

**EVIDENCE TO THE SOCIAL DEVELOPMENT COMMITTEE
ON THE PROPOSED HOUSING BILL**

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SUMMARY OF COMMENTS REGARDING THE HOUSING (AMENDMENT) (NO.2) BILL

Housing Rights Service welcomes the introduction of the Housing (Amendment) (No.2) Bill to the Northern Ireland Assembly on the 22 June 2010. Housing Rights Service broadly supports the measures contained in the Bill. In particular, we have long advocated for the registration of Private Landlords and consider this to be at the forefront of improving the regulation of the private rented sector. Getting it right in the Bill in terms of **ensuring that the registration of landlords is a statutory requirement with appropriate sanctions for non compliance is, in our view, paramount. It is on this basis that we call for tougher sanctions for non compliance with Landlord Registration.**

Housing Rights Service also wishes to highlight a number of other issues in relation to the Bill. In particular, there are a number of measures omitted which were contained, either in the original consultation document for this Bill or, in the Private Rented Sector strategy. **We would urge the Committee to consider the inclusion of the following measures in the current Bill:**

- **Increased fines for non compliance with the registration scheme process for HMOs up to a maximum of £20,000** (*as proposed in the original consultation document which preceded this Bill*);
- **An extension of Notice to Quit periods in the private rented sector to two months where the length of the tenancy is over five years and three months where the tenancy is over ten years** (*Departmental commitment to implement this change is contained in the Private Rented Sector Strategy launched by the Minister in March 2010*).

CLAUSES		HOUSING RIGHTS SERVICE RESPONSE
Clause 1	<p>Abolition of statement of tenancy terms This will effectively abolish the requirement, made under Article 4 of the Private Tenancies (NI) Order 2006, for private landlords to provide tenants with a separate statement of tenancy terms. The Department states that it intends to make subordinate legislation to require landlords to include all necessary information about the terms of the tenancy in the tenant’s rent book.</p>	<p>Support with qualification We appreciate that there is a need to simplify the way in which information is made available to tenants however our support for this measure is conditional on the basis that tenants will not be provided with less information. The information currently contained in the statement of tenancy terms and the rent book is different. Under the regulations it is detailed that the statement of tenancy terms shall contain nineteen particulars. The regulations in relation to the rent book detail the inclusion of only ten particulars. To ensure that elected Members have the opportunity to provide the appropriate level of scrutiny in relation to the revised regulations and ensure that all the necessary information is still provided to tenants we recommend that changes to these regulations should be subject to affirmative resolution. To achieve this we recommend:</p> <ul style="list-style-type: none"> • An amendment to Clause 7 (3) of this Bill to ensure that Article 72 (3) of the Private Tenancies (NI) Order 2006 also includes regulations made under Article 5 (<i>Tenant to be provided with a Rent Book</i>) of the Private Tenancies (NI) Order 2006.
Clause 2	<p>Tenancy Deposit Schemes</p> <p>(a) Enables DSD to make legislation providing for schemes to safeguard deposits paid by tenants in the private rented sector</p> <p>(b) Places on private landlords certain obligations relating to such schemes.</p>	<p>Support and recommend the following: Housing Rights Service wishes to ensure that a statutory tenancy deposit scheme WILL be introduced in NI. As 5A (1) is currently drafted it is a clause which enables, rather than requires, the introduction of such a scheme. To remove this element of discretion we recommend either:</p> <ul style="list-style-type: none"> • Replacing the word “may” at 5A (1) with “shall”, or • Including a time frame within the legislation by which the publication of the regulations must be brought forward e.g. <i>“The Department shall exercise that power so as to ensure that the provision for securing one or more tenancy deposit schemes are available within the period of 12 months beginning with the day on which Article 5A of the Housing</i>

