



Department of
**Finance and
Personnel**
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REVIEW OF RATE LIABILITY IN THE DOMESTIC RENTAL SECTOR

**Public Consultation Paper
MARCH 2016**

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ABOUT THIS CONSULTATION

1. This consultation is about rates liability for domestic rental properties including the rates exemption for student halls of residence. The relevant legislation is found mainly in the Rates (Northern Ireland) Order 1977 (“the 1977 Order”).
2. This is both a complex area of public policy and an increasingly dynamic one. The context for such a review has also changed significantly in comparison to what it was only a few years ago with:
 - a marked reduction in home ownership and an increase in the private rented sector;¹
 - ongoing and forthcoming changes in the way social housing is provided;²
 - recent Welfare Reforms and new arrangements for payment of housing costs;³ and
 - the development of major new purpose built student housing in Belfast for Queens University, with private operators fulfilling demand for the relocation of the University of Ulster.
3. All of these transformational changes draw into question the continued relevance, affordability and last but not least, fairness of the current arrangements under the rating system. This is a system that has worked reasonably well, but the Department is aware of some misunderstandings and inconsistencies; not only in terms of the respective responsibilities of landlords and tenants but also the operation of the various rating allowances, reliefs and exemptions.
4. The Department intends to use this consultation to establish the case for change in this policy area with the aim of ensuring that arrangements:

¹ <http://pwc.blogs.com/northern-ireland/2016/02/northern-ireland-embraces-generation-rent-as-property-ownership-falls.html>

² <https://www.dsdni.gov.uk/articles/what-social-housing-reform-programme>

³ <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7389>

- **are fair**, not simply to those in the sectors concerned but to the wider body of ratepayers;
 - **are workable and affordable** (and that any allowances that are provided are no more and no less than they need to be);
 - **support the effective and efficient collection of rates**;
 - **ensure clarity of responsibilities** for rate liability for both landlords and tenants; and
 - **are consistent**, so that one type of landlord is not placed at a disadvantage compared to another type of landlord.
5. Responses to the consultation exercise will be made available on the Rating Policy Division's website. The results of the consultation exercise will be analysed and presented to the next Finance Minister and the Committee for Finance and Personnel (or its replacement Department) early in the new mandate. A paper setting out the main issues raised during consultation will then be published.
6. Decisions will follow in due course. As any reform is likely to require changes to legislation, this will be subject to Assembly scrutiny and control. Indeed, should this Department wish to introduce measures that are materially repercussive on the policies of other Departments these will be brought to the Northern Ireland Executive before then, for clearance.
7. The Department welcomes direct engagement with stakeholders throughout the consultation process and to that end individuals or organisations may wish to use the contact details provided in this section to arrange this once they have had a chance to review the Department's paper.
8. If you require any further information about this consultation exercise you should contact **Rating Policy Division** on **(028 9090 9325)**. The consultation paper can be made available, on request, in alternative languages and formats.

9. Should you wish to contact us by e-mail, any queries and consultation responses should be sent to: ratingpolicy.cfg@dfpni.gov.uk.

10. Written responses to this consultation should be sent to:

**Rating Policy Division
Carleton House
1 Cromac Avenue
Gasworks Business Park
BELFAST
BT7 2JA**

SECTION 1: BACKGROUND

11. This section of the consultation document will look at the background to liability for the payment of rates in the domestic rental sector in Northern Ireland. Policies that apply to this sector have evolved and grown over many years in response to changing circumstances. It is necessary to explain this in some detail before setting out what the arrangements are at present and what the options might be for change.

Background

12. Northern Ireland's rating system has been in place for over 160 years. It is based on the long established principle of **occupier based liability**. This reflects the purpose of rates as a funding source to help pay for both regional and local services.

13. Today the occupier remains liable to domestic rates in Northern Ireland in most circumstances. There are exceptions, however and these include:

- vacant properties, where the person entitled to possession is liable;
- compulsory landlord liability for houses assessed for rating purposes at £150,000 capital value or less (Article 20 cases); and
- voluntary landlord liability by agreement (Article 21 cases).

14. The last two categories form the main focus of this consultation paper.

15. Rating legislation⁴ however gives the landlord a statutory right of recovery of rates through the rent payments.

16. Although the landlord is liable for paying rates over to the Department, the actual imposition of rates falls on the tenant. The landlord is merely acting as a collection agent and in return receives an allowance. If this were not the

⁴ Schedule 8 of the Rates (NI) Order 1977 Order

case, there would be a strong argument for making these properties subject to business rates and taking them out of the domestic sector entirely.

17. Landlords assuming responsibility for the payment of rates has existed as a departure from the general rule of occupier liability for many years. The mechanism originally stemmed from a time of harsh social conditions for many in the late 1920s, when there were a great deal more factory workers, who were generally paid weekly and lived in the main on a week-to-week basis in rented accommodation. It was considered to be economically sound and efficient to compel landlords in these circumstances to collect rates along with the rent. This is because the cost of direct collection from the occupier would have been disproportionately high, in comparison with the small individual sums to be recovered in respect of each property.

18. Despite major social changes since then, the need for a “landlord rates payment mechanism” remains today given that the turnover of occupation in the private rented sector has not diminished. There is increased occupation in the sector by young professionals such as nurses, students and migrant workers. The people may be different but the problem of direct collection remains. Indeed, with housing affordability increasingly becoming a major issue, this more mobile element of Northern Ireland’s population continues to grow.

19. The rationale for making landlords liable for the payment of rates continues because landlords remain in a much better position to collect rates than a government agency.⁵ In most circumstances they are able to easily identify the occupier (their tenant) and will have an arrangement in place for the collection of rent to which the collection of rates can be easily appended.

20. The rules around landlord liability have changed over the years. As recently as 2015 the legislation was revised to remove the requirement to produce a tenancy agreement. This was done in order to simplify the system and make it

⁵ Currently Land and Property Services, which is part of Department of Finance and Personnel

clearer who is responsible for the payment of rates to Land and Property Services (LPS). The allowances were also standardised at 10% for compulsory landlord liability, voluntary agreements and between the social and private rented sectors, again with the objective of making the rules easier to understand.

SECTION 2: CURRENT PROVISION

21. This section looks at the current legislative provision in relation to the rating of the domestic rental sector. There are two types of landlord liability in rating legislation: **compulsory** and **voluntary**.
22. For those landlords (owners) who do not have a voluntary agreement with the Department to pay rates the liability will alternate between the tenant (occupier), during periods of occupation, and the landlord (owner), during periods of vacancy. This situation can still give rise to confusion between landlords and tenants, as well as difficulty in collection for the Department. There have been a number of cases in which tenants have paid landlords rates only to face a demand for unpaid rates from LPS where there is no such voluntary agreement. These situations can sometimes result in court cases between the tenant and LPS and/or cases being brought to the small claims courts by the tenant against the landlord in order to resolve disputes.

