
STATUTORY INSTRUMENTS

2006 No. 1459

The Private Tenancies (Northern Ireland) Order 2006

PART III

UNFITNESS AND DISREPAIR

Introductory

Interpretation: Part III

15. In this Part—

“fit for human habitation” shall be construed in accordance with Article 17;

“notice of disrepair” means a notice under Article 19;

“notice of unfitness” means a notice under Article 18;

“the owner”, in relation to a dwelling-house or building, means the person who for the time being receives or is entitled to receive the rent of the dwelling-house or building, whether on his own account or as agent or trustee for any other person.

Application of this Part

16. This Part applies in relation to any dwelling-house which is for the time being let under a private tenancy.

Determining fitness for human habitation

17.—(1) Article 46 of the [Housing \(Northern Ireland\) Order 1981 \(NI 3\)](#) (standard of fitness for human habitation) shall apply in determining for the purposes of this Order whether a dwelling-house is fit for human habitation.

(2) In its application for those purposes, that Article shall have effect as if for any reference to the Executive there were substituted a reference to the appropriate district council.

Notices

Notice of unfitness

18.—(1) Where the appropriate district council is satisfied—

(a) that any dwelling-house to which this Part applies is unfit for human habitation, and

(b) that serving a notice of unfitness is the most satisfactory course of action,

it may, subject to the provisions of this Part, serve a notice of unfitness under this paragraph on the owner of the dwelling-house.

(2) Where the appropriate district council is satisfied—

- (a) that any dwelling-house to which this Part applies and which is a flat is unfit for human habitation by reason of the defective condition of a part of the building outside the flat, and
- (b) that serving a notice of unfitness is the most satisfactory course of action,

it may, subject to the provisions of this Part, serve a notice of unfitness under this paragraph on the owner of the building.

(3) The appropriate district council, in addition to serving a notice of unfitness in accordance with paragraph (1) or (2)–

- (a) shall serve a copy of the notice on–
 - (i) the tenant of the dwelling-house,
 - (ii) the Executive, and
 - (iii) the rent officer; and
- (b) may also serve a copy of the notice on any other person having an estate in the dwelling-house.

(4) A notice of unfitness shall–

- (a) require the person on whom it is served to execute the works specified in the notice within such reasonable period, not being less than 21 days after service of the notice, as may be so specified; and
- (b) state that, in the opinion of the appropriate district council, the works will render the dwelling-house fit for human habitation.

(5) This Article is subject to Article 21.

Notice of disrepair

19.—(1) Where the appropriate district council is satisfied–

- (a) that any dwelling-house to which this Part applies is in such a state of disrepair that, although fit for human habitation, substantial repairs are necessary to bring it up to a reasonable standard, having regard to its age, character and locality; or
- (b) whether on a representation made by an occupying tenant or otherwise, that such a dwelling-house is in such a state of disrepair that, although fit for human habitation, its condition is such as to interfere materially with the personal comfort of the occupying tenant;

it may, subject to the provisions of this Part, serve a notice of disrepair under this paragraph on the owner of the dwelling-house.

(2) Where the appropriate district council is satisfied–

- (a) that any building containing a dwelling-house to which this Part applies and which is a flat is in such a state of disrepair that, although the flat is fit for human habitation, substantial repairs are necessary to a part of the building outside the flat to bring the flat up to a reasonable standard, having regard to its age, character and locality; or
- (b) whether on a representation of an occupying tenant or otherwise, that such a building is in such a state of disrepair that, although the flat is fit for human habitation, the condition of the part of the building outside the flat is such as to interfere materially with the personal comfort of the occupying tenant;

it may, subject to the provisions of this Part, serve a notice of disrepair under this paragraph on the owner of the building.

(3) The appropriate district council, in addition to serving a notice of disrepair in accordance with paragraph (1) or (2)–

- (a) shall serve a copy of the notice on the tenant of the dwelling-house, and
 - (b) may also serve a copy of the notice on any other person having an estate in the dwelling-house.
- (4) A notice of disrepair shall—
- (a) require the person on whom it is served, to execute the works specified in the notice, not being works of internal decorative repair, within such reasonable period, not being less than 21 days after service of the notice, as may be so specified; and
 - (b) state the appropriate district council's reasons for serving the notice.

Matters to be taken into consideration by appropriate district council

20.—(1) Without prejudice to the generality of Article 62, guidance issued under that Article may include guidance as to matters that the appropriate district council is to take into consideration in deciding whether serving a notice of unfitness or a notice of disrepair (as the case may be) is the most satisfactory course of action in respect of a dwelling-house.

(2) In particular such guidance may include guidance in respect of financial and social considerations to be taken into account by the appropriate district council.

