

Housing Rights

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Consultation Response

Response to the Department for Communities' Consultation on the Review of the Role and Regulation of the Private Rented Sector

April 2017

when everyone has a home

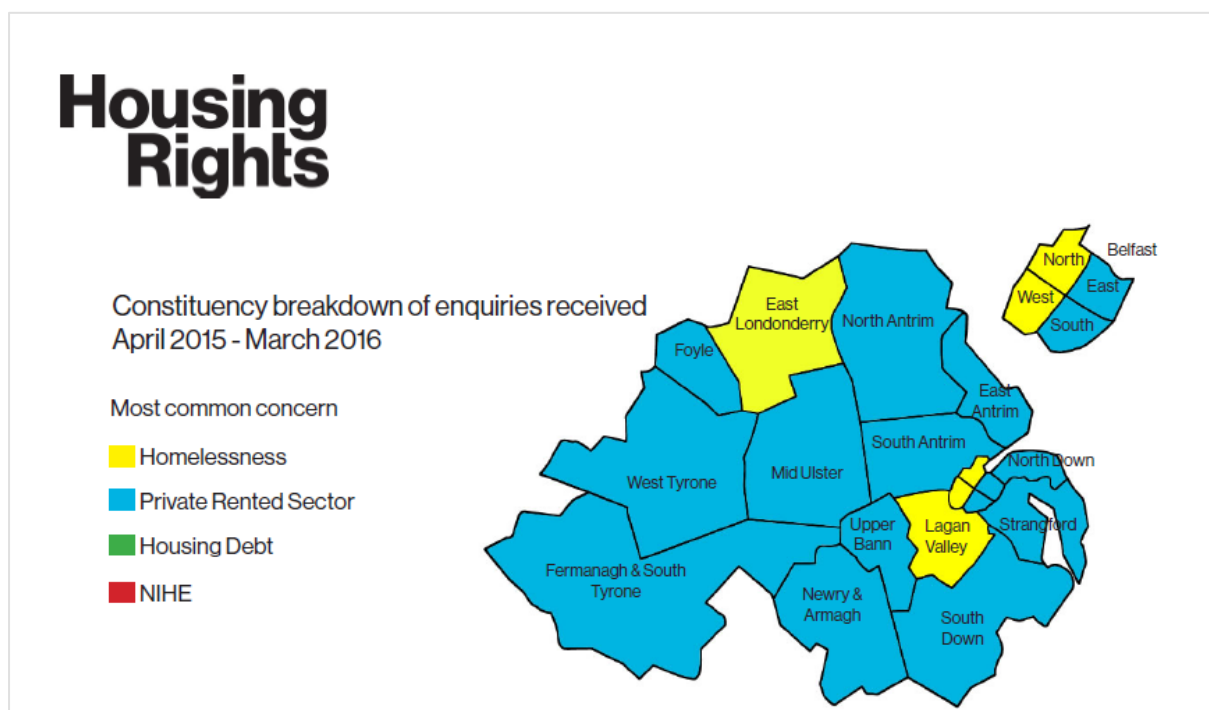
INTRODUCTION

Housing Rights has been helping people in housing need for over fifty years and is the leading provider of specialist housing advice services in Northern Ireland. Housing Rights works to improve lives by tackling homelessness and housing problems and our policy work is based on the experience of our clients.

Housing Rights welcomes the opportunity to respond to the Department's Proposals for Change for the Private Rented Sector in Northern Ireland. Housing Rights has participated in the Department's stakeholder group established to consider proposals as they developed and has previously responded to the discussion paper published in 2015.

HOUSING RIGHTS

Housing Rights offers advice to people living in all housing tenures in Northern Ireland. A disproportionate level of enquires (given the sector size) however, are received from tenants renting privately. Whilst 17% of households in Northern Ireland live in the private rented sector¹, in 2015/16 34% of the people who contacted Housing Rights for advice lived in this sector. Furthermore, as the map below shows, the private rented sector is the top concern in 14 out of 18 constituencies in Northern Ireland. Housing Rights therefore welcomes proposals which aim to ensure the private rented sector is a housing option of choice for those who live there.



