish-government-model-private-residential-tenancy-agreement/

⁴¹ Scottish Government. Private residential tenancy statutory terms: supporting notes. 5 April 2020.

www.gov.scot/publications/private-residential-tenancy-statutory-terms-supporting-notes-essential-housing-information/

⁴² Scottish Government. Tenant Information Pack. December 2016. www.gov.scot/publications/tenant-information-pack-revised-december-2016/documents/

⁴³ Information extracted from Scottish Government. Private residential tenancy statutory terms: supporting notes. 5 April 2020.

The landlord must give the tenant a written receipt for rent paid in cash. The receipt must contain certain information (e.g the amount paid and the date on which it was paid).

Statutory Term 2: Rent increases

Rent can only increase once a year and the tenant must be given official notice of this in the form of a notice called a rent increase notice. If the tenant feels that the rent is higher than that charged for similar properties they can ask a Rent Officer to decide on the fairness of the increase (there is a 21 day time limit for this to be done).

Statutory Term 3: Subletting etc.

Without the landlord's permission – a tenant is not permitted to enter into another agreement to sublet the property (or part of it) to another person; take in a lodger; enter into an agreement to transfer the tenancy to another person; allow another person to start living in the property; or start using it for some other purpose.

Statutory Terms 4 & 5: Notification about other residents

If a person over the age of 16 lives with the tenant as their only or main home then the tenant must inform the landlord of this including the name of the person and the tenant's relationship with that person. The tenant must also inform the landlord if person leaves the property. Statutory terms 4 and 5 also contain information relating to rights to inherit the tenancy.

Statutory Terms 6, 7 & 8: Access for Repairs etc.

The tenant is legally obliged to let the landlord (or their workmen or advisers) have reasonable access to the property for "authorised purposes". The statutory terms outline the length of the notice that must be given before accessing the property; emergency access (e.g. due to a dangerous electrical fault or burst water pipe); reasonable access for non-emergency work; when the tenant cannot access the property without the consent of the tenant; and the tenant's right to redress should a landlord not adhere to the statutory terms.

Statutory Term 9: Termination

Sets out details regarding the ending of the Tenancy Agreement by either the landlord or tenant; the type and notice that must be given; information on joint tenancies and termination; the 18 grounds (mandatory and discretionary) that allow a landlord to end a tenancy; and unlawful eviction.

England

The most common type of private rented tenancy in England is an [assured shorthold tenancy](#)⁴⁴. Landlords and agents are required to provide assured shorthold tenants with a document (published by the UK Government) called '[How to Rent: The checklist for renting in England](#)'⁴⁵. Landlords in England cannot use what is called a Section 21 notice (a notice which represents the first step by a landlord towards seeking

⁴⁴ UK Government. Tenancy agreements: a guide for landlords (England and Wales). www.gov.uk/tenancy-agreements-a-guide-for-landlords/tenancy-types

⁴⁵ UK Government. How to Rent: the checklist for renting in England. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/942503/6.6642_MHCLG_How_to_Rent_v5.pdf

possession of the property) if they have not issued the tenant with the 'How to Rent' booklet⁴⁶.

The 'How to Rent' booklet contains information to help tenants understand the type of tenancy they hold and their rights in respect of:

- letting agent fees and other permitted fees;
- deposits and deposit protection;
- security of tenure and the length of the tenancy; property fitness and standards;
- paperwork that the landlord must provide (e.g. gas safety certificate, Energy Performance Certificate, record of electrical inspections); and
- the responsibilities of tenants, for example, in relation rental payments; property repairs.

'How to Rent' outlines the responsibilities of landlords in respect to repairs and maintenance; property standards; fire and electrical safety; and rights in relation to entering the property. The guide also sets out redress and enforcement mechanisms that can be used by either the landlord or tenant to bring the tenancy to an end. Similar to the guidance produced by the Scottish Government, at the very end of the booklet is information signposting tenants to sources of support and advice e.g. Citizens Advice, Shelter, the Tenancy Deposit scheme providers and letting agent redress schemes.

The Ministry of Housing, Communities & Local Government has published a [model agreement](#)⁴⁷ for shorthold assured tenancies and accompanying guidance on its use and clauses. Similar to Scotland the use of the model is entirely voluntary, i.e. there is no legal requirement to use it, but it is recommended by the Government as a means of striking a fair balance between the rights of landlord and tenants⁴⁸. The model agreement can be completed online or downloaded and completed manually.

Wales

Private landlords in Wales must, under [Section 31](#) of the Renting Homes (Wales) Act 2016, provide a tenant (i.e. a contract holder) with a written statement of the contract before the end of the period of 14 days starting with the occupation date. This must be provided free of charge. However, the tenant can request a further written statement at any time and the landlord may charge a reasonable fee for providing a further written statement. In March 2021, the Welsh Government [consulted](#) on the introduction of new regulations that would introduce model written statements of tenancy contracts

⁴⁶ Wilson, W.; Baxter, J.; Berry, K. & Murphy, E. Comparing private rented sector policies in England, Scotland, Wales and Northern Ireland. House of Commons Library. <https://researchbriefings.files.parliament.uk/documents/CBP-7624/CBP-7624.pdf>

⁴⁷ Ministry of Housing, Communities & Local Government. Model Agreement for Assured Shorthold Tenancy and Accompanying Guidance. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/955826/Model_agreement_for_a_shorthold_assured_tenancy_and_accompanying_guidance_2021.pdf

⁴⁸ Ibid.

and explanatory information⁴⁹. Draft regulations were subsequently published and are available to view [here](#)⁵⁰.

Concluding remarks

The provisions in Clauses 1 and 2 of the Bill (as introduced) lay an important foundation towards removing ambiguity in private rented tenancies. Providing tenants with information and other particulars relating to the tenancy is an important tool for tenant empowerment in terms of helping them understand and utilise their legal rights. It is equally important for landlords, ensuring that both they and their tenants have a clear understanding of their rights and obligations. The devil will of course, be in the detail. The Bill's Financial and Explanatory Memorandum states that the Department will clarify what information is required in regulations.

As highlighted, other jurisdictions have already moved ahead on this issue. Both Scotland and England have published model tenancy agreements that landlords can use and also adjust within reason. Both the UK Government and the Scottish Government have published supporting documents to help tenants understand their written tenancy terms which also provide wider information on tenancy-related matters signpost to other sources of help and information.

We do have a rich base of information on which to build similar resources in Northern Ireland in terms of written tenancy terms and supporting information. For example, the Housing Rights' [Housing Advice NI](#) (funded by the Housing Executive) provides a wealth of information for landlords and tenants on tenancy agreements and tenancy terms etc⁵¹. The Department for Communities website provides a [model tenancy agreement](#) for tenancies in Northern Ireland that potentially could be updated to reflect future requirements that may emerge in relation to Clauses 1 and 2. A wide range of stakeholders, including those representing landlords and tenants, will likely seek to input into the development of the regulations and supporting documents.

Discussion Points:

What progress has the Department made to date in developing potential proposals for the information that will be required in the notice? Have, or will tenants, landlords, letting agencies and advice organisations be involved in the development of the tenancy term requirements and supporting information?

What information landlords will be asked to provide in the notice?

⁴⁹ Welsh Government. Consultation Document. Renting Homes (Wales) Act 2016 – Regulations relating to Model Written Statements of Occupation Contracts and Explanatory Information. March 2021.

<https://gov.wales/sites/default/files/consultations/2021-03/consultation-document.pdf>

⁵⁰ The Renting Homes (Model Written Statement of Contract) (Wales) Regulations 2021.

<https://gov.wales/sites/default/files/consultations/2021-03/draft-regulations.pdf>

⁵¹ Housing Rights. Housing Advice for Northern Ireland. www.housingadviceni.org/

What would happen in the case of a tenant who loses or misplaces the notice? Would they be entitled to request a replacement notice, free of charge?

Will a written statement of tenancy terms contain mandatory terms, if so, what are these likely to be?

Similar to other jurisdictions, will the Department develop supporting guidance for landlords on the specifics of the new requirements?

Will it develop easy-to-read guidance for tenants explaining key concepts such as tenancy terms, roles and responsibilities, sources of support and advice?

Will it place an obligation on landlords (and letting agents) to provide tenants with a copy of the guide?

Will it develop a standardised model tenancy agreement to reflect the new requirements? If so, are there plans to make available a digital version similar to that in Scotland?

How does the Department propose to make tenants aware of their new rights in respect of written tenancy terms?

Is the current redress mechanism sufficiently effective and accessible for tenants and landlords in relation to breaches in tenancy terms? If not, does the Department anticipate bringing forward changes in the second stage of reform?

Clause 3: Tenant to be provided with a rent receipt for payment in cash

What is the current law in Northern Ireland?

Article 5 of the Private Tenancies (Northern Ireland) Order 2006 still requires landlords to provide tenants with a rent book within 28 days after the date on which the tenancy is granted. However, the Bill's EMF (as introduced) explains that this requirement will be removed. The repeal of the rent book requirement was not one of the Department's original proposals contained within its 2007 consultation on the private rented sector. However, one can assume that there are a number of reasons for the removal of this requirement e.g. many tenants may now pay rent electronically rather than in cash and proof of payment or payment received can be retrieved. Clause 3 of the Bill will provide protection for those tenants paying their rent in cash as it will require landlords to provide the tenant with a receipt.

Paying rent in cash may be convenient for some tenants and landlords. However, it does carry potential risk of dispute if proof of payment cannot be presented by either party. A number of housing charities such as Shelter recommend that tenants paying

rent by cash should ask their landlord for a receipt of payment in case a dispute arises⁵². The Housing Rights [Housing Advice website](#) also highlights to tenants the importance of being able to provide documentation to prove that they have paid their rent should a dispute arise⁵³. It may also be good practice for tenants to have documentary evidence in the form of rent receipts paid in cash should it be required for other purposes e.g. by mortgage lenders. It is notable that a number of registered Housing Associations in Northern Ireland will also issue to their tenants a receipt for any payments (including rent payments) made in cash⁵⁴.

Should this aspect of the Bill become law, the refusal of a landlord to issue receipts for cash payments could act as a red flag to tenants and other agencies (e.g. the tenant of the property could be illegally subletting the property to another tenant who is completely unaware that they are not the landlord, or the landlord is receiving housing benefit for a tenant who does not live in the property but leasing the property to another tenant who is unaware of this, or the landlord is attempting to evade paying tax on some of the rental income).

What was the outcome of the consultation in respect of rent receipts for payment in cash?

The [Departmental Response](#) to the consultation indicates that there were 32 responses to the proposal for rent receipts, with all 32 in support of it.

What are the provisions in the Bill?

New Article 5 proposes introduce a requirement, **where rent is paid in cash**, for the landlord of a private tenancy to provide the tenant, **free of charge**, with a **written receipt** detailing:

- the date of payment;
- the amount paid;
- if any amount remains outstanding, that amount; and
- if no further amount remains outstanding, that fact.

The receipt must be provided either at the time the payment is made, or if that is not possible, as soon as reasonably possible after that time. New Article 5 states that a tenant must not be required to make a payment in respect of the provision of the receipt. If the landlord fails to comply with the requirements to (a) provide the information that must be provided or (b) provides a notice late, the landlord and “any person appointed by the landlord to provide the receipt” (e.g. an agent) are guilty of an

⁵² Shelter. Payment of Rent.

https://england.shelter.org.uk/professional_resources/legal/costs_of_renting/rents_and_rent_increases/payment_of_rent#title-3

⁵³ Housing Rights. Housing Advice NI. Paying rent for a private tenancy. www.housingadvice.org.uk/advice-private-tenants/about-paying-rent

⁵⁴ See for example Apex www.apex.org.uk/paying-your-rent/by-cash-or-cheque/

offence under the 2006 Order. However, new Article 5ZB provides a defence in relation to this offence.

New Article 5 contains two new sections, i.e.(5ZA and 5ZB):

- **5ZA** which contains new provisions in relation to the **continued failure by a landlord to provide rent receipt after conviction or fixed penalty**; and
- **5ZB** which contains new provisions in relation to **controlled tenancies** and defences to offences under Articles 5 and 5ZA.

There are a number of other amendments made to the 2006 Order as a consequence of New Article 5 and new Articles 5ZA and 5ZB:

- [Article 66\(1\)](#) of the 2006 Order (this Article deals with “Service of notices on landlord’s agents”) currently provides that any document required or authorised by the Order to be served on a landlord shall be deemed served if it is served on any agent the landlord named in the rent book or on the person who receives the rent for the property. Given that the substituted new Article 5 removes the requirement for landlords to provide their tenants with a rent book, the Financial and Explanatory Memorandum (as introduced) states that it is no longer appropriate to refer in Article 66(1)(a) to “the rent book”. Therefore, subsection (4) of Clause 3 amends “the rent book” to “a rent book” to **acknowledge that landlords and tenants may continue to operate a rent book system voluntarily**.
- Subsections 5 and 6 of Clause 3 amend [Articles 68](#) (“**prosecution of offences**”) and [68A](#) (“**fixed penalty for certain offences**”) of the 2006 Order respectively. According to the Bill’s Financial and Explanatory Memorandum (as introduced), the amendment of Article 68(1) ensures that 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 EMF goes on to explain that 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.

What is the position in other jurisdictions?

Scotland

Schedule 2 of the [Private Housing \(Tenancies\) \(Scotland\) Act 2016](#), requires that where any payment of rent is made in cash, the **landlord must provide the tenant with a written receipt for the payment stating** (a) the amount paid, and (b) either the amount which remains outstanding or confirmation that no further amount remains outstanding. The provision of a rent receipt is one of a number of statutory terms outlined in the 2016 Act which is applicable to any new tenancy entered into on or after 1 December 2017 (i.e. the new “private residential tenancy”). Further information on this newer form of tenancy is available [here](#)⁵⁵.

Republic of Ireland

The **Republic of Ireland** maintains a rent book system under the [Housing \(Rent Books\) Regulations 1993](#). The law requires a private landlord to provide tenants with a rent book with certain details (includes the rental amount, when and how it is to be paid, the amount of any rent in advance etc.). The landlord is obliged under the Regulations to keep the particulars of the rent book up to date and the tenant is obliged to make the rent book available to the landlord. With regard to payments, the legislation states that⁵⁶:

“Where the rent or any other amount due to the landlord under tenancy is handed in person by the tenant, or by any person acting for the tenant, to the landlord, the landlord must, on receipt, record the payment in the rent book or acknowledge it by way of receipt.”

Responsibility for the enforcement of the law relating to rent books rests with the housing authority for the areas in which the property is located. The local authority can issue a notice requiring the landlord to comply with their statutory obligations and can initiate legal action if necessary⁵⁷.

England

English housing legislation does not appear to require a landlord to provide a tenant with a receipt for cash payments. However, some tenant and landlord representative bodies advise that a receipt should be sought/provided in case a dispute arises⁵⁸.

⁵⁵ Scottish Government. Guidance for private sector tenants on the Private Housing (Tenancies) (Scotland) Act 2016. www.gov.scot/publications/private-residential-tenancies-tenants-guide/documents/

⁵⁶ Housing (Rent Books) Regulations 1993.

⁵⁷ Citizens Information. Rent Books. www.citizensinformation.ie/en/housing/renting_a_home/rent_books.html

⁵⁸ Shelter. Payment of rent.

https://england.shelter.org.uk/professional_resources/legal/costs_of_renting/rents_and_rent_increases/payment_of_rent#:~:text=Although%20rent%20is%20payable%20by%20cash%20or%20cheque,the%20specified%20day%2C%20into%20the%20landlord%27s%20bank%20account.

Discussion Points:

New Article 5 contains provisions that will require landlords to issue a receipt either at the time payment is made, or if that is not possible, “as soon as reasonably possible after that time”. How will “as soon as reasonably possible” be defined/assessed?

How will tenants be informed of their new rights, and landlords informed of their new obligations, in relation to receipts for cash payments?

How easy will it be for tenants to make a complaint if a receipt is not provided, or provided without all of the required information? Are there particular groups of tenants that may find it difficult to make a complaint e.g. tenants from black and minority ethnic groups, students, migrant workers etc.? If so, how can this issue be addressed?

What measures are currently in place to protect tenants from illegal “retaliatory evictions” should they make a complaint that the landlord or agent is not complying with their new duties?

What support is, or could be provided, to landlords should a complaint arise regarding receipts for cash payments?

Should a landlord or agent continually fail to provide a receipt are there existing mechanisms in place to share this information with other relevant agencies (e.g. if it is suspected that failure to provide a receipt is linked to benefit fraud)?

Clause 4: Limit on tenancy deposit amount

Both rent and deposit affordability are significant issues for many households in the PRS, particularly those on low incomes including benefit claimants. There is currently no provision in legislation that limits the amount of deposit a landlord can require tenants to provide. Many landlords may request a deposit equating to one month’s rent. However, as one MLA highlighted during the second stage of the Bill, they had supported constituents who had been required to provide the equivalent of up to three times their rent as a deposit⁵⁹.

Given that many tenants in Northern Ireland are also required to provide one month’s rent in advance, this equates to a considerable initial financial outlay for many individuals and households seeking to access the PRS. Some tenants on certain social security benefits may be eligible for assistance with upfront costs in the form of an interest-free [Budgeting Loan](#) from the Social Fund⁶⁰. However, for many others there is limited financial support available to assist with these initial upfront costs.

Given that rental deposits typically equate to one, two or three months’ rent it is important to look at current rent levels in Northern Ireland. Recent [analysis](#) by PropertyPal indicates that the average rent in Northern Ireland (for Q2 of 2021) is **£682**

⁵⁹ Northern Ireland Assembly. Official Report. 13 September 2021. <http://aims.niassembly.gov.uk/officialreport/report.aspx?&eveDate=2021/09/13&docID=348691>

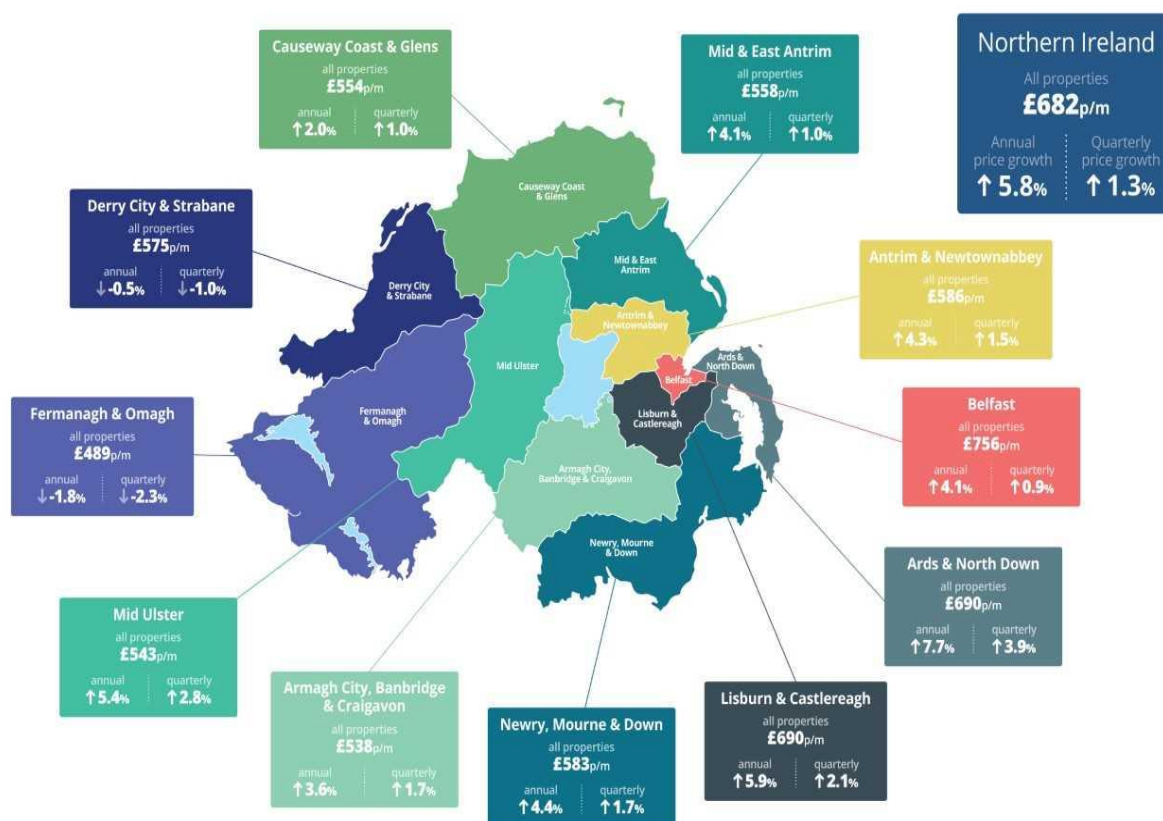
⁶⁰ NI Direct. Budgeting Loan. www.nidirect.gov.uk/articles/budgeting-loans

per month with an annual growth of 5.8% (an average of £674 per month for houses and £700 for apartments)⁶¹. There are notable regional differences in average rents across Northern Ireland, as **Map 1** below, extracted from PropertyPal's [Housing Market Rent's \(Q2, 2021\)](#), demonstrates. For example, the highest average rent in Belfast (all properties) is estimated to be **£756 per month** (with an annual growth of 4.1%).

The lowest average rent is the Fermanagh and Omagh District Council area (**£489 per month** with an annual growth of -1.8%). The Ards and North Down area has experienced the highest annual rent growth (7.7%) with average rent estimated to be £690 per month⁶². Even though average rents (and thereby deposits on rental properties) may appear more affordable in some parts of Northern Ireland, a high degree of caution must be exercised taking into consideration factors such as subregional wage differentials, unemployment rates, the nature of the local job market etc.

Map 1: Rents across Northern Ireland. Map provided with the kind permission of PropertyPal.

Rents across Northern Ireland



Source: PropertyPal. [Housing Market Rents](#). Q2, 2021.

⁶¹ PropertyPal. Housing Market Rents. Q2 2021. 8 July 2021. <https://insights.propertypal.com/flash-commentary/>

⁶² Ibid, p13.

There are of course variations in average rent by property type. For example, PropertyPal's data reveals that the average rent of a **two-bedroom house in Northern Ireland is £564** (with an annual growth of 4.1%) and **£642 for a three-bedroom property** (with an annual growth of 4.8%). The average rent for a one-bedroom apartment is estimated to be £553 per month (with an annual growth of 3.6%)⁶³.

If we take as an example a typical two-up, two-down terraced property in east Belfast with rent set at £575 per month. The potential initial outlay for a household (deposit plus one months' rent in advance) would be £1,150 or £1,725 if an equivalent of two months' rent and one months' rent in advance is required for a deposit.

Some households and individuals may simply have insufficient savings or income to meet these upfront costs. The latest [Family Resource Survey](#) for Northern Ireland (2018/19) indicates that 37% of households here have no savings or investments and 14% of households have savings/investments of less than £1,500⁶⁴. The COVID-19 pandemic has undoubtedly had an impact on savings for many households. Analysis by the [Institute for Fiscal Studies](#) indicates that higher income groups have accumulated more savings during the pandemic than in previous years (e.g. due to lower household spending). Whereas the research suggests that the poorest fifth have seen a decline in their bank balances as income falls are not fully cancelled out by lower spending (likely as a reflection of both lower saving and higher debt)⁶⁵. Future editions of the Family Resource Survey NI may reveal further the impact of the pandemic on household income and savings.

Arguably, there are a number of takeaway messages in terms of deposit affordability in Northern Ireland. Firstly, it reinforces the importance of the [Tenancy Deposit Scheme](#) in terms of protecting existing deposits and providing a tenant with a lump sum payment to transfer to another tenancy should they move house. Secondly, the impact of the pandemic is likely to have exacerbated both deposit and rent affordability for low-income households. This is particularly acute for many younger people who are (a) said to be disproportionately represented in the PRS⁶⁶, and (b) more likely to be employed, or to have been employed, in industries impacted by the pandemic such as retail and hospitality⁶⁷.

Even before the pandemic, there was a recognition that many tenants, particularly those on low incomes and benefits, were experiencing affordability issues with the upfront costs and charges associated with private rented sector tenancies. A number of schemes are available, particularly in other jurisdictions, to assist tenants with rental

⁶³ Ibid, p12.

