

The Private Tenancies (NI) Order 2006

The Private Tenancies (NI) Order 2006 comes into operation on 1 April 2007. The 2006 Order is the first major piece of legislation concerning the private rented sector in Northern Ireland for almost thirty years. It covers the following areas:

- Obligations of landlords and tenants
- Unfitness and disrepair
- Certificates of fitness and rent control
- Role of the rent officer and rent assessment committee
- Repeals other legislation.

This fact file provides an overview of the 2006 Order and highlights some of its main areas.

A. Obligations of Landlords and Tenants

Statement of Tenancy Terms

From 1 April 2007, all new tenants should receive a **written statement of tenancy terms** from their landlord within 28 days of the tenancy commencing. This should be provided free of charge. The statement is in addition to any tenancy agreement which may exist and sets out **default tenancy terms** which can be enforced, if needs be, in the absence of a written contract or where an inadequate agreement exists. Where a landlord fails to provide a statement they will be guilty of an offence and may be prosecuted by the local district council. Some of the information which **must** be in the statement includes:

- the address of the tenancy
- the name of the tenants
- the name, address and contact phone number for the landlord and agent

(including an emergency out of hour contact number)

- the length of the tenancy
- the level of rent and when it is to be paid
- the amount of rates
- the amount and purpose of any deposit and any other payments, and
- any other obligations which forms part of the tenancy agreement.

The *Schedule to the Tenancy Terms Regulations (NI) 2007* states that information on basic rights of tenants should also be included in the statement.

Rent Books

All tenants are entitled to receive a rent book from their landlord, free of charge, within 28 days of the commencement of their tenancy. A

rent book is legally required even where the rent is paid by electronic means e.g. by a standing order through the tenant's bank account. Failure to provide a rent book is an offence which may be prosecuted by the district council.

Repair Obligations

The 2006 Order sets out **default repairing obligations** for both landlords and tenants for private tenancies which:

- commence on or after 1 April 2007, or
- which have been regulated under the *Rent (NI) Order 1978*, i.e. protected tenancies, and
- either there is no tenancy agreement as to repairs, or
- the agreement is inadequate in defining who is responsible for repairs.

Landlords' Obligations

A landlord is required to keep in good repair the structure and exterior of the property (including gutters, drains, external pipes and external paintwork) and, in addition, is responsible for keeping in good repair and proper working order certain items in the interior including:

- Installations for the supply and use of water, gas and electricity and for sanitation including basins, sinks, baths and toilets,
- Installations for heating the dwelling-house and providing hot water,
- Appliances for making use of the supply of water, gas or electricity which the landlord has provided under the terms of the tenancy, and
- Any fixtures, fittings and furniture which the landlord has provided under the terms of the tenancy.

Tenants' Obligations

A tenant is required to:

- Take proper care of the dwelling-house as a good tenant;
- Make good any damage to the dwelling-house caused by the behaviour or negligence of the tenant, members of their household or any other person lawfully visiting or living in the dwelling-house;
- Keep the interior of the dwelling-house in reasonable decorative order; and
- Get permission from the landlord before carrying out alterations to the dwelling-house (this permission should not be unreasonably withheld).

A tenant is also obliged to allow their landlord, or anyone authorised by them, to enter the dwelling-house to inspect the state of repair or to carry out repairs which are the landlord's responsibility. Access must be at a reasonable time and the tenant must have been given reasonable notice of the visit.

Tenancy Duration

Where a new tenancy commences on or after 1 April 2007 and it does not have a specified term e.g. 1 year it will be considered as lasting for a default period of 6 months.

Notice to Quit

A notice to quit, given either by a landlord or tenant must be in writing and must be for a period of at least 4 weeks. This applies to all tenancies, regardless of when they commenced.

