

Housing Rights

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Consultation Response

Response to a Review of Rate Liability in the Domestic Rental Sector

June 2016

when everyone has a home

INTRODUCTION

Housing Rights is a charity with over 50 years' experience of helping people in housing need. By providing advice, support and representation to our clients, the organisation helps them sustain their homes.

According to the most recent statistics¹, 21% of households in Northern Ireland live in the private-rented sector, with a further 14% in social housing. Housing Rights' experience of supporting people in housing need in these sectors particularly emphasises that concerns around affordability and transparency are key for our clients. It is our experience that these issues are particularly relevant for those clients who are experiencing rates liability issues.

We are therefore pleased to have the opportunity to respond to the Department's review.

SUMMARY

- The experience of Housing Rights' clients reaffirms our view that changes to the arrangements for rates liability in the domestic rental sector should be made: these changes should ensure affordability for tenants (by precluding any effective "double-charging" of tenants which currently occurs), as well as improved transparency for all tenants and landlords.
- On the basis of the information presented in this consultation paper, Option 4 appears to be the option most capable of ensuring that both these issues are appropriately addressed.
- Housing Rights wishes to emphasize the critical importance of not only ensuring that changes to the current system are made, but that appropriate and accessible information relating to rates liability is made available to landlords and tenants. The Department may wish to be aware that the Private Tenants Forum, a group of people who live in or have experience of living in the Private Rented Sector, has raised the need for improved information on this matter.
- Rates recovery processes are closely linked to rates liability. Housing Rights welcomes the Department's acknowledgement, on page 18 of the consultation paper, that current recovery processes are unsatisfactory. Housing Rights would urge the Department, as part of this Review, to take the opportunity to ensure that recovery processes are transparent and affordable for tenants and occupiers.
- Reference is made in this response to particular issues relating to the experience of our clients in relation to rates liability, for example the situation of those living in 'single let' accommodation. Housing Rights would welcome further discussion with the Department on the issues raised.

¹ See NISRA (2015) 'Family Resources Survey 2013/14', p ii

Overarching concerns

Housing Rights' key concerns with the current system for domestic rates liability are in relation to affordability and transparency.

In relation to affordability, Housing Rights has been regularly contacted by clients who are being pursued by Land and Property Service for rates payments which they were either not aware that they were liable for, or for which they believed they had already made payments towards through their contractual rental payments to their landlords. This, from the tenant's perspective, is effectively double-charging.

The unfairness of this practice is made more acute when the situation of particularly vulnerable clients is considered. Housing Rights has been contacted by clients who are living in single let accommodation as a consequence of a statutory homelessness duty having been owed to them, who have been impacted by the affordability concerns noted above.

Housing Rights' concern relating to transparency has implications both in terms of the tenancy agreement between landlord and tenant which may or may not explain liability for rates, and information more broadly- for both landlords and tenants.

Both these concerns are discussed further below. Housing Rights wishes to make specific comment on the proposals put forward by the Department in the consultation paper. These comments are referenced below.

Simplifying the liability arrangements

As the Department acknowledge, the need for a landlord rates payment mechanism remains today:

'The rationale for making landlords liable for the payment of rates continues because landlords remain in a much better position to collect rates than a government agency.'²

This most particularly applies to the private rented sector, which remains, by some distance, the most transient of the primary housing tenures in Northern Ireland.³

As the consultation details, however, landlord liability is not currently universal, and the policy environment surrounding rates liability in the domestic rental sector is complex.

Based on the information presented, Housing Rights views Option 4 as having the potential to simplify the policy environment surrounding rates liability; align with the Department and others' views regarding existing widespread tenant understandings

² Ibid., p7

³ 66% of households in the private rented sector had tenures of ≤ 3 years, compared to 27% of social rented households and 9% of owner-occupier households. See NISRA (2015) 'NI Family Resources Survey', p61

of rates liability⁴; and align with expressions of rates liability as contained within many tenancy agreements in the private rented sector.⁵

Option 4 would remove the £150,000 capital value threshold from Article 20 of the 1977 Rates Order. In practice, this would mean that the landlord would be liable for payment of rates on any domestic rental property in Northern Ireland, and entitled, by Schedule 8 of the Rates Order, to recoup rates payments from the tenant.