⁶⁴ Department for Communities. Family Resource Survey: Northern Ireland 2018/19. Published 10 December 2020. www.communities-ni.gov.uk/system/files/publications/communities/frs-201819.pdf

⁶⁵ Institute for Fiscal Studies. Spending and saving during the COVID-19 crisis: evidence from bank account data. https://ifs.org.uk/uploads/BN308-Spending-and-saving-during-the-COVID-19-crisis-evidence-from-bank-account-data_2.pdf

⁶⁶ Northern Ireland House Conditions Survey 2016. <https://www.nihe.gov.uk/Documents/Research/HCS-2016-Main-Reports/HCS-Main-Report-2016.aspx>

⁶⁷ Institute for Fiscal Studies. COVID-19 and the career prospects of young people. Briefing Note. 3 July 2020. <https://ifs.org.uk/publications/14914>

deposits, for example, via bond schemes provided by local authorities or third sector bodies. There is limited availability of such schemes and initiatives in Northern Ireland. It should be noted that also in terms of managing upfront tenancy costs, both the UK Government, Scottish Parliament and Welsh Parliament have also introduced legislation to prevent tenants from unfair charges and premiums associated with tenancy fees. These issues are explored further at the end of this section of the paper.

What are the provisions in the Bill?

Limiting the tenancy deposit amount to no more than one month's rent was not one of the Department for Communities' initial proposals outlined in its 2017 consultation. However, the Departmental response to the consultation stated that:

“Given the concerns around affordability and in order to mitigate against landlords charging 8 weeks deposit which would make access to the PRS even more difficult for those on low income the Bill will introduce an offence for a landlord to charge a deposit of more than 1 months’ rent”.

Clause 4 of the Bill (as introduced) therefore contains provisions to amend The Private Tenancies (NI) Order 2006 to limit the amount of deposit that can be required to be paid or retained in connection with a private tenancy to **no more than one months’ rent**. This clause inserts new Articles 5ZC and 5ZD into the 2006 Order. Tenancy deposit is defined in new Article 5ZC as *“in relation to a private tenancy. Means any money intended to be held (by the landlord or otherwise) as security for (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” is defined as *“money in the form of cash or otherwise”*.

New Article 5ZC

New Article 5ZC is entitled “Tenancy deposit of 1 month’s rent” and contains the following provisions:

- **It 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**;
- Provides a **definition of 1 months’ rent in cases where the rent under a private tenancy is not payable monthly**. One months’ rent where the rent is not payable monthly means (a) where the rent is payable for periods of whole months, the rent for a period divided by the number of months in the period or (b) where the rent is payable for periods determined otherwise than by reference to whole months, the rent is attributable to one day’s letting under the tenancy multiplied by 30.
- Provides that any **landlord or other person** who requires a tenancy deposit in excess of 1 months’ rent to be paid or retained in connection with a private tenancy is **guilty of an offence under the 2006 Order**. Where a person is

convicted of this offence and has received (or retained) a tenancy deposit in excess of 1 months' rent, the court may **order the excess to be repaid to the person who paid it.**

New Article 5ZD

New Article 5ZD makes provision for the recoverability of a tenancy deposit paid in excess of 1 months' rent. This new Article 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 one months' rent** under the tenancy. This applies regardless of "anything in Agreement".
- A tenant or other person who has paid a tenancy deposit or had a tenancy deposit retained **can recover the amount of the deposit that exceeds one months' rent.**

New Article 5ZD also makes a number of amendments to the 2016 Order in relation to **offences and penalties.**

What is the position in other jurisdictions?

England

In **England**, the [Tenant Fees Act 2019](#) restricts the amount of deposit a tenant is required to pay according to the total annual rent for the property. If the total annual rent is **less than £50,000**, the maximum tenancy deposit is **up to five weeks' rent**. If the total annual rent is **£50,000 or above**, then the maximum deposit a tenant can be asked to pay is up to **six weeks' rent**. Since 1 June 2019, the cap on tenancy deposits applies to new tenancies including assured shorthold tenancies and tenancies of student accommodation. The cap also applies to fixed term tenancies that are renewed for another fixed term period even if this is at the same property⁶⁸.

Additionally, under the 2019 Act, a landlord or agent cannot require a tenant to enter into an agreement that '**front loads**' the rent at the start of the tenancy (i.e. charging the tenant more for the first month(s) of the tenancy). The amount of rent charged should normally be equally split across the first year of the tenancy⁶⁹. [Guidance](#) issued by the UK Government states that a tenancy agreement "*must not ask a tenant to pay more in rent for the first month compared to a later payment (the rent instalments should be split equally across the first year of the tenancy)*". However, tenants can be asked to pay more than one rent instalment at the start of the tenancy but only where the tenancy agreement does not require this as a single payment. For example, if the rent was £400 per month, a tenant can be asked to pay three months' rent up front

⁶⁸ UK Government. Tenant Fees Act 2019: Guidance for landlords and agents.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/922898/Tenant_Fees_Act_2019_-_Guidance_for_landlords_and_agents.pdf

⁶⁹ Ibid, pp29-30.

(3x£400=£1,200). However, the tenancy agreement cannot make a tenant liable to pay £1,200 in the first month and then £400 every month after that⁷⁰.

Where a landlord does not have a suitable guarantor or reference checks, the Tenant Fees Act 2019 does permit a landlord or agent to ask the tenant to pay their rent in a lump sum. However, they should consider if this is necessary and affordable for the tenant and cannot charge any more in an up-front lump sum payment that would have been charged over the fixed-term of the tenancy. For example, if the rent is £500 and the tenancy is for a fixed term of six months, a tenant cannot be asked to pay more than £3,000 up front.

Scotland

Section 90 of the [Rent \(Scotland\) Act 1984](#) provides that a tenancy deposit can be **no more than two months' rent**⁷¹. Similar to the situation with tenancy deposits in Northern Ireland, most tenancy deposits in Scotland must be secured by the landlord in one of three Scottish Government approved [tenancy deposit schemes](#)⁷². Section 20 of the [Private Housing \(Tenancies\) Act 2016](#) provides that any charge made in breach of these rules is recoverable by the tenant.

Republic of Ireland

The [Residential Tenancies \(No.2\) Act 2021](#) which came into operation in July 2021, limits both the *deposit and advance rent* that a landlord can require from tenants⁷³:

- A **deposit cannot exceed more than one months' rent**; and
- An **advance payment of rent, at any time, cannot exceed one month's rent** (exceptions apply to certain types of student accommodation).

The limits on deposits and advance rent payments introduced by the 2021 Act only apply to tenancies created from 9 August 2021 onwards. [Guidance](#) on the new Act issued by the Government states that an application for dispute resolution may be referred to the [Residential Tenancies Board](#) (RTB) where a person has been asked to pay more than the limits outlined above. The Residential Tenancies Board is a public body established to support and develop the rental housing sector. It maintains a national register of tenancies, provides dispute resolution services and can initiate investigations into the conduct of a landlord.

⁷⁰ Ibid, pp26-27.

⁷¹ Scottish Government. Private residential tenancy: information for tenants.

www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2017/04/private-residential-tenancies-tenants-guide/documents/information-tenants-pdf/information-tenants-pdf/govscot%3Adocument/Info%252Bfor%252BTenants%252Bpdf.pdf

⁷² Further information on tenancy deposit schemes in Scotland is available at www.mygov.scot/tenancy-deposits-landlords

⁷³ Residential Tenancies (No.2) Act 2021. What this means for landlords and tenants.

[www.rtb.ie/images/uploads/Comms%20and%20Research/Residential_Tenancies_\(No.2\)_Act_2021_\(16th_July_version\).pdf](http://www.rtb.ie/images/uploads/Comms%20and%20Research/Residential_Tenancies_(No.2)_Act_2021_(16th_July_version).pdf)

The remainder of this section of the paper looks at two other issues relating to tenancy affordability. These issues are (a) **financial assistance initiatives for tenancy deposits** and (b) the **regulation of tenancy-related fees**. Whilst these issues do not form part of the Bill (as introduced) it is important to consider these factors in order to form a broader picture of tenancy affordability and barriers restricting access to the Private Rented Sector in Northern Ireland.

Financial assistance with tenancy deposits in Northern Ireland and other jurisdictions

Deposit caps are one method of assisting with the affordability issues but there are a number of initiatives, particularly in other jurisdictions, that seek to address the tenancy deposit affordability issue. A recent House of Commons Library briefing paper on [‘tenancy deposit schemes’](#) identifies such schemes as falling into three broad themes⁷⁴:

- **Local authority rent deposit, bond or guarantee schemes** – these provide either cash to help with a deposit or a written guarantee to the landlord that the scheme will cover unpaid rent or damage up to a certain amount.
- A **deposit replacement product** - offered by some landlords and agents as an alternative to a traditional tenancy deposit. There are a range of product models e.g. an insurance product.
- **Employer-backed loans** – some employers offer their employees the option of an interest-free rental deposit loan. Repayments are deducted from the employees salary.

The availability of these schemes varies considerably across the UK and the Republic of Ireland. There appears currently to be a particular shortage of such initiatives in Northern Ireland. An example of one local initiative, provided by Smartmove Housing, is summarised in the box below:

Smartmove Private Rented Sector Access Scheme (Northern Ireland)⁷⁵

[Smartmove](#) exists to create sustainable tenancies in the private rented sector for those in housing need that are unable to access social housing. It provides prospective tenants with individually tailored solutions and benefit advice in order to help them choose the best property to meet their housing need and financial circumstances and thus prevent repeat homelessness. At the pre-tenancy interview, any additional support needs which might undermine tenancy sustainment are identified, and low to medium level support is provided via Smartmove floating support. The service can signpost to specialist services if necessary thus mitigating potential eviction and tenancy breakdown.

⁷⁴ Wilson, W. & Cromarty, H. Tenancy Deposit Schemes. House of Commons Library. 11 August 2021. <https://researchbriefings.files.parliament.uk/documents/SN02121/SN02121.pdf>

⁷⁵ Information provided in correspondence from Smartmove on 19 August 2021.

Smartmove aims to make accessing the private rented sector easier and more affordable to all by helping to remove common obstacles such as the need for excessive deposits or high levels of rent in advance. Clients in receipt of Universal Credit or Housing Benefit do not face having to pay a months' rent in advance. Instead Smartmove would calculate their housing cost entitlement against the rental amount and the tenant asked to pay their projected months' shortfall only.

Subject to funding availability, Smartmove's deposit bond scheme guarantees the deposit to its landlord, whereby the tenant agrees to make an initial small down payment with the remaining amount collected weekly, over a 6 month period at 0% interest. These services are only available to Smartmove Housing tenants.

A full management service is provided to landlords registered with the scheme at a below market rate which includes: rent account and arrears management; contents inventory; mediation; and help in acquiring a rent deposit bond where appropriate. These services aim to ensure more landlords are willing to house this client group and ease pressure on housing waiting lists.

Rent deposit bond schemes and employer loans schemes in other jurisdictions

Provided in the box below are just a few illustrative examples of a number of bond schemes provided by local authorities and voluntary organisations in Great Britain. It is important to note that the criteria and rules for schemes will vary from one local authority to another. For example, some may have relatively open eligibility criteria (e.g. to all households on a low income below a certain threshold) whilst others may restrict eligibility to households that are homeless or threatened with homelessness. Some local authorities may require that private rented properties must be of a certain physical standard to be eligible for the scheme and/or that the landlord must be registered in a local authority's landlord accreditation scheme). Some local authorities may set the duration of a tenancy in order to be eligible for a scheme (e.g. a minimum 18-month rather than a 12-month tenancy). Some bond schemes vary according to what they will cover. For example, some may cover rent arrears and damage to the property, whilst others may pay out for rent arrears.

Examples of Tenancy Bond or Lease Schemes in Great Britain

Salford City Council Bond Scheme

Salford City Council [bond scheme](#) assists tenants who have found a property to rent but cannot afford the rent advance or deposit. The Council offers eligible tenants a **non-cash deposit in the form of a written bond guarantee** for properties that meet the standards of its **landlord accreditation scheme** (landlord's registered on this scheme agree to operate according to the council's good practice code of standards).

To qualify for the scheme, applicants must be over 18 years of age; are homeless (or threatened with homelessness); are a low wage earner or in receipt of Housing Benefit or Local Housing Allowance); are a resident of Salford (or needs to move to the city to start work or care for a relative); and have distinct housing needs (e.g. have been evicted or have a disability). The council will issue a bond to the value of one month's contractual rent, landlords can only incentivise the bond at the 12-month anniversary of the contract and can make a claim (e.g. for rent lawfully due in arrears or uninsured loss or damage to the property or contents) in writing to the council. In return for accepting a bond, landlords are obliged to, for example, alert the council if the tenant accumulates more than two weeks rent arrears at any point during the agreement or grant access to the property (with reasonable notice) to enable Salford Rental Bond Scheme to investigate a claim against the bond by the landlord. The bond requires the tenant to have the intention of residing in the property for a minimum of 18 months⁷⁶.

Care Society Bond Scheme (voluntary organisation in Wales)

The [Care Society Bond Scheme](#) is provided by and funded by the Welsh Government and supported by Ceredigion Local Authority. It provides a bond equivalent to one month's rent and lasts for 12 months. The scheme is open to those who are homeless, facing homelessness or living in unsuitable conditions. To be eligible, a person must have a local connection to the scheme's catchment area and have no other means of financially securing accommodation. In addition to financial assistance the scheme will also offer advice and assistance on tenancy-related matters. The bond will not cover rent arrears and a bond cannot be granted if a tenancy agreement has already been signed. If the terms and conditions of a bond are broken, tenants will be expected to pay the costs incurred in fixing any damages. The scheme states that it will also provide ongoing support to both tenants and landlords and offer mediation if requested.⁷⁷

Provided in the box below are some examples of employer loan schemes for rental deposits and/or rent in advance. The purpose of many of these schemes is to incentivise potential employees to move to areas where rents are particularly high. However, it is an interesting loan model that could perhaps be adapted particularly by larger public or private sector bodies in Northern Ireland.

Example of Employer Rental Deposit or Rental Advance Loan Schemes

Department for Communities and Local Government Scheme

In February 2015, the UK Department for Communities and Local Government announced that it would offer a deposit loan scheme to staff. Other bodies who had signed up to implement the scheme included the Home Office and HMRC. The loan was conditional on the deposit being secured through a tenancy deposit protection scheme, and staff would repay the interest free loan through deductions from their salary across no more than 12 months⁷⁸.

⁷⁶ Salford Rental Bond Scheme. www.salford.gov.uk/safedeposit

⁷⁷ Care Society Bond Scheme. <https://caresociety.org.uk/bond-scheme/>

⁷⁸ UK Government. Press Release/. Thousands of tenants set to benefit from deposit loans. 3 February 2015. www.gov.uk/government/news/thousands-of-tenants-set-to-benefit-from-deposit-loans

Cambridge University

The University states that it is committed to providing employee benefits which support staff in securing living accommodation in and around Cambridge. The Rental Deposit Loan Scheme provides an interest free loan of up to £3,000 which can be used for some of the costs associated with private rented accommodation (e.g. deposit, first months' rent and other fees associated with moving into or between private rented accommodation). An employee can borrow the equivalent of one month's net pay up to a maximum of £3,000 but will need to provide evidence to support the loan amount (e.g. a tenancy agreement or letter from a letting agency). The employee will authorise the University to deduct 10 equal monthly payments directly from their salary in order to repay the loan. There is no tax or national insurance to pay on the loan as long as it is paid back within 12 months. Employees may pay off the loan earlier if they wish to do so⁷⁹.

Co-operative (Co-op)

The Co-op offers an [interest free rent deposit](#) loan to its co-op employees who have been employed for at least 13 weeks. Introduced in 2018, the loan must be for the purposes of a tenancy deposit in the private rented sector and can't go towards anything else. Up to 80% of earnings in a four-week period can be borrowed (based on contractual hours and doesn't include overtime). The loan will be repaid directly from salaries over the next 10 paydays after the loan is received. Should a person leave Co-op before they repay the loan, the outstanding balance must be repaid in full⁸⁰.

A “lifetime deposit” for private rented sector tenants in England?

The [Queen's Speech 2019](#) outlined the UK Government's intention to introduce a Renters' Reform Bill to “enhance renters' security and improve protections for short-term tenants”. This included a proposal to introduce a new lifetime deposit “*so that tenants don't need to save for a new deposit every time they move house*”⁸¹. There were no further details as to how the lifetime deposit would operate in practice. However, the National Residential Landlord Association (NRLA) made a number of recommendations including a “deposit builder ISA”, i.e. a government protected savings pot available to renters. It suggested that neither party should have access to money deposited in an account unless ordered by an approved deposit scheme or at an account closure⁸². The proposed Renters' Reform Bill has not yet been introduced. However, the [Queen's Speech 2021](#) stated that “later this year” the UK Government would publish a White Paper detailing a reform package as part of its commitment to

⁷⁹ Cambridge University. Human Resources. Rental Deposit Loan Scheme. <https://www.hr.admin.cam.ac.uk/pay-benefits/cambens-employee-benefits/relocation-and-accommodation-benefits/rental-deposit-loan>

⁸⁰ Co-op Rent Deposit Loan. <https://colleagues.coop.co.uk/rent-deposit-loan>

⁸¹ The Queen's Speech 2019.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/853886/Queen_s_Speech_December_2019_-_background_briefing_notes.pdf

⁸² National Residential Landlords Association. Renters Reform Bill. Spotlight: Lifetime Deposits. 22 February 2021. www.nrla.org.uk/news/renters-reform-bill-spotlight-lifetime-deposits

“building back fairer and having a Better Deal for Renters in England” which would include proposals for the new “lifetime” tenancy deposit model⁸³.

Northern Ireland: are innovative solutions to affordability and tenancy sustainability needed?

A scoping paper published by Housing Rights on “[Preventing Homelessness and Sustaining Tenancies in the Private Rented Sector](#)” identified deposits and rent in advance as a barrier to accessing private rented sector accommodation in Northern Ireland. The research noted that for some of its clients moving into a private rented sector tenancy was not “*necessarily by choice and was necessitated as a result of events which were often beyond their control*”. Advisers reported that the upfront costs associated with tenancies led some clients into unmanageable debt⁸⁴.

The research highlights that for many interviewees paying rent in advance on top of a deposit left them with very little to live on until the next payday. The report describes how the upfront costs associated with tenancies also trap some people in poorly maintained Private Rented Sector properties given that they cannot afford to move on. The research also highlights that the issue can be particularly acute for foreign nationals with some being asked to pay double the deposit or double the rent in advance to secure the property. There are also wider barriers identified in terms of accessing the private rented sector such as the availability of guarantors and references. The research notes that several clients in the study were asked to provide an increased rental amount or increased deposit in lieu of a guarantor⁸⁵.

In conclusion, the provision in the Private Tenancies Bill (as introduced) to restrict deposits to the equivalent of one month’s will be welcomed by some sectoral organisations. Many landlords are good landlords but unfortunately a minority are not. Options may need to be explored to prevent some landlords who choose to circumvent the spirit of what the Department is trying to achieve by, for example, requiring additional months’ rent in advance in lieu of a larger deposit. It is also clear from the evidence provided in the Housing Rights’ research that further work needs to be carried out and options identified to improve access to the sector in terms of affordability. For example, through access to affordable credit, deposit assistance initiatives and assistance for tenants who require help to sustain their tenancies (e.g. through private rented sector access schemes). A one size approach will not fit all but this is an area that requires increasing focus.

What about the regulation of letting agent fees in Northern Ireland?

⁸³ The Queen’s Speech 2021. www.gov.uk/government/publications/queens-speech-2021-background-briefing-notes

⁸⁴ Housing Rights. Preventing Homelessness and Sustaining Tenancies in the Private Rented Sector: Scoping Project. September 2020.

www.housingrights.org.uk/sites/default/files/policydocs/Preventing%20Homelessness%20and%20Sustaining%20Tenancies%20in%20the%20PRS.pdf

⁸⁵ Ibid, pp24-25.

For many low-income tenants, including students, being able to afford the deposit and rent in advance is only one issue, another is fees associated with letting the property. Northern Ireland **does not have a modern regulatory framework for the regulation of letting fees and payments**. A 2020 [briefing paper](#) by Housing Rights, argues that despite a significant [court rulings](#)⁸⁶ on the issue of fees in 2017 and 2018, and the publication of a [Joint Communiqué](#) on letting agent fees, by the Ministers for Communities and Finance⁸⁷, they are still being contacted by tenants who have been charged illegal letting fees⁸⁸.

A regulatory framework for letting agent fees now exists in other jurisdictions within the UK (in England via the [Tenant Fees Act 2019](#); in Wales via the [Renting Homes \(Fees Etc.\) \(Wales Act\) 2019](#); and has been in place in Scotland for some time via the [Rent \(Scotland\) Act 1984](#)).

In addition to the issue of letting fees, letting agents who undertake letting and managing work on behalf of a landlord are legally required to be [licensed in Wales](#) (with [Rent Smart Wales](#)) and to undertake approved agent training. In Scotland, letting agents must follow a [Letting Agent Code of Practice](#) which contains minimum standards that must be met. If they wish to carry out letting agency work in Scotland they must be registered on the [Scottish Letting Agency Register](#) run by the Scottish Government. There is currently no overarching statutory framework for the regulation of letting agents in England. However, the UK Government did establish a working group, chaired by Lord Best to explore property agents (including letting agents). The [report](#) of the working group was published in July 2019, and its recommendations included⁸⁹:

- A model for an independent property-agent regulator including details as to how it should operate and how it will enforce compliance;
- A single, mandatory and legally enforceable Code of Practice for property agents; and
- A system of minimum entry requirements and continuing professional development for property agents.

The Government has not yet published its response to the report. However, an independent steering group was established. Chaired by Baroness Hayter, the working group consisting of industry-wide representative was tasked with developing a **new**

⁸⁶ Housing Rights. 'Letting agents ordered by court to repay fees charged to tenants. 29 June 2018.

www.housingrights.org.uk/news/letting-agents-ordered-court-repay-fees-charged-tenants

⁸⁷ Joint DfC and DoF Communiqué on Letting Agency Fees. 5 March 2020. www.communities-ni.gov.uk/publications/joint-dfc-and-dof-communicue-letting-agency-fees

⁸⁸ Housing Rights. Policy Briefing: Letting Fees in Northern Ireland.

www.housingrights.org.uk/sites/default/files/policydocs/HousingRights-briefing-letting-fees.pdf

⁸⁹ Regulation of Property Agents Working Group. Final Report. July 2019.

overarching code of practice for property agents on the back of the recommendations made in the Lord Best report⁹⁰.

Northern Ireland arguably remains without a clear and easily understood overarching framework for both regulation of letting agents or letting agent fees. The [Departmental response](#) to the Department's 2017 consultation states that the cross cutting nature of the issue of letting agent and fee regulation "*necessitates further detailed work with colleagues in other Departments and therefore while this is not part of the current Bill the Department will pursue in the long term*"⁹¹.

Discussion Points:

Is the current level of support to help tenants with deposits and other PRS affordability issues adequate? If not, what additional support needs to be put in place?

The UK Government's call for evidence on tenancy deposit reform in England (2019)⁹² stated its concern that tenants were using high cost credit to fund deposits. Is there evidence that tenants in Northern Ireland are using high cost credit to fund their access to the PRS? If so, what are the repercussions of this e.g. in terms of long term debt etc.?

Did the issue of affordability and/or restriction of advance rent payments arise in the consultation responses? Should the measures recently introduced in the Republic of Ireland to restrict advance payments of rent to no more than one months' rent be considered? If not, why not?

Should there be measures to prevent "front loading" the rent at the start of the tenancy (e.g. requiring the tenant to pay a larger sum for the first rental payment)? What are the pros and cons associated with this? Are there some forms of tenancy which require this more than others?

Are the current complaint and redress mechanisms accessible and effective should a tenant wish to make a complaint about being charged in excess of the required deposit?

Clause 5: Increase in time limits for requirements relating to tenancy deposits

What is the current law in Northern Ireland?

Article 2 of the [Housing \(Amendment\) Act \(Northern Ireland\) 2011](#) and related subordinate legislation facilitated the introduction of Tenancy Deposit Schemes in

⁹⁰ RICS. Press Release. New group to raise standards and protect consumers in residential markets. 1 July 2020. www.rics.org/uk/news-insight/latest-news/press/press-releases/new-group-to-raise-standards-and-protect-consumers-in-residential-market/

⁹¹ Department for Communities. Departmental Response: Consultation on the Review of the Role and Regulation of the Private Rented Sector. 2021. www.communities-ni.gov.uk/sites/default/files/consultations/communities/private-rented-sector-proposals-for-change-consultation-response.pdf

⁹² UK Government. Tenancy deposit reform: a call for evidence. www.gov.uk/government/consultations/tenancy-deposit-reform-a-call-for-evidence

Northern Ireland. The 2011 Act defined a scheme as one which is “*made for the purpose of safeguarding tenancy deposits paid in connection with private tenancies and facilitating the resolution of disputes arising in connection with such deposits*”. A “deposit” in relation to a private tenancy is defined as “*any money intended to be held (by the landlord or otherwise) as security for (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*”.