¹ DfC, Northern Ireland Housing Statistics 2015-2016, Pg 11 <https://www.communities-ni.gov.uk/sites/default/files/publications/communities/ni-housing-stats-15-16-full-copy.pdf>

SUMMARY:

- **Housing Rights welcomes the publication of the Department's Proposals for Change in the Private Rented Sector, many of which will contribute to making the sector fit for the future for the increasing numbers of people who find their home there. It is our view that further refinement of some of the proposals suggested, could strengthen the impact of such proposals on the ground. Where such refinement is necessary, Housing Rights has offered the organisation's views on how this could best be achieved.**
- **Housing Rights welcomes the intention to limit rent increases. However it should be noted that in so doing there may be unintended negative consequences which the Department should be aware of. It is our view that the proposal should be strengthened through appropriate safeguards.**
- **Housing Rights welcomes the proposal to bring forward legislation to ensure that all private tenants are issued with a written agreement containing mandatory terms, regardless of the type or length of the tenancy.**
- **The organisation welcomes the potential extra protection the notice to quit proposal may offer to a lot of tenants who contact Housing Rights concerned with short notice to quit periods. However, it is our view that the unintended consequences of this proposal, could impact tenants' housing options specifically in relation to some of those tenants who seek accommodation in the social rented sector and those tenants who present as homeless to the NIHE.**
- **Housing Rights has some queries about the evidence base for proposing the introduction of a Fast Track Eviction procedure. The organisation would welcome more comprehensive detail on the average time and cost associated with possession proceedings in Northern Ireland. Similarly, Housing Rights recommends further examination of what the exact delays are in the eviction process in Northern Ireland which make the process so lengthy, and at which point in the eviction process these occur. It is our view that appropriate safeguards are extremely important and further comments are made in this respect.**
- **Housing Rights welcomes proposals which seek to professionalise the sector by improving knowledge and promoting compliance with the law. It is our view therefore that both the proposal to review the impact of the CIH Learning to Let course and fund a dedicated landlord advice line pilot are important developments.**
- **Housing Rights welcomes the proposal to develop a tenant information pack which is to be provided to tenants by the landlord at the commencement of the tenancy.**
- **Housing Rights recommends that the Department consider the broader context of tenant support in the context of the review of the private rented sector. Specifically, it is our view that support for tenants renting privately should also include continued commitment to the importance of tenant access to independent, specialist housing advice services.**

- Furthermore, it has been our experience, that specific, skilled support and appropriate levels of resourcing are required to sustain the meaningful involvement of private tenants. Whilst such infrastructure exists in the social rented sector, no such infrastructure exists for private tenants. It is our view that steps should be taken to address this. Housing Rights specifically notes, the proposal in Annex B to 'explore the feasibility of allowing scheme administrators to use monies in designated accounts to work with Housing Associations to invest in affordable housing'. It is our view, that it would be significantly more appropriate for such monies to be redirected to support tenant involvement.
- Housing Rights is disappointed that the Department is not proposing to introduce a landlord licensing scheme. Improvements to property conditions can only reasonably be achieved when resourcing is available to ensure proper enforcement of a robust standard. If the Department choose to progress the current policy option, Housing Rights suggests that consideration is at minimum, given to the insertion of such a test, possibly also in the form of self-certification, alongside the amendment proposed.
- It is our view that the proposal to introduce a regulatory framework for all letting agents is an important proposal, which is to be strongly welcomed. It is also our view that it would be critical that such a framework has the confidence of all parties who engage with letting agents, including tenants and landlords. It is critical that standards must be applicable and enforceable across all letting agents and an independent, effective form of redress is available for parties who are impacted by letting agents failing to adhere to appropriate standards.
- Housing Rights welcomes the proposal to introduce legislation to ban letting fees. It is our view that this practice may already be illegal under Article 3 of the Commission on Disposals of Land (Northern Ireland) Order 1986. A test case is currently progressing to establish clarity on this issue. Regardless of the outcome of this case, legislation to ban fees is necessary to clarify the law in this area. Housing Rights notes that the recent legal ban on letting fees in Scotland, also served to clarify an earlier piece of legislation and that the impact of the ban in Scotland, on the private rented sector there, can assuage some concerns about the impact of such a ban in Northern Ireland.
- Housing Rights welcomes the Departments proposals in relation to property standards. It is our view, however, that whilst these proposals are welcome, they do not replace the need for an improved fitness standard.
- Housing Rights is pleased that the proposals for the private rented sector acknowledge the importance of providing a dispute resolution mechanism in the private rented sector. The organisation notes that the development of such a Panel has been suggested as a safeguard for tenants in some areas. It is our view that to truly act as a safeguard, an independent housing panel must be in place prior to (or at minimum, at the same time as) for example, changes to the eviction process.