This option would, it appears, lead to a considerably simplified rates collection and recovery processes, and reduced administrative costs for Land & Property Services. Tenants in the domestic rental sector are, by the Department's admission⁶, a relatively transient population who can be difficult for Government agencies to consistently and reliably identify. Landlords are more easily tracked. The Department will be aware of the Landlord Registration scheme. This Scheme, established in 2014, aimed to 'give Councils the means to work and communicate with landlords, allow them to ensure that landlords comply with the law, raise standards and where necessary take enforcement action.'⁷ By mid-2015, the Department for Social Development estimated that 94% of landlords have registered with the Scheme.⁸

If the Department for Finance & Personnel were to implement Option 4, Land & Property Services records of the number and details of landlords paying rates under Article 20 of the Rates Order would complement the data collected through the Landlord Registration Scheme. The Department may wish to consider discussing with the Department for Communities how the current proposals could practically align and be supported by, work being carried out under this scheme.

Avoiding "Double payment"

The implementation of Option 4 could also preclude the possibility of effective "double-payment" of rates by tenants. The Department outlines a familiar experience for Housing Rights' advisors, of instances where tenants have, in line with their tenancy agreement, made regular payments incorporating rent and rates to the landlord, who has failed to pass these rates to LPS.

In such scenarios, given the current structure of rates legislation, Land & Property Services pursue the tenant for unpaid rates. Housing Rights has advised and represented clients in several of these cases, and can testify to the unsatisfactory nature of current rating legislation in this regard.

⁴ The Department acknowledges that 'evidence collected over the years points to the current split between landlord and tenant liability leading to confusion [. . .] **Many tenants might reasonably assume that rates were included in their monthly charge which could lead to an arrears situation.**' See DFP (2016) 'Review of Rate Liability', p18. Housing Rights' experience of advising tenants with rates arrears aligns with this understanding.

⁵ 'Many respondents to the 2013 consultation suggested that confusion will still exist in regard to liability and whether it was determined by the Rates Order or by contract law as articulated mainly through tenancy agreements.' See *ibid.*

⁶ *ibid.*, p7

⁷ Department for Social Development (2014) 'Explanatory Memorandum to the Landlord Registration Scheme Regulations (Northern Ireland) 2014', p1

⁸ Housing Rights (2016) '94% compliance with Landlord Registration Scheme'. See housingrights.org.uk/news/94-compliance-landlord-registration-scheme

Housing Rights is mindful of the arguments put forward in the Department's paper which appear against implementing Option 4, and/or against the concept of landlord liability in general. Housing Rights would offer the following observations in relation to these arguments.

The proposed change is practical, not radical

Under Article 20 of the Rates Order, the landlord⁹ is liable for the payment of rates where

- the capital value of the property is £150,000 or less;
- where separate parts of the property are let as apartments or lodgings; or
- where the property is a House in Multiple Occupation.

However as the Department acknowledges, where there are tenant(s) in these properties:

'[. . .] although the landlord is liable for paying rates over to the Department, **the actual imposition of rates falls on the tenant** [emphasis added].¹⁰ The landlord is merely acting as a collection agent and in return receives an allowance.'¹¹

Thus clarified, under Article 20 (and Article 21) **the landlord is "liable" in the vital sense of being a collection agent for the Government** – by virtue of being in a better position than the Government to identify and procure rates payments from the tenant – and compensated for this by the 10% rates discount. **The removal of the £150,000 capital value threshold under Option 4 would not affect this dynamic:** landlords would be liable for *collection* and *transfer* of rates to LPS, whilst **the tenant would remain, under Schedule 8 of the Rates Order, liable for payment of the rates to the landlord**, which can be easily absorbed (in the administrative sense) into the periodical payment of rent.

Housing Rights therefore does not see the implementation of Option 4 as, in any sense, a move away from occupier-based liability. This in turn means there would be no rationale, were Option 4 to be implemented, for landlords to become liable for non-domestic rates.

⁹ 'The Rates (Northern Ireland) Order 1977', para 20

¹⁰ As permitted under Schedule 8 of the Rates Order.