Current Provisions: Compulsory Landlord Liability (Article 20)

23. Currently, under the **compulsory liability** provisions, the landlord (owner) of a property is automatically responsible for the payment of rates on their rental property, instead of the occupier, where:-
- the capital value is £150,000 or less
 - the property comprises a house in multiple occupation (HMO) or
 - separate parts of the property are let as apartments or lodgings.
24. It follows that tenants pay where the capital value of the property is above £150,000 and the property is not an HMO or part let as lodgings; **unless** the landlord has entered into a voluntary agreement with LPS to pay the rates
25. Landlords (owners) responsible for rates payments under the compulsory provisions are given a 10% allowance (discount) if the full annual rates

amount is paid in full before 30 September. This date derives from a time when rates were paid in moieties (with 30 September being the date when the second moiety instalment was due), recognising that landlords were being asked to pay rates for the year but with only a 6 month period of inclusive rent to cover it.

26. The £150,000 value limit is there because similar collection difficulties do not arise with single household tenants in high value houses. Making all owners of tenanted property liable to rates would represent a fundamental shift in the long established principle of occupier based liability in the Northern Ireland rating system. This matter is set out in more detail later in this paper because it is an issue on which there tends to be contrasting views.

27. Prior to the introduction of capital values as the basis of valuing and rating domestic properties in 2007, a net annual value (NAV) threshold was used to establish rate liability and so valuation limits have always been a feature of landlord liability.

Current Provisions: Voluntary landlord liability (Article 21)

28. Under Article 21 landlords (owners) can also formally undertake to pay rates on their property through a **voluntary liability agreement** with the Department (LPS). This is available to all landlords (owners) provided the rent becomes payable or is collected at intervals shorter than quarterly. Where an agreement is entered into, an allowance (formally a “discount by way of allowance”) is provided subject to the bill being paid before 30 September of that year (or such other date as the Department may determine).

29. Legally it can take between 6 to 18 months before either the Department or a landlord (owner) is able to exit a formal voluntary agreement, meaning both are committed to that agreement for a longer term period.

Current Provisions: Landlord allowances

30. Over the years various reviews of landlord liability provisions and allowances have resulted in a number of changes and refinements to the level of allowance applied. These changes are summarised in the table below. The current allowance is 10% across all sectors for both compulsory and voluntary liability.

31. There are additional advantages in volunteering for liability. This is because the 10% allowance applies whether the property is occupied or not. Where a landlord has not volunteered for liability he or she will be liable at 100% for any period of vacancy under the Rating of Empty Homes policy⁶.

Year	Provision	Allowance	Reason for change
2007	Article 20	7.5%	No change since 1972
	Article 21	15%	Increased from 10% on recommendation of IRRV
2011	Article 20	7.5%	No change
	Article 21	12.5% (Private sector) 10% (NIHE & Housing Associations)	Reduced as a result of the rating of empty homes and removal of ability to claim periods of vacancy
2015	Article 20	10%	Complete standardisation of landlord allowance in connection with changes to provide clarity on rules surrounding liability.
	Article 21	10%	

Current Provisions: Supplementary

⁶ <http://www.nidirect.gov.uk/rating-of-empty-homes>

32. Under rating legislation⁷ a landlord who is liable to pay rates to LPS is legally entitled to recoup that payment through the rent, where there is a tenancy agreement in place.
33. In addition the legislation provides the Department (LPS) with the power to recover unpaid rates from landlords regardless of whether rates have been collected from the tenant via this mechanism.⁸ Similar provisions holding tenants responsible for rates unpaid by a landlord were repealed following consultation.⁹
34. The relevant legislative provisions referred to above are set out in the **Annex A** to this paper as amended.
35. An overview of the current rental market using the latest data is presented at **Annex B**.

Current Provisions: Student Rental Accommodation in Halls of Residence

36. Student rental accommodation within University run Halls of Residence has been exempt from rates liability since 1 April 2007. The policy to exempt Halls was introduced by Direct Rule Ministers at the same time as a new rate relief for domestic properties which were occupied in their entirety by persons who were in education and training or who had just left care, commonly known as student rate relief
37. This rate relief was regarded as a way of protecting students from the impending imposition of domestic water charges, a policy which did not proceed when devolved government was restored. At that time the exclusions that were proposed for domestic charges mirrored the various rate reliefs.

⁷ Schedule 8 (paragraph 2) of the 1977 Order

⁸ Article 22 of the Rates (Northern Ireland) 1977

⁹ Financial Provisions Act (Northern Ireland) 2014

38. This much wider rate relief for students (which at that point provided domestic rented accommodation occupied wholly by students¹⁰ 100% rate relief) was the subject of a review in 2008 following the (restored) Executive's Review of Domestic Rating. That review found that student rate relief to be ineffective, overly complex and most importantly there was no evidence that the benefit of the rate relief passed from landlords to their student tenants. The scheme was abolished in 2009, however, **the Halls of Residence exemption was retained.**

39. The exemption for halls of residence did not present the same issues around 'benefit transfer' as private rented accommodation. There remains a legal requirement on Universities to "pass through" the benefit of rates exemption through lower accommodation charges to students and this was considered to be more easily monitored in an institutional environment. It was also kept as a policy to help encourage the supply of halls of residence, owned and managed by universities.

¹⁰ People in full time education, training or leaving care.

SECTION 3: FOCUS OF REVIEW

40. Having explained the background to the various policies and the current arrangements, the following section looks at the issues that lie at the heart of this review.

Issue 1: Rating liability in the domestic rental sector

41. A number of contributions received during the 2013 review of landlord liability (which was aimed at promoting greater clarity in this area) argued that the proposed changes did not go far enough. The main area of contention at that time was the fundamental issue of whether the landlord or tenant should be liable for the payment of rates. It is clear that a number of organisations hold diametrically opposed views on this subject. Other issues which arose in consultation responses included landlord discount and communication between landlords, agents and tenants.

42. A number of respondents referred to complications in the system and the confusion which continues to exist in regard to legal liability, in particular in the overlap between rating legislation and contract law. In light of all of these issues the Department accepts that there is a need for a more fundamental review.

43. This is in keeping with a statement made by the (then) Finance Minister Simon Hamilton, MLA during an Assembly debate on 2 March 2015¹¹

“...the rating system that has served us and previous Administrations for over 160 years is founded on the principle that the occupier pays. That works pretty well, given that rates are a charge for regional and local services. However, there are practical difficulties in strictly adhering to the principle when it comes to rented domestic property, because of the problems associated with recovering unpaid rates from tenants, who tend to move about more

¹¹ To affirm the Rates (Owners Allowances) Order (Northern Ireland) 2015 which implemented the unified landlord allowance of 10%.

in lower- and average-value houses. That is not a new phenomenon, which is why landlord allowances are a long-standing feature of the domestic rating system here. Various discounts are given to landlords in return for collecting rates from tenants and passing them on to Land and Property Services (LPS). It helps revenue collection. At the moment, the allowances vary, depending on whether they relate to compulsory or voluntary landlord liability, and there are differences between the private rented sector and the social rented sector.