- **Housing Rights is concerned that the impact of the proposal to amend the Private Tenancies Order to make it an offence for a person to obstruct an authorised officer of the council from entering the property, could unnecessarily criminalise tenants. It is our view that a more effective and proportionate response to this policy issue would be to consider this issue in the context of dispute resolution. In Scotland, for example, as a response to concerns from landlords, provision was made for issues concerning right of access to a property to be resolved through dispute resolution mechanisms.**

SUPPLY

Housing Rights is mindful of the increasingly important role that the private rented sector plays in meeting housing demand and addressing homelessness. Whilst the private rented sector now plays a significant role in bridging the supply gap, Housing Rights is conscious that should the housing market improve ‘accidental’ landlords may choose to leave the sector.

The high risk nature of such dependency on a sector which appears to have such fragile underpinnings, underlines the need for a comprehensive strategy which identifies appropriate solutions to any current or potential supply problems.

Housing Rights welcomes the proposals outlined in the consultation document and would make the following further comments.

- It is our view that a comprehensive strategy to address the supply issues in the private rented sector is the most appropriate way forward. Housing Rights notes therefore, that the proposals contained in the consultation documents are largely exploratory in nature. The Department should be encouraged to progress work in this area, in consultation with key stakeholders, as expeditiously as possible.
- It may be useful to consider the information presented at Housing Rights’ recent conference on the Private Rented Sector ‘Getting it Right’ (November 2016). Professor Tony Crook, from the University of Sheffield, presented on the role of institutional investment and housing associations in the English private rented sector; Susan Aktemel then outlined her work as Director of Homes4Good, Scotland’s first “social enterprise letting agency. The conference also heard from a local housing association on their pilot scheme in the private rented sector.²
- Housing Rights welcomes fuller examination of the potential for housing associations to have a role in the private rented sector. With experience in housing management and working with vulnerable client groups, housing associations could make a valuable contribution to professionalising the sector. It is our view that this role should not however, be at the expense of housing association’s role in the social rented sector; rather this should be progressed separately.

AFFORDABILITY

Housing Rights welcomes the inclusion in the consultation of a proposal relating to affordability. This issue is chief amongst the concerns of those contacting us for advice in the private rented sector.

² The conference report and links to presentations delivered by conference speakers are available online at: <http://housingrights.org.uk/news/prs-conference-2016-getting-it-right-report>

We note however, that the proposal relates narrowly only to the issue of rent. For our clients concerns about affordability relate to many issues including but not limited to deposit protection, the practice of letting fees, income vs housing costs, availability of Discretionary Housing Payments etc. Housing Rights notes that some of these issues such as deposit protection and letting fees are addressed under subsequent proposals in this consultation and that some fall outside the exclusive remit of the Department for Communities. It is important however, to recognise the full extent of the affordability concerns faced by those who rent privately.

In relation to the specific policy proposal contained in the consultation document - to introduce legislation to stipulate that rents can only be increased once in any 12-month period – **Housing Rights welcomes the intention to limit rent increases. However it should be noted that in so doing there may be unintended negative consequences which the Department should be aware of. It is our view that the proposal should be strengthened through appropriate safeguards.** These points are elaborated on below.

Unintended consequence

It is the experience of our advisers that many of those who contact us from the private rented sector have been living in the sector for a long period of time, without necessarily being impacted by regular rent increases. Housing Rights would therefore have cause for concern that this proposal may have the unintended impact of ‘normalising’ the practice of rent increases.

Safeguards

Housing Rights views it as imperative that standards are set and guidance is issued to landlords and tenants regarding what a reasonable and affordable rent increase is i.e. is it in line with market value? Inflation etc?