The requirement to protect a deposit only applies to new deposits paid on, or after, 1 April 2013. The tenancy deposit must be paid into an approved scheme (either custodial or insurance) and there are currently three approved scheme administrators in Northern Ireland:

- Tenancy Deposit Scheme Northern Ireland (TDS)
- Mydeposits Northern Ireland
- Letting Protection Service Northern Ireland

Further detailed information on the Tenancy Deposit Scheme in Northern Ireland is available from the approved administrator websites, [NI Direct website](#) and the Housing Rights [Housing Advice website](#).

Currently, [Article 5B](#) of the Private Tenancies (Northern Ireland) Order 2006 (as amended by the 2011 Act) places a number of obligations on the landlord with regards to deposit protection:

- The landlord must place the deposit in an approved scheme within the **period of 14 days** beginning on the date on which the deposit is received; and
- The landlord who has received a deposit must give the tenant certain **prescribed information about their tenancy deposit protection within 28 days** from the receipt of the deposit. Details of the prescribed information that must be provided by the landlord is contained within subordinate legislation. It includes, for example, details of the scheme in which the deposit will be protected including information on the dispute resolution mechanism. It also includes details of how the deposit will be refunded and the circumstances under which the landlord may retain all or some of the deposit⁹³.

Clause 5 of the Bill (as introduced) contains provisions to amend the Private Tenancies Order 2006 to provide landlords with additional time to both place the deposit in an approved tenancy deposit scheme and provide the tenants with prescribed information required.

What are the provisions in the Bill?

Clause 5 proposes to amend Article 5B of the Private Tenancies (NI) Order 2006 by:

⁹³ The Tenancy Deposit Scheme Regulations (Northern Ireland) 2012. www.legislation.gov.uk/nisr/2012/373/made

- Extending the time limit **for a deposit to be protected** in an approved scheme **from 14 days to 28 days**; and
- Extending the time limit for a **landlord to provide the prescribed information** to the tenant from **28 days to 35 days**.

Outcome of the 2017 consultation in relation to this proposal

The Department for Communities January 2017 consultation '[Private Rented Sector in Northern Ireland – Proposals for Change](#)' contained nine proposals in relation to the tenancy deposit scheme in Northern Ireland. One of the nine proposals was as follows⁹⁴:

“Time limit for deposit protection

Current legislation states a deposit must be protected in an approved scheme within 14 days of receipt. The Department will amend legislation to allow landlords additional time to protect the deposit so landlords will have 28 days to protect the deposit and give the required information to the tenant.”

The initial proposal contained in the consultation was to extend the time that landlords had to place a deposit in an approved scheme. It did not contain a specific proposal to extend the time in which a landlord had to provide the tenant with the prescribed information (from the current 28 days to the proposed 35 days included in Clause 5 of the Bill). However, the Department may have identified the need to extend the deadline for the prescribed information as a result of feedback from the public consultation.

Other proposals outlined in the 2017 consultation which do not form part of the Private Tenancies Bill (as introduced)

As previously highlighted, the proposal to extend time limits was just one of nine Departmental proposals to amend the Tenancy Deposit Scheme. Many of these do not form part of the current Private Tenancies Bill (as introduced). However, for information purposes, **Table 3** outlines the proposals for amendments to the tenancy deposit scheme and the Department's subsequent response to those proposals as outlined in its recently published [response paper](#).

Table 3: Tenancy deposit scheme proposals and Departmental response

Tenancy Deposit Scheme – 2017 Consultation Proposals	Outcome of consultation and Departmental response ⁹⁵
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⁹⁴ Department for Communities. Private Rented Sector in Northern Ireland – Proposals for Change. Consultation Document. January 2017, pp54-55.

⁹⁵ Information extracted from the Departmental Response paper www.communities-ni.gov.uk/sites/default/files/consultations/communities/private-rented-sector-proposals-for-change-consultation-response.pdf

<p>Retrospective Protection</p> <p>“The current scheme only requires deposits taken on or after 1 April 2013 to be protected. The Department recommends that retrospective protection be introduced so that all private rented deposits will be protected irrespective of the date the tenancy started. This will mean that all tenants will benefit from the protection the Scheme brings and will have access to the dispute resolution mechanism.”</p>	<p>The Department states that there were 15 responses to this proposal of which 7 (47%) supported the proposal and 8 (53%) were not in favour of it. The Department response paper states that <i>“There was a mixed response to the proposal to introduce retrospective protection. Some of those against cited that it would be impossible to determine, at the point of protecting the deposit, the condition of a property that had been rented 10 or more years ago”</i>.</p> <p>Conclusion/Departmental Response:</p> <p><i>“At the time of the consultation in 2016 it seemed reasonable that since the Tenancy Deposit Schemes had come into operation that deposits prior this date should also be protected. However, due to the passage of time and by the time legislation is brought forward it will be nearly 10 years since the Tenancy Deposit Schemes commenced. Recent evidence from the Scheme Administrators shows an average tenancy lasting 18 months therefore we see little value in taking this proposal forward.</i></p> <p><i>The Department will not implement this proposal as part of a PRS Bill delivered in this mandate.”</i></p>
<p>Time limit for deposit protection</p> <p>“Current legislation states a deposit must be protected in an approved scheme within 14 days of receipt. The Department will amend legislation to allow landlords additional time to protect the deposit so landlords will have 28 days to protect the deposit and give the required information to the tenant.”</p>	<p><i>This proposal has been included as part of the Private Tenancies Bill (as introduced). However, Clause 5 also proposes to increase the time that landlords have to provide their tenants with the prescribed information from the current 28 days to 35 days.</i></p>
<p>Prosecution Time Bar</p> <p>“Offences under the Tenancy Deposit Scheme cannot be prosecuted through the courts after six months. The Department will amend legislation so that the time limitation will not be a barrier to enforcement.”</p>	<p>The Department highlights that there were 12 responses to this proposal of which 11 supported the proposal and 1 was not in favour of it.</p> <p>Consultation/Departmental response:</p> <p><i>“The Department will implement this proposal as part of a PRS Bill delivered in this mandate so that time limitation will not be a barrier to enforcement action”</i>.</p> <p>This proposal is contained within Clause 6 of the Private Tenancies Bill (as introduced) and is explored in further detail in the next section of this Bill Paper.</p>
<p>Fixed Penalty</p> <p>“Currently any monies paid as a result of fixed penalties (up to three times the amount of the deposit) is paid to councils. The Department will</p>	<p>The Department states that there were 12 responses to this proposal of which 3 supported the proposal and 9 were not in favour of it. Those against stated</p>

<p>seek to amend legislation to allow part of the penalty to be paid to the tenant.”</p>	<p>that the tenant would not be disadvantaged as their deposit would now be protected.</p> <p>Conclusion/Departmental Response:</p> <p><i>“The Department will not implement this proposal. Councils will still be entitled to all fixed penalty monies to assist with the implementation of the Private Tenancies Order”.</i></p>
<p>Court Decisions</p> <p>“Currently a judge can issue a fine of up to £20,000 and there is no obligation for any monies to be returned to the tenant and the landlord is not ordered to protect the deposit in an approved Tenancy Deposit Scheme unlike Article 65A(7) where a court must order a landlord to register. The Department will seek to change the legislation.”</p>	<p>The Department states that there were 10 responses to this proposal of which 9 supported the proposal and 1 was not in favour.</p> <p>Conclusion/Departmental Response:</p> <p><i>“The Department will work with the Department of Justice and amend the Private Tenancies Order to ensure this proposal can be implemented”.</i></p>
<p>Monies in designated accounts</p> <p>“The Department will explore the feasibility of allowing scheme administrators to use monies in designated accounts to work with Housing Associations to invest in affordable housing.”</p>	<p>The Department states that there were 11 responses to this proposal of which 10 fully supported the proposal and 1 was not in favour (stating that monies should remain with the scheme administrator to reduce the cost of the insurance scheme).</p> <p>Conclusion/Departmental Response:</p> <p>The Department will explore how scheme administrators should use monies in designated accounts.</p>
<p>Proactive approach by Council Environmental Health Officers</p> <p>“The Department will take action to encourage all councils to be more proactive and use the legislative powers available to them to prosecute for non compliance”.</p>	<p>The Department states that there were 11 responses to this proposal of which 9 fully supported the proposal and 2 were not in favour of it. Those opposing did not agree that councils should be using resources to pursue minor non-compliance issues.</p> <p>Conclusion/Departmental Response:</p> <p>“The Department will continue to encourage all councils to be more proactive and use the legislative powers available to them to prosecute for non-compliance”.</p>
<p>Correspondence address</p> <p>“Amend para 1(d) of Schedule 1 to the Tenancy Deposit Scheme Regulations (Northern Ireland) 2012 to “change Northern Ireland” to “United Kingdom”.”</p>	<p>The Department states that there were 10 responses to this proposal of which 9 fully supported the proposal and one was not in favour.</p> <p>Conclusion/Departmental Response:</p> <p><i>“The Department will implement this proposal”.</i></p>

<p>Transfer between schemes</p> <p>“Amend Regulation 14 to insert a timeframe for transfer of a deposit and protection between schemes”.</p>	<p>The Department states that there were 9 responses to this proposal with all 9 supporting the proposal.</p> <p>Conclusion/Departmental Response:</p> <p><i>“The Department will implement this proposal”.</i></p>
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What is the position in other jurisdictions?

Landlords and agents in Scotland are legally obligated to place the deposit in one of three approved tenancy deposit schemes. Further information on the Scottish tenancy deposit system is available [here](#). The [Tenancy Deposit Schemes \(Regulations\) 2011](#) require that “*deposits must be submitted to the administrator of an approved scheme within 30 working days of the beginning of the tenancy. In most cases the date on which the tenancy begins will be specified in a tenancy agreement*”.

The landlord is also required under the regulations to **provide the tenant with particular prescribed information within 30 working days of the tenancy start date**.

In **England and Wales**, landlords and agents must place their tenants’ deposits in one of three approved deposit protection schemes if the tenancy is an assured shorthold tenancy which started after 6 April 2007. The deposit must be placed in an approved scheme **within 30 days** of it being received by the landlord. Further information on the deposit protection scheme for England and Wales is available [here](#)⁹⁶. Landlords must also provide tenants with [prescribed information](#) within **30 days** of receiving the deposit.

There is currently no statutory tenancy deposit scheme in the **Republic of Ireland**, therefore landlords are not required to place deposits in a government approved scheme.

Clause 6: Certain offences in connection with tenancy deposits to be continuing offences

What is the current law in Northern Ireland?

The Department for Communities 2017 consultation ‘[Private Rented Sector in Northern Ireland – Proposals for Change](#)’ stated that a post project evaluation of the Tenancy Deposit Scheme revealed that a number of changes to the scheme were necessary. As Table 3 of the previous section of this paper, the consultation contained **nine specific proposals for amendments to the tenancy deposit scheme**. One of the proposals related to the “prosecution time bar”. The consultation paper highlighted that

⁹⁶ UK Government. Deposit protection schemes and landlords. www.gov.uk/deposit-protection-schemes-and-landlords

currently offences under the Tenancy Deposit Scheme **cannot be prosecuted through the courts after six months**. The Department proposed to amend legislation so that the time limit would not be a barrier to enforcement.

What are the provisions in the Bill?

Clause 6 of the Bill amends [Article 5B](#) of the Private Tenancies (Northern Ireland) Order 2006 by inserting a **new paragraph (11A)**. According to the Bill's Explanatory Memorandum, where a landlord fails to protect a tenancy deposit or to give the prescribed information within the required time, the new paragraph provides that those offences continue to be committed throughout any period in which the failure continues. It goes on to state that as a result of this there will be no time barrier on prosecuting a person who fails to comply with the requirements of the Article.

What was the outcome of the Department's public consultation?

The [Departmental Response](#) to the 2017 consultation on the private rented sector notes that there were 12 responses to the proposal to remove the time limitation barrier. The majority of the responses (11) are said to have supported the proposal with one response not in favour.

How many prosecutions have there been to date? Is it possible to identify the number of cases that could not be prosecuted due to the time barrier?

Clause 7: Restriction on rent increases

What is the current law in Northern Ireland?

Only a small number of tenancies in Northern Ireland (e.g. statutory and protected tenancies) are subject to any form of rent control. For the vast majority of tenancies, landlords may set whatever rent they wish (e.g. in accordance with rental prices in the area) and there is currently no legal limit on the number of occasions rent can be increased throughout a 12-month period⁹⁷. However, Clause 7 of the Bill contains provisions to restrict landlords to increasing rent only once during any 12 month period and to require them to provide appropriate notice to tenants of that increase.

Rental increases and rental caps

The Department for Communities 2017 consultation '[Private Rented Sector in Northern Ireland – Proposals for Change](#)' looked at the issue of rental affordability from two

⁹⁷ Further information on these tenancies and rent control is available from the NI Direct website. www.nidirect.gov.uk/articles/rent-control Note that the Rent Officer for Northern Ireland sets the rent for rent controlled tenancies.

angles. Firstly, it explored the issue of rent caps i.e. setting limits on the amount of rent that the tenants can be charged. Secondly, it looked at the issue of restricting rent increases, i.e. the amount of times rent could be increased in a given period.

The consultation set out four options in relation to these issues:

1. **Rent control for all private tenancies** – the Department felt that this would act as a major disincentive to investment in the private rented sector. It argued that given the majority of landlords in Northern Ireland own one or two properties, rent control would likely have an adverse impact and would push landlords out of the sector.
2. **Limit the rent that can be charged to Local Housing Allowance rates** – the Department stated that this would mean that there would be no shortfall for tenants to pay. However, it stated that this may have an impact for landlords in terms of financing mortgage payments.
3. **Restrict rent increases e.g. rent setting indexed to the Consumer Price Index (CPI)** – the Department maintained that whilst this option would allow rents to move in line with inflation, it could discourage investment in the sector in terms of both current and additional stock.
4. **Rent increases restricted to once in any 12-month period and appropriate notice to be given for some.**

The Department opted for the fourth option i.e. to restrict rent increases to once in any 12-month period. The Department maintained that a number of consultees expressed concern about the frequency of rent increases and that⁹⁸:

“...examples were provided of landlords imposing increases in rent with little notice and in some cases more than once in a 12 month period. This practice can then cause tenants to leave or fall into arrears which in turn can lead to eviction. In comparison, rent reviews for commercial property are generally only carried out once in a three-five year period.”

Outcome of the Consultation

The [Departmental response](#) to the consultation states that there were 34 responses to the proposal to introduce legislation to restrict rent increases to only once in any 12-month period. The response paper states that 31 of these responses supported the proposal and 3 did not support the proposal. The response paper points out that of those who supported the proposal, 35% felt that it did not go far enough. No further information is contained with the response paper as to why they felt it did not go far enough. Of those responses (3 responses) that did not support the proposal, the Department highlights that *“some felt it was too rigid and needed to be more flexible to enable landlords to*

⁹⁸ Department for Communities. Private Rented Sector in Northern Ireland – Proposals for Change. Consultation document. January 2017.

respond if changing circumstances meant that their costs become volatile (rises to interest rates or inflation)".

The next section of the paper explores the provisions in Clause 7 in further detail and the final part of this section will look briefly at rent control policy and legislative developments in other jurisdictions.

What are the provisions in the Bill?

Clause 7 inserts **two new Articles (Articles 5C and 5D)** into The Private Tenancies (NI) Order 2006.

New Article 5C

New Article 5C applies to any private tenancy except for controlled tenancies (as defined under [Article 40\(4\)](#) of the 2006 Order). Controlled tenancies in Northern Ireland are subject to rent control. There is further information on this type of tenancy available on [NI Direct](#) and from the [Housing Advice NI](#) website.

New Article 5C provides that the **rent payable under a private tenancy may not be increased (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.** Article 5C also provides that the Department for Communities may make regulations specifying circumstances in which this does not apply (e.g. where a house is renovated, refurbished, altered or extended).

The Department may also, by way of regulations, amend the time periods during which rent increases are prohibited to periods above 12 months, up to a maximum of two years.

Clause 7 also provides that before laying a draft regulation under Article 5C (i.e. regulations amending the period from 12 months to not more than 2 years) it must consult such persons as appear to represent landlords, such persons as appear to represent tenants, and such persons as the Department considers appropriate (which may include landlords or tenants).

New Article 5D

New Article 5D also applies to private tenancies except controlled tenancies (within the meaning of Article 40(4) of the 2006 Order). It provides that a landlord cannot increase the rent on a private tenancy unless they have provided **written notice to the tenant.** The notice must specify (a) the date on which the increase in the rent will take effect (this **must not be less than 2 months after the date in which the notice is given to the tenant**) and (b) the rent that will be payable after the increase. The notice must contain such other information, and be in such form, as prescribed by regulations made by the Department.

What is the position in other jurisdictions?

Rent control has been introduced in other local jurisdictions by, for example, either:

- **restricting the number of occasions in which a landlord can increase rent** within a 12-month period; and/or
- by legislating for **Rent Pressure Zones**, i.e. a designated area where rent increases are controlled according to a formula set by Government.

Rent control is a complex issue that requires a thorough understanding of the nature of the local housing market. Designating an area as a Rent Pressure Zone is also dependent on the availability of robust data in order to determine whether rent control in a particular geographical area is appropriate. Both the Scottish and Irish Governments have introduced legislation to facilitate the designation of Rent Pressure Zones as a means of dealing with rental affordability issues in high rent areas. However, whilst there are quite a number of operational designated Rent Pressure Zones in the Republic of Ireland, Scotland has yet to designate any. This is looked at in some further detail in the next part of this paper.

Rent regulation measures in other jurisdictions

Republic of Ireland

(i) Restriction on rent increases; rent set in comparison to other similar properties in the area; and restrictions on rent in advance⁹⁹.

In the Republic of Ireland, if a property is not in a Rent Pressure Zone, a landlord can only review the rent either **24 months after the tenancy commencement date** or **24 months from the date from the last valid rent review**. However, what is interesting is that in the Republic of Ireland the rent review **must be based on current market rent. Evidence of three comparable properties** must be provided by the landlord to demonstrate how the new rent amount was arrived at. The three comparators must be of a similar size, type and character and situated in a comparable area in order to establish market rent. Evidence of the rent charged for comparable properties can be in the form of advertisements for such properties published within the previous four weeks. A tenant must be informed of any review to the rent and must be provided with at least **90 days' notice in writing of a change in rent** (an email or text is not considered appropriate notice of a rent review). The Notice of Rent review must also be in a [prescribed format](#)¹⁰⁰.

The new [Residential Tenancies \(No.2\) Act 2021](#), which came into operation in July 2021, also provides that an **advance payment of rent (e.g. rent paid at the start of**

⁹⁹ Information in this section extracted from the Residential Tenancies Board website www.rtb.ie/beginning-a-tenancy/sett

¹⁰⁰ Residential Tenancies Board. Notice of Rent Review. www.gov.scot/publications/private-residential-tenancies-landlords-guide/documents/www.rtb.ie/images/uploads/Comms%20and%20Research/Schedule_1_Notice_of_New_Rent_RTB_Final_July_2021.pdf

the tenancy) cannot exceed one month's rent. This was accompanied by a restriction on the amount of deposit that a landlord can require to the equivalent to one month's rent. This Irish Government states that these measures have been introduced to *“improve the operation of the residential rented sector and protecting tenants, particularly during a sustained period of constrained supply in the private rented accommodation sector which has been negatively impacted by Covid-19”*. The limits on deposits and advance payments of rent **only apply to tenancies created from 9 August 2021 onwards**¹⁰¹.

(ii) *Rent Pressure Zones (RPZs)*

As previously highlighted, there are operational Rent Pressure Zones in the Republic of Ireland. The Dublin City Council and Cork City Council areas were, for example, designated as RPZs in December 2016. In an RPZ rents cannot be increased by more than general inflation, as recorded by the [Harmonised Index of the Consumer Prize Index](#) (HICP)¹⁰². This applies to new and existing tenancies (although there are certain exemptions). In previous years, RPZs could not experience an increase in rent of more than 4% annually. However, since 16 July 2021, the 4% formula was replaced by the HICP (due to the impact of COVID-19 on the PRS).

The Residential Tenancies Board explains that Rent Pressure Zones (RPZs) are located in parts of the Republic of Ireland where rents are highest and rising and where households have the greatest difficulty finding accommodation. They are intended to *“moderate the rise in rents in these areas and create a stable and sustainable rental market that allows landlords and tenants to plan financially for their future”*¹⁰³.

Further detailed information on how RPZs are designated, including further information on the Harmonised Index of the Consumer Prize Index is available from the Residential Tenancies Board website [here](#)¹⁰⁴. The Residential Tenancies Board (RTB) [website](#) includes a list of the Local Authority (LA) areas and Local Electoral Areas (LEAs) that have been designated as RPZs and the dates that they were designated (these will remain in place until 31 December 2024). The Residential Tenancies Board can investigate and sanction landlords who do not comply with RPZ rules¹⁰⁵.

Scotland

(i) *Restriction on rent increases*

Landlords with tenants who hold one of the newer private residential tenancies (i.e., that began on or after 1 December 2017) **can only increase rent once a year**. If a

¹⁰¹ Government of Ireland. Residential Tenancies Act (No.2) Act 2021: What this means for landlords and tenants.

[www.rtb.ie/images/uploads/Comms%20and%20Research/Residential_Tenancies_\(No.2\)_Act_2021_\(16th_July_version\).pdf](http://www.rtb.ie/images/uploads/Comms%20and%20Research/Residential_Tenancies_(No.2)_Act_2021_(16th_July_version).pdf)

¹⁰² Future information on Rent Pressure Zones and the Harmonised Index of the Consumer Price Index is available from the Residential Tenancies Board website. www.rtb.ie/rent-pressure-zones

¹⁰³ Information extracted from the Residential Tenancies Board website <https://www.rtb.ie/rent-pressure-zones>

¹⁰⁴ Ibid.

¹⁰⁵ Rent Pressure Zones information available from gov.ie www.gov.ie/en/publication/85110-rent-pressure-zones/

landlord wants to increase the rent during this period, they must provide the tenant with at least **three months' written notice** before the increase comes into effect. The notice must be in a [prescribed format](#) as set out by the Scottish Government. The Scottish Government also provides an [online Notice](#) tool to help landlords create their Rent Increase Notice. The notice period begins on **the date the tenant gets the notice and ends three months after that date**. If a landlord sends the notice by post or email, they must **allow the tenant 48 hours to receive this**. Guidance published by the Scottish Government recommends that this delivery time is factored into the amount of notice given to the tenant¹⁰⁶.

It is important to note that in Scotland there is an established process should a tenant (with a 'private residential tenancy', i.e. which began on or after 1 December 2017) feel that the rent has been set too high. They are permitted to contact a [rent officer](#) within 21 days of receiving their notice. The rent officers are part of [Rent Service Scotland](#) which is part of the Scottish Government. Tenants must inform the landlord of this by returning "P3" of the notice to the landlord. The rent officer has the power to decide what the rent for the property should be and can vary the rent up or down¹⁰⁷. If the tenant or landlord disagrees with the decision made by the rent officer, they can ask them to reconsider it or they can appeal to the First-tier Tribunal ([Housing and Property Chamber](#)) who will make a final decision. If a landlord or tenant wishes to appeal to the Tribunal, they must do this within 14 days of the rent officer's decision¹⁰⁸.

(ii) *Rent Pressure Zones (RPZs)*

The [Private Housing \(Tenancies\) \(Scotland\) Act 2016](#) provided the Scottish Government with a vehicle to introduce rent controls in the form of Rent Pressure Zones (RPZs). However, there are currently no designated Rent Pressure Zones in Scotland¹⁰⁹. There is some suggestion that this is because local authorities are finding it difficult to gather the robust rental data required by the 2016 Act in order to have an area designated¹¹⁰.

The 2016 Act permits local councils to apply to Scottish Ministers to have an area designated as an RPZ if they can prove that:

- Rents payable with the proposed PRZ are rising by too much; and
- The rent rises within the proposed zone are causing undue hardship to tenants; and
- The local council is coming under pressure to provide housing or subsidise the cost of housing as a consequence of the rent rises within the proposed zone.

¹⁰⁶ Scottish Government. Private residential tenancy: information for landlords. www.gov.scot/publications/private-residential-tenancies-landlords-guide/documents/

¹⁰⁷ Scottish Government. About Rent Service Scotland. www.gov.scot/publications/about-rent-service-scotland/

¹⁰⁸ Scottish Government. Private residential tenancy: information for landlords. www.gov.scot/publications/private-residential-tenancies-landlords-guide/documents/

¹⁰⁹ Mygov.scot www.mygov.scot/rent-pressure-zone-checker

¹¹⁰ Shelter Scotland. Rent Pressure Zones: what next. 6 June 2018. <https://blog.scotland.shelter.org.uk/rent-pressure-zones-next/>

In 2017, the Scottish Government published a [list of requirements](#) that local authorities had to provide in order for an RPZ application to be accepted¹¹¹. The application was required to be accompanied with a wide range of “robust evidence”. This included detail of the methodologies used by the local authority to collect the evidence and how that evidence led the local authority to believe that the three criteria outlined above have been met. It is the availability of robust data that has led to difficulties in putting the law on RPZs into practice.