		<p><i>(Amendment) (No 2) Act (Northern Ireland) 2010 comes into operation".</i></p> <p>In relation to 5B (6) Members may wish to seek clarification from the Department on why the time period proposed for the provision of information to tenants is 28 days rather than 14 days as is the case in comparable legislation in England and Wales.</p>
Clause 3	<p>Power of entry to inspect dwelling-houses Confers powers of entry on persons authorised by district councils to carry out fitness inspections</p>	Support
Clause 4	<p>Power to modify Articles 42 to 45 Enables the Department to make regulations modifying certain provisions of the Private Tenancies (NI) Order 2006 relating to determination of private sector rents.</p>	Support
Clause 5	<p>Registration of Landlords Inserts in the Private Tenancies (NI) Order 2006 a new Article 65A which enables the Department to make regulations providing for the registration of private landlords. Such regulations may create new offences in relation to provision of false information, failure to provide evidence of registration, and letting of houses by unregistered persons.</p>	<p>Support and recommend the following: Housing Rights Service wishes to ensure that a statutory scheme for the registration of landlords WILL be introduced in NI. As 65A (1) is currently drafted it is a clause which enables, rather than requires, the introduction of such a scheme. To remove this element of discretion we recommend either:</p> <ul style="list-style-type: none"> • Replacing the word "may" at 65A (1) with "shall", or • Including a time frame within the legislation by which the publication of the regulations must be brought forward e.g. <i>The Department shall exercise that power so as to ensure that provision for the registration of landlords is made available within the period of 12 months beginning with the day on which Article 65A of the Housing (Amendment) (No 2) Act (Northern Ireland) 2010 comes into operation</i>

		<p>The level of sanction (<i>i.e a maximum fine of £2500 on summary conviction</i>) proposed, in 65A (5) for non compliance with any landlord registration scheme is, in our view, inadequate. To ensure that the landlord registration scheme is effective, Housing Rights Service believes, the courts should have potential to impose higher levels of fines. The considerable difficulties which have been experienced in persuading landlords to comply with the HMO registration scheme have informed this view. We recommend:</p> <ul style="list-style-type: none"> • The level of maximum fine which could be imposed by the court, on summary conviction, for non compliance with the landlord registration process should be increased to £20000 (this is in line with the level of fine proposed for non compliance with the requirements of a tenancy deposit scheme. <i>For your information, Appendix 1 details various offences and the level of fines proposed in this Bill</i>). • Consideration should be given, where appropriate (e.g in case of landlords resident outside this jurisdiction) to extending the register to cover agents and managers.
<p>Clause 6</p>	<p>Fixed penalty for certain offences Inserts in the Private Tenancies (NI) 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.</p>	<p>Support conditional on implementation of recommendation made in relation to Clause 5 (above) i.e.</p> <ul style="list-style-type: none"> • Amend the level of fine for an offence in relation to 65A (5) to ensure that it is appropriate. This would have the impact of increasing the maximum Fixed Penalty which could be imposed by the Council from £500 to £4000. <p>We would also recommend that:</p> <ul style="list-style-type: none"> • Consideration is given to alternative forms of sanctions for persistent offenders and would suggest the Committee may wish to review some of the enforcement options contained in the Scottish landlord registration

		scheme. In particular, we would support some form of Rent Penalty Notice system whereby tenants either pay no rent or a reduced payment where a landlord fails to comply with registration.
Clause 7	<p>Regulations Amends Article 72 of the Private Tenancies (NI) Order 2006 to provide regulations made in relation to:</p> <ul style="list-style-type: none"> • tenancy deposit schemes; • determination of rents; and • landlord registration <p>will be subject to the draft affirmative resolution procedure.</p>	<p>Support and recommend that 7 (3) is extended to include Article 5 (<i>Tenant to be provided with a Rent Book</i>) of the Private Tenancies (NI) Order 2006.</p> <p>For explanation see earlier point made in relation to Clause 1 of the Bill</p>
Clause 8	<p>Houses in multiple occupation: evidence of family relationship Provides that where the Housing Executive believes that a house is occupied by two or more qualifying persons who are not all members of the same family, the Executive may serve notice requiring evidence of a family relationship between occupants to be provided. Where such evidence is not forthcoming, the house would be treated as a house in multiple occupation and subjected to the regulatory regime which applies to such accommodation.</p>	No objections
Clause 9	<p>Withholding of consent to mutual exchange of secure tenancies Inserts in Schedule 3A to the Housing (NI) 1983 a new ground for landlords to withhold consent to an exchange of tenancies.</p>	It is our understanding that the rationale supporting the introduction of Clause 9 is to allow social landlords to withhold consent to a mutual exchange where there is evidence of anti-social behaviour. Therefore, we consider that a “relevant order” in this context should relate explicitly to anti social behaviour otherwise this could lead to ambiguity in the application of this Clause.