Members may well jump to the conclusion of asking why we should give landlords anything by way of discount. I can understand why Members might think that, but I reiterate that, in essence, rates are an occupier-based charge. Even if the landlord is liable to hand over payment to LPS, the tenant still pays the rates through the rent, and the landlord is effectively acting as a collection agent.

There is another key point to make — one that sometimes gets drowned out — which is that landlords' representatives have consistently told us that they do not want anything to do with rate collection. Their preference is to have no liability at all for the payment of rates to the Department, as is the case in the rest of the UK with council tax. Therefore, to impose a duty on a landlord to collect rates, as part of the rent, from the person who lives in the house and not make an allowance for it would represent a major shift in policy. It is not something that we can contemplate without undertaking a lot more research and consultation. For that reason, I wish to initiate a fundamental review of the whole policy area later this year, and I have asked my Department to factor that into its plans.”

Landlord allowances

44. Landlord allowances are a long standing feature of the domestic rating system. The allowance mechanism, through which a landlord receives a discount for rates paid before a certain date, is intended to compensate a landlord for the risk of default and for any costs associated with collecting the relevant amounts. It must be recognised, however, that landlords will already be collecting rents along with rates from their tenants and in many cases will receive a direct payment of Housing Benefit including an element for rates. While there is a lack of evidence on the additional costs actually incurred by

landlords in undertaking this task, it is understood that landlords do face additional costs to varying degrees and Ministers have been clear that any change to this position would require thorough research and consultation.

45. This review presents a good opportunity to look more closely at the continued need and level of such allowances and at what additional costs are incurred by landlords where collection of rates is undertaken.

46. Landlord allowances are payable in both the private and social rented sectors. The table below shows the current distribution in the private rented sector*:-

	Article 20 Occupancies	Article 21 Occupancies	Total Landlord Occupancies
1 April 2015	31,477	61,522	92,999

The total cost to the Department of landlord allowance across all sectors in 2014/15 was £10.7million.

Cost of Collection vs. Allowance: the Private Rental Sector Landlord

47. It continues to be difficult to ascertain the exact cost to a private sector landlord of collecting rates on behalf of the Department, and this will vary depending on the quantum and nature of the landlord's property portfolio. A number of landlord bodies have however commented that the reduction of the allowance to 10% has resulted in their costs outweighing the discount. The Landlords Association of Northern Ireland has commented on this issue noting that many landlords appoint an agent who charges a fee.

Cost of Collection vs. Allowance: the Social Rental Sector Landlord

48. The Northern Ireland Housing Executive and Housing Associations have a high number of tenants receiving full and partial housing benefit. Those receiving full housing benefit will have their rates paid directly to LPS

bypassing the administrative systems of NIHE or the relevant housing association. It could therefore be argued that collection costs for this sector are significantly lower in term of administrative issues.

49. NIHE received £3.9M in landlord allowance in 2014/15 and housing associations received £1.7M. The Department is considering the merit of continuing to award the current level of landlord allowance to this sector and discount in particular. It will be undertaking further research to establish if this is warranted and necessary.

Cost of Removing Landlord Liability

50. In 2014/15 the Department paid the landlord sector £10.7M in landlord allowance. The removal of landlord allowance whilst retaining landlord liability would remove the incentive for landlords to sign up to voluntary agreements (Article 21) with the Department. Currently, there are over 60,000 Article 21 occupancies, and the statement of voluntary liability usefully facilitates debt recovery if this should be necessary at a later stage.

51. A radical solution (that would obviously reduce the cost) would be to remove landlord liability entirely. This would make the tenant liable in all cases, thus negating the need for an allowance. This option would then be a saving to the Department as a result of the removal of landlord allowance. However this saving could be lost in additional administration and recovery costs to LPS stemming from the increased work involved in identifying those liable and the increased risk of default and therefore loss of revenue.

52. NILGA representatives have suggested that in order to assist LPS in identifying the liable party a landlord could be made legally responsible for informing LPS of a new tenant. It should be noted however that this may be difficult to enforce and the information provided needs to be accurate as it will form the basis of any legal recovery action taken by the Department.

Landlord/Tenant Communication

53. Irrespective of any change to landlord liability resulting from this review it is likely that a number of issues will continue to merit further consideration. By its very nature any kind of property relationship which involves two or more parties is likely to lead to confusion about the ultimate responsibility for rates payments.
54. Responding to the 2013 consultation a number of respondents referred to the complexity which would remain despite the simplification measures proposed at that time. For example, the tenant might not know the capital value of the house he was renting, or the implications if that was more than £150,000.
55. Many respondents to the 2013 consultation suggested that confusion will still exist in regard to liability and whether it was determined by the Rates Order or by contract law as articulated mainly through tenancy agreements. It was felt that most tenants did not know the breakdown between rent and rates or whether rates were included in the charge. Many tenants might reasonably assume that rates were included in their monthly charge which could lead to an arrears situation.
56. Evidence collected over the years points to the current split between landlord and tenant liability leading to confusion and in some cases to very difficult situations including in some instances painful recovery processes. This issue strongly reflects the need and importance of a clear and easily understood tenancy agreement clarifying the rates liability and the arrangements for meeting this in each property.
57. A theme throughout responses to previous consultation exercises was the need for transparency and simplicity in arrangements between landlords and tenants, many feeling that tenants did not always receive all of the information to which they were entitled from their landlords. This is to some extent supported by the findings contained in the NIHE Research document 'Living in the Private Rented Sector: The experiences of tenants' (June 2014) which outlined the following:

- 68% of tenants had a written tenancy agreement.
- 5% were not given a copy of any agreement.

Likewise landlords are legally obliged to provide a rent book to their tenants, free of charge. Despite this:-

- 73% of tenants were not provided with a rent book.
- 5% of tenants were charged for their rent book.
- In 11% of cases the rent book was not the standard rent book and did not contain the tenants' rights and responsibilities.

58. Since this research was completed, over 40,000 private landlords have registered under the NI Private Landlords Registration Scheme. On registration each landlord received a Toolkit highlighting their rights and responsibilities. Despite this compliance issues still exist in relation to some landlords fulfilling their statutory responsibilities in this area.

59. From these figures it is clear that a substantial number of tenants do not have a written record of their rights and responsibilities as a tenant in the private rented sector or of any specific obligations on the part of their landlord.