It should be noted that Rent Pressure Zones in Scotland will only apply to rent increases for tenants with a newer [private residential tenancy](#) (i.e. tenancies created on or after 1 December 2017). Rent increase for the older short assured or assured tenancies will not be affected by RPZs. Information provided on the Scottish Government website states that any cap set by Scottish Ministers will be at least consumer price index (CPI) plus 1%. For example, if CPI is 1.6%, the minimum cap set by Ministers would be 2.6%. However, landlords will be able to apply to a rent officer to add an additional amount of rent to reflect any improvements made to the property¹¹².

What about the future of rent regulation in Scotland? The new [draft shared policy programme](#) recently announced between the Scottish Government and the Scottish Green Party ‘*Working Together to Build a Greener, Fairer, Independent Scotland*’ states that a new “*effective national system of rent control*” will be implemented with an “*appropriate mechanism to allow local authorities to introduce local measures*”. The paper states a commitment to **consult on the options, deliver legislation and implement rent controls by the end of 2025**. So there are, as yet, no details as to what this will look like. Interestingly, the draft shared policy programme states that a much wider package of planned reforms to the PRS including, for example¹¹³:

- The creation of a **new housing regulator for the private rented sector** to improve standards and enforce tenants’ rights;
- Providing greater security of tenure for tenants by implementing **greater restriction on evictions over winter**;
- Introduce new rights for tenants including **greater flexibility to decorate their home and to keep pets**; and
- Put in place **additional penalties and compensation for illegal eviction**.

Wales

(i) *Restriction on rent increases*

¹¹¹ Scottish Government. Private Housing (Tenancies) (Scotland) Act 2016. Rent Pressure Zones.

www.gov.scot/publications/rent-pressure-zone-rpz-application-requirements-local-authorities/documents/

¹¹² Scottish Government. Private Renting. Rent Pressure Zones. www.gov.scot/policies/private-renting/rent-pressure-zones/

¹¹³ Scottish Government and Scottish Green Party. Draft Shared Policy Programme. Working Together to Build a Greener, Fairer, Independent Scotland. <https://tinyurl.com/2uuxk88j>

The [Renting Homes \(Fees etc.\) \(Wales\) Act 2019](#), sets out a number of rules on what it terms “rent fluctuations”. Guidance for tenants on the 2019 Act states that the amount of rent that they are charged must be the same across similar periods (so, the same each month, or week etc. depending on their specified rental period). Where this is not the case, the guidance states, that the difference between the two amounts is a ‘prohibited payment’. For example, if a tenant has been asked to pay £600 in month one and £450 in month two onwards – the additional amount of £150 in a month is a prohibited payment. An exception to this is a “permitted variation”. A “permitted variation” is made by an agreement between the landlord and the tenant. This is by way of a term in the tenancy contract for rent variation¹¹⁴.

(ii) Rent Pressure Zones (RCZs)

There are no Rent Pressure Zones in Wales and no legislation to facilitate their introduction.

England

(i) Rent Control/Pressure Zones (RCZs)

There are no Rent Pressure Zones in England similar to those legislated for in Scotland and the Republic of Ireland. The House of Commons Communities and Local Government Select Committee considered this issue as part of its 2013-14 inquiry into the private rented sector. It concluded, however, that it did not support rent control, it believed that it would “*serve only to reduce investment in the sector at a time when it is most needed*”. The Committee report maintained that the most effective way to make rents more affordable was to increase supply, particularly in those areas where demand is highest¹¹⁵.

However, there have been various calls for rent control in response to significant rent increases in areas of high housing demand. For example, the Mayor of London, Sadiq Khan, has previously announced that he was seeking to “*develop a new blueprint for stabilising or controlling private rents in the capital*” as part of his ongoing work to help renters in London¹¹⁶. Mr Khan has indicated that his preference would be for a London Private Rent Commission to be established that would be responsible for determining the best model of rent control for London¹¹⁷. The London Assembly’s Housing Committee has also commissioned research on the ‘[effect of rent stabilisation measure](#)

¹¹⁴ Information in this section has been extracted from the Renting Homes (Fees Etc) (Wales) Act 2019: Guidance for landlords and agents. <https://gov.wales/sites/default/files/publications/2019-08/letting-fees-guidance-for-landlords-and-letting-agents.pdf>

¹¹⁵ Wilson, W.; Baxter, J.; Berry, K. & Murphy, E. Comparing private rented sector policies in England, Scotland, Wales and Northern Ireland. House of Commons Library. <https://researchbriefings.files.parliament.uk/documents/CBP-7624/CBP-7624.pdf>

¹¹⁶ Mayor of London. London Assembly. ‘Mayor to develop ‘rent control’ proposals. 23 January 2019.

www.london.gov.uk/press-releases/mayoral/to-tackle-affordability-crisis

¹¹⁷ London Assembly. Question to the Mayor of London. 23 March 2020. www.london.gov.uk/questions/2020/1209

[in London](#)¹¹⁸. The National Residential Landlords Association (NRLA) argue that rent control reforms would have a dramatic impact on the sector and that it would risk reducing the supply of available homes and inflate prices further.

Concluding remarks

Placing restrictions on the number of times that landlords can increase rent in a 12-month period and providing sufficient notice of that increase, is just one method of assisting tenants with affordability issues in the private rented sector. Wider rent control and regulation, such as the creation of rent pressure zones, is a complex and controversial issue. The lack of robust private rented sector data e.g. rental data, can make difficult the task of establishing an argument for designated rent pressure zones. However, in developing an understanding of the issue of rent control it is useful to assess its impact in other jurisdictions that have introduced various rent regulation measures. Whilst it is not possible to go into great detail on this issue in this Bill paper, the box below contains a small sample of publications on the issue of rent control to assist Members in their understanding of the issue.

Further reading: a sample selection of papers on the issue of rent control and regulation

Wilson, W. & Barton, C. (2019) Private rented housing: the rent control debate. House of Commons Library. Research Briefing.
<https://commonslibrary.parliament.uk/research-briefings/sn06760/>

Clay, N. & Smith, D. (2019) Rent control and the Private Rented Sector. Residential Landlords Association. www.nrla.org.uk/research/special-reports/rent-controls

Whitehead, C. & Williams, P. (2018) Assessing the evidence on Rent Control from an international perspective. London School of Economics.
www.lse.ac.uk/business/consulting/assets/documents/assessing-the-evidence-on-rent-control-from-an-international-perspective.pdf

Robertson, D. & Young, G. An Evaluation of Rent Regulation Measures within Scotland's Private Rented Sector. A report to Shelter Scotland. March 2018.
https://assets.ctfassets.net/6sgqfrl11sfj/6nhgdY3rmRytcYThx7MKBP/299e41572bca2b0b59d08d68daa7ca4d/Shelter_RentReport_May18_screen3_1.pdf

¹¹⁸ Clarke, A.; Hamilton, C.; Heywood, A.; & Udagawa, C. Research on the effect of rent stabilisation measures in London. Cambridge Centre for Housing and Planning Research.
www.london.gov.uk/sites/default/files/report_on_rent_stabilisation_for_london_assembly.pdf

Aside from rent regulation, what other measures can be used to help tenants with affordability in the private rented sector?

As highlighted at the beginning of this section, rent affordability is a significant issue for tenants, but it is not the only issue that impacts access to, and security of tenure within, the private rented sector. As well as assistance with the financial aspects of the tenancy, many vulnerable low-income tenants in particular, require help to find suitable properties and be supported to sustain those tenancies in the long term. As highlighted in a previous section of the paper, there are very limited options available that provide a package of support to private rented sector tenants in Northern Ireland. [Smartmove Housing](#), is just one example of a very limited range of services that provide this kind of support.

There does seem to be considerably more progress in other jurisdictions in terms of initiatives and projects that aim to increase security of tenure within the sector by providing a package of support for both tenants and landlords from the beginning of the tenancy to the end. Provided below are just a few illustrative examples of such initiatives, some are government led, some are local authority-led, and others led by third sector bodies and social enterprises:

The Welsh Government's pathfinder [Private Rented Sector leasing scheme](#) model.

This model recognises that for those struggling financially, the disparity between Local Housing Allowance rates and market rents acts as a barrier to the PRS for many local income households. The leasing scheme pilot involves local authorities leasing properties from private landlords, guaranteeing them a rental income for five years even if the property is empty for any period during that time. Maintenance and repairs will be managed by the local authorities. Landlords will receive rent equal to 90% of the Local Housing Allowance rate with the other 10% of rent retained by the local authority for maintenance obligations. Grants of up to £2,000 may be available for improvements that are essential to bring the property up to Welsh Government standards. Interest free loans of up to £8,000 are available and repayable over the lease term for improvements to bring the house up to these standards. For tenants, tailored tenancy management and ongoing housing support will be provided by support workers within the local authority in order to help the tenant sustain their tenancy¹¹⁹. This pathfinder is designed to test the usefulness and viability of the project and to provide a test base for a scalable model.

Homes for Good – a Social Enterprise Letting Agent and Property Management Company (Scotland)

[Homes for Good](#) (HFG) is described as **Scotland's only social enterprise letting agent and property management company**. The aims of Homes for Good is to “bridge the gap in affordable

¹¹⁹ Welsh Government. Private Rented Sector leasing scheme: guidance. <https://gov.wales/private-rented-sector-leasing-scheme-guidance>

housing between the social and private rented sectors”. It includes an in-house team of plumbers, joiners, designers and tenancy support officers. It manages over 500 properties and works with around 130 landlords and 800 tenants around Glasgow and the West of Scotland. Since 2014, it has also raised around £12m in investments to create its own portfolio of properties.

HFG states that matches tenants with properties, takes care of the viewings, prepares the leasing documents, ensure the rent is paid on time, lodges the deposit in one of the authorised tenancy deposit schemes, checks on the tenant regulator to see how they are managing, checks the property every three months, and handles any maintenance issues. In-house tenancy support officers can provide support to tenants in applying for and managing benefits. HFG’s investment arm purchases dilapidated properties, refurbishes them and leases the homes to people in housing need¹²⁰.

Housing association or local authority Private Rented Sector Letting Schemes

Some **housing associations in Great Britain**, in addition to providing social housing, provide and manage private rented housing e.g. at intermediate rent levels. Some housing associations will also find tenants and/or manage properties on behalf of private landlords. Some local authorities in England provide **Private Sector Letting Schemes** which will match a tenant with the landlord. For example, in [Bradford Council’s Letting Scheme](#) landlords are offered a number of incentives to join the scheme e.g. joining is free; the council will advertise the property to potential clients on the landlord’s behalf; landlords will be provided with an equivalent to one months’ rent in advance; a £500 contribution can be made towards costs associated with Energy Performance Certificates or gas and electricity safety certificates; and there is a rent guarantee (e.g. for family accommodation there is a 6 months rent guarantee and a £1,000 damage waiver). The landlord retains full control of the property and is under no obligation to take a tenant and can advertise the property elsewhere at the same time¹²¹.

There perhaps is an argument for further work to be carried out in order identify the extent to which tenant demand for private rented sector properties is outstripping supply in Northern Ireland and whether this trend is likely to continue. If it is forecast to continue in the longer-term and rents continue to rise, low-income households including those on benefits, may find it increasingly difficult to both access and maintain tenancies in the private rented sector. Therefore, it is important to look to other jurisdictions to identify innovative models that are effective and may be adaptable to the Northern Ireland housing context.

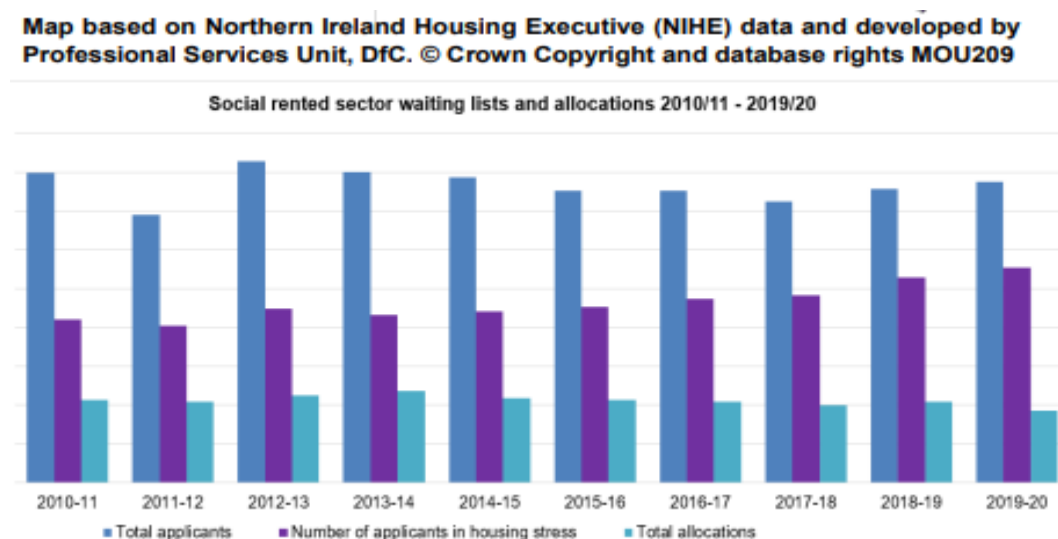
¹²⁰ Information extracted from the Homes for Good website <https://homesforgood.org.uk/>

¹²¹ City of Bradford Council. Private Sector Letting Scheme. <https://www.bradford.gov.uk/housing/private-sector-lettings-scheme/private-sector-lettings-scheme/#:~:text=Private%20Sector%20Lettings%20Scheme%20Bradford%20Council%E2%80%99s%20Private%20Sector,in%20the%20private%20rented%20sector%20across%20Bradford%20district.>

Why is there a need to look to innovative solutions for removing barriers and providing supported access to the private rented sector in Northern Ireland?

The Northern Ireland private rented sector does not exist in a vacuum, housing need and demand in the PRS is influenced by need and demand in both the social housing sector and the owner-occupied sectors. Ideally, social housing would meet the needs of those who are homeless or threatened with homelessness, and those lower income families who have a preference to be housed in the social sector. However, as Figure 1 demonstrates, social housing need in Northern Ireland significantly outstrips supply. For example, on 31 March 2020, there were 38,745 applicants on the social housing waiting list (of these 27,745 were deemed to be in housing stress). Data provided by the Housing Executive in answer to an Assembly Question in March 2021 showed that there were 42,665 applicants on the waiting list, with 29,918 of these in housing stress. The data also reveals that the median number of months on the waiting list at the point of allocation, from January to December 2020 was 14 months¹²².

Figure 1: Social rented sector waiting lists and allocations 2010/11 to 2019/20



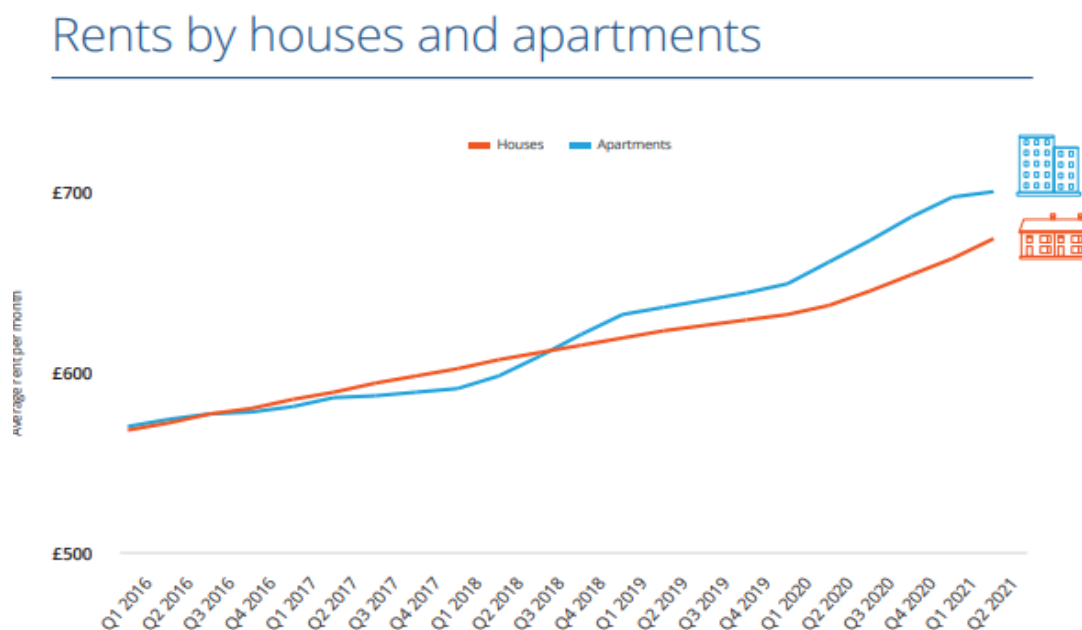
Source: [Northern Ireland Housing Statistics 2019-20](#). Department for Communities and NISRA.

Many low-income households are reliant upon the private rented sector to meet their immediate housing needs but it has become an increasingly competitive market and expensive tenure of housing. Local rent levels are continuing to rise as demonstrated by Propertypal's graph below. Analysis provided in Propertypal's latest [Housing Market Trends \(Quarter 2, 2021\)](#) points to an ongoing supply/demand imbalance that is most pronounced in the private rented sector. It predicts that there may be continued upward pressure on rents unless there is (a) a significant uplift to the number of rental properties coming onto the market and (b) a drop in demand (for example, demand

¹²² Northern Ireland Assembly. Question for Written Answer 15559/17-22. Ms Carál Ní Chuilín to the Minister for Communities. Answered on 15 March 2021. <http://aims.niassembly.gov.uk/questions/printquestionssummary.aspx?docid=329009>

could drop if more market lenders make available mortgage options that may appeal to first time buyers who are currently renting)¹²³.

Figure 2: average rent per month for houses and apartments in NI, 2016 (Q2) to 2021 (Q2)



Source: extracted from Propertypal's [Housing Market Trends](#) (Q2, 2021)

Factors such as rising house prices and a reduced supply of entry level properties for sale are likely to increase demand for private rented sector properties in Northern Ireland. The latest Ulster [University Northern Ireland Quarterly House Price Index](#) (Q2, 2021) that for home buyers there continues to be a demand/supply imbalance in home buyers' market, particularly in the middle and upper pricing levels¹²⁴. This could potentially impact have a trickle-down impact on the supply of 'entry level' properties. The UU report states that there has "... *there has been increasing activity at the entry level of the market, where apartment prices and the terrace/townhouse sectors have rebounded and seen the highest price growth, largely due to the current benign lending environment*"¹²⁵. Should inelasticity in the supply of entry level homes and a more benign lending environment continue this will likely have a knock-on effect on the private rented sector in terms of demand for properties and on rental prices.

Therefore, affordability of, and access to, the private rented sector for low-income households may continue to be a significant issue in Northern Ireland. Household finances for this group are likely to be constrained further due to factors such as the ending of the £20 Universal Credit uplift, the end of the furlough scheme, rising energy prices, and the fall-out of Brexit on the price of food and other goods.

¹²³ Propertypal. Housing Market Trends. Q2 2021. <https://insights.propertypal.com/flash-commentary/>

¹²⁴ Ulster University. Northern Ireland Quarterly House Price Index. Quarter 2, 2021. www.ulster.ac.uk/data/assets/pdf_file/0014/941000/UU_HPI_Q2-2021_FIN-web.pdf

¹²⁵ Ibid.

Increasing housing supply and addressing issues such as insecurity of tenure was a central theme of Minister Ni Ní Chuilín's [housing statement](#)¹²⁶ to the Assembly in November 2020. The Minister stated that she wanted to “*provide a suite of options to help people get a family home and to secure community stability*”¹²⁷. Looking at innovative policies, initiatives and interventions to improve access to, and security of tenure in, the private rented sector may form an important part of this process. Understanding issues from a private tenant’s perspective is crucial to policy development in this area and it is notable that the Department has recently commissioned [research](#) into understanding tenant participation in the Private Rented Sector in Northern Ireland¹²⁸.

Discussion points:

The Departmental response paper to its 2017 consultation on the private rented sector indicated that the Department was looking at different supply models such as Build to Rent and Private Sector Leasing Schemes. It also indicated that its main priority would be social and intermediate housing supply. Could the Department provide an update to the Committee as to the progress it is making on the issue of supply?

Recent research commissioned by the Housing Executive (2019) found that almost nine in ten private rented sector claimants (89%) experienced a shortfall between their weekly contract rent and the amount of Housing Benefit they receive¹²⁹. Since, then Local Housing Allowance rates have been restored to the 30th percentile of market rents due to the COVID-19 pandemic. However, could the Department comment upon the scale of the shortfall between market rents and Local Housing Allowance; outline what support is available to help tenants make-up this shortfall and state whether it has plans for any additional forms of support?

Clauses 8, 9 & 10 and property standards in the Private Rented Sector in Northern Ireland

It is important to understand Clauses 8, 9 and 10 within the context of the Department for Communities’ wider review of the Northern Ireland housing Fitness Standard. In summary, **Clause 8** sets out new requirements on private landlords in relation to the provision of **fire, smoke and carbon monoxide detectors**. **Clauses 9 and 10** provide the Department with **enabling powers** to make regulations in respect of **minimum**

¹²⁶ Department for Communities. ‘Housing Statement from Communities Minister Carál Ní Chuilín’. 3 November 2020. www.communities-ni.gov.uk/news/housing-statement-communities-minister-caral-ni-chuilin-3-november-2020

¹²⁷ Department for Communities. ‘Housing Statement from Communities Minister Carál Ní Chuilín’. 3 November 2020. www.communities-ni.gov.uk/news/housing-statement-communities-minister-caral-ni-chuilin-3-november-2020

¹²⁸ Hickman, P. & Frey, J. Understanding Approaches to Tenant Participation in the Private Rented Sector in Northern Ireland: A Scoping Report. UK Collaborative Centre for Housing and the Department for Communities. July 2021. <https://housingevidence.ac.uk/wp-content/uploads/2021/07/Understanding-Approaches-to-Tenant-Participation-in-the-Private-Rented-Sector-in-Northern-Ireland-v4.pdf>

¹²⁹ Economic Research and Evaluation. Northern Ireland Broad Rental Market Area Scoping Study and Impact Assessment. Final Report. Commissioned by the Northern Ireland Housing Executive. January 2019. <https://niopa.qub.ac.uk/bitstream/NIOPA/11790/1/northern-ireland-broad-rental-market-areas-scoping-study-and-impact-assessment-final-report.pdf>

energy efficiency standards and **electrical safety standards** respectively in residential private rented sector properties. The Department highlighted in its January 2017 consultation paper '[Private Rented Sector in Northern Ireland – Proposals for Change](#)' that a **wider fundamental review of the Fitness Standard** was still ongoing. The Department felt that its proposals on issues such as fire, smoke and carbon monoxide detectors and minimum Energy Performance Ratings could introduce improvements in safety and comfort "*in the medium term*" while awaiting the outcome of the review.

The Box below provides a short overview of the current Fitness Standard for housing in Northern Ireland.

What is the Fitness Standard?

The current statutory minimum standard for housing, including private rented sector properties, is set out in the Housing (NI) Order 1981 (amended in 1992). This is known as the "Fitness Standard". Further information on the Fitness Standard is available on the Housing Advice NI [website](#)¹³⁰ and the Department for Communities [website](#)¹³¹ but a summary of the standard is provided below.

Fitness Standard

A house is fit for human habitation if it is:

- (a) Structurally stable;
- (b) It is free from serious disrepair;
- (c) It is free from dampness prejudicial to the health of the occupants (if any);
- (d) It has adequate provision for lighting, heating and ventilation;
- (e) It has adequate provision for lighting, heating, ventilation;
- (f) It has an adequate piped supply of wholesome water;
- (g) There are satisfactory facilities in the house for the preparation of cooking of food, including hot and cold water;
- (h) It has a suitably located water-closet for the exclusive use of the occupants (if any); and
- (i) It has an effective system for the draining of foul, waste and surface water.

The Northern Ireland Housing Executive has an overarching statutory responsibility for the assessment and enforcement of the Housing Fitness Standard. Local Councils can carry out fitness inspections and can take enforcement action in relation to private rented properties.