		<p>Recommend the following amendment:</p> <ul style="list-style-type: none"> • Remove 9 (1) (b) (b) “an injunction against breach of a tenancy agreement”
<p>Clause 10</p>	<p>Disclosure of information as to orders etc. in respect of anti social behaviour Provides that any person may disclose information about certain injunctions , anti social behaviour orders or order for possession where such information is required to enable landlord of a secure tenancy to decide:</p> <ul style="list-style-type: none"> • Whether to withhold consent o an exchange of tenancies • Whether a tenant is entitled to exercise the right to buy their home, or • To take an appropriate action in relation to an application to exchange tenancies or to exercise the right to buy. 	<p>Support with recommendation that Article 10 (1) “any” person is amended to “prescribed” persons (e.g. housing officer).</p>
<p>Clause 11</p>	<p>Duty to persons found to be homeless 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.</p>	<p>No objections: it is our understanding that this is a technical amendment which will have no adverse impact.</p>
<p>Clause 12</p>	<p>Functions of Executive in relation to energy brokering</p>	<p>Support and recommend extension to cover housing associations (as proposed in the original consultation paper on this Bill).</p>

	<p>Enables the Housing Executive to submit for Departmental approval a scheme for making arrangements with energy providers for the supply of electricity, gas or oil to the Executive's tenants.</p>	
<p>Clause 13</p>	<p>Functions of district councils in relation to energy efficiency Provides district councils with powers to promote energy efficiency in residential accommodation within their own districts. To ensure coherence with existing activity, councils will be required to take account of work undertaken by the Housing Executive and the Department for Social Development and provide information to the Housing Executive which it needs to carry out its functions as Home Energy Conservation Authority for Northern Ireland.</p>	<p>No objections</p>

Appendix 1

Article breached	Potential offences	Maximum fine on summary conviction	Maximum Fixed Penalty
Article 5B (10) (tenancy deposits)	Paragraph (7) A person must not, in connection with a private tenancy, require a deposit which consists of property other than money.	A person who contravenes Article 5B paragraph (7) is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale (£2,500)	An amount determined by the council not being an amount exceeding one-fifth of the maximum fine payable on summary conviction for that offence (£500)
5B (11) (tenancy deposits)	A landlord who receives a deposit must: <ul style="list-style-type: none"> • Comply with initial requirements of an approved scheme within 14 days. • Give the tenant and any relevant person prescribed information within a certain time period. 	A person who contravenes any provision of Article 5B (other than paragraph 7) is guilty of an offence and liable on summary conviction to a fine not exceeding £20,000.	An amount equal to or three times the amount of that tenancy deposit.
Article 6A (4) (a) and (b) (landlord Registration)	A person commits an offence if – (a) he provides false information in connection with an application for registration under this Article; (b) not being a person registered under this Article, he lets a dwelling house under a private tenancy.	A person guilty of an offence under paragraph 4(a) or (b) is liable on summary conviction to a fine not exceeding level 4 on the standard scale (£2,500)	An amount determined by the council not being an amount exceeding one-fifth of the maximum fine payable on summary conviction of that offence (£500)
Article 6A (4) (c) (Landlord Registration)	A person commits an offence if – (c) being a person registered under this Article, he fails to provide evidence of registration in prescribed circumstances.	A person guilty of an offence under paragraph 4 (c) is liable on summary conviction to a fine not exceeding level 2 on the standard scale (£500)	An amount determined by the council not being an amount exceeding one-fifth of the maximum fine payable on summary conviction of that offence (£100)