Related to this, Housing Rights is mindful of the experience in other jurisdictions such as Scotland which specifically provides tenants to use dispute resolution mechanisms to challenge rent levels. It is our view that the subsequent proposal contained in this document which relates to the establishment of an Independent Housing Panel, should have as one of its functions, addressing disputes relating to rent levels.

It is also our view that it is important to consider the method for increasing rents i.e. what will the process be? What will the period of notice be for tenants? Housing Rights notes for example that in England, where a landlord wants to increase the rent of an assured shorthold tenancy, section 14 Housing Act 1988 contains a special procedure. If section 14 is followed, a prescribed form must be served giving the tenant at least (in most cases) one months’ notice of the increase.

SECURITY OF TENURE

The private rented sector has, by default, become a long term housing option for many who are unable to afford to own their own home or have their housing need met in the social housing sector. Despite this, concerns continue to exist about the sustainability of the sector principally because of the short (often 6 months) and insecure tenancies offered by private landlords. Research carried out by Policis and the University of York on behalf of Housing Rights in 2012 pointed to a perception amongst vulnerable homeless people that the private rented sector is less secure with higher risk of eviction.³ More recent research carried out on

³ Ellison, A. et al. For Housing Rights (2012) “Meeting the housing needs of the most vulnerable in the private rented sector in Northern Ireland”, accessible at: <http://www.housingrights.org.uk/sites/default/files/policydocs/Meeting%20the%20Housing%20Needs%20of%20Vulnerable%20People.pdf>

behalf of the NIHE by the University of Ulster⁴ confirmed this perception; almost two fifths (38%) of those wishing to leave the private rented sector indicated that their preference for the social sector related to security of tenure.

Housing Rights therefore welcomes proposals to strengthen security of tenure for tenants renting privately. Housing Rights offers the following comments in relation to the specific proposals in the consultation document.

Tenancy agreements:

- **Housing Rights welcomes the proposal to bring forward legislation to ensure that all private tenants are issued with a written agreement containing mandatory terms, regardless of the type or length of the tenancy.**
- A standard tenancy agreement has been a key 'ask' of the Private Tenants Forum as outlined in their Agenda for Action, whose work Housing Rights supports. Housing Rights would support the development of a standard tenancy agreement which would remove the confusion and uncertainty which currently accompanies the use of a wide variety of often unfair and misleading agreements.
- Housing Rights acknowledges the use of fundamental and discretionary terms in tenancy agreements in Scotland and suggests that it may be appropriate to consider similar use in any model tenancy agreement developed for use in Northern Ireland.
- It is our view that it is particularly important that relevant key stakeholders be involved in specific work to take forward this proposal to ensure that the potential of such a development is maximised in practice. Such stakeholders could include tenants, landlords, letting agents and those routinely involved in liaising with either party in the practical use of tenancy agreements, such as specialist housing advice agencies such as Housing Rights.

Notice to Quit:

Housing Rights acknowledges the consultation proposal to amend the notice to quit period from 4 weeks to 2 months for tenancies lasting longer than 12 months and offers the following comments.

The organisation welcomes the potential extra protection the proposal offers to a lot of tenants who contact the organisation concerned with short notice to quit periods. The extended notice to quit period will offer them increased time to find and secure alternative accommodation.

However, it is our view that the unintended consequences of this proposal, could impact tenants' housing options in the following ways;

- *Tenants offered social rented accommodation and reliant on housing benefit:*
Housing Rights is particularly conscious of the potential scenario whereby a private rented sector tenant is offered a social tenancy. Under current Housing Benefit regulations, housing benefit can cover both the old tenancy and the new tenancy for a period of 4 weeks. If the notice to quit period were to be increased as proposed, without a corresponding increase in housing benefit payments for such a period of overlap, this could lead to an increased risk of debt as for many social tenancy is still the desired outcome.
- *Tenants who wish to be assessed as homeless:*

⁴ Gray, P. Et al for NIHE (2014) *Living in the Private Rented Sector: the experiences of tenants* p.24, accessible at: http://www.nihe.gov.uk/living_in_the_private_rented_sector.pdf

For private tenants who present as homeless to the Northern Ireland Housing Executive (NIHE) on receiving a notice to quit, the increased time period would not present them with an advantage. This is because current homelessness legislation only entitles someone to a homelessness assessment if they are homeless or likely to become homeless within 28 days. In such a scenario therefore, a tenant who receives a notice to quit 2 months in advance of the end of their tenancy, would still have to wait until they had 28 days remaining to present as homeless to the NIHE.