¹³⁰ Housing Advice NI. Fitness Standard and council inspections. www.housingadviceni.org/advice-landlords/fitness-standard#:~:text=Basic%20fitness%20standard%20The%20Fitness%20Standard%20that%20is,to%20be%20described%20as%20fit%2C%20a%20property%20must%3A

¹³¹ Department for Communities. Housing Fitness Standard. www.communities-ni.gov.uk/topics/housing/housing-fitness-standard

The first step in the fundamental review of the Fitness Standard was the discussion paper '[Review of the Statutory Minimum Housing Fitness Standard for all Tenures of Dwelling](#)', published by the then Department for Social Development in March 2016. The paper outlined a case for revising the Fitness Standard maintaining that it¹³²:

“...has not kept pace with building standards, environmental and health and safety issues while other parts of the United Kingdom have, at least to some extent, enhanced their standards to take account of some of these key developments.

Against the current criteria, the number of unfit dwellings is now very small, meaning that statistics on housing fitness are no longer a compelling evidence basis to underpin new initiatives to improve housing stock. Its relevance, therefore, as a policy driver is significantly reduced”.

The discussion paper sought to obtain views on revised standards in relation to thermal comfort; the detection of fire and carbon monoxide; electrical safety; home security measures; and the prevention of accidental falls.

Given the amount of time that has elapsed since the announcement of plans for a review and the publication of the discussion document (March 2016) it would be understandable if stakeholders were frustrated at the pace of developing a new standard. Some stakeholders, in response to the 2017 PRS consultation, welcomed the Department's proposals on property standards, but felt that they did not replace the need for an improved fitness standard¹³³. The Private Tenants' Forum response to the consultation felt that wider issues around the Fitness Standard were required including information for tenant's explaining the Fitness Standard, what it entails and information on how tenants could request inspections of their properties.

Rent control for unfit properties?

The 2017 consultation paper also looked at the issue of rent control for unfit properties. It noted that some stakeholders felt that rent control should apply to all unfit properties regardless of when they were built because all tenants should have the right to live in a property that meets a minimum fitness level. Landlords, however, felt that the *“introduction of any form of rent control, over and above the controls that currently exist for specified properties, would be detrimental to the sector and would serve only to reduce investment in the sector at a time when it is needed”.*

¹³² Department for Social Development. Review of the Statutory Minimum Housing Fitness Standard for all tenures of dwelling. Discussion Paper. March 2016. www.communities-ni.gov.uk/sites/default/files/publications/communities/review-statutory-minimum-housing-fitness-standard-all-tenures-dwelling.pdf

¹³³ Housing Rights. Housing Rights responds to proposals for the Private Rented Sector. Response to the Department to the Department for Communities' Consultation on the Review of the Role and Regulation of the Private Rented Sector;. April 2017. www.housingrights.co.uk/sites/default/files/policydocs/Housing%20Rights%20Response%20to%20the%20Review%20of%20the%20Private%20Rented%20Sector%20APR17.pdf

The consultation paper considered three options:

- **Do nothing** – so that rent control only applies to pre-1945 properties that are unfit.
- **Consider rent control for all unfit properties.** The consultation paper argued that this would have resource implications for council environmental health officers responsible for fitness inspections, landlords and potentially the Rent Officer for NI.
- **Consider moving the date for unfit properties subject to rent control back to 1956.**

The Department proposed that legislation be amended so that all unfit properties built before 1956 are subject to rent control. The [Departmental Response](#) to the consultation (published 2021) stated that there were 25 consultation responses to this proposal, 22 supported the proposal and 3 were not in favour of it. The response notes that a number of consultation responses highlighted the urgent need for the Fitness Standard to be reviewed. The Department concluded by stating that:

“...the Department will be undertaking a review of the fitness standard and that the proposal to transfer landlord registration to councils will, in the slightly longer term, drive improvements in the PRS fitness levels. That said it is our intention to amend the date in the Prescribed Dwelling-house Regulations (Northern Ireland) 2007 from 1945 to 1956. This will be done in parallel to the Bill being delivered in this mandate”.

Minimum property standards and statutory tools for dealing with unfit properties or properties in disrepair are arguably more advanced in other jurisdictions, particularly in Scotland. The [Scottish Repairing Standard](#) (introduced via the Housing (Scotland) Act 2006) and the [Tolerable Standard](#)¹³⁴, covers the legal and contractual obligations of private landlords to ensure that private rented sector properties meet minimum physical standards. There is also dedicated [Housing and Property Chamber](#) (First-Tier Tribunal for Scotland) to adjudicate on private rented sector housing property standards. The Housing and Property Chamber can, for example, issue Repairing Standard Enforcement Orders (RSEO) to require landlords to carry out repairs (with an appeals process).

The [Housing Health and Safety Rating System \(HHSRS\)](#), the main system for assessing and enforcing housing standards in **England and Wales**, has been in since April 2006. The HHSRS is a risk-based tool designed to help local authorities identify and protect against potential risks and hazards to health and safety in properties across all housing tenures. The [outcome of a scoping review](#) of the HHSRS was

¹³⁴ See also www.gov.scot/publications/regulations-to-modify-repairing-standard-summary/ and www.housingandpropertychamber.scot/repairs/repairs-faq

published by the Ministry of Housing, Communities & Local Government in July 2019. The review appears to be ongoing.

In **England**, the [Homes \(Fitness for Human Habitation\) Act 2018](#) (which originated as a Private Members' Bill and came into force on 20 March 2019) places a renewed onus on landlords (both social and private rented sector) to ensure that their properties are fit for human habitation at the beginning of a tenancy and throughout. Landlords are required to remedy unfitness (except, for example, where the unfitness is caused by tenant's own behaviour). Where the landlord fails to do so, the Act provides the tenant will the right to take action in the courts for breach of contract and the court may order the landlord to take action to remove the hazard and/or award damages to the tenant to compensate them for having to live in a property not fit for human habitation. This does not prevent local authorities in England from using their own enforcement powers to tackle poor and illegal practices¹³⁵.

The next three sections of this paper will now provide an overview of Clauses 8, 9 and 10 of the Bill (as introduced) and will examine in further detail the statutory requirements in other jurisdictions regarding these issues.

Clause 8: Fire, smoke and carbon monoxide alarms

What is the current law in Northern Ireland?

There is currently no blanket requirement for private landlords to install fire, smoke or carbon monoxide alarms in Northern Ireland. However, smoke alarms are required to be installed in certain residential dwellings e.g. new build properties or certain modifications to existing properties. Carbon monoxide alarms are a mandatory requirement for all homes where a new fossil fuel appliance is installed¹³⁶. Even if there is no legal requirement in place, some insurers may require that landlords provide smoke and carbon monoxide detectors in certain prescribed circumstances. There are higher fire safety requirements placed on landlords of Houses in Multiple Occupation (HMOs) in Northern Ireland given that the risk of death from fire is considered to be greater in these types of properties than single occupancy properties¹³⁷.

The Department for Communities 2017 PRS consultation paper states that there was unanimous agreement from responses to the November 2015 [discussion paper](#) on the PRS¹³⁸ that private landlords operating in Northern Ireland should be required to provide smoke and carbon monoxide detectors in all PRS properties. The consultation

¹³⁵ Ministry of Housing, Communities & Local Government. Guide for landlords: Homes (Fitness for Human Habitation) Act 2018. www.gov.uk/government/publications/homes-fitness-for-human-habitation-act-2018/guide-for-landlords-homes-fitness-for-human-habitation-act-2018

¹³⁶ HSENI. Carbon monoxide alarms. www.hseni.gov.uk/articles/carbon-monoxide-alarms

¹³⁷ Northern Ireland Fire and Rescue Service. HMO Fire Safety Guide. Information on Complying with Fire Safety Law in Northern Ireland. 13 November 2020. www.nifrs.org/wp-content/uploads/2021/02/HMO-Fire-Safety-Guide-V2.pdf

¹³⁸ Department for Social Development. Review of the Role and Regulation of the Private Rented Sector. November 2015. www.communities-ni.gov.uk/sites/default/files/consultations/dsd/review-role-regulation-of-private-rented-sector-consultation.pdf

paper argued that this would not only provide a level of parity for private renters here with their counterparts in Great Britain but would also be beneficial for landlords in terms of enhancing the maintenance and insurance of their assets¹³⁹. The Department, therefore, proposed I to introduce “*as soon as practicable to make it a mandatory requirement for private landlords to provide smoke and carbon monoxide detectors...*”.

The [Departmental Response](#) to the consultation states that there were 32 consultation responses to the proposal on smoke and carbon monoxide detectors with all responses supporting the proposal.

As the final section of this part of the Bill Paper highlights, legislation compelling private sector landlords to provide smoke and carbon monoxide alarms is already in place in England, Scotland and the Republic of Ireland.

What are the provisions in the Bill?

The Bill’s [Financial and Explanatory Memorandum](#) states that the intention of Clause 8 is to “*reduce the risk of injury or death by fire, smoke and carbon monoxide in private tenancies*”. **Clause 8 will insert a number of new Articles** (11A to 11F) into the Private Tenancies (Northern Ireland) Order 2006 that will set out (a) new requirements on private landlords in relation to the provision of fire, smoke and carbon monoxide detectors and (b) the duties on private landlords and tenants with regard to these.

New Article 11A - Application

Provides that the requirements and duties in Articles 11B and 11F apply:

- To any private tenancy granted on or after the date on which section 8 of the Private Tenancies Act (NI) 2021 comes into operation;
- Any private tenancy granted before the date on which section 8 of the Private Tenancies Act (NI) comes into operation but only “from the prescribed date”. The Explanatory and Financial Memorandum states that “*in respect of those tenancies granted before such commencement only from a date in the future to be prescribed by the Department in regulations*”.

Article 11B (landlord’s duties: fire, smoke and carbon monoxide alarms)

Requires landlords to keep in repair and proper working order (a) “**sufficient appliances**” for detecting fire, or smoke, and for giving warning in the event that they are detected and (b) “**sufficient appliances**” for detecting whether carbon monoxide is present at levels that are harmful to people, and for giving warning if those levels are present. Article 11B also provides that the **Department may make regulations setting minimum standards** for the purposes of determining whether these duties have been complied with. This may include standards as to the number,

¹³⁹ Department for Communities. Private Rented Sector in Northern Ireland – Proposals for Change. Consultation document. January 2017.

type and condition of appliances that should be installed in circumstances specified in the regulations. A landlord who fails to comply with a duty to keep in repair or proper working order the appliances outlined above is guilty of an offence under this Order.

Article 11C (tenant's duties: fire, smoke and carbon monoxide alarms)

Requires that the tenant must (a) take proper care of the appliances installed for the purposes of Article 11B and (b) make good any damage done to those appliances wilfully or negligently by the tenant or any other person lawfully on the premises.

Article 11D (landlord's duties: private tenancy of part of a building)

Where a private rented property let under a tenancy consists of part of a building, Article 11C provides that the duties imposed by 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.

Article 11E (general qualification on landlord's duties)

States 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 by virtue of Article 11C.

Article 11F (knowledge of disrepair)

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

The remainder of Clause 8 deals with offences and fixed penalty notices relating to a landlord's breach of duty.

What is the position in other jurisdictions?

England

[The Smoke and Carbon Monoxide Alarm \(England\) Regulations 2015](#) required (from 1 October 2015) that private sector landlords ensured that a smoke alarm was equipped on every storey of their property when occupied under a tenancy. It also requires that a carbon monoxide alarm is equipped in any room which contains a solid fuel burning combustion appliance. The regulations also require landlords to ensure that such alarms are in proper working order at the start of a new tenancy. These requirements are enforced by local authorities who can impose a fine of up to £5,000 where a

landlord fails to comply with a remedial notice. Further information on these requirements is available to download [here](#)¹⁴⁰.

Scotland

Private rented sector properties must comply with the [Repairing Standard](#) contained in the Housing (Scotland) Act 2006. One part of the Repairing Standard is that PRS properties should have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire. In order to comply with the Repairing Standard there should be at least¹⁴¹:

- One functioning smoke alarm in the room which is frequently used by the occupants for general daytime living purposes (normally the living room/lounge);
- One functioning smoke alarm in every circulation space on each storey, such as hallways and landings, or in main room if no landing in upper storey;
- One heat alarm in every kitchen;
- All alarms should be ceiling mounted; and
- All alarms should be interlinked.

However, Scotland has gone one step further. From 1 February 2022, **all houses regardless of tenure**, must have satisfactory provision for detecting fires and for giving warning in the event of a fire or suspected fire. Further information on this is available to download [here](#)¹⁴². The regulations were introduced in the light of the Grenfell Tower tragedy and were originally due to come into force in February 2021. The Scottish Parliament agreed to delay the implementation to February 2022 due to the COVID-19 pandemic. The law will require:

- One smoke alarm installed in the room most frequently used for general daytime purposes;
- One smoke alarm in every circulation space on each storey, such as hallways and landings; and
- One heat alarm installed in every kitchen. All alarms must be ceiling mounted and interlinked.

The Repairing Standard also requires that *“the property must have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is*

¹⁴⁰ Ministry of Housing, Communities & Local Government. Guidance. The Smoke and Carbon Monoxide Alarm (England) Regulations 2015: Q&A booklet for the private rented sector – landlords and tenants. 4 September 2015. www.gov.uk/government/publications/smoke-and-carbon-monoxide-alarms-explanatory-booklet-for-landlords/the-smoke-and-carbon-monoxide-alarm-england-regulations-2015-qa-booklet-for-the-private-rented-sector-landlords-and-tenants

¹⁴¹ Scottish Government. Fire detection in private rented properties. Guidance. 7 February 2019. www.gov.scot/publications/fire-safety-guidance-private-rented-properties/

¹⁴² Scottish Government. Fire and smoke alarms: changes to the law. 21 October 2020. www.gov.scot/publications/fire-and-smoke-alarms-in-scottish-homes/

hazardous to health". The Scottish Government's statutory guidance for the provision of carbon monoxide alarms in private rented housing is available to download [here](#)¹⁴³.

From 1 February 2022, **all houses in Scotland regardless of tenure**, will be required to have satisfactory provision for giving warning if carbon monoxide is present where there is a carbon-fuelled appliance (e.g. boiler, fires and heaters) in the property. The Scottish Government has estimated that the cost for an average three-bedroom house which requires three smoke alarms, one heat alarm and one carbon monoxide detector will be around £220 (based on the householder installing the alarm themselves without the need for an electrician)¹⁴⁴.

Tenants who feel that their landlord is not complying with their obligations on the Repairing Standard may appeal to the First-tier Tribunal for Scotland (Housing and Property Chamber). Penalties for non-compliance will be determined by the Chamber¹⁴⁵.

Republic of Ireland

Private rented sector landlords with properties in the Republic of Ireland must comply with Minimum Standards for fire safety as set out in the [Housing \(Standards for Rented Houses\) Regulations 2019](#). This states that each private rented property must have:

- A suitable self-contained fire detection and alarm system;
- A suitably located fire blanket;
- A suitable fire detection and alarm system in common areas within a multi-unit building (i.e. a building that contains two or more houses that share a common access); and
- That fire detection and alarm systems should be maintained in accordance with "current standards". Current standards meaning standards produced by the National Authority of Ireland for Fire Detection and Fire Alarm Systems in Buildings.

The 2019 Regulations further state that each property shall also, where necessary, have suitably located devices for the detection and alarm of carbon monoxide.

Local authorities in the Republic of Ireland have responsibility for ensuring compliance of the minimum standards including those on fire safety. Local authorities can issue Improvement Notices or Prohibition Notices to landlords who breach the minimum standards regulations. Landlords can also be subject to penalties and prosecution. An Improvement Notice sets out the works that the landlord must carry out in order to

¹⁴³ Scottish Government. Guidance. Carbon monoxide alarms in private rented properties.

<https://www.gov.scot/publications/carbon-monoxide-alarms-in-private-rented-properties-guidance/#history>

¹⁴⁴ Scottish Government. Guidance. Carbon monoxide alarms in private rented properties. www.gov.scot/publications/carbon-monoxide-alarms-in-private-rented-properties-guidance/

¹⁴⁵ Ibid.

remedy a breach of the regulations. A Prohibition Notice directs the landlord not to re-let the property until the breach has been rectified¹⁴⁶.

Discussion Points:

The Clause refers to duties on the landlord to “keep in repair and working order” does this include a duty to supply/provide fire, smoke and carbon monoxide alarms in the property? Does this duty extend to providing, repairing and maintaining specialist alarms (e.g. such as those for people who are deaf or those with hearing loss)?

The Clause enables the Department to make regulations setting minimum standards. Will these standards specify the types of alarms that should be installed in properties and the location(s) in the property where they should be placed?

Is there a tentative timetable for the drafting of the regulations? When does the Department anticipate they could become operational?

Will the Department be publishing guidance for landlords and tenants on the new duties and obligations?

The requirements are applicable to private tenancies on or after the date on which section 8 of the Act comes into operation. It will also apply to tenancies granted before this date but only from the “prescribed date”. What will the prescribed date be?

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 for those works. What would constitute notification of those works, i.e. does the notification have to be in writing, is there a burden of proof on tenants to prove that notification had been provided to the landlord?

How will compliance with the new duties on fire, smoke and carbon monoxide alarms be monitored?

Should serious cases of failure to comply be linked with the Landlord Registration Scheme (i.e. failure to comply could result in the inability for landlords to register with, or be suspended from, the scheme)?

Clause 9: Energy efficiency regulations

What is the current law in relation to energy efficiency and the private rented sector in Northern Ireland?

Energy Performance Certificates (EPCs) provide an overview of how energy efficient a property is and give it a rating from A (very efficient) to G (inefficient). It will also provide information on how costly it will be to heat or light the property and what property’s carbon dioxide emissions are likely to be (see diagram below). An EPC will

¹⁴⁶ Citizens Information. Minimum standards for rented housing.
www.citizensinformation.ie/en/housing/renting_a_home/repairs_maintenance_and_minimum_physical_standards.html

also include information on what the energy efficiency rating could be if recommended improvements are made and highlights cost effective ways in which to achieve a better rating¹⁴⁷. In Northern Ireland, EPCs are **required whenever a property is (a) built, (b) marketed for sale, and (c) marketed for rent**¹⁴⁸. An EPC can only be produced by an accredited energy assessor who will visit the property to carry out an assessment. The certificate is valid for 10 years. A copy of the EPC is lodged on a national register and this can be accessed via the EPC search facility on the [EPC Register](#).

Score	Energy rating	Current	Potential
92+	A		
81-91	B		
69-80	C		
55-68	D		
39-54	E		
21-38	F	22 F	37 F
1-20	G		

This graph shows an example of a Northern Ireland property’s current and potential energy efficiency. Properties are given a rating from A (most efficient) to G (least efficient). Properties are also given a score. The higher the number the lower the property’s fuel bills will be. According to information on the EPC Register, for properties in Northern Ireland, the average energy rating is D and the average energy score is 60.

Currently, a private landlord must provide all new tenants with an Energy Performance Certificate (EPC) in Northern Ireland. However, **there is no requirement for the property to have a specific EPC rating before it can be rented**. As explored, in the final part of this section of the paper, since 1 April 2020, private landlords in England and Wales can no longer continue to let properties if they have an EPC band rating below “E”, unless there is a valid exemption in place¹⁴⁹. Further information on this, and energy performance in private rented properties in other jurisdictions is included at the end of this section of the paper.

¹⁴⁷ Energy Saving Trust. Guide to Energy Performance Certificates. <https://energysavingtrust.org.uk/advice/guide-to-energy-performance-certificates-epcs/>

¹⁴⁸ Department of Finance. Energy Performance Certificates. www.finance-ni.gov.uk/articles/energy-performance-certificates

¹⁴⁹ UK Government. Domestic private rented property: minimum energy efficiency standard – landlord guidance. 1 October 2017 (updated 4 May 2020). www.gov.uk/guidance/domestic-private-rented-property-minimum-energy-efficiency-standard-landlord-guidance

Clause 9 of the Bill (as introduced) provides for an enabling power for the Department for Communities to make regulations to make it obligatory for domestic rented properties in Northern Ireland to have a minimum EPC rating. The Bill does not contain details of what that minimum standard will be, it is likely that this will be set out in regulations. The Department has stated that it will work with experts in the area of energy efficiency and the Department for the Economy (who are developing the Energy Strategy) to bring forward proposals on an appropriate EPC standard; the timeframes for delivery; and consideration around exemptions for particular properties¹⁵⁰.

Fuel poverty, energy efficiency and the private rented sector in Northern Ireland

COVID-19 has caused delays in the publication of the Northern Ireland House Conditions Survey. The survey was due to be scheduled in 2021 but has been postponed until 2022 due to the pandemic¹⁵¹. This is an important publication which not only offers an insight into housing conditions across all tenures in Northern Ireland but also fuel poverty levels. The [Northern Ireland House Conditions Survey 2016](#) estimates that **approximately 22% (160,000) households in Northern Ireland were in fuel poverty**. The survey report highlights that this represents a significant improvement in fuel poverty levels in Northern Ireland since 2011 when the figure was 42%¹⁵². The decrease in fuel poverty levels in this five-year period is attributed in the report to a number of factors including *“lower average fuel prices, lower modelled household energy use (mainly due to improved energy efficiency of the stock, particularly dwelling fabric and heating systems) and increased income”*¹⁵³.

Whilst the overall proportion of fuel poverty has dropped significantly in Northern Ireland, the 2016 House Conditions Survey reveals that fuel poverty continues to be unevenly distributed across different housing tenures in Northern Ireland. As demonstrated in Table 4, the tenure with the highest proportion in fuel poverty in 2016 was the private rented sector (26% of households in the PRS estimated to be in fuel poverty, around 35,700 households) followed by the owner-occupied sector (23% of households in fuel poverty, around 112,100 households).

¹⁵⁰ Department for Communities. Departmental Response: Consultation on the Review of the Role and Regulation of the Private Rented Sector in Northern Ireland. <https://www.communities-ni.gov.uk/sites/default/files/consultations/communities/private-rented-sector-proposals-for-change-consultation-response.pdf>

¹⁵¹ Information extracted from the NIHE website <https://www.nihe.gov.uk/Working-With-Us/Research/House-Condition-Survey-user-engagement>

¹⁵² The 2016 House Conditions Survey reports on two methods of measuring fuel poverty – the 10% definition and the 'Low Income High Costs' method. The 22% fuel poverty figure is derived from the “10% definition”, under this methodology a household is considered to be in fuel poverty if, in order to maintain a satisfactory level of heating (21 degrees Celsius in the main living area and 18 degrees Celsius in other occupied rooms) it is required to spend in excess of 10% of its household income on fuel use. See the House Conditions Report for further information on these methodologies. www.nihe.gov.uk/Working-With-Us/Research/House-Condition-Survey.

¹⁵³ Northern Ireland Housing Executive. House Condition Survey 2016: Main Report. www.nihe.gov.uk/Working-With-Us/Research/House-Condition-Survey.

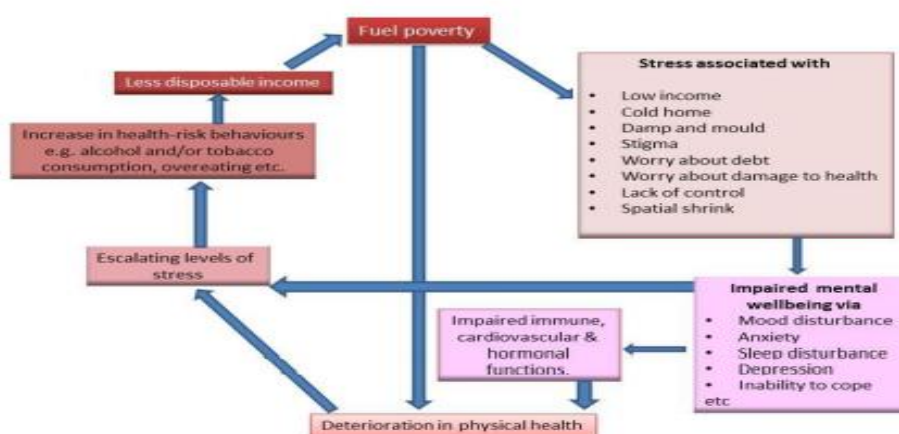
Table 4: Percentage of households in fuel poverty by tenure, 2006-2016 (using 10% definition)

Tenure	2006	2011	2016
Owner occupied	32%	41%	23%
Private rented and others	44%	49%	26%
Social Housing	37%	40%	10%
Overall	34%	42%	22%

(Data extracted from the 2016 Northern Ireland House Conditions Survey report, p60)

Research by Liddell and Gray on ‘[Fuel Poverty in Northern Ireland’s Private Rental Sector](#)’ (2014) highlights clearly that the impact of fuel poverty on human health and wellbeing has been identified through both epidemiological and longitudinal research programmes¹⁵⁴. Liddell & Guiney’s (2014) cumulative stress model (outlined below) demonstrates that fuel poverty is a multi-dimensional concept in which factors such as thermal discomfort, mouldy and damp accommodation, social isolation and stigmatisation combine to create a self-perpetuating cycle of psychosocial stress and physical and mental ill-health¹⁵⁵.