B. Fitness Inspections

The *2006 Order* provides district councils with new powers of enforcement in respect of properties which are not **'fit for human habitation'** or which are in need of substantial repair. Tenancies of properties built before 6 November 1956 which commence on or after 1 April 2007 **must** have a fitness inspection carried out unless they already have a certificate of fitness in place or unless the property is **prescribed or exempt** i.e.:

- was built after 1 January 1945 and before 6 November 1956
- has had a renovation grant paid by the Housing Executive in the last 10 years
- has had an HMO grant paid by the Housing Executive in the last 10 years
- is currently registered as a HMO with the Housing Executive
- was previously let as a protected tenancy and had a regulated rent certificate issued.

Fitness Standard

In determining whether a property is fit for habitation the district council will use the fitness standard in the *Housing (NI) Order 1981, as amended by the Housing (NI) Order 1992* i.e. the property must:

- be structurally stable;
- be free from serious disrepair;
- be free from dampness prejudicial to the health of the occupants (if any);
- have adequate provision for lighting, heating and ventilation;
- have an adequate piped supply of wholesome water;
- have satisfactory facilities in the house for the preparation and cooking of food, including a sink with a satisfactory supply of hot and cold water;
- have a suitably located water-closet for the exclusive use of the occupants (if any);
- have a suitably located fixed bath or shower and wash-hand basin, for the exclusive use of the occupants, each of which is provided with a satisfactory supply of hot and cold water; and
- have an effective system for the draining of foul, waste and surface water.

Notice of Unfitness

Where a district council is satisfied that a property is unfit for human habitation it can, if it is considered to be the most satisfactory course of action, serve a **notice of unfitness** on the owner or their agent. The notice will specify what works are needed to be carried out in order to bring the dwelling-house up to a reasonable standard and will give a period of at least 21 days for the works to be completed. The district council is responsible for enforcing the notice.

Notice of Disrepair

Where a property is fit for human habitation but in need of substantial repairs in order to bring them up to a reasonable standard the district council may issue a notice of disrepair. The notice will specify what works are needed to be carried out in order to bring the dwelling-house up to a reasonable standard and will give a period of at least 21 days for the works to be completed. The district council is responsible for enforcing the notice.

Right of Appeal

The *2006 Order* provides a right of appeal to the county court against either the serving of a notice of unfitness or a notice of disrepair. An appeal can be lodged within 21 days of the date of service of the notice.

C. Rent Control and Certificates of Fitness

The *2006 Order* links a property's standard of fitness with the amount of rent which can be legally charged. From 1 April 2007 two types of tenancies will be subject to rent control.

1. Tenancies whose rents are subject to the *Rent (NI) Order 1978* i.e. **protected tenancies**. From 1 April 2007 no more of these types of tenancy can be created. Whilst there is no obligation in these circumstances for a landlord to have a fitness inspection carried out they may apply to do so at any time in order to determine whether the dwelling-house is fit for human habitation and consequently to allow them to increase the amount of rent which can be legally charged. The property will remain controlled until the property becomes vacant or the line of succession to the tenancy ends. Where a fitness inspection is not carried out it will be assumed that the property is unfit and the rent level will stay in accordance with the 1978 level or the level registered with the Northern Ireland Housing Executive prior to 31 March 2007.
2. Tenancies which have commenced on or after 1 April 2007 and the property:
 - i. was constructed before 6 November 1956, or is part of a converted building which was constructed before that date, **and**
 - ii. does not meet the fitness standard i.e. it is not a prescribed dwelling and it does not have a certificate of fitness.

In these circumstances a landlord **must** apply to the local district council for a fitness inspection to be carried out. An application for a fitness inspection should be made within 28 days of the date of commencement of the tenancy; failure to do so is an offence. Where the tenancy fails a fitness inspection its rent will be **controlled**. These will be referred to as **controlled tenancies**.

Tenant's Application

Where a dwelling-house falls within the same criteria as above under C 2 a tenant **may** apply, at any time, for a fitness inspection to be carried out where they believe that it has become unfit and that they are consequently paying too much rent, even though a certificate of fitness is in operation.

If a notice of refusal is issued, the tenant can apply to the rent officer for a new rent level to be determined.

