

PRIVATE TENANCIES (NORTHERN IRELAND) ORDER 2006

S.I. 2006 1459

EXPLANATORY MEMORANDUM

INTRODUCTION

1. The Private Tenancies (Northern Ireland) Order 2006 was made on 7 June 2006.
2. This Explanatory Memorandum has been prepared by the Department for Social Development ("the Department") in order to assist the reader in understanding the Order. It does not form part of the Order.

BACKGROUND AND POLICY OBJECTIVES

3. In 2002, a working group reviewed the workings of the present legal framework under the Rent (Northern Ireland) Order 1978 ("the Rent Order"). The Department's strategy for the sector, entitled '*Renting privately: a strategic framework*', was published in 2004.
4. The policy objectives of the Order are:
 - To target unfitness and disrepair through repair enforcement and rent control;
 - To reduce inequities between tenure types;
 - To simplify, clarify and raise awareness of landlord and tenant obligations.

CONSULTATION

5. The Order will give effect to the structure proposed in the Department's policy consultation paper '*Private Rented Sector Northern Ireland: proposals for reform*', published in 2003, which received widespread public support.

OPTIONS CONSIDERED

6. The options which were considered were:
 - To retain the existing system of rent control;
 - To adopt a system similar to the Republic of Ireland where the tenancy term is determined by law and where all private tenancies must be registered with the local council and are subject to the jurisdiction of a statutory body for the resolution of disputes;
 - To create a unique system drawing on elements of best practice from elsewhere which would target unfitness while relaxing rent control.

MAIN ELEMENTS OF THE ORDER

7. The Order is divided into 6 parts. Part 1 sets out the title and commencement information and includes general interpretation provisions. Part II describes the obligations of landlords and tenants in relation to rent books, repairs and other matters. Part III sets out the new provisions relating to unfitness and disrepair including the powers which

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will be provided to district councils in relation to enforcement. Part IV, which has 3 chapters, sets out the provisions in relation to fitness inspections and rent control. Part V makes a number of amendments to the Rent Order in relation to security of tenure and the assignment of tenancies. Part VI sets out a number of miscellaneous provisions relating to landlords' liability for defective premises, the service of notices and powers of district councils to require information on ownership.

COMMENTARY ON PROVISIONS

A brief commentary on the Articles in the Order is provided below. Comments are not given where the wording is self-explanatory.

Part I Introductory

Article 3 defines a private tenancy to include protected and statutory tenancies together with any other private tenancy of a dwelling-house other than public sector and housing association tenancies, holiday homes and certain other excluded categories.

Part II Obligations of Landlords and Tenants

This Part requires tenants to be given a written statement of tenancy terms and provides default provisions in relation to the term of the tenancy and repairing obligations of both parties.

Article 4 introduces a requirement for the landlord of a private tenancy to provide the tenant, free of charge, with a written statement of the main terms of the tenancy within 28 days of the granting of the tenancy. Under current law, all tenancy agreements of over one year must be in writing, but a tenancy of one year or less can be agreed verbally. This can lead to difficulties in the event of a dispute between the parties, for example with regard to repairs. The new provision does not alter this basic principle, however the terms of all private tenancies must now also be provided to the tenant in written form. Any alterations to the agreement must also be provided in writing.

Article 5 restates and clarifies the existing requirement with regard to rent books, currently contained in the Rent Order. The landlord is to provide the rent book free of charge to the tenant.

Article 6 introduces the default repairing obligations set out in **Articles 7 to 11**. Landlords and tenants are still free to make whatever arrangement they wish regarding repairing obligations, subject to statutory requirements in relation to furnishings and gas and electrical installations and fittings. However, where there is no tenancy agreement or where any agreement does not clearly establish which of the parties is responsible for repairs, then the Order sets out a division of responsibility. **Article 12** requires the tenant to provide access to the dwelling-house at suitable times and with appropriate notice to allow the landlord or persons authorised by him to inspect the state of repair and to carry out works for which the landlord is responsible.