60. In relation to the Social Rented Sector the Department for Social Development's Social Housing Reform Programme is Northern Ireland's first major review of social housing. The Programme vision is to create *"housing structures that support the provision of social and affordable homes, in successful communities where people are proud to live."* Earlier, in 2015, the Programme published a tenant participation strategy and a new regulatory framework for public consultation. A public consultation and draft Equality Impact Assessment on the development of a social housing rent policy are expected to follow shortly. The programme will produce principles for local government engagement, and subsequently, options for the future delivery of social housing.

61. Other steps may be taken to increase awareness among those involved in the letting process who engage with both landlords and tenants. The Department is of the view that regardless of the outcomes of this consultation that a further process of engagement with the letting and estate agents would be a useful undertaking.

SECTION 4: RATES LIABILITY IN RENTAL SECTOR: POLICY OPTIONS

62. The issue of landlord liability has always been a complex one which divides opinions. This section will now look at the policy options available to the Department in addressing the issues presented. It also provides a high level assessment of the “pros and cons” associated with each option. The pros and cons are those which occur to the Department and therefore they are not exhaustive lists. It is hoped that the consultation will supplement these.

OPTION 1 – NO CHANGE

63. Continuing with landlord liability provisions as they currently stand has the advantage of providing stability for both landlords and tenants. It is less than a year since the last changes were made and therefore it remains difficult to assess whether these changes have helped improve understanding. During the last consultation it was, however, clear that many of those affected by these provisions did not feel the changes went far enough. Some were of the opinion that there was still residual confusion over liability. Difficulties could also arise with the introduction of Universal Credit and rate relief being paid directly to the landlord.

PROS
<ul style="list-style-type: none"> ▪ Retains the status quo and allows for some stability – no need to communicate further change to ratepayers. ▪ Allows for a longer testing period for changes made in April 2015. ▪ Accepts that the occupancy based system should only see a departure to owner liability in certain circumstances. ▪ Current threshold tied to last domestic revaluation process. ▪ This approach is consistent with historical rationale and is therefore relatively easily explained.
CONS
<ul style="list-style-type: none"> ▪ There is still an element of doubt as the landlord is not automatically liable.

- Difficulties with rate support provisions going through the landlord.
- The rules still require a level of explanation.
- Does not meet the needs of those who want all owners (landlords) to be liable.
- Goes against the feeling of the landlord sector who would prefer the tenant was liable in all cases.
- Levels of landlord allowance may be too generous.

OPTION 2: INTRODUCE A HIERARCHY OF LIABILITY

64. Under Council Tax Local Authorities in GB use a system called the *hierarchy of liability* to work out who is the liable person. The person at the top, or nearest to the top, of the hierarchy is the liable person. Two people at the same point of the hierarchy will both be jointly liable. The hierarchy is set out in section 6 of the Local Government Finance Act 1992¹². Introducing a similar hierarchy in NI would provide LPS with a legal framework through which to recover rates on properties where the liable person is not immediately identifiable. However the actual process of identifying the liable party could still be costly and time consuming.

PROS
<ul style="list-style-type: none"> ▪ Provides legal cover for the Department to obtain rates in circumstances where the ratepayer is not easily identifiable.
CONS
<ul style="list-style-type: none"> ▪ May not improve understanding among tenants unless well communicated by the Department and Landlords. ▪ Could be costly to the Department in identifying correct ratepayer. ▪ Does not address all the issues with landlord liability unless implemented in conjunction with other changes.

OPTION 3: NO CHANGE BUT REMOVE LANDLORD ALLOWANCE

¹² <http://www.legislation.gov.uk/ukpga/1992/14/section/6>

65. The level of landlord allowance provided by the Department has been discussed in this paper (Section 4). It has been accepted that there are certain administrative costs associated with collection of rates which are borne by the landlord. However, these costs will vary depending on the transience of tenants. It has been suggested that the social rental sector and housing associations will have significantly lower administrative costs. This is because they generally have less transient tenants the majority of whom will receive full or partial housing benefit through which rates will be paid directly to LPS. Therefore, there may be justification for treating the social rented sector differently from the private rented sector in terms of landlord allowances.

PROS
<ul style="list-style-type: none"> ▪ Retains the status quo and allows for some stability – no need to communicate further change to ratepayers. ▪ Allows for a longer testing period for changes made in April 2015. ▪ Accepts that an occupancy based system prevails but with defined exceptions ▪ Current threshold tied to last domestic revaluation process ▪ This approach is consistent with historical rationale and is therefore relatively easily explained. ▪ Saving for the Department.
CONS
<ul style="list-style-type: none"> ▪ No compensatory element for landlords. ▪ There is still an element of doubt as the landlord is not automatically liable. ▪ Difficulties with rate support provisions going through the landlord. ▪ The rules still require a level of explanation. ▪ Does not satisfy those who want all owners (landlords) to be liable. ▪ Goes against the feeling of the landlord sector who would prefer the tenant was liable in all cases.

- Danger of a reduction in the number of landlords entering into Article 21 agreements.
- Increased Departmental collection cost and rating debt levels.

OPTION 4: REMOVE £150,000 THRESHOLD FROM ARTICLE 20

66. This option (which in practice is similar to Option 5 but requires less structural changes to legislation) was favoured by some respondents to the 2013 consultation who believed that the changes made at that time would not go far enough to clarify whether the landlord or the tenant was liable in certain situations. This option would retain both Article 20 and 21. Under Article 20 (i.e. the provision which defines which landlords fall within compulsory liability) landlords only receive the 10% allowance during periods of occupation. The advantage to a landlord of signing an Article 21 agreement with the Department is that the allowance is paid irrespective of occupancy.

67. This solution is a radical one and would result in all landlords being liable for the collection and payment of rates on their properties. Universal and compulsory landlord liability would beg the question whether the investment nature of a landlord’s interest is such that it should be liable for non domestic rates instead of domestic rates. This consideration applies to option 5 as well.

PROS
<ul style="list-style-type: none"> ▪ Clear to LPS who is liable for rates. ▪ Clear for landlords and tenants – easy process to communicate. ▪ May provide links to land tax registry systems in LPS for recovery purposes but this is likely to be limited. ▪ Clear lines for tax recovery purposes. ▪ Will not involve major redrafting of existing legislation.
CONS

- Such a change would represent a fundamental shift in the nature of rates which is 'local resident' based.
- Loses clear line of accountability that exists - currently landlords are merely collecting rates from tenants with the rent. Universal landlord liability may lead to landlords passing on the imposition of rates to their tenants in different ways and this may require control measures to avoid exploitation.
- Creates a “de facto” system of owner liability for rates.

OPTION 5: UNIVERSAL OWNER LIABILITY

68. This option would go a step further than Option 3 by introducing the concept of owner liability into legislation as the **default** position rather than an exception to the rule of the occupier being liable. Rather than the occupier being liable the owner becomes liable. This would be a move away from long established rating principles and would involve redrafting rates legislation.