Hypothesised cycles of impact from living in fuel poverty – a cumulative stress model (Liddell & Guiney, 2014)



¹⁵⁴ Liddell, C. & Gray, B. (2014) Fuel Poverty in Northern Ireland’s Private Rental Sector: An evidence-based audit. Ulster University. https://pure.ulster.ac.uk/ws/portalfiles/portal/11470144/Private_Rental_Report_Master_copy.pdf

¹⁵⁵ Figure extracted from Liddell, C. & Gray, B. (2014) Fuel Poverty in Northern Ireland’s Private Rental Sector: An evidence-based audit. Ulster University.

The 2016 House Conditions Survey highlighted that there are an increasing number of children living in the Private Rented Sector in Northern Ireland. Liddell in her policy briefing '[The impact of Fuel Poverty on Children](#)' documents the impact that fuel poverty can have on infants, children and young people including¹⁵⁶:

- **For infants** - living in a fuel poor home is associated with greater risk of admission to hospital or primary care facilities when other contributory factors have been accounted for.
- **For children** - living in fuel poor homes is associated with a greater risk of health problems, especially respiratory problems. Poorer weight gain and lower levels of adequate nutritional intake have also been found (a “heat or eat” effect); and
- **For adolescents** - living in fuel poor homes are at significantly greater risk for multiple mental health problems when other contributory factors have been accounted for.

Therefore, policy and initiatives to increase energy efficiency and thermal comfort is crucial for the physical and mental well-being of children and young people including those living in the private rented sector.

[Research](#) by Housing Rights identifies fuel efficiency issues as one of a number of barriers to sustaining PRS tenancies in Northern Ireland. It also highlights the impact that poor heating and energy efficiency measures can have on a household's resources¹⁵⁷:

“...participants reported generally poor conditions with regard to fuel efficiency which impacted on their household resources. More money used to pay for heating poorly insulated houses or those having to rely on metres for heat/gas/electricity meant that there were fewer resources to spend on other essentials and impacted on their ability to pay their rent and therefore risking eviction.”

The Fuel Poverty Coalition's '[A Manifesto for Warmth](#)' published in August 2021 has a number of “key asks”, the second of which is to ensure “*that sufficient funding is provided for energy efficiency schemes that help those who need the most support. This must include a particular focus on the private rented sector*”. The Coalition maintains that ensuring that privately rented homes meet an adequate level of energy efficiency will be particularly important to eradicating fuel poverty in Northern Ireland. The Coalition feel that not enough is being done to encourage private landlords to upgrade their properties and that the [Affordable Warmth Scheme](#) and the [Northern Ireland Sustainable Energy Programme \(NISEP\)](#) do not provide sufficient subsidy to

¹⁵⁶ Liddell, C. (2009). Policy Briefing: The impact of Fuel Poverty on Children. Commissioned by Save the Children. https://pure.ulster.ac.uk/ws/portalfiles/portal/11789864/The_Impact_of_Fuel_Poverty_on_Children_Feb_09%5B1%5D.pdf

¹⁵⁷ McAuley, M. Sustaining Tenancies in the Private Rented Sector: Scoping Project. September 2020.

attract landlords to the initiatives thereby leading to a low uptake amongst this group¹⁵⁸. Further information may be needed to ascertain the extent to which the COVID-19 pandemic has impacted upon affordability issues for landlords e.g. due to factors to such as accumulating rent arrears.

The new Energy Strategy for Northern Ireland – how will the PRS feature?

The [New Decade, New Approach](#) agreement contained a commitment for a new Energy Strategy that would “set ambitious targets and actions for a fair and just transition to a zero carbon society”¹⁵⁹. The Department for the Economy opened a [call for evidence](#) on the new Energy Strategy on 17 December 2020 requesting that evidence be submitted on what potential funding models could be utilised for future energy efficiency support with consideration to the specific needs of different housing tenures including the private rented sector.

The Department for Communities and the Housing Executive (as the Home Energy Conservation Authority for Northern Ireland) play a critical part in securing energy efficiency in different housing tenures in Northern Ireland. However, energy efficiency responsibilities are spread across multiple government departments and there are a range of different policies and interventions aimed at tackling fuel poverty and increasing energy efficiency. Stakeholders may very well be looking to the new Energy Strategy to streamline co-ordination and develop innovative solutions to meet the new zero carbon target. Given the level of fuel poverty and energy efficiency in the private rented sector, innovative funding initiatives will be critical for both landlords and tenants in the PRS.

Impact of COVID-19 – a focus on the importance of good quality housing

It would be remiss not to highlight the legacy that the COVID-19 pandemic could have in terms of its impact on private tenants and how they experience their homes in terms of thermal comfort. [Research](#) published by the UK Collaborative Centre for Housing (CaChe) has highlighted how the Stay-Home orders augmented the importance of a comfortable home to private tenants’ health and wellbeing¹⁶⁰:

“The pandemic has re-emphasized the importance of a good home to people’s and society’s health and wellbeing. With more time spent at home, the pandemic has also brought under the spotlight home’s insecurities and vulnerabilities as they combine along key axes of inequality

¹⁵⁸ Fuel Poverty Coalition. A Manifesto for Warmth. August 2021. <http://fuelpovertyni.org/wp-content/uploads/FPC-Manifesto-for-Warmth-2021.pdf>

¹⁵⁹ New Decade, New Approach. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/856998/2020-01-08_a_new_decade_a_new_approach.pdf

¹⁶⁰ Soaita, AM. Renting during the COVID-19 pandemic in Great Britain: the experiences of private tenants. UK Collaborative Centre for Housing Evidence. May 2021. <https://housingevidence.ac.uk/wp-content/uploads/2021/05/Renting-during-the-Covid-19-pandemic-in-Great-Britain-final.pdf>

and difference (e.g. social class, race, gender, age lifestyle) and manifest in specific forms across space. These insecurities take a particular intensity in the private rental sector (PRS)...furthermore, evidence is emerging that tenants' difficulties has intensified given the pressures of homeworking, homel schooling, and loss of income through furlough and redundancy."

Importantly, the research goes on to state that the pandemic invites us to re-evaluate the role of the PRS in the housing system and the extent and the means by which it can deliver good, secure and affordable homes. The thermal comfort of homes in the PRS is clearly just one of a number of issues that requires a re-evaluation and the development of innovative solutions.

Clause 9 of the Bill contains provisions for an enabling power that would permit the Department for Communities to make regulations concerning the energy efficiency of houses let under a private tenancy. The Department for Communities has stated that it will be working with *"experts in the area of energy efficiency and the Department for the Economy who are developing the Energy Strategy to bring forward proposals on an appropriate EPC standard setting and the timeframes for delivery"*¹⁶¹. Clause 9 potentially represents an important start towards tackling fuel poverty and improving energy efficiency in the PRS. But much work may be ahead in terms of incentivising and supporting landlords to improve the energy efficiency of their properties.

Is there support for introducing energy efficiency standards in the PRS?

The [Departmental Response](#) to its 2017 PRS consultation states that there were 30 responses to *"Proposal 14 – To introduce legislation around Energy Performance Certificate (EPC) ratings similar to that in England & Wales where landlords will be prevented from commencing a new lease where the EPC of that dwelling is below the minimum permitted energy efficiency level of a band/rating level"*. It highlighted, however, that *"ratings still under consideration"*. Of the 30 responses received, the Department states that 22 supported the proposal and 8 were not in favour of the proposal and that:

"Of those that disagreed with the proposal the main concern was that the cost of making relevant improvements to properties will be prohibitive for landlords. They stated that government funding in the form of grant or loan funding should be made available".

The Department concluded that as the rates of fuel poverty are highest in the PRS the Department proposed to make an enabling power in primary legislation to make it obligatory for any domestic private rented property in Northern Ireland to have a

¹⁶¹ Department for Communities. Departmental Response. Consultation on the Review of the Role and Regulation of the Private Rented Sector. 2021

minimum EPC rating¹⁶². This is provided for in Clause 9 of the Private Tenancies Bill (as introduced). The next section of the paper looks at Clause 9 in further detail.

What are the provisions in the Bill?

Clause 9 of the Bill contains provisions to amend the Private Tenancies (Northern Ireland) Order 2006 to enable the Department for Communities to make regulations concerning the energy efficiency of dwelling-houses let under a private tenancy. Further details are set out in **Schedule 2** of the Bill (as introduced).

Schedule 2 provides that the Department may by regulations provide that a person may not (a) grant a private tenancy or (b) continue to let the property out under a private tenancy which falls below such a level of energy efficiency as demonstrated by the [Energy Performance Certificate](#) (EPC)¹⁶³. Schedule 2 sets out that the forthcoming regulations would:

- Define the EPC standards a private rented property is expected to met;
- Identify the types of tenancy that this would apply to (a [protected tenancy or a statutory tenancy](#) would not be included¹⁶⁴);
- Identify properties that would be exempt from the requirements; and
- Provide a power to create an offence associated with non-compliance of the new regulations on energy efficiency.

Schedule 2 provides that before making the regulations the Department for Communities must consult with:

- the Department for the Economy;
- the Department of Finance;
- district councils;
- such persons as appear to the Department to be representative of landlords; and
- such other persons as the Department considers appropriate (which may include landlords).

As previously highlighted, the Bill does not specify what the minimum EPC rating will be. However, the Department states that it¹⁶⁵:

¹⁶² Department for Communities. Departmental Response: Consultation on the Review of the Role and Regulation of the Private Rented Sector. 2021.

¹⁶³ Further information on Energy Performance Certificates is available on the NI Direct website.

www.nidirect.gov.uk/articles/energy-performance-certificates

¹⁶⁴ Further information on protected and statutory tenancies is available from the NI Direct website

www.nidirect.gov.uk/publications/protected-and-statutory-tenancies-guide-private-landlords-and-tenants-northern-ireland and from the Housing Rights Housing Advice NI website www.housingadviceni.org/protected-tenancy#:~:text=The%20Rent%20Officer%20for%20Northern%20Ireland%20is%20responsible.stay%20on%20in%20a%20property%20than%20other%20tenants.

¹⁶⁵ Department for Communities. Departmental Response: Consultation on the Review of the Role and Regulation of the Private Rented Sector. 2021.

“...will work with experts in the area of energy efficiency and colleagues in the Department for the Economy who are developing the Energy Strategy to bring forward proposals on appropriate EPC standard setting, the timeframes for delivery and consideration around exemptions for particular properties”.

What is the position in other jurisdictions?

England and Wales

The Department for Business, Energy & Industrial Strategy states that PRS properties in England account for a disproportionate number of fuel poor households (18% of PRS households are in fuel poverty under the [Low-Income High Cost Measure](#), compared to 8% of owner-occupied households and 9% of social housing households)¹⁶⁶.

Additionally, approximately 3.2 million PRS properties in England and Wales have an EPC rating of D or below¹⁶⁷.

In order to improve energy efficiency standards in domestic private rented properties in England and Wales the Domestic Minimum Energy Efficiency Standard (MEES) Regulations set a minimum energy efficiency level for domestic PRS properties. The Regulations apply to all domestic PRS properties that are let on specific types of tenancy agreements and are legally required to have an Energy Performance Certificate. The requirement for landlords to carry out energy efficiency improvements is set out in the [Energy Efficiency \(Private Rented Property\) \(England and Wales\) Regulations 2015](#). These not only define the minimum level of energy efficiency but also enable a tenant to request their landlord’s consent to the tenant making energy efficiency improvements to the property. It also places a duty on the landlord not to unreasonably refuse consent to the improvements being made¹⁶⁸.

The Regulations **set a minimum energy performance standard of EPC Band ‘E’ for domestic private rented property**. The requirement that a property must be at least EPC Band E has applied since 1 April 2018 to properties let on new tenancies (including renewals). However, since 1 April 2020, the Band E standard applies to all private rented properties (even where there has been no change in tenancy). Although there are **certain exceptions to this rule** which are outlined below.

¹⁶⁶ Further information on the Low Income High Cost indicator and how it works is available in Annex B of the Department for Business, Energy & Industrial Strategy and National Statistics publication “Annual Fuel Poverty Statistics in England 2020 (2018 data)”. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/882404/annual-fuel-poverty-statistics-report-2020-2018-data.pdf

¹⁶⁷ Department for Business, Energy & Industrial Strategy. Improving the Energy Performance of Privately Rented Homes in England and Wales. September 2020. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/946175/prs-consultation-2020.pdf

¹⁶⁸ The Energy Efficiency (Domestic Private Rented Property) Order 2015. Explanatory Memorandum. www.legislation.gov.uk/uksi/2015/962/pdfs/uksiem_20150962_en.pdf

According to [Guidance for Landlords](#) issued by the UK Government¹⁶⁹:

- If a landlord is currently planning to let a property with an EPC rating of F or G, they need to improve the property's rating to E, or register an exemption, before they enter into a new tenancy;
- If a landlord is currently letting a property with an EPC rating of F or G, they must improve the property's rating to E immediately, or register an exemption.
- If the property is currently empty and the landlord is not planning to let the property, they do not need to take action to improve its rating until they decide to let it again.

Currently, there is a **“cost cap” applied to energy efficiency improvements**.

Landlords are not required to spend more than £3,500 (including VAT) on energy efficiency improvements. The guidance states that if a landlord cannot improve the property to EPC E for £3,500 or less, they should make all the improvements which can be made to that amount, then register an “all improvements made” exemption. The EPC report will include a list of recommendations detailing measures which should improve the energy efficiency of the property.

The guidance identifies three ways to fund improvements to the property:

- **Self-funding** – if a landlord is self-funding they will not need to spend more than the cost cap (i.e. £3,500).
- **Third party funding** – if the landlord is able to secure third party funding to cover the full cost of improving the property to EPC E and they don't need to invest their own funding then the cost cap does not apply. Third party funding may be derived from e.g. local authority grants, [Green Deal](#) finance or the [Energy Company Obligation \(ECO\)](#).
- **Combination of third-party funding and self-funding** – if a landlord can secure third party funding, but it is less than £3,500 and not enough to improve the property to EPC rating E, then the landlord may need to top this up with their own funds to the value of the cost cap.

Energy efficiency investment made to the property since 1 October 2017 is counted within the cost cap.

Exemptions

If the landlord has installed all relevant energy efficiency improvements to the property but the property's EPC rating is still below E, the landlord can [register an exemption](#) on the grounds that “all relevant improvements have been made and the property remains below E”. This exemption lasts for five years. There are also various exemptions that apply to the prohibition of letting a property below EPC band E. For example, cavity wall or external wall installation that is recommended in the EPC but is deemed by

¹⁶⁹ UK Government. Domestic private rented property: minimum energy efficiency standard – landlord guidance. Last updated May 2020. www.gov.uk/guidance/domestic-private-rented-property-minimum-energy-efficiency-standard-landlord-guidance

expert advice to negatively impact on the fabric or structure of the property. Another example that may be eligible for a five-year exemption is where the landlord has evidence demonstrating that making energy efficiency improvements to the property would de-value it by more than 5%¹⁷⁰.

Enforcement and Penalties

The Regulations are enforced by local authorities in England and Wales. The maximum penalty amount is set per property and per breach of the regulations. They are¹⁷¹:

- Up to £2,000 and/or publication penalty for renting out a non-compliant property for less than 3 months;
- Up to £4,000 and/or publication penalty for renting out a non-compliant property for 3 months or more;
- Up to £1,000 and/or publication for providing false or misleading information on the PRS Exemption Register; and
- Up to £2,000 and/or publication for failure to comply with a compliance notice.

The maximum amount a landlord can be fined per property is £5,000 in total.

Evaluation of the Domestic Private Rented Sector Minimum Energy Efficiency Standards in England and Wales

In March 2021, the Department for Business, Energy & Industrial Strategy published an Interim Process and Impact Evaluation [report](#) of the domestic Private Rented Sector Minimum energy Efficiency Standards Regulations. In summary, the report concluded that¹⁷²:

- There was a high level of awareness and understanding in relation to the new standards amongst landlords. Landlord bodies such as the National Residential Landlords Association and Rent Smart Wales) and letting and managing agents were the main sources raising awareness amongst landlords;
- It has not been possible to definitively quantify the level of compliance with the regulations across the entire PRS housing stock in England and Wales at this stage in the evaluation. However, English Housing Survey data in 2022 is expected to change this. Data from the EPC database for England and Wales may not reflect accurately the compliance rate given that landlords are not required to update their EPC after complying with the regulations.

¹⁷⁰ UK Government. Domestic private rented property: minimum energy efficiency standard – landlord guidance. Last updated May 2020.

¹⁷¹ Ibid.

¹⁷² Department for Business, Energy & Industrial Strategy. Evaluation of Domestic Private Rented Sector Minimum Energy Efficiency Standard regulations. 2020 Interim Process and Impact Evaluation Report. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/969540/domestic-private-rented-sector-minimum-energy-efficiency-standards-interim-synthesis-report.pdf

- Qualitative interviews with landlords indicate that levels of compliance may have increased during 2020.
- The most important factors motivating and facilitating compliance were the potential negative consequences of non-compliance and pre-existing plans to upgrade properties. Non-compliance or deferred or delayed compliance was associated with a lack of awareness and understanding of the extension of the regulations to all tenancies from April 2020, the cost and time implications of compliance, and possible disruption for tenants.
- The main energy efficiency improvements made by landlords with a previous EPC rating of F or G was new insulation in combination with more energy efficient lighting. Some landlords had invested in more extensive improvements either as part of a wider upgrade or in anticipation of future increases in minimum standards above an E rating.

Overall, the analysis concluded that the regulations had a “*statistically significant impact*” on the energy efficiency of private rented sector properties in England and Wales (using a quasi-experimental methodology)¹⁷³. The report maintained that the average impact of the regulations on the energy efficiency is estimated to be an increase of 5 SAP points (on the 1-100 SAP scale used in EPCs to measure energy efficiency). The regulations are also estimated to have resulted in an average assumed reduction in fuel costs of around £120 per year for an individual property.

A new 2030 target for energy efficiency within the PRS in England and Wales?

In September 2020, the Department for Business, Energy & Industrial Strategy launched a further [consultation](#) setting out the UK Government’s commitment to upgrade as many private rented sector homes as possible in England and Wales to **EPC Band C by 2030** “*where practical, cost-effective and affordable*”¹⁷⁴. The consultation states that this policy proposal links closely with other work in planning and policy areas that include, for example:

- Publication in due course of a consultation on the merits of setting requirements for lenders to help households to improve the energy performance of homes they lend to; and
- The “[Future Homes Standard](#)” (to be introduced by 2025) which will require new build homes to be future proofed with low-carbon heating and energy efficiency.

The UK Government believes that the proposed target and associated amendments would contribute to, for example, decreased carbon emissions targets (towards the Net Zero 2050 target); decrease energy bills for low income and vulnerable tenants;

¹⁷³ A quasi-experimental approach was used to quantify the impact of the regulations on levels of energy efficiency when pre-existing trends and other factors are discounted. This was based on the analysis of EPC data for properties in England and Wales and a control group of properties in Scotland where no equivalent regulations had been introduced.

¹⁷⁴ Department for Business, Energy & Industrial Strategy. Consultation: Improving the energy performance of privately rented homes. 30 September 2020. www.gov.uk/government/consultations/improving-the-energy-performance-of-privately-rented-homes

increase the value of landlord's assets; and support investment in employment in the domestic retrofit supply chain across England and Wales.

The consultation closed on 8 January 2021. The Government's response to the consultation has not yet been published.

Scotland

In June 2019, the Scottish Government published [draft guidance](#) on the Energy Efficiency (Private Rented Property) (Scotland) Regulations 2019 which were due to be laid before the Scottish Parliament later that year. The Regulations set out minimum EPC standards for the domestic private rented sector in Scotland, e.g.:

- By **31 March 2022** all private rented sector properties must have a **minimum EPC rating of E**.
- By **31 March 2025** all private rented sector properties must have a **minimum EPC rating of D**.

However, **it important to note that progress on the regulations was paused due to the COVID-19 pandemic**. The recent [draft shared policy programme](#) between the Scottish Government and the Green Party (August 2021) outlines the potential future direction of travel in respect of energy efficiency across all housing tenures in Scotland¹⁷⁵:

“We also agree that, where technically and legally feasible and cost-effective, by 2030 a large majority of buildings should achieve a good level of energy efficiency, which for homes is at least equivalent to an EPC Band C, with all homes meeting at least this standard by 2033”.

What do landlords think about energy efficiency standards in Scotland?

Recent research published in August 2021 by Citizens Advice Scotland entitled [‘Identifying opportunities and barriers to Energy Efficiency in the Private Rented Housing Sector’](#), maintains that whilst landlords in Scotland are broadly supportive of a Net Zero target they are concerned that significant barriers may prevent them from making the necessary upgrades to their property. The research highlighted that landlords participating in the survey had several concerns including the timing of the introduction of new regulations around energy efficiency in the PRS. They were also concerned about the perceived lack of financial and technical support and information to help landlords make informed decisions. The report argued that whilst there was an appetite in the sector to install energy efficiency measures, cost was identified as a key barrier preventing or disincentivising them from doing more in this area¹⁷⁶.

¹⁷⁵ Scottish Government and Scottish Green Party. Draft Shared Policy Programme. Working Together to Build a Greener, Fairer, Independent Scotland. www.gov.scot/news/agreement-with-scottish-green-party/

¹⁷⁶ Rice, E. & Haigh, K. Identifying opportunities and barriers to Energy Efficiency in the Private Rented Housing Sector. Citizens Advice Scotland. August 2021. www.cas.org.uk/system/files/publications/cas_private_rented_sector_energy_report.pdf

It should be noted that there are a number of financial incentives available to support energy efficiency measures in private rented property in Scotland. This includes, for example, the [Home Energy Scotland](#) initiative, funded by the Scottish Government and delivered by the Energy Saving Trust. The initiative is said to provide free and impartial advice to landlords (registered on the Scottish Landlord Registry) on improving the energy efficiency of the property. It also provides a funding finder tool to enable landlords (and others) to search for funding and support. There is also a [Private Rented Sector Landlord Loan](#) funded by the Scottish Government (although backlogs to the scheme are said to have been caused by COVID-19).

Republic of Ireland

A [Building Energy Rating \(BER\)](#) certificate is compulsory for all homes available for rent or sale in the Republic of Ireland. The rating is on an A to G scale with A-rated homes the most energy efficient. Similar to the Energy Performance Certificate in the UK, the BER report will identify potential energy performance home improvements that could lead to better thermal comfort levels and reduced energy use and costs¹⁷⁷.

There does not appear to be a requirement at present for domestic private rented properties to meet a statutory minimum BER rating in the Republic of Ireland. However, in December 2019 the Irish Government launched a consultation exploring steps to improve warmth and energy efficiency in the rental sector which is said to have considered options around requirements for properties to meet BER standards before they are offered for rent¹⁷⁸. The need for minimum energy efficiency standards for the private rented sector was raised by several Senators during a recent Seanad Éireann debate (March 2021) on the Private Rented Sector¹⁷⁹.

The Irish Government's [Climate Action Plan](#) contains a commitment to encourage around 500,000 homes to upgrade to B2 Building Energy Rating (BER). In addition to the Climate Action Plan, the Irish Government is taking a number of different approaches to improving residential energy efficiency including, for example:

- The establishment of a [Retrofit Taskforce](#) with cross-departmental and agency membership. The Taskforce has been asked to design a national retrofit delivery model which provides financing options as easy pay back methods. This will include developing approaches to supporting people on lower incomes to participate in the retrofit programme. The Taskforce will also look to other

¹⁷⁷ Sustainable Energy Authority of Ireland. Information on BER certificates. www.seai.ie/home-energy/building-energy-rating-ber/find-a-ber/

¹⁷⁸ The Irish Times. 'Landlords of energy-inefficiency homes may have to pay for heating bills'. 6 December 2019. www.irishtimes.com/news/environment/landlords-of-energy-inefficient-homes-may-have-to-pay-heating-bills-1.4106065

¹⁷⁹ Seanad Éireann. Official Report. 8 March 2021. <https://www.oireachtas.ie/en/debates/debate/seanad/2021-03-08/15/?highlight%5B0%5D=ber&highlight%5B1%5D=bers&highlight%5B2%5D=ber&highlight%5B3%5D=ber&highlight%5B4%5D=minimum>

jurisdictions to determine best practice for retrofit financing and delivery. It will be split into sub-groups to look at different issues¹⁸⁰; and

- [Home and Community Energy Grants](#) (administered by the [Sustainable Energy Authority of Ireland](#)).

