

HOUSING (AMENDMENT) ACT (NORTHERN IRELAND) 2010

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Housing (Amendment) Act (Northern Ireland) 2010 which received Royal Assent on 13 April 2010. They have been prepared by the Department for Social Development 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 do not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

3. The purpose of this Act is to enhance the existing legislative framework in a number of areas, including homelessness. The provisions fall into the following categories:
 - recommendations emerging from earlier consultation;
 - amendments aimed at clarifying existing legislation;
 - amendment required as a consequence of judicial review; and
 - technical amendments.

CONSULTATION

4. The homelessness provisions of the Act were the subject of detailed consultation in the context of a draft report on promoting the social inclusion of homeless people which was published in November 2004.
5. Other provisions of the Act were discussed with the relevant stakeholders.

OPTIONS CONSIDERED

6. The consultation paper on promoting the social inclusion of homeless people published in November 2004 set out broad recommendations and asked a number of detailed questions about the desirability of implementing those recommendations and the best way to achieve this. The possible options were fully explored at that stage and the homelessness provisions of the Act reflect the consensus views of consultees.

7. Where the Act places certain statutory duties on the Housing Executive (such as the duty to review its decisions on homelessness applications, or to notify applicants treated as ineligible of the reason for the decision), it could be argued that legislation was not required, given that the Executive did these things already as a matter of policy. However, the “do nothing” option would have meant that Northern Ireland’s housing legislation failed to reflect the kind of statutory rights that tenants and applicants for homelessness assistance have a right to expect.
8. Where the Act clarifies existing legislation, the alternative would have been to maintain the status quo. This would, for example, have left the Housing Executive unable to take effective action against tenants who use their homes for illegal or immoral purposes and the Executive would have continued to be committed to needless expenditure in cases where certain tenants have abandoned their accommodation. Having identified flaws in the legislation and appropriate remedial action, the Minister chose to legislate at the first opportunity.
9. In connection with a judicial review in 2005, the judge criticised the definition of a house in multiple occupation (“HMO”) in Northern Ireland on the basis that the definition of “family” used for the purposes of defining an HMO failed to recognise that members of an extended family living under the same roof comprise a single household. In the circumstances, it was necessary to amend the legislation to take account of the judge’s views.

OVERVIEW

10. The Act has 20 sections. A commentary on the provisions follows. Comments are not given where the wording is self-explanatory.

COMMENTARY ON SECTIONS

Section 1: Homelessness strategy

Section 1 requires the Housing Executive to formulate and publish a homelessness strategy every five years, requires the Regional Agency for Public Health and Social Wellbeing and the Regional Health and Social Care Board to assist with the formulation of the strategy, and requires certain bodies to take account of the strategy in the exercise of their functions. This section also explains what is meant by a “homelessness strategy”.

Section 2: Duty of Housing Executive to provide advice

Section 2 requires the Housing Executive to ensure that advice about homelessness, and the prevention of homelessness, is available free of charge to any person in Northern Ireland and enables the Housing Executive to pay grants or to make loans or other assistance available to persons providing such advice. In relation to the form and content of the advice, the Housing Executive must have regard to relevant guidance issued by the Department.

Section 3: Eligibility for housing assistance

Section 3 substitutes the words “a person” for “an applicant” in Article 7A(5) of the Housing (Northern Ireland) Order 1988 to make it clear that the power to determine that a person is ineligible for re-housing under the homelessness legislation by virtue of Article 7A(5) (which allows the Housing Executive to treat persons as ineligible if they have been guilty of unacceptable behaviour) applies both *before* a decision under Article 7 has been taken and *after* such a decision has been taken. Section 3 also requires the Housing Executive to notify a person who is found to be ineligible of the decision and the reason(s) for the decision.

Section 4: Power of the Department to prescribe form of advice and assistance

The Housing Executive is required under Articles 10 and 11 of the Housing (Northern Ireland) Order 1988 to provide advice and assistance to applicants who are homeless or threatened with homelessness but do not meet the full statutory criteria for re-housing. However, the legislation does not specify what form the advice or assistance should take. Section 4 therefore enables the Department to prescribe the kind of advice and assistance that the Housing Executive is required to provide in such cases.

Section 5: Reviews of decisions in relation to homelessness

Section 5 gives applicants for homelessness assistance the right to request a review of various decisions taken by the Housing Executive in relation to their applications, as well as the right to appeal the outcome of such a review to the county court. Section 5 also allows the Department to make regulations setting out the procedure for carrying out a review.

Section 6: Power to obtain information from registered housing associations

Section 6 replaces and strengthens the Department’s existing power to monitor registered housing associations contained in Article 21 of the Housing (Northern Ireland) Order 1992. The Department may now serve a notice requiring information which would assist it in discharging its functions on a wider class of person than was previously the case. The new Articles make provision in connection with the procedural matters for the notice; provide for penalties and other ancillary matters in the case of a failure to comply with the notice; provide a statutory power for specified persons to disclose to the Department information received by them in the course of their duties; make provision for the Department to disclose information which relates to a registered housing association for specified purposes and to specified persons, and also prescribe penalties for disclosure not in accordance with these provisions.

Section 7: Restriction on inquiry into affairs of registered housing associations by persons associated with the Housing Executive

Section 7 provides that existing and former members or employees of the Housing Executive cannot take part in inquiries into the affairs of registered housing associations. This reflects similar provision made by previous legislation in respect of officers and former officers of the Department.

Section 8: Department's powers in cases of misconduct or mismanagement of registered housing associations

Section 8 enables the Department, where it has a reasonable belief that there has been misconduct or mismanagement in relation to a registered housing association and where circumstances warrant this, to take immediate action to protect the interests of the housing association or the tenants at any time after the commencement of an inquiry or audit (rather than waiting until the production of an interim report which was the position under previous legislation).