Housing Rights is also mindful of the experience of tenants who experience inconvenience and possibly even distress by unregulated requests for access to their home during the notice to quit period for the purpose of arranged viewings and re-letting. Extended the notice to quit period, therefore extends the period during which such viewings take place. **Housing Rights recommends that this issue be addressed under two other proposals contained in this consultation; the proposal to regulate letting agents and the proposal regarding the model tenancy agreement. Specifically, consideration should be given to how regulation can serve to address practice around arranging viewings for re-let and how this can be incorporated into the model tenancy agreement.**

Eviction:

Housing Rights notes that the consultation document proposes that the Department seek to introduce legislation for a Fast Track Eviction Scheme which may include mandatory grounds for possession and provide appropriate safeguards to ensure fairness.

The Fast Track Eviction scheme is similar to that which operates in England and Wales and would run in parallel to the current eviction process, would be for use in certain situations and would not be available for use in cases where the landlord is trying to recover rent arrears.

Housing Rights offers the following points for consideration in relation to this policy proposal:

- Housing Rights further notes that amongst the rationale for introducing such a measure is the argument largely put forward by landlords that the current eviction process is both too expensive and lengthy.⁵ No objective evidence base, however, is offered to substantiate this point. It is our view, that especially in areas of policy development which relate to fundamental rights such as security of tenure, there should be a particularly high threshold for evidence based policy making. **Housing Rights would therefore welcome more comprehensive detail on the average time and cost associated with possession proceedings in Northern Ireland.**
- Housing Rights has assessed research published in 2014 which analysed the operation of a similar eviction process in England & Wales, which was first introduced there in 1993.⁶ **This research identified that despite the process being designed to avoid the need for a court hearing, significant court time remained devoted to hearing accelerated possession cases.** The report states;

“Private landlords present a particular challenge to court resources because of a lack of understanding of process requirements by both landlords and their agents. The time allocated to private landlord cases is commonly twice that devoted to other possession cases, and sometimes three times as long. Cases that could be determined by use of the

⁵ See p.32/33 of the consultation document.

⁶ Bright S & Whitehouse L (2014) ‘Information, Advice & Representation in Housing Possession Cases’ University of Oxford/ University of Hull accessed at: https://www.law.ox.ac.uk/sites/files/oxlaw/housing_possession_report_april2014.pdf

*paper-based accelerated possession procedure without a hearing often take up unnecessary court time because the correct procedure has not been followed.*⁷

- In addition to this research, **Housing Rights recommends that further examination is undertaken to identify what the exact delays are in the eviction process in Northern Ireland which make the process so lengthy, and at which point in the eviction process these occur.** In our experience, especially in the owner occupied sector, it is the enforcement process, not the court process, during which the most significant delays occur. It would be useful therefore, if the use of a fast track eviction scheme, which does not address delays in the enforcement process, can address the objective of making the process shorter.
- Housing Rights also observes the inclusion in the consultation document of examples in the current eviction process in Northern Ireland, whereby landlords encountered long delays to evict a 'problem tenant'.⁸ It is the experience of our advisers, however, that often those tenants perceived by landlords as 'problem tenants' can be those with complex needs, this has been particularly noted for example in relation to e.g. antisocial behaviour. Whilst such behaviour is of course inappropriate and can cause difficulties for landlords and other tenants, **the policy response to this issue must assess whether some 'problem tenants' actually require more support to sustain a tenancy rather than less.** It is our view that this would be especially important if the statutory duty to homeless people was to be discharged into the private rented sector, as is the current policy intention.
- Housing Rights would welcome more information about what the proposed mandatory grounds for Fast Track Eviction in Northern Ireland would be no such information is included in the consultation document. Similarly, the Department may wish to consider the usefulness of further conversations with stakeholders about this specific aspect of the proposal as many stakeholders are not aware of the finer detail of the English system.
- **Housing Rights welcomes the acknowledgement that it is important to ensure that there are safeguards to protect tenants.** As the consultation document notes, the experience in England and Wales has been that a downfall in the operation of the Fast Track Eviction process has been that there 'may be some vulnerable tenants left at the mercy of unscrupulous landlords'.⁹
- **It is our view that one potential safeguard could be the linking of the use of this scheme to the operation of the Independent Housing Panel. Due care must be taken however to ensure that the appropriate alternative dispute resolution mechanism is selected to address eviction cases.** It would not, for instance, be appropriate to link the use of mediation (which both parties must consent to voluntarily) to the eviction process. It may however be useful to examine the learning which emerges from Scotland which is due at the end of this year, to expand the prescribed areas under which disputes can be dealt with to include eviction (Please see appendix for further details).