Article 13 provides a default mechanism in relation to the length of the tenancy. While landlord and tenant are free to determine the length of time for which the tenancy will run, where no term is specified in the tenancy agreement then a tenancy of 6 months duration is deemed to apply. **Article 14** requires a notice to quit to be in writing and the effective date to be no less than four weeks from the date of service.

Part III Unfitness and Disrepair

This Part provides powers similar to those held by the Northern Ireland Housing Executive in relation to requiring the owner of an unfit house to carry out work to make it fit for human habitation. The definition of 'owner' includes the person receiving or entitled to receive the rent. Remedies are also provided to tackle serious disrepair falling short of unfitness.

Articles 15, 16 and 17 define the terms used in this Part and indicate that it applies to any dwelling-house let under a private tenancy. The standard of fitness used is to be found in Article 46 of the Housing (Northern Ireland) Order 1981.

Article 18 empowers the appropriate district council to serve a notice of unfitness where it is satisfied that a dwelling-house is unfit for human habitation and that serving a notice of unfitness is the most satisfactory course of action. **Article 19** permits a district council to serve a notice of disrepair where a dwelling-house is not unfit but is in need of substantial repairs.

Articles 20 and 21 require district councils to act in accordance with any guidance issued by the Department and to consult with the Housing Executive before issuing a notice of unfitness. **Article 22** provides for appeals to be made to the county court against notices of unfitness and notices of disrepair. **Article 23** defines the operative date in relation to such notices.

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Articles 24 to 26 create an offence of failing to comply with a notice of unfitness or notice of disrepair and stipulate the powers available to district councils in relation to enforcement and the right to make a charge for enforcement action. **Articles 27 and 28** provide district councils with powers of entry and make it an offence to obstruct council officials in the performance of their functions. **Article 29** amends Article 74 of the Housing (Northern Ireland) Order 1992 in relation to the payment of repairs grants. A mandatory repairs grant will only be payable where a notice of disrepair is served in relation to a dwelling-house let under a protected or statutory tenancy.

Part IV Certificates of Fitness and Rent Control

The purpose of Part IV is to improve the standard of fitness of privately rented dwelling-houses through the introduction of a system of inspection and rent control. Responsibility for conducting fitness inspections will rest with district councils. A dwelling-house which does not obtain a certificate of fitness will be subject to rent control. A dwelling-house which is granted a certificate of fitness will be subject to rent control only if it is let under a protected or statutory tenancy. A fitness inspection will be required for all new lettings not falling into the prescribed category. Other tenancies will be inspected for fitness at the request of the landlord or tenant. In Chapter I, **Articles 30 and 31** define various terms including “prescribed dwelling-house”. Such a dwelling-house will not require a certificate of fitness and will not be subject to rent control unless it is let under a protected or statutory tenancy.

Under Chapter II, **Articles 33 to 38** set out the new system of fitness inspections. Where any dwelling-house to which Article 33 applies is let after the commencement of the Order, the landlord must apply to have it inspected. In addition such a dwelling-house may be inspected at any time (whether the tenancy was granted before or after commencement of the Order) if the landlord or tenant makes an application under Article 33(6) and 35. Where a dwelling-house meets the standard of fitness for human habitation a certificate of fitness will be issued under Article 36(4). Where it does not meet the standard of fitness for human habitation a notice of refusal will be issued under Article 36(5).

Under Chapter III, **Articles 39 to 54** establish the system of rent control to be applied to controlled tenancies of dwelling-houses which have been served with a notice of refusal and all protected and statutory tenancies. **Article 42** provides for the rent officer to determine an appropriate rent based on the Housing Executive points scheme but also taking into account other factors including the local reference rent used by the Housing Executive for Housing Benefit determinations and the general condition and state of repair of the dwelling-house. **Articles 43 and 44** provide that a landlord or tenant may apply to have the rent officer’s determination considered by a rent assessment committee. The committee may confirm or vary the rent officer’s decision. **Article 45** provides for the landlord or tenant of a dwelling-house let under a protected or statutory tenancy to apply for a further rent determination where there has been a change in circumstances. **Articles 46 and 47** provide for the keeping of a register of rents and the means by which the register can be amended. **Articles 48 to 52** establish a rent limit, being the maximum rent which can be charged in respect of controlled tenancies and provide for the offences and means of recoupment applicable in cases of overpayment or overcharging.