(3) Where the Department proposes to issue guidance which is or includes guidance under paragraph (2), or to revise such guidance, it shall lay a draft of the guidance or revised guidance before the Assembly.

(4) The Department shall not issue such guidance or revised guidance until after the expiration of the statutory period and, if within that period the Assembly resolves that the guidance or revised guidance is not to be issued, the Department shall not issue it (but without prejudice to the laying of a further draft).

Consultation with the Executive

21.—(1) Before serving a notice of unfitness in respect of a dwelling-house, the appropriate district council shall consult the Executive.

- (2) The appropriate district council shall not serve a notice of unfitness if the Executive indicates—
- (a) that it intends to exercise any of its powers under Part III of the [Housing \(Northern Ireland\) Order 1981 \(NI 3\)](#) (development functions) with respect to the dwelling-house; or
 - (b) that the dwelling-house forms part of a building which would be a qualifying building in relation to a group repair scheme and that the Executive expects to prepare such a scheme in respect of the building within the period of 12 months from the date on which it was consulted.

(3) Nothing in this Article requires the Executive to serve a repair notice under paragraph (1) or (2) of Article 41 of the [Housing \(Northern Ireland\) Order 1981](#).

Appeal against notice of unfitness or notice of disrepair

22.—(1) Any person aggrieved by a notice of unfitness or notice of disrepair may, within 21 days from the date of service of the notice, appeal to the county court.

(2) Without prejudice to the generality of paragraph (1), it shall be a ground of appeal that serving the notice is not the most satisfactory course of action.

(3) On an appeal under this Article the county court may confirm, quash or vary the notice as it considers fit.

(4) Where an appeal under this Article is allowed and the reason or one of the reasons for allowing the appeal is that specified in paragraph (2) the judge shall, if requested to do so by the appellant or the appropriate district council, include in his judgment a finding to that effect.

Operative date of notice of unfitness or notice of disrepair

23.—(1) If no appeal is brought under Article 22 against a notice of unfitness or notice of disrepair, the notice shall become operative on the expiration of 21 days from the date of service of the notice.

(2) Any notice against which an appeal is brought shall, if and so far as it is confirmed by the county court or the Court of Appeal, become operative as from the date of the final determination of the appeal.

(3) For the purposes of this Article, an appeal shall be deemed to be finally determined on the date on which the decision of the Court of Appeal is given, or, in a case where an appeal from the county court is not brought to the Court of Appeal, upon the expiration of the period within which such an appeal might have been brought.

(4) For the purposes of this Article, the abandonment of an appeal shall be deemed to be a final determination thereof, having the like effect as a decision confirming the notice, order or decision against which the appeal was brought.

(5) No steps shall be taken by the appropriate district council to enforce a notice of unfitness or notice of disrepair before the notice becomes operative.

Enforcement

Offence of failing to comply with notice of unfitness or notice of disrepair

24.—(1) Where the person upon whom a notice of unfitness or a notice of disrepair in respect of a dwelling-house has been served fails to comply with the notice within the appropriate period, he shall be guilty of an offence under this Order.

(2) In paragraph (1) “the appropriate period” means—

- (a) the period specified in the notice, or
- (b) where the notice has been varied on appeal, such other period as the court may specify on final determination of the appeal.

(3) If any default in respect of which a person is convicted of an offence under paragraph (1) continues for more than 14 days after that conviction, that person shall be deemed to have committed a further offence under that paragraph in respect of that default.

(4) The obligation to execute the works specified in the notice continues notwithstanding that the period for completion of the works has expired.

(5) The provisions of this Article are without prejudice to the exercise by the appropriate district council of the powers conferred by Article 25.

Enforcement of notice of unfitness or notice of disrepair

25.—(1) If a notice of unfitness or notice of disrepair is not complied with within the appropriate period, the appropriate district council may itself do the work required to be done by the notice or, where the notice has been varied by the court on appeal, by the notice as so varied.

(2) In paragraph (1), “the appropriate period” has the meaning given in Article 24(2).

(3) Where the appropriate district council proposes to exercise its powers under paragraph (1), it may authorise a person to enter the dwelling-house in accordance with Article 27(2).

(4) Subject to paragraph (5), any expenses incurred by the appropriate district council under this Article, together with interest at the prescribed rate from the date when a demand for the expenses is served until payment, may be recovered by the council summarily as a civil debt from the person upon whom the notice was served.

(5) Where the appropriate district council claims to recover any expenses from a person as being the person upon whom the notice was served and that person proves that he—

(a) is receiving the rent merely as agent or trustee for some other person, and

(b) has not, and since the date of the service on him of the demand has not had, in his hands on behalf of that other person sufficient money to discharge the whole demand of the council, his liability shall be limited to the total amount of the money which he has, or has had, in his hands.