Concluding remarks

The requirement for private rented sector residential properties to meet a minimum rating standard will be interpreted by many to be a positive move towards improving thermal comfort, particularly for vulnerable households and children living with the PRS in Northern Ireland. However, there are many outstanding questions that stakeholders may want to see addressed including, for example, what that standard rating will be; how soon it will be implemented; will (as is the case in England and proposed for Scotland) a more ambitious rating will be required in future years; what support will be provided to landlords and tenants to help them finance required upgrades to the property; and how will these standards fit in with wider policies such as the new Energy Strategy; and is the strategy likely to lead to funding opportunities to tackle issues such as energy poverty across all forms of housing tenure?

What minimum EPC standard are appropriate for private rented sector properties in Northern Ireland?

Should there be a staged approach to their introduction i.e. a lower minimum threshold set initially with a more ambitious target set for a later date? Should there be exemptions? If so, what should these be? |

Is there tentative timeframe for the introduction of the new regulations?

How effective are current schemes (e.g. Affordable Warmth) in incentivising landlords to make improvements to their properties?

Are examples of financial assistance models in other jurisdictions that could be adapted for use by tenants or landlords in Northern Ireland?

Clause 10: Electrical safety standards regulations

What is the current law in Northern Ireland?

There is currently no legal requirement for private rented sector landlords (except for landlords of HMOs) to ensure that periodic mandatory electrical safety checks in their rental properties are conducted by a suitably qualified professional. There is, however, a requirement for landlords under the [Electrical Equipment \(Safety\) Regulations 1994](#) to ensure that any electrical equipment provided by them as part of a tenancy agreement, is safe to use (e.g. refrigerators, televisions etc.). Additionally, [The Plugs](#)

¹⁸⁰ Department of the Environment, Climate and Communications. Retrofit Taskforce. Last updated 8 February 2021. www.gov.ie/en/publication/f2b3ee-retrofit-taskforce/

[and Sockets \(Safety\) Regulations 1994](#) impose a number of standards requirements relating to electrical plugs, sockets and adapters. There is further advice on electrical safety in private rented properties from the [NI Direct website](#) and from the Housing Rights Housing Advice [website](#)¹⁸¹.

In contrast to landlords of non-HMO properties, landlords of HMO properties in Northern Ireland are required as part of their licensing requirements under the [Houses in Multiple Occupation Act \(Northern Ireland\) 2016](#) to ensure that:

“a satisfactory Electrical Installation Condition Report (EICR) is produced at intervals of no more than five years or more frequently if required in accordance with the previous EICR confirming compliance with the applicable edition of the I.E.E. [Institute of Electrical Engineers]. Where the property is less than five years old a letter or statement issued by building control confirming the date of completion will be accepted instead. The licensee shall within seven days of any demand by the council, provide the most recent fixed wire inspection and test report. This report must be issued by a competent electrical engineer.”¹⁸²

[Electrical Safety First](#), a consumer charity that aims to reduce deaths and injuries caused by electricity in UK homes, has called for mandatory five-yearly electrical safety checks in the Private Rented Sector in Northern Ireland. Additionally, Electrical Safety First has stated that they would like to see protections for vulnerable tenants (e.g. older people and people with disabilities) in the Private Rented Sector put in place to ensure that they can report electrical hazards to landlords without fear of eviction¹⁸³.

The Department for Communities [‘Private Rented Sector in Northern Ireland – Proposals for Change’](#) consultation document (published January 2017) contained a proposal to introduce legislation to make it a mandatory requirement for landlords to carry out periodic electrical checks. The aim of Clause 10 (and schedule 3) of the Private Tenancies Bill (as introduced) is to provide the Department for Communities with the power to make regulations concerning electrical safety standards and checks for private rented sector properties.

Legislative frameworks for electrical safety in private rented properties have already introduced by both the UK Government (in 2020 for rental properties in England) and the Scottish Government (2015) including mandatory minimum five-year electrical safety inspections in private rented properties. An overview of mandatory fire safety standards in private rented sector properties is provided at the end of this section of the Bill Paper.

¹⁸¹ Housing Rights. Electrical and furniture safety standards. www.housingadviceni.org/electrical-and-furniture-safety-standards and www.housingadviceni.org/electrical-and-furniture-safety-standards

¹⁸² Belfast City Council. Standard Licensing Conditions for Houses in Multiple Occupation (HMOs) in Northern Ireland. www.belfastcity.gov.uk/Documents/NIHMO/Standard-Licence-Conditions-for-Houses-in-Multiple#section3

¹⁸³ Electrical Safety First. Our Key Policies in Northern Ireland. www.electricalsafetyfirst.org.uk/media/p2qb2bbn/our-key-policies-in-northern-ireland.pdf

What proposals did the Department's public consultation contain and what was the Department's response to the consultation?

The 2007 consultation document '[Private Rented Sector in Northern Ireland – Proposals for Change](#)' recognised that other jurisdictions have moved ahead in terms of introducing electrical safety standards for private rented sector accommodation. The paper noted that in Scotland mandatory five yearly safety checks of electrical installations have been introduced for the private rented sector. The Department proposed to introduce requirements for private landlords in Northern Ireland to carry out periodic electrical checks on their properties.

The [Departmental Response](#) to its 2017 consultation highlights that there were 33 consultation responses to the introduction of periodic electrical checks. The response paper states that 29 of these responses supported the Department's proposal and 4 responses were not in favour of it. The paper highlights that¹⁸⁴:

“The main objection to the electrical checks is that 5 years is too frequent. It was also said that it was unfair because it would only be a requirement for the PRS and not for owner occupied or social rented sectors and also it could prove costly for landlords”.

The Department's conclusion/response to this aspect of the consultation was as follows:

“It is proposed to make an enabling power in primary legislation which will make it obligatory for any domestic private rented property to be subject to periodic electrical checks. This will impose duties on landlords to carry out a periodic electrical check for any domestic private rented properties. As a result landlords will be prevented from commencing a new lease where an electrical safety check has not been certified. The certification process will confirm that such checks have been carried out. The enabling power will be part of a PRS Bill delivered in this mandate and will be followed by a set of Regulations”.

What are the provisions in the Bill?

[Clause 10](#) of the Private Tenancies Bill introduces a **new Schedule 3** which contains amendments to the Private Tenancies (Northern Ireland) Order 2006 to enable the Department for Communities to make regulations concerning electrical safety standards in properties let under a private tenancy.

Schedule 3 entitled “Electrical Safety Standards Regulations” contains the following provisions:

¹⁸⁴ Department for Communities. Consultation on the Review of the Role and Regulation of the Private Rented Sector.

- That the **Department may by regulations** impose duties on private landlords (for properties let under a private tenancy) for **the purposes of ensuring that electrical safety standards** are met during the period when the property is let under the tenancy.
- “Electrical safety standards” means standards that will be determined in accordance with the regulations but will relate to (a) the **installations in the property for the supply and use of electricity** or (b) **electrical fixtures, fittings or appliances provided by the landlord**.
- The duties imposed on the landlord may include duties to ensure that a **“qualified person”** has checked that electrical safety standards are met”. The regulations may make provisions about (a) **how and when checks are carried out** and (b) who is **qualified to carry out checks**.
- The regulations may also **require the landlord to undertake works** as a result of checks carried out by a qualified person.
- The regulations may require the landlord to (a) obtain a certificate from the qualified person confirming that electrical safety standards are met and (b) provide a copy of the certificate to the tenant, prospective tenant or any other person in the regulations.
- **Where the electrical safety standards** are not met the regulations may require the landlord to obtain from the qualified person a **written description of the works required to meet the standards**.
- The regulations may provide that a landlord who fails to comply with a duty imposed under new regulations (i.e. new Article 11I) is **guilty of an offence**.
- A new Article 11K in Schedule 3 sets out the provision that the new regulations may make for the **purpose of enforcing the duties imposed by the regulations**. These provisions can include (a) a **requirement for the landlord to take remedial action** and (b) **that a district council may**, with the consent of the tenant, **arrange for a person to enter the property to take remedial action**.

Offences, fines and penalty notices

New Schedule 3 also provides that regulations may include provisions about **procedural matters** and to enable the landlord to **make representations against any requirement to take remedial action**. Regulations may also make provisions about (a) **appeals** against any proposed remedial action (b) **enabling a district council to recover costs** from the landlord incurred by it taking remedial action (known as “remedial costs”) (c) **enabling a district council to recover remedial costs from any agent of the landlord** (up to the total amount of money held by the agent on behalf of the landlord) and (d) charging and recovery of costs from the land in relation to which the costs were incurred.

Paragraph 3 of the new Schedule 3 proposes to amend [Article 68\(3\)](#) of the Private Tenancies Order (Northern Ireland) 2006 (which currently states that proceeding for any offence under the 2006 Order may be “instituted by the appropriate district council”) to provide that district councils may prosecute any offence created under new Article 11J.

What is the position in other jurisdictions?

Scotland

A new duty on private landlords to carry out electrical safety inspections came into force in Scotland on 1 December 2015 under sections 13(4A) and 19B of the [Housing \(Scotland\) Act 2006](#). It applies to tenancies that began on or after 1 December 2005.

Private landlords in Scotland are required by law to ensure that a property let under a private tenancy meets the [Repairing Standard](#) at the start of a tenancy and throughout a tenancy¹⁸⁵. One aspect of the Repair Standard is any installations in the house for the supply of electricity, electrical fixtures and fittings, and any appliance provided by the landlord under the tenancy, must be in a reasonable state of repair and in proper working order. A “reasonable state of repair” is not defined in legislation. However, Scottish Government guidance states that it “*broadly reflects that the condition of the equipment is what a reasonable person would expect taking the circumstances into account. Equipment that is not safe for use would not be in a reasonable state of repair*”.

The Scottish Government has published detailed statutory [guidance](#) for private sector landlords on their statutory obligations in relation to electrical installations and appliances¹⁸⁶ and landlords must have regard to this guidance. To comply with the Repairing Standard, private landlords must have regard to this statutory guidance¹⁸⁷. The guidance outlines the duty on private landlords to ensure that **electrical safety inspections** are carried out in their properties. Private landlords are required to carry out an electrical safety inspection at least once every five years. There are **two elements to the electrical safety inspection**:

- An [Electronic Installation Conditions Report \(EICR\)](#)¹⁸⁸ on the safety of the electrical installation, including a visual inspection of fixtures and fittings, plus a fixed electrical equipment test; and
- A [Portable Appliance Test \(PAT\)](#)¹⁸⁹ on portable appliances.

¹⁸⁵ Scottish Government. The Repairing Standard. Factsheet. www.gov.scot/publications/repairing-standard/

¹⁸⁶ Scottish Government. Electrical installations and appliances in private rented properties: guidance. December 2016. www.gov.scot/publications/electrical-installations-and-appliances-private-rented-properties/

¹⁸⁷ Scottish Government. The Repairing Standard. www.gov.scot/publications/repairing-standard/

¹⁸⁸ For an explanation of EICRs see Electrical Safety First’s Guide to Electrical Installation Condition Reports (EICR). www.electricalsafetyfirst.org.uk/find-an-electrician/periodic-inspection-explained/guide-to-condition-reports/

¹⁸⁹ For an explanation of PATs see Electrical Safety First “PAT Testing Explained”. www.electricalsafetyfirst.org.uk/find-an-electrician/pat-testing-explained/

The EICR must be completed by a “**competent person**” as defined in the guidance (e.g. must be a suitably trained person employed by a firm that is a member of an accredited registration scheme operated by a recognised body). However, a landlord may carry out appliance testing if they have undertaken appropriate training. Any electrical installation, fixture, fitting or equipment which fails to pass electrical safety inspection must be replaced or repaired immediately to comply with the repairing standard.

The electrical safety inspection **must be recorded in an EICR and PAT report**. The landlord must keep a copy of the EICR and PAT report for six years. A **copy of the EICR and PAT must be given to a tenant before the tenancy starts** or if an inspection is carried out during a tenancy a copy relating to that inspection must be given to the tenant. **Tenants cannot be required to pay for or contribute towards the cost of an electrical inspection** unless ordered to do so by the [First-tier Tribunal \(Housing and Property Chamber\)](#) for Scotland¹⁹⁰.

If a private rented property in Scotland fails to meet the Repairing Standard (e.g. with regards to electricity or electrical fittings or fixtures) and the landlord refuses to carry out the repair work, the tenant can report the landlord to the First-tier Tribunal (Housing and Property Chamber). Local councils may also report landlords to the Tribunal on behalf of vulnerable tenants. If the Tribunal determines that the Repairing Standard has not been met, it can issue a **Repairing Standard Enforcement Order (RSEO)**, to compel a landlord to carry out the necessary repairs¹⁹¹. A landlord can seek to appeal the decision of the First-tier Tribunal.

England

MPs and peers from across the political divide had raised electrical safety in the private rented sector as an important issue during the passage of the Housing and Planning Act 2016. These calls were backed up by tenant representative groups and electrical safety lobby groups. In response, the UK Government introduced an **enabling power** in the Housing and Planning Act 2016, to allow requirements for electrical standards in the private rented sector, and their enforcement to be set via secondary legislation. Following Royal Assent of the Housing and Planning Act 2016, a working group was established to provide recommendations to Ministers on what, if any, legislative requirements for electrical safety should be introduced in the private rented sector. A consultation paper on “[Electrical Safety in the Private Rented Sector](#)” was subsequently published by the Ministry of Housing, Communities and Local Government in February 2018¹⁹².

¹⁹⁰ The First-tier Tribunal for Scotland (Housing and Property) Chamber deals with determinations of rent or repair issues in private sector housing. For further information see www.housingandpropertychamber.scot/

¹⁹¹ Information extracted from the mygov.scot website. “Housing and Property Chamber”. 9 May 2018. www.mygov.scot/landlord-repairs/housing-and-property-chamber

¹⁹² Ministry of Housing, Communities and Local Government. Electrical Safety in the Private Rented Sector: A consultation paper. February 2018.

New regulations followed on from the consultation, the [Electrical Safety Standards in the Private Rented Sector \(England\) Regulations 2020](#). The **Regulations came into force on 1 June 2020** and are said to form part of the Department's wider work to improve safety in all residential premises, particularly in the private rented sector. From **1 April 2021**, the Regulations **apply in all cases where a private tenant has a right to occupy a property as their own or main residence and pays rent**¹⁹³. Although [Schedule 1](#) of the regulations includes a list of tenancies that are excluded (e.g. shared accommodation with the landlord's family, student hall of residence etc.). HMOs in England are also now covered by the new Regulations.

Unlike in Scotland, the regulations do not cover checks to electrical appliances (including those supplied by the landlord). [Guidance for landlords](#) issued by the Ministry of Housing on the regulations includes only a recommendation that landlords carry out portable appliance testing (PAT) on any electrical appliance they provide and to supply tenants with a record of any electrical inspections carried out on these as a method of good practice¹⁹⁴.

The Regulations require landlords of private rented accommodation to:

- Ensure **national standards for electrical safety are met** (these are set out in the 18th edition of the 'Wiring Regulations').
- Ensure the electrical installations in their rented properties are **inspected and tested by a qualified and competent person at an interval of at least every five years**.
- **Obtain a report** from the person conducting the inspect and test which gives the result and sets a date for the next inspection and test. Guidance provided by the Ministry of Housing, Communities and Local Government states that this report is "usually an **Electrical Installation Condition Report or EICR**").
- **Supply a copy of this report to the existing tenant** within 28 days of inspect and test.
- **Supply a copy of this report to a new tenant** before they occupy the premises.
- **Supply the local authority with a copy** of the report **within 7 days of receiving a request for a copy**.
- **Retain a copy of the report** to give to the inspector and tester who will undertake the next inspection and test.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/682100/Consultation_on_PR_S_Electrical_Safety.pdf

¹⁹³ Ministry of Housing, Communities and Local Government. Guidance for landlords: electrical safety standards in the private rented sector. Updated 1 April 2021. www.gov.uk/government/publications/electrical-safety-standards-in-the-private-rented-sector-guidance-for-landlords-tenants-and-local-authorities/guide-for-landlords-electrical-safety-standards-in-the-private-rented-sector

¹⁹⁴ Ministry of Housing, Communities and Local Government. Guidance for landlords: electrical safety standards in the private rented sector. Updated 1 April 2021.

If the inspection report shows that remedial work is required landlords **must complete this work within 28 days or any shorter period if specified as necessary in the report**. Landlords must then **provide written confirmation** that the work has been carried out to their **tenant and to the local authority within 28 days**. Should local authorities have reasonable grounds to believe that a landlord is in breach of one or more of the duties in the Regulations, they must serve a **remedial notice** on the landlord requiring action. Should a landlord fail to comply with the notice, the local authority may **arrange for remedial action to be taken themselves and recover the costs from the landlord**.

Similar to Scotland, landlords are not in breach of their duty to comply with a remedial notice if they can show that they have taken all reasonable steps to comply (e.g. a tenant refuses entry to the landlord or person employed to carry out repairs). Local authorities can impose **financial penalties of up to £30,000** on landlords who are in breach of their duties. However, landlords have the right to appeal a notice to firstly the local authority and then the First-tier tribunal¹⁹⁵.

The Ministry of Housing, Communities and Local Government have published detailed guidance on the new Electrical Safety Standards for both private sector [landlords](#) and [tenants](#).

Republic of Ireland

The [Housing \(Standards for Rented Houses\) Regulations 2019](#), which came into operation on 1 May 2019, require private landlords to ensure that *“installations for the supply of gas, oil and electricity including pipework, storage facilities and electrical distribution boxes shall be maintained in good repair and safe working order”*. Similar to Northern Ireland, the enforcement of these minimum standards is the responsibility of the various Local Authorities in the Republic of Ireland. However, unlike in Scotland and England (and the proposals in the Northern Ireland Bill), there does not appear to be any requirement set out in regulations, for minimum periodic inspections.

However, according to information from the [Residential Tenancies Board](#), if the property is below the minimum standards set out in the Regulations and the landlord refuses to carry out repairs as required the tenant can request that their local authority carry out an inspection¹⁹⁶. Local Authorities should conduct rental property standards inspections of private rented accommodation within the first eight months for those in the [Housing Assistance Payment \(HAP\)](#) scheme (a form of housing support for people who have long-term housing need)¹⁹⁷. The Minimum Standards Regulations do not

¹⁹⁵ Ministry of Housing, Communities and Local Government. Guidance for landlords: electrical safety standards in the private rented sector. Updated 1 April 2021.

¹⁹⁶ The Residential Tenancies Board (RTB) is a public body established to support and develop the rental housing sector in the Republic of Ireland. www.rtb.ie/beginning-a-tenancy/what-minimum-standards-must-a-property-meet

¹⁹⁷ Citizen Information. www.citizensinformation.ie/en/housing/renting_a_home/repairs_maintenance_and_minimum_physical_standards.html

appear to specify any timeframe within which a private landlord must carry out necessary repairs and maintenance.

Discussion Points:

The Bill provides the Department with an enabling power to introduce regulations in relation to electrical safety standards in private rented accommodation in Northern Ireland. It is likely that much of the detail the Committee may seek in relation to these standards will be contained in these new Regulations. However, in anticipation of the new Regulations some issues which merit consideration include:

How often should electrical safety checks be required?

How long landlords will be given to organise inspections before the law changes?

Is there a tentative timetable for the drafting of the regulations? When are they likely to become operational?

In Scotland, the electrical safety inspection contains two separate elements (1) the Electrical Installation Conditions Report (EICR) on the safety of electrical installations and (2) a Portable Appliance Test (PAT) on portable appliances supplied by the landlord. In England, only the EICR Report is required by law and the PAT is recommended (but not required by law). What approach should be taken in Northern Ireland and why?

The Scottish Government have published detailed general guidance on the new electrical safety requirements for the PRS and the UK Government have produced guidance for both landlords and tenants. Will the Department produce similar guidance? If so, what status will such guidance have? Should it be statutory or non-statutory?

The Scottish Government guidance also contains “good practice” guidance which is not part of a landlords statutory duty but is recommended as good practice. This includes, for example, the fitting of Residual Current Devices (RCD) into the consumer unit to protect against electrical shock; landlords providing copies of the instructions of electrical goods supplied by them so that the tenant can familiarise themselves with the safe operation of the equipment; and if a tenancy lasts longer than one year, annual visual inspections by the landlord to detect damage, wear and tear, signs of overheating, loose fittings etc that may lead to danger (a sample annual checklist is provided in the guidance). Will similar non-statutory “good practice” be included should any guidance be issued by the Department?

How easy will it be for tenants to report failure to adhere to the new electrical safety standards requirements?

Is it likely that landlords will pass the costs associated with inspections and remedial action on tenants (e.g. in the form of rent increases)?

Clause 11: Validity requirements for notices to quit given by landlords and tenants

What is the current law in Northern Ireland?

Both landlords and tenants must serve a Notice to Quit if they wish to end a tenancy in Northern Ireland. The Notice to Quit period can, for example, provide the tenant with sufficient time to find alternative accommodation. It also provides landlords with the time needed to find new tenants and prepare the property for re-let. A landlord may only evict a tenant during the term of a tenancy agreement if they can demonstrate that the tenant has materially breached the agreement and has failed to remedy the breach¹⁹⁸.

Further detailed information on the Notice to Quit process is available to download from the Housing Rights' Housing Advice NI website [here](#)¹⁹⁹. Issuing a valid Notice to Quit is an important step for landlords seeking to gain legal possession of their property. But tenants also have a right to “due process” meaning that the landlord must follow the correct legal procedure before removing tenants from the property and a Notice to Quit is a critical component of that process. Further detailed information on Notice to Quit, possession action and due process are also available to download from the Housing Rights' Housing Advice NI website [here](#)²⁰⁰.

The length of the Notice to Quit period is set out in housing law. It is important to note that the COVID-19 pandemic has led to changes in the law with regards to the Notice to Quit period. The next section outlines the Notice to Quit period during the pandemic and in the pre-pandemic period.

COVID-19 Pandemic and Notice to Quit

Introduced at the start of the COVID-19 pandemic, the [Private Tenancies \(Coronavirus Modifications\) Act \(Northern Ireland\) 2020](#) (enacted in May 2020) requires landlords (but not tenants) in the private rented sector to give tenants a **12-week Notice to Quit period** before seeking a court order to begin proceedings to evict. The 12-week Notice to Quit period was due to expire on 30 September 2021. However, the Minister for Communities has taken the decision that it should be extended further until **4 May 2022** to protect tenants in the private rented sector²⁰¹. Outlining her rationale for the decision, the Minister has stated that she has²⁰²:

¹⁹⁸ Housing Rights. Housing Advice NI. Issuing a Notice to Quit. www.housingadviceni.org/

¹⁹⁹ Housing Rights. Housing Advice NI. Notice to Quit. www.housingadviceni.org/tags/notice-quit

²⁰⁰ Housing Rights. Housing Advice NI. Possession action & due process. www.housingadviceni.org/advice-landlords/possession-action

²⁰¹ Department for Communities. News Release. 'Hargey extends eviction protection until May 2022'. 31 August 2021. www.communities-ni.gov.uk/news/hargey-extends-eviction-protection-until-may-2022

²⁰² Ibid.

“...considered very carefully the balance between landlords’ interests as property owners and the protection of those in need during this pandemic to ensure people are not facing eviction in this challenging time.

Whilst it is clear that the overall situation is greatly improving from the beginning of the pandemic, there is still some way to go. I am mindful of the economic disruption which may emerge as other protections unwind.

As ever, I would encourage landlords and tenants to continue to work together during this period to avoid the need for commencing or pursuing possession proceedings in what remains a difficult time.”

Similar emergency powers extending the Notice to Quit period were also introduced in England, Scotland and Wales at the beginning of the pandemic to protect private rented sector tenants from eviction.

Notice to Quit in the pre-pandemic period

The length of the Notice to Quit period is set out in [Article 14](#) of the Private Tenancies (Northern Ireland) Order 2006. Article 14 states that a notice by a landlord or tenant to quit a property let under a private tenancy will only be valid if it is (a) given in writing and (b) is not less than the “relevant period” before the date on which it is to take effect. The length of the relevant period depends on how long the tenancy has lasted. That is,

- If the tenancy has been in existence for **less than 5 years**, then **4 weeks’ Notice to Quit** must be given;
- If the tenancy has been in existence for **more than 5 years but for not more than 10 years**, then **8 weeks’ Notice to Quit** must be given; and
- If the tenancy has been in existence for **more than 10 years**, then **12 weeks’ Notice to Quit** must be given.