¹¹ DFP (2016) 'Review of Rate Liability', p6

Ensuring that additional charges are not passed to the tenant

The consultation paper states;

[Pursuing Option 4] loses clear line of accountability that exists - currently landlords are merely collecting rates from tenants with the rent. Universal landlord liability may lead to landlords passing on the imposition of rates to their tenants in different ways and this may require control measures to avoid exploitation.¹²

Housing Rights is increasingly concerned about affordability issues for tenants. Accordingly the organisation would not be in favor of any option which would intensify such concerns for those that we assist. Should the Department view any amendments to the domestic rating liability system as having the potential of having this effect, Housing Rights would encourage safeguards to be put in place to prevent this. The Department may therefore wish to liaise with Housing Rights and others regarding how this could be achieved. One potential option could be legislation which requires landlords to:

- Incorporate rent and rates into consolidated and regular periodical payments
- Clearly express, in any tenancy agreement, what proportion of each periodical payment is towards rent and rates respectively

Housing Rights notes that the Department for Communities is currently undertaking a 'Review of the Role and Regulation of the Private Rented Sector.'¹³ This review provides an excellent opportunity to implement such subordinate legislation, which would preclude the possibility of any inconsistency or exploitation in the collection of rates payments from tenants.

Ensuring accountability and transparency

Furthermore, Housing Rights does not accept that the implementation of Option 4 would remove the "clear line of accountability" that exists in current legislation.

As the consultation paper details, liability/accountability varies depending on a multitude of factors including (*inter alia*) the capital value of the property; HMO status; and whether the property is split into multiple apartments. In addition, as the Department acknowledge, pursuing any "clear line of accountability" to a tenant can be practically very challenging.¹⁴

The practical impact of Option 4 – the removal of the £150,000 threshold from Article 20 – would be that instead of landlords of properties with a capital value of ≤ £150,000 being liable for rates as collection agents, *all* landlords would be liable for rates as collection agents. The implementation of Option 4 therefore does not remove the current clear line of accountability; if anything, **Option 4 would clarify accountability even further, by removing the capital value threshold and creating one rule for all landlords.**

¹² DFP (2016) 'Review of Rates Liability', p25

¹³ Department for Social Development (2015) 'Review of the Role and Regulation of the Private Rented Sector'

¹⁴ DFP (2016) 'Review of Rates Liability', p7

Housing Rights strongly believes that this option would help to achieve our fundamental aims of ensuring affordability and transparency for our clients and tenants more generally, by precluding the possibility of “double-charging” of tenants and creating one rule of rate liability which is easily understood and transparent to all tenants and landlords.

Guidance on rates liability in the domestic rental sector

a) Current Departmental guidance

In the course of their work, Housing Rights’ advisers regularly refer to Land and Property Service’s ‘Payment Arrangement Guidance.’¹⁵ In our advisers’ experience, this Guidance does not provide for consistent payments and recovery procedures, as the relevant rating law is focussed only on liability. This has resulted in inconsistent recovery processes from Land & Property Services, and significant affordability and transparency concerns for Housing Rights’ clients.

In the past year¹⁶, Housing Rights has dealt with 82 cases concerning rates liability in the domestic rental sector; in the experience of Housing Rights’ advisers, information relating to rates liability had not been sufficiently or effectively communicated to tenants. This is compounded by the information passed to tenants from third parties such as estate or letting agents. It has been our experience that often times such information does not accurately and clearly identify the current rates liability position.

Housing Rights notes, in this regard, the Agenda for Action of the Private Tenants’ Forum, a group of people living in or with experience of living in the Private Rented Sector who are supported by Housing Rights which calls for better information and education for tenants in the private-rented sector.¹⁷ It is vital that the dissemination of guidance to tenants addressed, and that guidance on rates liability is available in an accessible and comprehensive format to tenants (and landlords) across Northern Ireland.

Housing Rights supports the Private Tenants Forum’s call for improved information for tenants and others impacted by rates liability issues. The Department should consider the creation and comprehensive dissemination of an “easy-read” guidance and information document from the Department on rates liability.

With regards to the content and style of the guidance document, Housing Rights believes that the document must:

- Be simply written and formatted, and understandable to the tenant (and landlord)
- Signpost to further sources of information, independent advice and guidance (there is considerable precedent, across government, for signposting to independent advice)

¹⁵ Land & Property Services (2012) ‘Payment Arrangement Guidance’

¹⁶ Specifically, 1st June 2015 to 31st May 2016.

¹⁷ See <http://www.housingrights.org.uk/sites/default/files/Agenda%20for%20action.pdf>

Housing Rights would specifically recommend that the Private Tenants Forum and others impacted by this issue are themselves involved in the production of this information, having firsthand knowledge of the specific issues and insight into the most appropriate and accessible ways to communicate with tenants.