The current proposal aside, Housing Rights remains concerned that weaknesses in the application of the current eviction process - which will not be replaced, but rather will continue to ruin alongside this proposed system - remain unaddressed by this proposal. With

⁷ Ibid. p.4

⁸ See p.33 of the consultation document.

⁹ Ibid.

specific regards to the practice of (or fear of) illegal evictions, which our advisers deal with on a quite frequent basis, Housing Rights would be encouraged to see more formal recognition of this issue in future policy development in this area.

As is noted in the operation of the accelerated eviction process in England and Wales, there remains an issue with regards to landlord knowledge of and compliance with the eviction process. It is our view that there is potential to address in some way this issue through the provision of both landlord advice through the landlord helpline and training through CIH's Learning to Let programme.

It is imperative however, given that not all landlords will chose to access either service, that enforcement agencies are supported with sufficient resources to take action against those landlords engaged in this practice.

Longer tenancies

Housing Rights notes that specific policy proposals in relation to longer tenancies are not included in this consultation proposal despite having been suggested in the original Discussion Paper. It is our view that it remains important to ensure that relevant mechanisms exist to support tenants who chose to make their long term home in the sector. It is significant that recent legislative developments in other jurisdictions make provision for long term tenancies. As the appendix to the consultation notes, tenancies of up to four years already exist in the Republic of Ireland and longer tenancies in England are not uncommon. Additionally, in Scotland for example, the Private Tenancies Bill, which received Royal Assent on 22 April 2016, makes private rented tenancies open ended so landlords will not simply be able to evict a tenant because their tenancy agreement has reached its end date.

It is our view that it is important the Department continue to monitor the use of longer term tenancies in other jurisdictions and strongly consider how similar proposals can be introduced in Northern Ireland. With supply issues in the social rented sector and many people unable to access home ownership, it is unlikely that the need for longer term tenancies will disappear.

TENANCY MANAGEMENT

In relation to the proposals referred to in this section of the consultation documents, Housing Rights offers the following comments.

Support for landlords

Housing Rights welcomes proposals which seek to professionalise the sector by improving knowledge and promoting compliance with the law. It is widely acknowledged that most landlords in Northern Ireland are small landlords, often owning one or two properties and may have little prior knowledge of the sector. **It is our view therefore that both the proposal to review the impact of the CIH Learning to Let course and fund a dedicated landlord advice line pilot are important developments.**

Housing Rights currently assists in the delivery of the CIH Learning to Let course in Northern Ireland with one of our experienced advisers contributing as a course tutor for one of the days in the three day course. Housing Rights also contributes, alongside other key stakeholders, to the Learning to Let Stakeholder Group.

In addition to our other services, Housing Rights is also delivering the pilot landlord advice line which was recently officially launched as 'Landlord Advice'. Qualified advisers provide information and advice to registered landlords, those who may be considering becoming a landlord and estate agents. In the last three months, on average 100 landlords per month

have accessed Landlord Advice, with key landlord queries relating to difficulties with tenants in arrears and the process for ending a tenancy. Feedback from those accessing the service is already very positive with 100% of landlords who accessed the service reporting satisfaction with the service. The service has also reported an increase in landlords accessing the service registering with the Landlord Registration Scheme.

