

HOUSING (AMENDMENT) ACT (NORTHERN IRELAND) 2011

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate the Housing (Amendment) Act (Northern Ireland) 2011. They have been prepared by Department for Social Development (“the Department”) in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by the Assembly.
2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section or schedule does not seem to require an explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

3. The purpose of the Act is to enable better regulation of the private rented sector, provide new tools to tackle fuel poverty, clarify existing law in respect of homelessness and promote effective housing management in the social rented sector.

CONSULTATION

4. On 7 December 2009 the Department published a consultation document on proposals for new housing legislation. The Department’s officials subsequently discussed the proposals with relevant stakeholders at a series of events organised by the Department and the voluntary sector. There were around forty responses to the consultation, many of them very detailed, from a wide range of bodies including the Housing Executive, housing associations, district councils and the community and voluntary sectors.
5. The consultation document highlighted the fact that a number of proposals for new legislation had been set out in “Building Sound Foundations”, the Department’s strategy for the private rented sector which was published on 15 May 2009. Around forty responses were received to that consultation.
6. On 1 March 2010 the Department published proposals for a Housing and Regeneration Bill which included provision for district councils to promote energy efficiency within their own areas. That provision has been incorporated in the Housing (Amendment) Act (Northern Ireland) 2011.

OVERVIEW

7. The Act has 27 sections and 1 Schedule.

COMMENTARY ON SECTIONS

Section 1: Abolition of statement of tenancy terms

Section 1 repeals Article 4 of the Private Tenancies (Northern Ireland) Order 2006. This effectively abolishes the requirement in regulations made under that Article for private landlords to provide tenants with a separate statement of tenancy terms.

Section 2: Tenancy deposit schemes

Section 2 inserts in the Private Tenancies (Northern Ireland) Order 2006 a new Article 5A, which enables the Department to make regulations providing for schemes to safeguard deposits paid by tenants in the private rented sector, and a new Article 5B which places on private landlords certain obligations relating to such schemes.

Section 3: Length of notice to quit

Section 3 amends Article 14 of the Private Tenancies (Northern Ireland) Order 2006 to provide that the existing 4 week period for giving notice to quit in respect of a tenancy in the private rented sector shall remain 4 weeks if the tenancy has not been in existence for more than 5 years but shall be increased to 8 weeks if the tenancy has been in existence for more than 5 but not more than 10 years, and to 12 weeks if the tenancy has been in existence for more than 10 years.

Section 4: Power of entry to inspect dwelling-houses

Section 4 inserts in Article 36 of the Private Tenancies (Northern Ireland) Order 2006 a new paragraph (1A) which confers powers of entry on persons authorised by district councils to carry out fitness inspections.

Section 5: Power to modify Articles 42 to 45

Section 5 inserts in the Private Tenancies (Northern Ireland) Order 2006 a new Article 45A which enables the Department to make regulations modifying certain provisions of that Order relating to determination of some private sector rents.

Section 6: Disclosure of information

Section 6 inserts new Articles 64A and 64B in the Private Tenancies (Northern Ireland) Order 2006 which provides for the Department of Finance and Personnel and the Housing Executive to share certain information with district councils to enable or assist councils to carry out some of their functions in relation to the private rented sector.

Section 7: Registration of landlords

Section 7 inserts in the Private Tenancies (Northern Ireland) Order 2006 a new Article 65A which enables the Department to make regulations providing for the registration of private landlords. This section creates new offences in relation to provision of false information, letting of houses without registering as a landlord and failure to provide evidence of registration, and enables the courts to order a person to register as a landlord if they have been convicted of the offence of letting of houses while unregistered.

Section 8: Fixed penalty for certain offences

Section 8 inserts in the Private Tenancies (Northern Ireland) Order 2006 a new Article 68A which allows landlords who appear to have committed an offence in relation to the registration of landlords or tenancy deposits the opportunity of avoiding prosecution by payment of a fixed penalty.

Section 9: Regulations

Section 9 amends Article 72 of the Private Tenancies (Northern Ireland) Order 2006 to provide that regulations in relation to tenancy deposit schemes, determination of rents and landlord registration are subject to the draft affirmative resolution procedure by the Assembly. Regulations in relation to tenancy deposit and landlord registration must be laid within 18 months of the Act receiving Royal Assent.

Section 10: Houses in multiple occupation: evidence of family relationship

Section 10 amends Article 75 of the Housing (Northern Ireland) Order 1992 to provide that, where a house is occupied by two or more qualifying persons and the Housing Executive believes they are not all members of the same family, the Executive may serve notice inviting evidence of a family relationship between the occupants to be provided. Where satisfactory documentary evidence is not forthcoming, the house will be treated as a house in multiple occupation and subjected to the regulatory regime which applies to such accommodation under Part 4 of that Act.

Section 11: Houses in multiple occupation: increase in fine for failure to register

Section 11 amends Article 75L of the Housing (Northern Ireland) Order 1992 to increase to £20,000 the maximum fine for failing to register a house to which the scheme for registration of houses in multiple occupation applies.

Section 12: Withholding of consent to mutual exchange of secure tenancies

Section 12 inserts in Schedule 3A to the Housing (Northern Ireland) Order 1983 new grounds for withholding consent to an exchange of tenancies. This enables the Housing Executive and registered housing associations to withhold consent to exchanges of tenancies between their tenants where certain orders relating to anti-social behaviour are in force or pending against a party to an exchange or a person residing with them, or where a party to such an exchange or a person residing with them has been convicted of certain offences.

Section 13: Disclosure of information as to orders, etc. in respect of anti-social behaviour

Section 13 provides that any person may disclose to the landlord of a secure tenancy information about certain orders or applications for orders relating to anti-social behaviour to enable the landlord to decide:

- whether to withhold consent to an exchange of tenancies on anti-social behaviour grounds;
- whether a tenant is entitled to exercise the right to buy their home, or
- to take any appropriate action in relation to an application to exchange tenancies or to exercise the right to buy.