(6) Any expenses and interest due to the appropriate district council under this Article shall, until recovered, be deemed to be charged on and payable out of the estate of the person responsible in the land, in relation to which they have been incurred.

(7) For the purposes of paragraph (6)—

(a) where a notice of unfitness was served under Article 18(1) or a notice of disrepair was served under Article 19(1), the estate of the person responsible is the estate of the landlord and of any person deriving title from him; and

(b) where a notice of unfitness was served under Article 18(2) or a notice of disrepair was served under Article 19(2), the estate in the land of the person responsible is the estate of the owner of the building and of any person deriving title from him.

(8) The charge created by paragraph (6) shall be enforceable in all respects as if it were a valid mortgage by deed created in favour of the appropriate district council by the person on whose estate the charge has been created (with, where necessary, any authorisation or consent required by law) and the appropriate district council may exercise the powers conferred by sections 19, 21 and 22 of the Conveyancing Act 1881 on mortgages by deed accordingly.

(9) There shall be included among the matters required to be registered in the Statutory Charges Register any charge created under paragraph (6).

(10) An application for registration of such a charge shall be made by the appropriate district council within 2 months from the date when a demand is served under paragraph (4).

Power to require payment for enforcement action

26.—(1) The appropriate district council may require a person upon whom a notice of unfitness or a notice of disrepair has been served to make such reasonable payment as it considers appropriate in respect of the administrative and other expenses incurred by it in connection with serving the notice.

(2) The expenses are those incurred in—

(a) determining whether to serve the notice,

(b) identifying the works to be specified in the notice, and

(c) serving the notice.

(3) The amount of the payment shall not exceed such amount as the Department may specify by order made subject to negative resolution.

(4) Where a court allows an appeal against a notice of unfitness or notice of disrepair, it may make such order as it thinks fit reducing, quashing or requiring reimbursement of any payment under this Article in respect of the notice.

(5) Nothing in Article 25 shall prejudice the power of a district council to require a payment under this Article.

Power to enter dwelling-houses

27.—(1) A person authorised by the appropriate district council in relation to this paragraph may, at any reasonable time and having given at least 24 hours' notice to the occupier, and to the owner if known, enter a dwelling-house to which this Part applies for the purpose of survey or examination—

- (a) where it appears to the council that survey or examination is necessary in order to determine whether any powers under this Part should be exercised in respect of the dwelling-house; or
- (b) where a notice of unfitness or a notice of disrepair has been served in respect of the dwelling-house.

(2) A person authorised by the appropriate district council under Article 25(3) may, at any time and having given at least 6 days' notice of his intention to do so to the occupier, and to the owner if known, enter any dwelling-house for the purpose of doing any work required to be done in relation to the dwelling-house by a notice of unfitness or a notice of disrepair or, as the case may be, by such a notice as varied by the county court under Article 22(3).

(3) An authorisation for the purposes of this Article—

- (a) shall be in writing stating the particular purpose or purposes for which the entry is authorised; and
- (b) shall, if so required, be produced for inspection by the occupier or anyone acting on his behalf.

Obstruction

28. A person, who obstructs—

- (a) an officer of an appropriate district council, or
- (b) a person authorised in pursuance of this Part,

in the performance of functions under this Part, shall be guilty of an offence under this Order.

*Repairs grants***Repairs grants**

29.—(1) Article 74 of the [Housing \(Northern Ireland\) Order 1992 \(NI 15\)](#) (repairs grants towards costs of meeting certain statutory repairing obligations in respect of dwelling-houses), shall be amended as follows.

(2) In paragraph (1), for sub-paragraph (a) there shall be substituted—

- “(a) in a notice of disrepair served in respect of a dwelling-house which is let under a protected tenancy or a statutory tenancy; or”.

(3) After that paragraph there shall be inserted—

“(1A) In paragraph (1)—

- (a) “notice of disrepair” means a notice under Article 19 of the Private Tenancies (Northern Ireland) Order 2006; and
- (b) “protected tenancy” and “statutory tenancy” have the meaning given in the Rent (Northern Ireland) Order 1978.”.

(4) In paragraph (2), the words from “to whom” to “may be,” shall be omitted.

(5) In Schedule 3 to the [Housing \(Northern Ireland\) Order 1992](#) (provisions with respect to repairs grants), in sub-paragraph (4) of paragraph 2, for the words from “the repairing conditions” to “1978”

there shall be substituted “the works specified in the notice of disrepair served under Article 19 of the Private Tenancies (Northern Ireland) Order 2006 in relation to the dwelling-house”.

(6) The amendments made by this Article apply to a repairs grant payable under Article 74 of the Housing (Northern Ireland) Order 1992 towards the cost of works specified in a notice of disrepair served under Article 19 after the commencement of this Order.