PROS

- Clear to LPS who is liable for rates.
- Clear for landlords and tenants – easy process to communicate.
- May provide links to land tax registry systems in LPS for recovery purposes but this is likely to be limited.
- Clear lines for tax recovery purposes.

CONS

- Departure from a general occupancy based system (with exceptions).
- Removes the principle that an element of rates paid is a charge for services and makes the charge purely a property tax.
- Will involve heavy redrafting of rates legislation
- Loses clear line of accountability that exists - currently landlords are merely collecting rates from tenants with the rent. Universal landlord liability may lead to landlords passing on the imposition of rates to their tenants in different ways and this may require control measures to avoid

- exploitation.
- Creates a “de jure” system of owner liability for rates which is at odds with historic position where the occupier pays.

OPTION 6: TENANT LIABILITY FOR PAYMENT

69. During the 2013 consultation landlords and bodies representing landlords requested that landlord liability be removed completely. They argued that this follows practice in the rest of the UK where, under Council Tax provisions, the occupier is liable for payment. However, again this approach is a step away from long established provision in Northern Ireland and would be very unpopular with tenant bodies.

PROS
<ul style="list-style-type: none"> ▪ Clear for LPS who is liable. ▪ Landlord sector would be satisfied with this arrangement. ▪ Easier to pay out rates support. ▪ There would be a saving to the Department on landlord allowance. ▪ Approach consistent with the general principle of occupier liability. ▪ A similar position to the rest of the UK.
CONS
<ul style="list-style-type: none"> ▪ Increases administration cost for LPS as rates will be collected from multiple ratepayers as opposed to one payment for each landlord portfolio. ▪ Difficulty of identifying liable party in cases of frequently transient tenants. ▪ Potentially significant revenue losses due to difficulty of recovering arrears within the recovery cycle and in past ratepayer arrears. ▪ Departure from the historic position in Northern Ireland. ▪ Does not entirely eradicate the complexities inherent where two parties are involved with a property.

SECTION 5: HALLS OF RESIDENCE EXEMPTION

70. This section looks at a separate but not unrelated issue of the rating of student rental accommodation in Halls of Residence.

Current System

71. Currently in order to qualify for exemption the halls of residence must satisfy certain criteria.¹³ The qualifying criteria is that Halls must:

- be predominantly for the accommodation of students or trainees, who satisfy certain criteria; and
- be owned or managed by either:-
 - the Queen's University of Belfast,
 - the University of Ulster,
 - St Mary's University College, Belfast,
 - Stranmillis University College, Belfast or
 - the Department of Agriculture and Rural Development

or be the subject of an agreement allowing these bodies to nominate the majority of persons who are to occupy all the accommodation so provided.

72. However, in recent years and months there has been a transformation occurring in this sector due to the recent growth of new purpose built developments by both Universities and private operators (some as joint ventures).

73. The new developments will increase competition for tenants between the traditional university owned halls of residence and the new developments

¹³ Provided by the Rate Relief (Education, Training and Leaving Care) Regulations (NI) 2007 as amended with savings by the Rate Relief (Education, Training and Leaving Care) (Revocation and Savings) Regulations (NI) 2009.

landlords and also between the new developments landlord and the more traditional student houses landlords. This raises the question of the fairness of the exemption in relation to university controlled halls of residence and other landlords.

74. The continuation of the current exemption is the matter in question, it is not suggested that the exemption should be extended or relaxed.

Students place demands on public services and it is still considered appropriate that they make a contribution to the cost of those services.

75. Although many may be unaware of the fact, tens of thousands of full time students living away from home already pay rates through their rental payments to landlords in private rented accommodation. The number of students housed in University run Halls of Residence, which are rate exempt, is small by comparison and 'in the low thousands'.

76. This escalating development activity draws into question the appropriateness, indeed the consistency, of continuing with the current policy. As noted in earlier sections, the factors that existed when the halls of residence exemption was first introduced in 2007 (and then retained in 2009) may not be as relevant today.

77. As things stand, the new private halls being built in and around Belfast City Centre are unlikely to qualify for the exemption from rates unless any of the named bodies nominate the majority of persons who are to occupy the accommodation and the saving is passed on to the students.

78. Unlike the preceding section on landlord liability, **the options on which views are sought are straightforward: either retain Halls of Residence rates exemption or abolish it.**

SECTION 6: CONSULTATION QUESTIONS

QUESTIONS – LIABILITY FOR RATES PAYMENT IN THE DOMESTIC RENTAL

SECTOR:

1. Who should be liable for the payment of rates to LPS, the landlord or the tenant?
2. Which, if any, of the policy options proposed in Section 4, reflects your preference?
3. In relation to the answer(s) provided for Question 1 and 2 above, please detail your reasons.
4. If landlords are to continue to be subject to a category of compulsory liability (as is currently the case under Article 20) should there be a capital value threshold?
5. If you think that there should be a capital value threshold, is the present level of £150,000 too low or too high?
6. If the valuation threshold for compulsory liability in Article 20 were to be removed then what implications do you think this would have for the voluntary arrangement mechanism provided by Article 21?
7. Should landlords be paid a collection allowance?
8. Should social sector landlords be paid an allowance?
9. Should any housing body be paid an allowance?
10. Does the Department provide clear guidance on liability in the landlord sector?
11. Do third parties, such as letting agents provide landlords and tenants with an accurate view of the legislation in this area?
12. What further methods could the Department employ to ensure that there are clear lines of responsibility for rates payments in this sector?
13. How can the method outlined be both fair and contribute to effective collection?

14. How can the Department best deal with private contractual agreements made between landlords and tenants that go against rating law?

QUESTIONS HALLS OF RESIDENCE

15. Do you consider that University run Halls of Residence should continue to get special treatment (full exemption) under the rating system?

ANNEX A - CURRENT LANDLORD LIABILITY PROVISIONS

EXTRACTS FROM THE RATES (NORTHERN IRELAND) ORDER 1977 (AS AMENDED)

20. Rating of owners instead of occupiers in certain cases

1.—(1)▶⁽¹⁴⁾ (1) Subject to the provisions of this Order, rates shall be payable by, and levied on, the owner, instead of the occupier, of a hereditament if any of the following sub-paragraphs applies—

- (a) the net annual value of the hereditament does not exceed £750 ▶⁽¹⁵⁾ (where the hereditament does not have a net annual value and a capital value)◀;
- (b) the capital value of the hereditament does not exceed ▶⁽¹⁶⁾£150,000◀;
- (c) both the following conditions are satisfied—
 - (i) the rent of the hereditament is payable or is collected at intervals shorter than quarterly or the tenancy agreement (if any, and all of them if more than one) does not provide when it is payable or collected; and
 - (ii) ▶⁽¹⁷⁾its net annual value does not exceed £1,590◀;
- (d) separate parts of the hereditament are let as apartments or lodgings; or
- (e) the hereditament consists of or includes a house in multiple occupation.