Section 9: Abandonment of introductory tenancies

Housing Executive and housing association tenancies are initially let as introductory tenancies, which become secure tenancies after 12 months if the tenant's conduct is satisfactory. While there was provision in previous legislation for the Housing Executive and housing associations to take possession of accommodation abandoned by secure tenants and to deal with any personal effects left on the premises, there was no such provision in respect of introductory tenancies. Landlords would therefore be required to make a formal application to the court for an order for possession in such cases, and to store any personal property in case the tenant wished to reclaim it.

Section 9 therefore confers power on the Housing Executive and registered housing associations to enter (by force if necessary) a house held under an introductory tenancy, which it believes has been abandoned, for the purpose of making the house and contents safe. A right is also given to the landlord in these circumstances to terminate the tenancy without the need to go to court. Ancillary provision is made in connection with both of these rights. In particular, they may only be exercised after the service of a notice, and in the case of termination of a tenancy, after making further inquiries. Tenants have a right of appeal to the county court against termination of an introductory tenancy on the grounds of abandonment and the legislation makes provision in connection with the type of alternative accommodation which may be provided where the court rules in favour of the tenant.

Section 10: Anti-social behaviour: Housing Executive's policies and procedures

Section 10 requires the Housing Executive to publish its policy in relation to anti-social behaviour and its procedures for dealing with such behaviour. The Housing Executive is required to keep the policy under review and to have regard to any relevant guidance issued by the Department

Section 11: Grounds for possession: nuisance or annoyance to neighbours, etc.

Ground 2 in Part 1 of Schedule 3 to the Housing (Northern Ireland) Order 1983 is a ground for possession of a Housing Executive or housing association tenancy. As originally drafted, Ground 2 would have allowed the court to grant such an order for possession where the tenant had been convicted of "using the accommodation for immoral or illegal purposes". However, no such offence actually exists in law and section 11 therefore inserts the words "an offence involving" in Ground 2. This clarifies the circumstances in which court can grant an order for possession under this Ground.

Section 12: Increase in Housing Council representation on Housing Executive Board

The Housing Council is an advisory body made up of representatives from all of Northern Ireland's district councils. The Housing Council has the right to nominate its members to join the Housing Executive Board and section 12 increases the number of Housing Council nominees on the Board of the Housing Executive from three to four.

Section 13: Amendment of Article 13(6) of the Housing (Northern Ireland) Order 1992 (qualifying shorthold tenancies)

Section 13 amends Article 13(6) of the Housing (Northern Ireland) Order 1992. The purpose of this technical amendment is to ensure that housing associations are not required to seek the Department's approval where they wish to offer tenancies on a qualifying shorthold basis.

Section 14: Definition of "house in multiple occupation"

Section 14 amends the definition of "family" which is used for the purpose of defining an HMO. The aim of the amendment is to ensure that the law recognises the fact that members of an extended family living under the same roof normally comprise a single household which should not be subject to the full regulatory regime prescribed for HMOs.

Section 15: Amendment of Article 35(5) of the Private Tenancies (Northern Ireland) Order 2006

Section 15 substitutes the word "Article" for "Order" in Article 35(5) of the Private Tenancies (Northern Ireland) Order 2006. This corrects a drafting error.

Section 16: Refusal by district council to issue certificate of fitness for human habitation

Section 16 amends Article 36(5)(a) of the Private Tenancies (Northern Ireland) Order 2006 to make it clear that the purpose of a "notice of refusal" is to inform a landlord of a district council's refusal to issue a certificate of fitness and the reasons for refusal. This corrects a drafting error in the 2006 Order.

Section 17: Amendment of Article 55 of the Order of 2006

Article 55(5) of the Private Tenancies (Northern Ireland) Order 2006 allows the Department to make orders providing for the increase of registered rents. Section 17 provides that such orders shall be subject to the negative resolution procedure, thereby giving the Assembly a degree of control over orders made under Article 55(5).

Section 18: Interpretation

Section 18 provides for the interpretation of certain expressions used in the Act.

*These Notes refer to the Housing (Amendment) Act (Northern Ireland) 2010 (c.9)
which received Royal Assent on 13 April 2010*

Section 19: Commencement

Section 19 enables the Department to make provision by order as to the day or days when sections 1 to 17 come into operation.

Section 20: Short title

Section 20 provides for the Act to be known as the Housing (Amendment) Act (Northern Ireland) 2010.

HANSARD REPORTS

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

STAGE	DATE
Introduction to the Northern Ireland Assembly ("Assembly")	09.06.09
Assembly - Second Stage debate	23.06.09
Committee Stage - evidence from Assembly Research & Library Services	10.09.09
Committee Stage - evidence from Housing Rights Service, Simon Community (NI) and Council for the Homeless (NI)	17.09.09
Committee Stage - evidence from NI Human Rights Commission, NIACRO and Equality Commission NI	24.09.09
Committee Stage - evidence from Chartered Institute of Housing, NI Federation of Housing Associations, Supporting Communities NI and NI Housing Council	01.10.09
Committee Stage-consideration of possible amendments	08.10.09
Committee Stage- consideration of sections (Departmental response)	15.10.09
Committee Stage –consideration of sections	22.10.09
Committee Stage – further evidence from Housing Rights Service and Department for Social Development	05.11.09
Committee Stage - formal consideration amendments agreed	12.11.09
Committee Stage - formal conclusion	19.11.09
Committee publishes its report on the Act - Report Number 27/09/10R	07.12.09
Assembly - Consideration Stage	16.02.10
Assembly - Further Consideration Stage	01.03.10
Assembly - Final Stage	09.03.10
Royal Assent	13.04.10

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