Section 13 also provides that any person may disclose to the Housing Executive information about certain orders or applications for orders relating to anti-social behaviour to enable the Executive to decide:

- whether to treat an applicant for an allocation of housing accommodation as ineligible for such an allocation by virtue of unacceptable behaviour; or
- whether to treat an applicant for homelessness assistance as ineligible for such an allocation by virtue of unacceptable behaviour.

Section 13 also provides that any person may disclose to a registered housing association information about certain orders or applications for orders relating to anti-social behaviour to enable the association to decide whether to allocate housing accommodation to any person.

Section 14: Possession orders: conduct causing nuisance or annoyance

Section 14 amends Article 29 of the Housing (Northern Ireland) Order 1983 to ensure that, where a court is considering whether to make an order for possession of a secure tenancy on the grounds of conduct causing nuisance or annoyance, the court must take into account the effect that the nuisance or annoyance has had on persons other than the person against whom the order is sought and the likely effect that it would have on such persons if continued or repeated. Section 14 also requires the court to consider the likely impact of a possession order on the tenant and any person residing with the tenant.

Section 15: Abandoned tenancies

Section 15 amends Article 41 of the Housing (Northern Ireland) Order 1983 to remove the legal requirement for the Housing Executive and registered housing associations to enter abandoned dwelling-houses before an abandonment notice can be served in relation to secure tenancies. Section 15 also amends Article 19A of the Housing (Northern Ireland) Order 2003 to remove the same legal requirement in relation to introductory tenancies. The Housing Executive and registered housing associations continue to have power to enter such premises where this is necessary to make them safe.

Section 16: Duty to persons found to be homeless

Section 16 amends Article 10 of the Housing (Northern Ireland) Order 1988 to provide that the Housing Executive's duty under paragraph (2) of that Article to persons found to be homeless shall come to an end if the applicant ceases to be eligible for assistance on certain grounds.

Section 17: Abolition of rent surplus fund

Section 17 repeals Article 37 of the Housing (Northern Ireland) Order 1992 (with a consequential amendment to Article 20(2) of that Order) in order to abolish the requirement for registered housing associations to show a "rent surplus fund" in their accounts.

Section 18: Service of documents

Section 18 amends Article 104 of the Housing (Northern Ireland) Order 1992 to provide that the Housing Executive or a registered housing association may legally serve any document by sending it by ordinary post.

Section 19: Functions of Executive in relation to energy brokering

Section 19 enables the Housing Executive to submit for Departmental approval a scheme for making arrangements with energy providers for the supply of electricity, gas, oil or other means of producing energy to the Executive's tenants.

Section 20: Functions of Executive in relation to community safety

Section 20 enables the Housing Executive to take such action for enhancing community safety in any area as is compatible with the proper exercise of its functions in that area.

Section 21: Power of Executive to enter into arrangements with other statutory authorities

Section 21 enables the Department to make regulations providing for the Housing Executive to enter into partnership arrangements with certain statutory bodies if such arrangements are likely to lead to an improvement in the way in which certain functions of the Executive or certain housing-related functions of the other bodies are exercised.

Section 22: Indemnification of members and officers of Executive

Section 22 enables the Department to make provision by order for the Housing Executive to provide indemnities to its members and officers.

Section 23: Functions of councils in relation to energy efficiency

Section 23 provides district councils with powers to promote energy efficiency in residential accommodation within their own districts. To ensure coherence within existing activity, councils are required to take account of certain work undertaken by the Housing Executive and the Department for Social Development and to provide information to the Housing

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which received Royal Assent on 3 May 2011*

Executive which it needs to carry out its functions as Home Energy Conservation Authority for Northern Ireland.

Section 24: Repeals

Section 24 provides for the repeal of the provisions specified in the Schedule to the Act.

Section 25: Commencement

Section 25 provides for sections 2, 7 and 9 to come into operation on Royal Assent and enables the Department to make provision by order as to the day or days when sections 1, 3, 4, 5, 6, 8 and 10 to 24 come into operation.

Section 26: Interpretation

Section 26 provides for the interpretation of certain expressions used in the Act.

Section 27: Short title

Section 27 provides that the Act may be cited as the Housing (Amendment) Act (Northern Ireland) 2011.

SCHEDULE

The Schedule specifies the statutory provisions repealed by section 24.

HANSARD REPORTS

The following table sets out the dates of the Hansard reports for each stage of the Act's passage through the Assembly.

STAGE	DATE
Introduction to the Northern Ireland Assembly ("Assembly").	22 June 2010
Assembly- Second Stage debate	30 June 2010
Committee Stage- evidence from the Department for Social Development and the Housing Rights Service	11 November 2010
Committee Stage- evidence from the Landlords Association of Northern Ireland and the Northern Ireland Housing Executive	18 November 2010
Committee Stage- evidence from Disability Action and the Northern Ireland Local Government Association	25 November 2010
Committee Stage- further evidence from the Department for Social Development	2 December 2010 & 7 December 2010

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STAGE	DATE
Committee Stage- further evidence from the Department for Social Development	09 December 2010
Committee Stage- clause by clause scrutiny	16 December 2010
Committee Stage- clause by clause scrutiny	11 January 2011
Committee Stage- clause by clause scrutiny	20 January 2011
Committee publishes its report on the Bill- Report No. NIA 30/10/11R	27 January 2011
Assembly- Consideration Stage	21 February 2011
Assembly- Further Consideration Stage	01 March 2011
Assembly- Final Stage	14 March 2011
Royal Assent	03 May 2011

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