These changes to the Notice to Quit period were brought about by the [Housing \(Amendment\) Act \(Northern Ireland\) 2011](#) which linked the Notice to Quit period to the length of the tenancy for the first time. Previous to this, the Notice to Quit period for most tenancies was 4 weeks, regardless of the length of the tenancy. The aim of extending the Notice to Quit period was to provide greater security of tenure and to provide private sector tenants with a more reasonable period in which to find accommodation should their tenancy be brought to an end²⁰³.

Proposals within the 2007 consultation on the Private Rented Sector

In the 2017 consultation, [‘Private Rented Sector in Northern Ireland – Proposals for Change’](#) in its section on “Security of tenure” proposed to:

²⁰³ Northern Ireland Assembly Committee for Social Development. Report on the Housing (Amendment) (No.2) Bill. 27 January 2011. http://archive.niassembly.gov.uk/social/2007mandate/reports/2010/report_30_10_11r.htm

- Amend the Notice to quit period from four weeks to two months for tenancies lasting longer than 12 months; and
- Seek to introduce legislation for a Fast Track Eviction scheme which may include mandatory grounds for possession and provide appropriate safeguards and fairness.

The consultation included a discussion on longer term tenancies and noted the changing demographics in the rented sector and that whilst some renters welcomed the flexibility that the PRS offered, an increasing number of households in the sector, including those with children, were seeking longer term security. The paper notes that these households wanted “to settle down in a community, get the children settled in a local school and have family support in a particular area for as long as they desire”. However, in terms of mandatory longer-term tenancies, the consultation paper maintained that²⁰⁴:

“...outcomes from the [PRS] discussion document [published in 2015] and the consultative forum showed there was no appetite to move to a mandatory long term tenancy or an indefinite lease such as being introduced under the Private Tenancies (Housing) Act 2016 in Scotland”

As highlighted by the Department, some jurisdictions such as Scotland are moving toward **mandatory longer-term tenancies** as a means of providing more stability and security for tenants. This is explored further at the end of this section of the paper.

The Department for Communities’ response to the consultation

The [Departmental response](#) to the consultation (published in 2021) states that there were 34 response to the proposal to amend the notice to quit period from 4 weeks to 2 months for tenancies lasting longer than 12 months. Of these, 22 were said to have supported the proposal and 12 responses were not in favour of the proposal. The Departmental response states that²⁰⁵:

“There were mixed responses to this proposal with those in support saying that this would give a more adequate period for tenants to find alternative accommodation and those against concerned that landlords may then ask for 2 months’ rent in advance making accessibility to the PRS even harder”.

The Department concluded by stating that it considers that the Notice to Quit Period landlords are required to give tenants should be extended. It important to note that in a [Ministerial Statement](#) on 3 November 2020, Minister Ní Chuilín, setting out her plans

²⁰⁴ Department for Communities. Private Rented Sector in Northern Ireland – Proposals for Change. Consultation Document. January 2017.

²⁰⁵ Department for Communities. Departmental Response. Consultation on the Review and Role of the Regulation of the Private Rented Sector in Northern Ireland. 2021.

for housing in Northern Ireland, stated that she wanted to at least explore extending the Notice to Quit even further²⁰⁶:

“I will bring forward legislation to the Assembly that will improve the safety, security and quality of the private rented sector. Four weeks is too short a time for anyone to be asked to leave their home, find a suitable new house that they can afford, maybe find a new school and childcare for their kids and pack up their belongings. It is just not enough. My Department previously consulted on extending notice to quit to eight weeks. That would be a start, but my view is that it should be a lot longer, more like six months. I will see what is possible, given the limits of our legislation, and bring proposals to the Assembly”

The Departmental response paper states that it has commenced a consultation process to gauge the implications of this and views of the sector around this proposal. But until this has been completed the Department would proceed with the proposal to extend the Notice to Quit period to 8 weeks’ (the Notice to Quit period is currently 12 weeks’ but ordinarily the minimum Notice to Quit period is 4 weeks’ for tenancies of less than five years).

A fast-track eviction process?

As previously highlighted, the Department’s 2017 consultation also contained a proposal to introduce a fast-track eviction process. It stated that landlords were very critical of the time and effort it takes for the eviction process in Northern Ireland and the associated high cost of legal action which could, on occasions, cost thousands of pounds²⁰⁷:

“There were examples provided of long delays to evict a ‘problem tenant’, with delays as long as 24 months not uncommon. There was also anecdotal evidence that on occasions a landlord would pay a tenant to leave a property as an alternative to going through the court process.”

Three options were considered in the consultation paper:

- Do nothing and allow the current established process to continue; or
- To consider introducing a fast-track eviction process similar to that in England and Wales. However, the Department stated that information from colleagues at the UK Department for Communities and Local Government indicated that the process was not as fast as the name would suggest and that there may also be some vulnerable tenants left at the mercy of unscrupulous landlords; or

²⁰⁶ Northern Ireland Assembly. Official Report. 3 November 2020. <http://data.niassembly.gov.uk/HansardXml/plenary-03-11-2020.pdf>

²⁰⁷ Department for Communities. Private Rented Sector in Northern Ireland – Proposals for Change. Consultation Document. January 2017.

- Aligned to a fast eviction process, the Department could introduce criteria which must be met before a landlord could move to evict a tenant under the accelerated procedure. The Department felt that this would put protections in place to safeguard tenants from unscrupulous landlords.

Ultimately, the consultation proposed to follow the third option, i.e. that the Department would "...seek to introduce legislation for a Fast Track Eviction scheme which may include mandatory grounds for possession and provide appropriate safeguards to ensure fairness.

A fast-track eviction process does not form part of the Private Tenancies Bill (as introduced). In the [Departmental response](#) paper, the Minister states that issues such as the introduction of grounds for eviction (as well as issues such as letting agent regulation and Fitness Standards) are "*things we need to look at over a longer timescale*". The response papers states that there were 32 responses in relation to the proposal on a fast track eviction process of which 27 support the proposal but 5 were not in favour.

The response paper states that there was:

"A high level of support for a Fast Track Eviction Scheme. However those who were opposed to the proposal believed it would be more appropriate that the Department invested in mediation services which could be used to ensure vulnerable people are not put at risk of homelessness. Others felt that to develop a policy in this area there would need to be an objective evidence base to substantiate the argument largely put forward by landlords that the current eviction process is both too expensive and lengthy. It was also thought that this proposal would be best supported by the introduction of a housing panel."

The Departmental response paper indicates that the Department will put a "hold for now" on the Fast Track Eviction scheme as evidence is difficult to obtain. However, it stated that it has been gathering evidence about eviction processes in other jurisdictions and from landlords on their experience of taking a Possession Order case through the courts. But evidential gaps remain in relation to (a) lack of statistics on PRS evictions in Northern Ireland (b) lack of evidence that a new process is required and (c) lack of evidence that fast track eviction actually works.

The Department states that it will be considering the outcome of the [mediation pilot](#)²⁰⁸ and work with the Department of Justice to explore the potential for using the mediation service to resolve disputes and thus preventing the need for cases to progress to court. It also states that as a programme of longer term work it will consider the possibility of creating certain grounds for evictions and stakeholders will be consulted on this²⁰⁹.

²⁰⁸ For further information on the mediation pilot run by Housing Rights see www.housingrights.org.uk/housing-mediation-service

²⁰⁹ Department for Communities. Departmental Response. Consultation on the Review and Role of the Regulation of the Private Rented Sector in Northern Ireland. 2021.

What are the provisions in the Bill?

Clause 11 of the Private Tenancies Bill makes a **number of amendments** to [Article 14](#) of the Private Tenancies (NI) Order 2006 as well as **inserting a new Article 14A**.

As previously highlighted, Article 14 covers the Length of the Notice to Quit period that landlords and tenants in Northern Ireland must give. The current notice to quit period of 12 weeks' has been put in place via emergency COVID-related regulations.

However, ordinarily the Notice to Quit period is as follows:

- If the tenancy has been in existence for **less than 5 years**, then **4 weeks' Notice to Quit** must be given;
- If the tenancy has been in existence for **more than 5 years but for not more than 10 years**, then **8 weeks' Notice to Quit** must be given; and
- If the tenancy has been in existence for **more than 10 years** then **12 weeks' Notice to Quit** must be given.

Amending the Notice to Quit period

The Bill's Financial and Explanatory Memorandum states that Paragraph 1A of the 2006 Order (which deals with the Notice to Quit period) will be amended as follows (this applies to Notice to Quit provided by landlords and not tenants):

- **4 weeks'** Notice to Quit if the tenancy has not been in existence **for more than 12 months**;
- **8 weeks'** Notice to Quit if the tenancy has been in existence for **more than 12 months but not for more than 10 years**; and
- If the tenancy has been in existence for **more than 10 years**, then **12 weeks' Notice to Quit** must be given.

Clause 11 (as introduced) provides that the Notice to Quit given by a landlord is not valid unless it is in "the prescribed format" and "contains the prescribed information".

Clauses 11 also provides the **Department for Communities with a power amend the Notice to Quit periods in relation to longer term tenancies for periods of 6 months or less**. That is, it could make regulations providing that;

- in relation to a tenancy in existence for more than 12 months but not more than 10 years, a period that is more than 8 weeks' but not more than 6 months; and
- in relation to a tenancy in existence for more than 10 years, a period of more than 12 weeks' but not more than 6 months.

The [Financial and Explanatory Memorandum](#) explains that any such regulations can specify cases to which any new Notice to Quit periods do not apply.

A new paragraph (paragraph 5) will ensure 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 have to comply with the rule in force at the time they were given.

New Article 14A – Notice to Quit given by tenants

New Article 14A provides the Department for Communities with the power to make regulations to amend the **Notice to Quit period given by tenants**. Article 14 of the current version of the Private Tenancies (NI) Order specifies that tenants must adhere to the following Notice to Quit periods:

- If the tenancy has been in existence for **less than 5 years**, then **4 weeks’ Notice to Quit** must be given;
- If the tenancy has been in existence for **more than 5 years but for not more than 10 years**, then **8 weeks’ Notice to Quit** must be given; and
- If the tenancy has been in existence for **more than 10 years** then **12 weeks’ Notice to Quit** must be given.

However, Clause 11 and new Article 14A provides that the Department may in regulations provide that the Notice to Quit provided by tenants are as follows:

- **4 weeks’ Notice to Quit**, if the tenancy **has not been in existence for more than 10 years**; and
- **12 weeks’ Notice to Quit**, if the tenancy **has been in existence for more than 10 years**.

New Article 14A, similar to the requirements placed on landlords, requires that to be valid, the Notice to Quit provided by tenants should be in writing. The new Article also gives the Department the power, by regulations, to alter the Notice to Quit period provided by tenants by specifying different periods for different cases.

Discussion Points:

Minister Ní Chuilín indicated in her Ministerial Statement of 3 November 2020 that she wished to explore whether extending the Notice to Quit period to 6 months was possible. The Departmental response to the consultation stated that the Department has commenced a consultation process to gauge views on this. What stage is this consultation process at? What type of views are emerging?

Clause 11 requires landlords and tenants to issue Notices to Quit in writing and that landlords must provide Notice in the “prescribed form” and containing the “prescribed information”. What is the definition of “in writing”, i.e. what types of notices are, and are not acceptable? What assistance is available for people who cannot provide their Notice in writing (e.g. due to literacy issues or certain disabilities and impairments)?

Should Clause 11 come into operation, how does the Department intend to inform both landlords and tenants of the changes to Notice to Quit and the new requirements?

What is the position in other jurisdictions?

As previously highlighted, other jurisdictions have put in place longer notice to quit periods due to the COVID-19 pandemic. This section of the paper, however, concentrates on the **Notice to Quit process in other jurisdictions before the pandemic**. It also looks at what other jurisdictions are doing to **increase security of tenure including legislating for longer-term tenancies**, as is the case in Scotland.

Scotland

There are a number of different types of private rented sector tenancies in Scotland, each with their own requirements in terms of bringing a tenancy to an end. There are short assured tenancies, assured tenancies and the newer private residential tenancy.

Short-assured tenancies (i.e. most tenancies that began before 1 December 2017) are fixed term tenancies (i.e. for a specific period of time). If a tenant wishes to leave a short-assured tenancy after the tenancy runs out, they must give the landlord or letting agent at least 40 days' notice, although a tenancy agreement may specify a different notice period. If a landlord wants a tenant to leave they must provide the tenant with a written Notice to Quit and a section 33 notice which is a letter providing at least two months' notice that the landlord requires the tenant to move out. If a tenant refuses to leave after this period, then the landlord must seek a court order²¹⁰.

Assured tenancies are tenancies that started after 2 January 1989 and before the tenancy started the tenant was not given an 'AT5 notice' stating that the tenancy was a short assured tenancy. If a tenant wishes to leave an assured tenancy before the tenancy runs out they must give the landlord or letting agency either 28 days' notice if the tenancy was less than 4 months, or 40 days' notice if the tenancy was for more than 4 months. If the landlord wishes the tenant to leave the property they must issue the tenant with a 'Notice to Quit' and a 'Notice of Proceedings' (a written notice that they plan to start legal proceedings to get the property back). Importantly, the Notice of Proceedings has to explain which grounds for eviction the landlord is using in order to justify claiming the property back. This could be, for example, on the grounds of anti-social behaviour or where the landlord requires the property back so that they can move into it²¹¹.

In comparison, the pre-pandemic Notice to Quit periods in Northern Ireland offer many longer-term tenants in Northern Ireland a much longer Notice to Quit period than their short assured or assured counterparts in Scotland. Although it is important to note that some tenants, and indeed some landlords in Northern Ireland as in other jurisdictions, are not aware, or simply ignore, the legal Notice to Quit requirements.

²¹⁰ Information extracted from mygov.scot 'Short assured tenancies'. www.mygov.scot/ending-a-tenancy-as-a-landlord/short-assured-tenancies

²¹¹ Information extracted from mygov.scot. 'Types of tenancy'. www.mygov.scot/types-of-tenancy

What is interesting, however, is that Scotland has introduced a different type of tenancy, the [private residential tenancy](#) which is open-ended. This means that the landlord can no longer ask the tenant to leave the property because the fixed term has ended unless they use one or more of the [18 grounds for eviction](#) (see Table 5 for further details – note, however, there were temporary changes to the eviction process introduced due to the pandemic, see [here](#)²¹² for further details).

The legal requirements for landlords and tenants in respect of this type of tenancy are set out in the [Private Housing \(Tenancies\) \(Scotland\) Act 2016](#). A private residential tenancy must be used for all **new tenancies** created on or after 1 December 2017. The purpose of this new form of tenancy is to “improve security, stability and predictability” for tenants and to provide safeguards for landlords, lenders and investors. As well as offering longer term tenancy arrangements it is also said to offer other elements providing greater security of tenure:

- Protection from frequent rent increases – **rent cannot increase more than once a year** and tenants must be given at least three months’ notice of any increase;
- Any rent increase can be **referred to a rent officer** who will determine if the increase is fair;
- If a tenant has lived in a property for more than six months, the landlord must give **84 days’ notice to leave** (unless the tenant has done something wrong e.g. anti-social behaviour);
- If the tenant feels they were misled into moving out, they can appeal to the First-tier tribunal ([Housing and Property Chamber](#)) for a ‘**wrongful termination order**’. If the tribunal gives the order it can award up to six months’ rent in compensation; and
- Local authorities can apply to Scottish Ministers to **cap the levels of rent increases** in areas where rents are rising too much (i.e. [Rent Pressure Zones](#)²¹³). Note, however, there are as yet no designated Rent Pressure Zones in Scotland as there has been a number of difficulties around their introduction. For example, due to methodological difficulties in gathering the data necessary to make an application. The Scottish Government has indicated that it will be publishing a new draft Rented Sector Strategy by the end of 2021 and that Rent Pressure Zones will be reformed to make it a workable tool for local authorities²¹⁴.

²¹² Berry, K. Covid-19 Support for tenants and landlords. Scottish Parliament. SPICe Briefing. May 2021.

<https://digitalpublications.parliament.scot/ResearchBriefings/Report/2021/5/20/57b09f3e-0eb3-40a2-ae89-799ac28d0430>

²¹³ Further information on Rent Pressure Zones in Scotland is available at www.gov.scot/policies/private-renting/rent-pressure-zones/

²¹⁴ Scottish Parliament. Question S6W-00945. www.parliament.scot/chamber-and-committees/written-questions-and-answers/question?ref=S6W-00945

Table 5: Private Residential Tenancy in Scotland – Mandatory and Discretionary Grounds for Eviction²¹⁵

Mandatory Grounds	Discretionary Grounds
<p>There are 8 ‘mandatory’ grounds for eviction. This means that if a Tribunal agrees that a ground exists, the tenant must leave the property. The mandatory grounds are as follows:</p> <ol style="list-style-type: none"> 1. Landlord intends to sell the property (evidence will be needed to prove this). 2. The property is to be sold by the lender (the mortgage lender wants to repossess the property). 3. Landlord intends to refurbish the property (e.g. major works are to be carried out to an extent that a tenant could not live in the property). 4. Landlords intends to live in the property (e.g. evidence is required such a statement signed under oath in the presence of “Notary Public”) 5. Landlord intends to use the property for non-residential purposes (e.g. a business, evidence in the form of planning permission could be used). 6. Property is required for a religious worker (e.g. priest, nun, lay missionary, Imam etc. Ground can only be used if the property has been used previously for this purpose) 7. Tenant has a relevant criminal conviction (e.g. has used, or let the property be used for illegal purposes). 8. Tenant is no longer occupying the property (e.g. if the property isn’t be used as the tenants main or only home. Does not count if the landlord has failed in their duty to keep the property in good repair). 	<p>There are 8 ‘discretionary’ grounds for eviction. This means that even if the Tribunal agrees that the grounds exists, it still has to decide whether it will issue an eviction order.</p> <ol style="list-style-type: none"> 1. Landlord’s family member intends to live in the property as their only or main home for at least three months (e.g. evidence is required such as an affidavit). 2. Tenant no longer needs supported accommodation (i.e. if the tenant moved in because they had a need for community care and they have been accessed as no longer having that need). 3. Tenant has breached a term of the tenancy agreement (this doesn’t appear to rent arrears as there is a separate ground for this). 4. The tenant has engaged in relevant anti-social behaviour. The First-Tier Tribunal will consider the behaviour to decide whether to issue an eviction order. To use this ground, the landlord must apply to the Tribunal within a year of the conviction or behaviour taking place unless there is a reasonable excuse. 5. Tenant has associated in the let property with someone who has a criminal conviction. This person could be a sub-let, lodger of the tenant, someone the tenant lets in the property on more than one occasion. 6. Landlord has their registration refused or revoked. Landlords in Scotland must be registered – this could apply where the council has refused to enter the landlord in the register or removed them from the register. 7. Landlord has an HMO licence revoked (keeping tenants in the property after revocation would no longer be legal). 8. An overcrowding statutory notice has been served on the landlord.
Grounds that could be mandatory or discretionary	
<p>There are two grounds than can be either mandatory or discretionary, depending on the circumstances of the case.</p> <ol style="list-style-type: none"> 1. Tenant is in rent arrears over three consecutive months. Applies where a tenant has been in arrears for three or more months in a row. If the tenant still owes at least a month’s rent by the first day of the Tribunal hearing, the ground is mandatory and the Tribunal must issue an eviction order. The Tribunal must be satisfied that the arrears were not due to a delay or failure in the payment of a relevant benefit. If the tenant 	

²¹⁵ Information extracted from www.gov.scot/publications/private-residential-tenancies-landlords-guide/pages/grounds-for-eviction/

owes less than a month's rent (or is no longer in arrears) the ground is discretionary and the Tribunal will decide whether it is reasonable to issue an eviction order.

2. **Tenant has stopped being, or has failed to become, an employee.** This ground applies where the tenancy is associated with employment. The Tribunal will give an eviction order if the landlord applies within 12 months of the tenant no longer being an employee or the tenant never became an employee and they apply within 12 months of the tenancy starting. The Tribunal will have discretion to decide whether to issue an eviction order if a landlord applies on or after the date of 12 months after the tenant stops being an employee or the tenant never become an employees but the landlord applied on or after the 12 months after the tenancy started.

A paper published by the UK Collaborative Centre for Housing on '[Housing in Scotland: Evidence for the Scottish Government 2021-26](#)' notes private renting in Scotland has experienced an extraordinary growth in the last two decades which has been accompanied by a range of regulatory measures and new tenancy arrangements. It maintains that whilst this has been widely welcomed, some elements of the reform have been more successful than others. It identifies the open-ended tenancy with its specific rules for repossession and the end of no-fault evictions as one example of Scotland leading the way in the UK in terms of private rented sector reform²¹⁶.

Republic of Ireland

There are various types of private rented sector tenancies in the Republic of Ireland including fixed term tenancies. Interestingly, however, a "**Part 4**" tenancy runs alongside a fixed term tenancy which means that a tenant **can after a period of six months become entitled to stay in the property for 4 or 6 years**. However, this is dependent upon when the tenancy commenced. For tenancies that commenced after 24 December 2016, once a tenant has been in occupation for a continuous period of 6 months (and a valid Notice of Termination has not been served), they are entitled to remain in the property for a further 5 and a half years. For tenancies that commenced before 24 December 2016, their Part 4 rights will continue for three and a half years after the initial six months period²¹⁷.

In short, this means that irrespective of the length of the fixed term lease, a tenant has an entitlement to remain in the property beyond the expiration of the fixed term tenancy agreement. The landlord can only terminate the tenancy on limited grounds. However, there are other ways in which the landlord can claim back the property sooner. For example, the landlord could insert a "break clause" into the tenancy agreement, i.e. after the six month initial "probationary" period for tenancy, or say after a period of 18 months, which allows a landlord or tenant to bring the lease to an end prematurely²¹⁸.

²¹⁶ Gibb, K. & James, G. Housing in Scotland: Evidence for Scottish Government 2021-26. UK Collaborative Centre for Housing Evidence. April 2021. https://housingevidence.ac.uk/wp-content/uploads/2021/04/HousinginScotland_EvidenceforScottishGovernment_2021_26_FINAL.pdf

²¹⁷ Information extracted from the Residential Tenancies Board website. Fixed Term Tenancy. www.rtb.ie/beginning-a-tenancy/types-of-tenancies-and-agreements/fixed-term-tenancy

²¹⁸ Residential Tenancies Board. The Good Landlord/Tenant Guide: A Guide to the Residential Tenancies Act. www.rtb.ie/images/uploads/general/Being_a_Good_Tenant.pdf

Despite the introduction of longer-term tenancies in the Republic of Ireland, some landlords may, deliberately or through lack of knowledge, try to bring tenancies to a close prematurely. Landlords and tenants can seek advice, redress or mediation through a public body, known as the [Residential Tenancies Board](#)²¹⁹. There is no similar public body providing support to tenants and landlords in Northern Ireland although there are a number of bodies providing similar functions. For example, support provided by third sector bodies such as Housing Rights (e.g., through the Housing Advice NI website, the landlord and tenant helplines and the pilot mediation service).

Concluding remarks

The United Nations Human Rights Office of the High Commissioner maintains that security of tenure is a central component of the right to adequate housing. It states that without security of tenure, either in law or in practice, protection against forced eviction is made very difficult, particularly for vulnerable or marginalised groups²²⁰. This section of the paper has looked briefly at how Scotland and the Republic of Ireland have moved towards increasing security of tenure by legislating for longer-term tenancies.

The Minister for Communities has taken a number of steps to protect tenants during the pandemic, extending the 12-week Notice to Quit period until May 2022 is just one example. But there are many interlocking factors that could compromise the security of tenure for tenants beyond this. For example, the furlough scheme will come to a close at the end of September 2021 and the impact that this will have on redundancies will become clearer. The UK Government has taken the decision to end the £20 Universal Credit uplift in October 2021 which has been a lifeline for many households and will impact on the ability to afford the costs associated with rent, food and energy. Several Northern Ireland energy providers have announced significant increases to energy bills which will compound affordability problems for low-income households even further.

Demand for rental properties has increased and rental prices continue to rise. The ability of Local Housing Allowance to keep pace with rental increases is an important issue. Furthermore, many tenants have accumulated rent arrears during the pandemic. A clearer picture is needed on what this will mean for landlords in the longer term being mindful that the vast majority of local landlords are not property management businesses but rather owners of perhaps one or two rental properties. Security of tenure in the PRS was a significant issue pre-pandemic but the pandemic has exacerbated existing issues and created new challenges. However, it also provides opportunities look to at what other jurisdictions are doing and to develop a

²¹⁹ Residential Tenancies Board. www.rtb.ie/images/uploads/general/Being_a_Good_Tenant.pdf

²²⁰ United Nations Human Rights Office of the High Commissioner. Security of tenure, cornerstone of the right to adequate housing. www.ohchr.org/EN/Issues/Housing/Pages/SecurityOfTenure.aspx

more innovative approach to improving security of tenure in Northern Ireland in the short and long term.