Comprehensive dissemination of such guidance could be facilitated by requiring landlords, by law, to provide said document to tenants at the commencement of any tenancy. There is considerable precedent for such a requirement, with landlords already required to provide tenants with a rent book¹⁸ and information on the Tenancy Deposit Scheme¹⁹ respectively²⁰; in addition, the Landlord Registration Scheme provides a framework through which to communicate such an obligation to landlords.

Contractual agreements which contradict rating law

The experience of Housing Rights' advisers, in representing clients in cases of contested rate liability, clearly indicates that improvements to the system detailed above would be a major, positive step. In our advisers' experience, this is a particular concern in "single lets" cases, where the NIHE fulfil their Full Duty Applicant homeless duty with a private-rented sector landlord, occasionally with no written contract. (This contrasts with the arrangements for the fulfillment of the FDA duty in (for example) hostels, where rates payments are processed directly to Land & Property Services through payment of Housing Benefit.) Occupiers of these single lets have then been pursued by Land & Property Services, occasionally years after the fact, due to inadequate contractual expression of rates liability.

¹⁸ See The Private Tenancies (Northern Ireland) Order 2006, Part II

¹⁹ See The Tenancy Deposit Schemes Regulations (Northern Ireland) 2012, Part 5

²⁰ Housing Rights acknowledges the Department's point (on pp18-19 of the consultation paper) that only 73% of tenants were provided with a rent book according to a recent NIHE survey. However, we feel that placing the requirement to provide information on a statutory footing will reflect the significance of this issue for landlords and tenants.

Landlord Collection Allowances**a) Private landlords**

Housing Rights notes that the current 10% collection allowance paid to landlords is intended to compensate the landlord against the risk of default, and any costs associated with the collection of rates from the tenant.²¹ The Department may wish to consider whether access to any such discount or allowance should be conditional on evidence of a clear tenancy agreement between the landlord in question and any tenant(s), which clearly expresses the landlord's liability to pay the rates, and any proportion of periodical rent which is paid, by the tenant(s), toward these rates.²²

b) Social landlords

Housing Rights notes the arguments which the Department express in favour of potentially reducing or ending collection allowances for social landlords, namely:

- Social landlords have a disproportionately high number of tenants receiving Housing Benefit, whose rates payments bypass the social landlords' administration;²³
- Social tenants are generally (although not exclusively) much less transient than those in the private rented sector, further reducing the administrative effort from social landlords;²⁴
- Just over ½ of the total allowance in 2014/15 went to social landlords.²⁵

The Department's commitment to 'undertake further research to establish if [awarding the current level of allowance to the social rented sector] is welcome.'²⁶

Housing Rights would urge the Department, in this context, to be aware of the potential impacts of reducing or ending the collection allowance for social landlords on affordability for social tenants. Housing Rights would be particularly wary of any change to the allowance resulting, for example, in the passing of rates liability to social tenants, or in increases to social rents.

In undertaking this research, the Department may also wish to take into account the pending replacement of Housing Benefit (rates) with the Rate Rebate Scheme²⁷ as part of Welfare Reform, as well as the potential introduction of a Social Housing Rent Policy by the Department for Communities²⁸, and the impacts these may have on social landlords and tenants.

²¹ DFP (2016) 'Review of Rate Liability', p16

²² See p5 above for further details of this proposal.

²³ DFP (2016) 'Review of Rate Liability', p16

²⁴ Ibid., p23

²⁵ Ibid., p17

²⁶ Ibid.

²⁷ See <https://www.nidirect.gov.uk/articles/rate-rebate-scheme>

²⁸ See <https://www.communities-ni.gov.uk/articles/what-social-housing-reform-programme#toc-3>

Rates exemption for Halls of Residence

Housing Rights acknowledges the Department's considerations in favor of reducing or ending the University-run Halls of Residence "full exemption."²⁹

Housing Rights would caution any impact this would have on affordable accommodation for students and should ensure that appropriate safeguards are put in place to prevent this from occurring.

For information on this response please contact Stephen Orme, Policy & Public Affairs Officer,
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²⁹ Considerations include the fact that rates exemptions were intended to compensate for the introduction of water charges (which never occurred); and increasing private and joint-venture development activity, which could benefit from the full exemption. See pp12-13 & pp27-28 of the consultation paper.