Article 55 provides for periodic reviews of registered rents.

Part V Amendments of the Rent Order

This Part deals with amendments to the Rent Order. Current protected and statutory tenants will retain their security of tenure and rent control will apply to both fit and unfit tenancies. No new tenancy of a dwelling-house will be subject to Rent Order control and will thus not be a protected or statutory tenancy. The assignment of protected and statutory tenancies will only be possible in certain limited circumstances.

Article 56 clarifies which tenancies are protected under the Rent Order. Tenancies of dwelling-houses that were protected under the old Rent Restriction Acts continue to be protected, as do tenancies of unregistered housing associations that were brought within the scope of the Rent Order by the Housing (Northern Ireland) Order 1983. Tenancies protected under Article 5 of the Rent Order between 1978 and the introduction of the new Order will also retain their status.

Article 57 states that no new tenancy of any dwelling-house is to be a protected or statutory tenancy. This does not affect the legitimate successor to a protected or statutory tenancy.

Article 58 clarifies the wording of Article 12 of the Rent Order in relation to dwelling-houses used for both residential and non-residential purposes.

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Article 59 prevents the assignment of a protected or statutory tenancy, except where a court order is made under a number of provisions pertaining to marriage and partnership breakdowns. It will no longer be possible to assign a protected or statutory tenancy by agreement.

Article 60 amends Article 54 of the Rent Order. The present definition of harassment states that the acts involved must have been calculated to interfere with the tenant's peace or comfort. The amended definition instead refers to actions likely to interfere with the peace or comfort of the tenant. This amendment is in line with the Protection from Eviction Act 1977 which applies in England and Wales. The maximum fine on summary conviction is the statutory maximum, currently £5,000.

Article 61 amends the succession rights of family members in relation to protected or statutory tenancies. Under the new provisions, a spouse, civil partner or other resident family member will be able to succeed to a protected or statutory tenancy, but only on one occasion, rather than on two occasions as at present. Any existing tenant who succeeded to their tenancy under the current provisions will continue to be a statutory tenant while they remain resident in the dwelling-house.

Part Vi Miscellaneous

This Part provides a range of measures necessary to give effect to other provisions of the Order. Amendments to associated legislation are also provided.

Article 62 empowers the Department to issue directions and guidance to district councils in relation to their functions under the Order. For monitoring purposes district councils are also required to provide such information on the exercise of their functions as the Department may require.

Articles 63 and 64 enable the Department and the Housing Executive to publish information for the benefit of private landlords and tenants and to collect information in relation to the private rented sector generally.

Article 65 provides district councils with the power to require the occupier and any person appearing to be the landlord or agent of a dwelling-house to provide written details of their own interest in it and the name and address of any other person known to have an interest. **Article 66** provides that any notice served on a landlord may be served on the landlord's agent or the person who receives the rent and requires an agent to provide the district council with details of the landlord. **Article 67** lists those documents which may be served by being sent by ordinary post.

Article 68 sets out the fines that may be imposed in respect of offences under the Order.

Article 69 extends the Defective Premises (Landlord's Liability) Act (Northern Ireland) 2001 (c.10) to tenancies that were formerly regulated and restricted tenancies under the Rent Order.

Article 70 provides that no agreement may be validly entered into which purports to exclude the provisions of this Order.

Article 71 provides as to the application of the Order to Crown property.

Articles 72 and 73 give the Department power to make regulations for the purposes of the Order and to make such further provision by order as it considers appropriate to carry the Order into effect.

Schedule 1 sets out the method of appointment of the rent officer and rent assessment committees.

Schedule 2 establishes the procedures to be followed by rent assessment committees in considering determinations of rents by the rent officer.

Schedule 3 determines the method of calculating the rates payable for a rental period.

Schedule 4 lists a number of minor and consequential amendments to the Rent Order and other associated legislation.

Schedule 5 repeals various statutory provisions.

COMMENCEMENT

Article 1 and 2 come into operation on the expiration of 7 days from the day on which the Order is made. The remaining provisions will come into operation on a day or dates to be appointed by order of the Department.