Support for tenants

Housing Rights welcomes the proposal to develop a tenant information pack which is to be provided to the tenants by the landlord at the commencement of the tenancy.

It is our view that much of the impetus for the development of this proposal has come from private tenants themselves, particularly those who have been involved in the work of the Private Tenants Forum who specifically called for better information in their Agenda for Action. It is therefore, particularly important that private tenants are involved in the design and development of the pack.

The Department may wish to consider how both the content and format of the pack can maximise its use and usefulness in providing support to tenants. For example, it may be useful to consider how to make the pack more visually appealing and whether a section could be included in which the landlord can add property specific information to (where the gas meter is located, what day the bin goes out etc).

Standard information included in the pack could relate to tenant / landlord rights and responsibilities including information e.g. regarding rates liability, as well as key contact information for the local council and housing advice agencies.

Housing Rights recommends that the Department consider the broader context of tenant support in the context of the review of the private rented sector. Specifically, it is our view that support for tenants renting privately should also include continued commitment to the importance of tenant access to independent, specialist housing advice services and consideration of the need to appropriately resource tenant participation.

Access to independent specialist advice

As outlined in Housing Rights' submission to the discussion paper which preceded these proposals, it is our view that **proposals developed with regard to support for tenants, take account of the continued demand from tenants living in the private rented sector – for access to specialist and independent advice, support and information.** As the sector continues to grow, it is highly likely that the demand for such support will continue.

Furthermore, particularly in the context of the implementation of the current proposals to amend the regulation of the sector, it will be important that tenants have access to specialist advice, information and support to assist them to navigate the changed legal and policy landscape.

Involving private tenants

Housing Rights is mindful of the important role played by private tenants themselves in contributing to the policy development of the current proposals. The specific work undertaken by the Private Tenants Forum (PTF), whose work has been supported by Housing Rights, for example, underlines the valuable input those with lived experience of renting privately have in shaping government policy development in the sector.

The impact of the PTF's *Agenda for Action* which set out specific priority areas for policy improvement as well as the Forum's contribution to the Proposals' Working Group can easily be tracked in many of the proposals now being recommended by the Department.

It has been our experience, that specific, skilled support and appropriate levels of resourcing are required to sustain the meaningful involvement of private tenants. Whilst such infrastructure exists in the social rented sector, no such infrastructure exists for private tenants.

It is our view that the work being taken forward in the current proposals represent a significant opportunity to professionalise the sector and ensure it is fit for the future. **In this context, it is important that alongside the proposals advanced in the current consultation, steps are also taken to advance the mechanisms available to support the voice of private tenants in the private rented sector.**

Housing Rights therefore recommends that the Department consider what funding it could usefully contribute to resource initiatives in this area.

Housing Rights specifically notes, the proposal in Annex B to 'explore the feasibility of allowing scheme administrators to use monies in designated accounts to work with Housing Associations to invest in affordable housing'. It is our view, that it would be significantly more appropriate for such monies to be redirected to support tenant involvement.

With our experience in working with the Private Tenants Forum, as well as our work with tenants in the private rented sector more generally, **Housing Rights would be pleased to have further discussions with the Department and other relevant stakeholders e.g. Supporting Communities, to progress work in this area.**

Fitness declaration at the point of registration

Housing Rights notes the proposal to amend the Landlord Registration Regulations to incorporate a fitness declaration at the point of registration. The proposals also make reference to sample checks which could then be carried out by councils based on these declarations though no further information about how the costs of these checks would be met.

In the development of the current proposals, Housing Rights joined with other stakeholders to make the case for developing a model of landlord licensing for Northern Ireland which would robustly contribute to improved fitness standards. In recognition of the resource implications this would have for local councils, good practice models suggested were also entirely self-funding.

It is our view that arguments against the introduction of licensing which are largely based on the perceived high cost of a license, cannot be substantiated. The discussion paper circulated by the Department in 2015, noted that the typical cost for a license which lasts for five years is 'around £500'. It should be pointed out that £500 over 5 years equates to £1.92 per week. It would be reasonable to suggest that this is a price any landlord should be willing to bear the cost of, in order to be licenced and recognised as wholly diligent and compliant in the execution of their duties.