(1A) Where a hereditament has a net annual value and a capital value, the conditions in sub-paragraphs (b) and (c)(ii) of paragraph (1) must be satisfied, but ▶⁽¹⁸⁾the condition set out in sub-paragraph (c)(i) of that paragraph does not apply in relation to such a hereditament◀.

(1B) In paragraph (1)(e) “house in multiple occupation” has the same meaning as in Part IV of the Housing (Northern Ireland) Order 1992 (NI 15) except that—

- (a) a person under the age of 16 shall not be treated as a qualifying person for the purposes of that definition; and
- (b) paragraphs (5) and (6) of Article 31AA shall apply for the purposes of determining whether a person is a member of another person’s family for the purposes of this paragraph as they apply for the purposes of that Article.◀

(2) Where any owner is rated under this Article, he shall be entitled to such relief in respect of any non-occupation of the hereditament as he would have been entitled to receive had he been rated as the occupier in respect thereof.

(3) Notwithstanding anything in paragraph (1), so long as a person who has wilfully entered upon a hereditament ▶⁽¹⁹⁾ for “such as is mentioned in sub-paragraph (a) of that paragraph” substitute “to which (subject to paragraph (1A)) sub-paragraph (a), (b) or (e) of paragraph (1) applies”◀ with intent wrongfully to take possession of, or use, the hereditament is in occupation of the hereditament without the permission of the owner, that person, and not the owner, shall be chargeable to rates in respect of the hereditament.

⁽¹⁴⁾ Article 20(1) to (1B) was substituted, for paragraph (1), by Article 35(2) of the 2006 Order, previously amendment by Schedule to S.R. 1997 No. 144 and Schedule to S.R. 2003 No. 73

⁽¹⁵⁾ Words inserted by section 3 of the 2014 Act.

⁽¹⁶⁾ Words substituted by section 3 of the 2014 Act.

⁽¹⁷⁾ Words substituted by section 3 of the 2014 Act.

⁽¹⁸⁾ Words substituted by section 3 of the 2014 Act.

⁽¹⁹⁾ In Article 20(3) words substituted by Article 35(3) of the 2006 Order

(4) There shall be allowed to each owner who is rated under this Article and pays the amount due from him on account of the rate on or before the date of the expiration of—

(a) half the year for which the rate is made ►⁽²⁰⁾◄ ; or

(b) one month from the date of service of the demand note on which the rate is levied;

whichever is the later, an allowance equal to ►⁽²¹⁾10 per cent. ◄ of the amount payable.

►⁽²²⁾ (5) The Department may by order made subject to affirmative resolution substitute a different limit for any limit specified in paragraph (1)(a), (b) or (c)(ii); but any such order shall not affect any person's liability for rates for any period before the coming into force of the first new valuation list to come into force after the date of the order, being a valuation list relevant to the net annual value or capital value of the hereditament in question. ◄

21. Payment or collection of rates by owners by agreement

2.—(1) The owner of any hereditament the rent of which becomes payable or is collected at intervals shorter than quarterly may by agreement in writing with the Department undertake ►⁽²³⁾ that he will pay the rates chargeable in respect of the hereditament whether it is occupied or not ◄ and the Department may agree, where the owner so undertakes and pays over to the Department on or before the date or dates specified in the agreement the amounts payable by him thereunder, to make him an allowance not ►⁽²⁴⁾ exceeding ►⁽²⁵⁾ 10 per cent. of the amount payable ◄.

(2) An allowance made under paragraph (1) in respect of any hereditament to an owner who is rated under Article 20 shall be in substitution for any allowance to which he might otherwise have been entitled in respect of that hereditament under that Article.

(3) An agreement entered into under this Article shall continue in force until determined by notice served either by the Department on the owner or by the owner on the Department, and, in the event of a change in the ownership of any hereditament while the agreement is in force, shall continue to be binding upon the new owner as if it had been made by him.

(4) A notice for the purposes of paragraph (3) shall take effect only on the expiration of a year and shall be given not less than six months before the expiration of that year.

⁽²⁶⁾

22. Provisions supplementary to Articles 20 and 21

3.—(1) Where in the case of any hereditament the owner is rated in respect thereof in pursuance of Article 20, or has undertaken in pursuance of Article 21 to pay or collect the rates charged in respect thereof, the amount due from him on account of those rates shall be recoverable by the Department from him in like manner and subject to the like conditions as rates payable by the occupier of a hereditament (not being an occupier by whom a notice under Article 29 of his election to pay rates by instalments has been given and is for the time being in force) are recoverable from the occupier.

⁽²⁰⁾ In Article 20(4)(a) words omitted by Article 3(2) of the 1983 Order

⁽²¹⁾ Inserted by S.R. 2015 No. 46, Article 2.

⁽²²⁾ Article 20(5) was substituted by Article 35(3) of the 2006 Order

⁽²³⁾ In Article 21(1) words substituted by Article 4(a) of 1998 Order

⁽²⁴⁾ In Article 21(1) words substituted by Article 4(a) of 1998 Order

⁽²⁵⁾ Inserted by S.R. 2015 No. 46, Article 2.

⁽²⁶⁾ Article 21(5) and (6) repealed by Schedule 3 to the 1998 Order

(2) The Department may serve on an owner who is rated under Article 20 instead of the occupier or who enters into an agreement with the Department under Article 21 a notice requiring him to state to the Department in writing, within a period and in the manner specified in the notice,—

- (a) the names and addresses of the occupiers of the hereditaments in respect of which he is so rated or has so agreed; and
- (b) such particulars with respect to the periods for which any of those hereditaments have been unoccupied and with respect to the amount which he has failed to collect from the occupiers as the Department may require for the purpose of enabling it to determine what amount is properly due from the owner under Article 20 or 21;

and the owner shall comply with the notice.

(3) Where the name of any person liable to be rated as owner of any hereditament is not known to the Department, it shall be sufficient to assess him to the rate by the description of the "owner" of the hereditament (naming it) in respect of which the assessment is made, without further name or description.

►⁽²⁷⁾ (4) The Department may by order direct that for any percentage mentioned in Article 20(4) or 21(1) there shall be substituted such other percentage as may be specified in the order.

►⁽²⁸⁾(4A) In paragraphs (4B) and (4C) "existing agreement", in relation to an order under either of those paragraphs, means an agreement under Article 21 which is in force on the commencement of the order under that paragraph.

(4B) Where the Department makes an order under paragraph (4), the Department may by order direct that for any percentage specified in an existing agreement there shall be substituted such other percentage as may be specified in the order under this paragraph.

(4C) The Department may by order direct that for any percentage mentioned in an existing agreement in respect of a hereditament of a class specified in the order there shall be substituted such other percentage as may be specified in the order.