Changes of Circumstances – Protected Tenancies

Where a landlord or tenant of a protected tenancy believes that there has been such a change of circumstances in the property or the tenancy which has resulted in the registered rent for the dwelling-house no longer being relevant then an application may be made to redetermine the rent.

Determining the Appropriate Rent

Under the *2006 Order* the rent officer for Northern Ireland has responsibility for determining the maximum level of rent for controlled tenancies. The rent officer will set a rent which is appropriate for the tenancy taking into account all of the circumstances surrounding the dwelling-house. Once a rent determination has been made the rent officer will notify both the landlord and tenant of the rent that has been determined and of their right to have the determination reviewed or 'considered' by a Rent Assessment Committee.

Where a tenancy is controlled the amount of rent which can be charged for the dwelling-house cannot exceed the amount of rent entered in the register. Where the tenancy is a protected tenancy the maximum rent chargeable is the rent limit as determined by the *1978 Order* i.e. £1 a week, or the amount registered by the Northern Ireland Housing Executive prior to 31 March 2007.

Rent Assessment Committee

The rent assessment committee has a duty to consider any rent determination which has been referred to it by the rent officer following a written request by either the landlord or tenant. Following their consideration, the rent assessment committee may either confirm or vary the level of rent set by the rent officer. Whatever their decision, the rent assessment committee shall notify the landlord, tenant and rent officer accordingly. Following this, the rent officer will then enter the final rent determination into the register of rents.

Register of Rents

For the new controlled tenancies, created under the *2006 Order*, a new register of rents, detailing the appropriate rent and other information about the tenancy and dwelling-house, has been produced and will be kept up-to-date by the rent officer. The register is a record of the maximum lawful rent which can be charged for a controlled tenancy. The register can be accessed free of charge at www.rentofficer-ni.gov.uk.

D. Unlawful Eviction and Harassment

The *2006 Order* amends the *1978 Order* in relation to the definition of harassment. The new definition is wider and offers more protection to tenants in that, previously a person was guilty of harassment if they committed acts which were "calculated" to interfere with the peace and comfort of the tenant whereas, from 1st April 2007 harassment will occur where the landlord or agent:

- commits acts which are 'likely' to interfere with the peace and comfort of the tenant, or
- persistently withdraws or withholds services reasonably required by the tenant for the occupation of the home e.g. cutting off the electricity supply.

In all cases the landlord or agent must either know or have a reasonable belief that the tenant will give up their tenancy or refrain from exercising their rights or pursuing any legal remedy as a result. Such actions amount to an offence which may be prosecuted by the local district council.

E. Succession

Protected tenants have the right to succession. However, under the new provisions a spouse, civil partner or other family member living in the dwelling-house will now only be able to succeed to the tenancy, upon the death of the tenant on one occasion; rather than twice as was the case previously. Therefore, anyone succeeding to a protected tenancy after 1st April 2007 will not be able to pass on their tenancy to a spouse, civil partner or other relevant family member as the one and only succession will have already occurred. A family member can only succeed if there is no spouse or civil partner and the family member was living with the deceased at the time of, and for 6 months immediately before his/her death.

Further Advice & Information

- For advice on any of the above issues please see www.housingadviceNI.org or contact Housing Rights Service on 028 9024 5640.
- For further information on the private rented sector and the *2006 Order* go to www.dsdni.gov.uk/index/hsdiv-housing/private_rented_sector.htm or www.rentofficer-ni.gov.uk

Further Reading

- *Guide to the Private Tenancies (NI) Order 2006*, produced by Housing Rights Service, published March 2007. Copies of the Guide are available at £5.00 for members and £9.95 for non-members. To order a copy please contact Adele Pound by email: adele@housingrights.org.uk or by phone 028 9024 5640.
- *Housing Rights Manual*, Chapter 5, produced by Housing Rights Service.
- The *2006 Order* and Regulations can be downloaded from www.opsi.gov.uk/legislation/northernireland/ni_legislation.htm
- A variety of information is available on the Department for Social Development's website www.dsdni.gov.uk/index/hsdiv-housing/private_rented_sector.htm

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