(4D) The power conferred by paragraph (4C) is exercisable whether or not it is exercised in consequence of an order under paragraph (4) ◀

(5) An order under paragraph (4), ►⁽²⁹⁾(4B) or (4C) ◀ shall be subject to affirmative resolution and shall have effect from the beginning of the year after that in which it is made. ◀

⁽²⁷⁾ Article 22(4) and (5) was added by Article 4 of the 1981 Local Government, Planning and Land Order

⁽²⁸⁾ Article 22(4a,b,c,d) was added by Section 12(2) of the 2009 Act.

⁽²⁹⁾ Article 22(5) was amended by Section 12(3) of the 2009 Act.

SCHEDULE 8

Article 25

INCIDENCE OF RATES

Occupiers, generally, not to deduct rates from rent

1. Except as provided in this Order, the occupier of a hereditament shall not be entitled to deduct from his rent any part of a rate.

Contracts or covenants for payment of rates

2. Without prejudice to the provisions of this Order with respect to the chargeability of persons to rates, a contract or covenant may provide for the payment by any person (whether by allowing a deduction from rent or otherwise) of any rate payable by any other person, and paragraph 1 shall not restrict the right of any person to claim the benefit of any such contract or covenant.

Incidence of rates in consequence of Article 20

3.—(1) Where the rates are payable by the owner under Article 20 in respect of any hereditament in the occupation of a tenant under a contract of tenancy, then—

- (c) if the contract was made before Article 20 came into force, or before any transferred provision corresponding to that Article which was repealed by or under the 1972 Order or by this Order came into force, in relation to the hereditament, the tenant shall repay to the owner all sums paid by the owner during the continuance of the tenancy on account of rates which would, but for that Article, have been payable by the tenant under the contract of tenancy;
- (d) if the contract was made after Article 20 came into force, or after any such transferred provision as aforesaid came into force, in relation to the hereditament, and the owner pays any sum in respect of rates which, under the contract of tenancy as between the owner and the tenant, the tenant is liable to pay, the tenant shall pay to the owner the amount of the rates so paid;

and every sum payable by the tenant to the owner by virtue of the provisions of this sub-paragraph may be recovered, if not paid upon demand, as arrears of rent could be recovered from the tenant by the owner.

(2) Where, under the terms of any contract of tenancy made, after Article 20 comes into force, for the letting of any hereditament to which that Article applies or under the terms of any such contract made after any transferred provision corresponding to that Article which was repealed by or under the 1972 Order or by this Order came into force in relation to the hereditament, the sum made payable under the contract is inclusive as between landlord and tenant of all sums payable for rates, and after the date of the contract the amount of the rates payable in respect of the hereditament is increased or reduced, then—

- (e) the sum so made payable as rent shall be increased or reduced, as the case may be, by the amount of every such increase or reduction in the sum payable by the landlord for rates in respect of the hereditament and attributable to the period during which such rent accrued; and
- (f) where any such rent is made payable for a period or periods of less than one year, the proper proportion of such increase or reduction in rates shall be paid or allowed, as the case may require, on the occasion of each payment of rent; and
- (g) any such increased or reduced rent shall be recoverable in the same manner as the rent reserved by the contract of tenancy; provided that, for the purpose of the summary recovery of possession of any such premises as aforesaid under any transferred provision, the amount of the rent shall be deemed to be the amount computed by deducting the amount of the rates from the total sum payable in respect of rent.

(3) In every contract of tenancy made, after Article 20 comes into force, for the letting of any hereditament to which that Article applies and in every contract of tenancy made after any transferred provision corresponding to that Article which was repealed by or under the 1972 Order or by this Order came into force in relation to the hereditament to which the contract relates, any rent reserved by the contract shall be deemed to be inclusive of rates unless a contrary intention appears from the contract.

(4) Any reference in this paragraph to Article 20 coming into force includes, in relation to hereditaments brought within the application of that Article by virtue of an order under paragraph (5) of that Article, a reference to that order coming into force.

Deductions from inclusive rents in respect of rate exemption or relief

4.—(1) Where—

- (h) a change in the law determining the rateable value of hereditaments of any description, or of hereditaments generally, comes into operation so as to alter the rateable value of a hereditament, and
- (i) the hereditament is occupied by a tenant under a contract of tenancy made before the alteration in the rateable value takes or took effect, by virtue of which—
 - (i) the landlord has undertaken to pay the rates in respect of the hereditament, and
 - (ii) there is payable by the tenant a rent inclusive of a sum in consideration of the payment of those rates by the landlord,

then, ►⁽³⁰⁾ if the amount payable by way of rates is reduced in consequence of the alteration” ◀ the landlord shall be liable to pay to the tenant, or allow by way of deduction from his rent, and, ►⁽³¹⁾ if the amount payable by way of rates is increased in consequence of the alteration” ◀, the tenant shall be liable to pay to the landlord, a sum equal to the difference between every amount payable by way of those rates and the amount which would have been so payable ►⁽³²⁾ ◀ if the rateable value of the hereditament had not been altered.

►⁽³³⁾ (1A) For the purposes of sub-paragraph (1)(a) the rateable value of a hereditament is altered if—

- (j) the rateable net annual value or the rateable capital value is altered;
- (k) the hereditament becomes liable, or ceases to be liable, to be valued upon an estimate of its net annual value or its capital value. ◀

(2) Any question arising as to the amount to be paid or allowed to a tenant by way of deduction from his rent under this paragraph shall be referred to and determined by the Lands Tribunal.

Saving for existing rights

5.—(1) Except as expressly provided in this Order, nothing in this Order, and no repeal of any transferred provision effected by or under the 1972 Order or by this Order, shall affect the right of any person to deduct from rent payable by him any sum or any part of a sum paid by him in respect of rates or deducted, on account of any payment of rates, from any rent payable to him, and any such right which existed immediately before the commencement of the 1972 Order shall continue to apply to rates under this Order, as nearly as may be to the same extent and subject to the same incidents as then existed.

⁽³⁰⁾ In Schedule 8 in paragraph 4(1) words were substituted by paragraph 44(2)(a) of Schedule 2 to the 2006 Order

⁽³¹⁾ In Schedule 8 in paragraph 4(1) words were substituted by paragraph 44(2)(b) of Schedule 2 to the 2006 Order

⁽³²⁾ In Schedule 8 in paragraph 4(1) words were repealed by Schedule 3 to the 2006 Order

⁽³³⁾ In Schedule 8 paragraph 4(1A) was inserted by paragraph 44(3) of Schedule 2 to the 2006 Order

(2) Any question arising as to the application of a right such as is mentioned in sub-paragraph (1) in relation to rates under this Order shall be referred to and determined by the Lands Tribunal.

ANNEX B: OVERVIEW OF THE DOMESTIC LANDLORD SECTOR

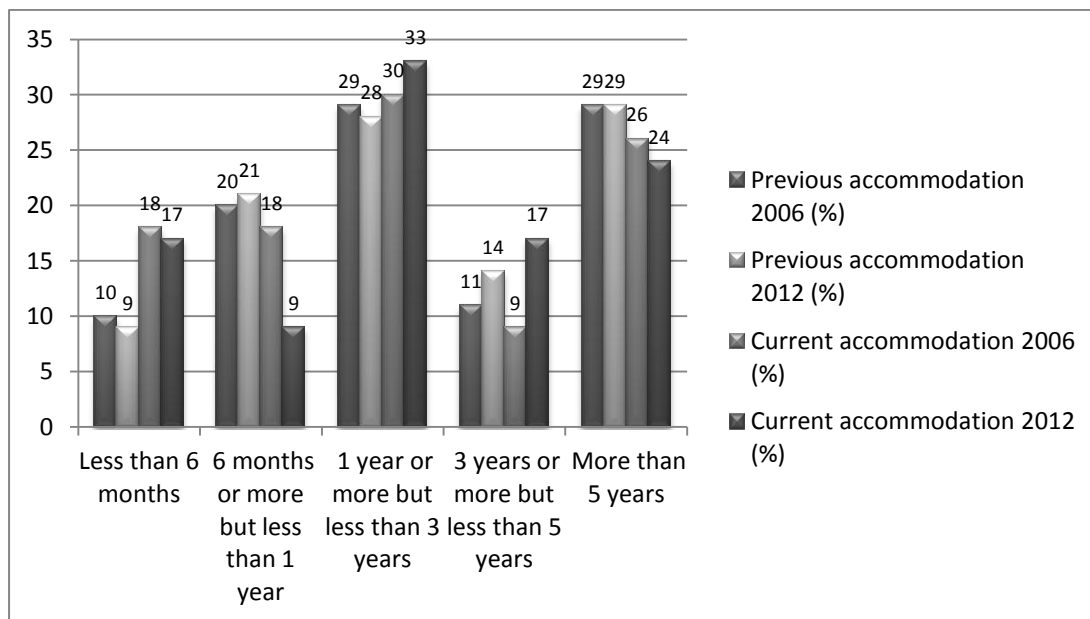
1. The Northern Ireland Housing Executive (NIHE) is currently signed up to an Article 21 agreement for some 94,000 properties. Also, there are currently 32 registered Housing Associations in Northern Ireland (excluding the co-ownership scheme) and around 7 unregistered ones. They too are subject to Article 21 agreements, which covers another 27,000 properties.
2. The level of landlord allowance at 10% is the same that applies to landlords in the private rented sector. However, there are much lower collection difficulties in this sector, where high numbers of properties (as much as 75% of the stock) are covered either partially or fully by housing benefit. Also tenants in the social rented sector tend to be more permanent than those in the private rented sector, though it is accepted that there are some specialist Housing Associations where this may not be the case.
3. The NIHE Article 21 allowance or discount is currently estimated to be worth in the region of £4m with another £1.7M awarded to the various housing associations.
4. The private rented sector more than any other has experienced exceptional and sustained growth over the last 15 years, growing from 7.6% in 2001 to 16.6% of the total housing stock by 2011. The Northern Ireland Rental Index for the second half of 2014 shows an ongoing healthy demand for private rental properties with an increase of 6.4% in the number of rental transactions observed over the second half of the year³⁴.
5. In terms of household profile, the makeup of people living in the private rented sector over this period has also changed significantly with larger numbers of people in full/part time work and fewer retirees and those not working/not seeking work. In addition there are significantly fewer 17 to 24 year olds in the sector with the majority of households now aged 25 to 59³⁵.

³⁴Page 30 - NI Rental Index issue no. 4 H2 2014

³⁵From Living in the Private Rented Sector: The Experiences of Tenants, June 2014, NIHE/University of Ulster

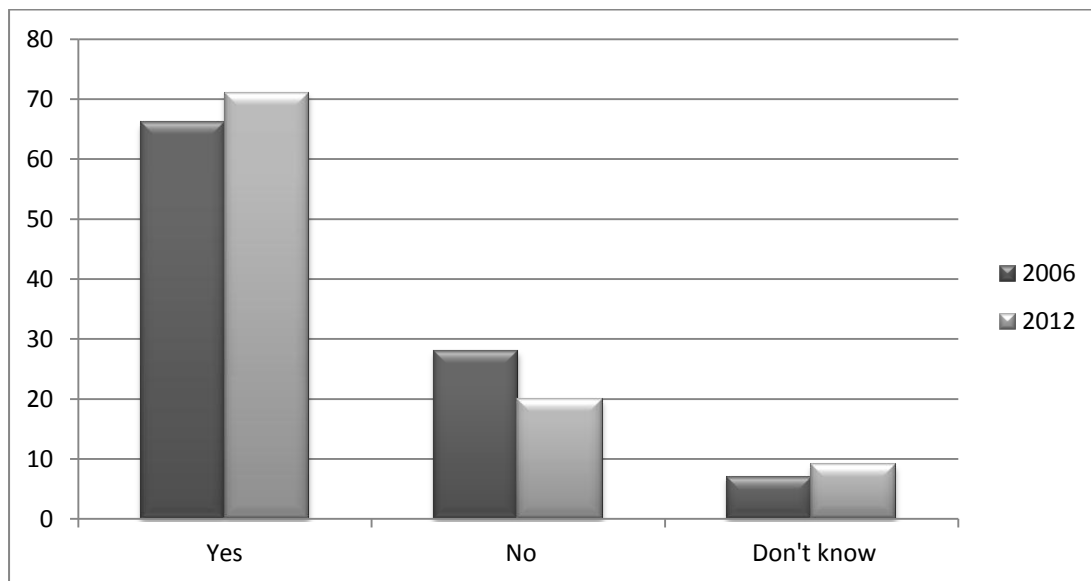
6. Tenants in this sector have traditionally been thought of as a transient group. **Figure 1**, below, shows the outcome of a research survey of a group of private renting tenants carried out by the University of Ulster on behalf of the NIHE, published in June 2014. This shows that half had lived in their accommodation between one and five years and almost a quarter had lived there for five years or more. A previous survey in 2006 showed 39% and 26 % respectively.
7. **Figure 2**, below, shows an increase in the proportion of respondents who wish to remain in the private rented sector and a decrease in the proportion that wish to leave this sector.

Figure 1: Length of Time in Current and Previous Accommodation³⁶



³⁶p.8, Figure 6 – Living in the Private Rented Sector – The Experiences of Tenants

Figure 2: Future Intentions (% intending to remain in the private rented sector)³⁷



8. This data taken together appears to point to a less transient private rental sector where renting is becoming a more common life choice.

³⁷ p.24, Figure 20 – Living in the Private Rented Sector – The Experiences of Tenants