Housing Rights is therefore disappointed that the policy option selected by the Department does not include licensing. It is our view that the current proposal is weakened in view of the fact that it requires on self-certification at the point of registration, with only sample checks to ensure compliance. **Improvements to property conditions can**

only reasonably be achieved when resourcing is available to ensure proper enforcement of a robust standard.

In recognition of the importance of landlords meeting other reasonable standards (i.e. those broader than property conditions) Housing Rights has also advocated for a 'fit and proper person test' by drawing on learning from the experiences in other jurisdictions, e.g. Scotland and from similar practice being developed for the regulation of Houses of Multiple Occupation (HMOs) in Northern Ireland. **If the Department choose to progress the current policy option, Housing Rights suggests that consideration is at minimum, given to the insertion of such a test, possibly also in the form of self-certification, alongside the amendment proposed.**

Housing Rights notes with interest the use of a fit and proper person test in Scotland and the usefulness this has both in raising standards as well as in enforcement. The fit and proper person test, in Scotland, also linked to the use of a dispute resolution service similar to that also proposed by the Department. If such a test were to be introduced in Northern Ireland, there could be a valuable link between landlord behaviour and enforcement.

Letting Agent regulation (including a ban on letting fees)

Letting agent regulation

Housing Rights welcomes the acknowledgment by the Department of the dissatisfaction expressed by many private tenants with the service provided by letting agents. Housing Rights also welcomes acknowledgement of the serious impact on tenants and prospective tenants, of the practice by some letting agents of charging additional administrative fees.

It is our view that the proposal to introduce a regulatory framework for all letting agents is an important proposal, which is to be strongly welcomed. In order to maximise the potential of such a framework, **it is also our view that it would be critical that such a framework has the confidence of all parties who engage with letting agents, including tenants and landlords.** It would also be important that **standards set are applicable and enforceable across all letting agents** and that **an independent, effective form of redress is available** for parties who are impacted by letting agents failing to adhere to appropriate standards.

For these reasons, it is our view that it would not be appropriate simply to require all lettings to be a member of an approved body such as ARLA, RICS etc. Instead **the Department may wish to consider developments elsewhere in the UK such as the Code of Conduct for Letting Agents in Scotland and/ or the Redress Scheme in England.**

In England, The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014 is the piece of legislation requiring letting agents in England to belong to a redress scheme. Much like the deposit protection provisions, a redress scheme must be authorised by government, and there are three such companies:

- The Property Ombudsman
- The Property Redress Scheme
- Ombudsman Services Property

Each can deal with a myriad of issues and there is a code of conduct which allows have a code of consumers to complain if the agent does not adhere to the standards therein. With

the English legislation, the council can issue a penalty notice for a maximum of £5000 if the agent hasn't joined one of the three schemes.

Among the remedies are the power to;

- compel an agent to carry out action to mitigate the issue
- compel an agent to apologise
- order a penalty payment equal to the cost involved in making the complaint or any losses suffered due to the matter under consideration
- order a payment to compensate for distress

Letting fees

In relation specifically to letting fees, as the Department is aware, the widespread nature of this practice was confirmed in research carried out by the Private Tenants Forum in 2013 in a 'mystery shopping' exercise, with the majority of those letting agents sampled, confirming the charging of additional fees. This research pointed to the charging of upfront fees of as much as £100 by some agents to cover routine services such as credit checks and administrative costs. These costs are in addition to the common requirement of a deposit (normally equivalent to one month's rent), and one month's rent in advance.

Housing Rights believes that this practice, which affects landlords as well as tenants, may be illegal under Article 3 of the Commission on Disposals of Land (Northern Ireland) Order 1986, which states:

“any stipulation which has the effect, on a disposal of land, of obliging the person acquiring the land to pay commission (including fees, charges, disbursements, expenses and remuneration) due to an agent acting for a person disposing of the land, is void by virtue of this Order. In addition, in relation to lettings of land, any stipulation which has the effect of obliging the tenant to pay commission due to an agent acting for the landlord in connection with rent reviews or rent renewals/extensions is void by virtue of this Order. Money paid by a person under a stipulation which is void by virtue of this Order, is recoverable by the person.”

Housing Rights recognises however, that not all stakeholders share this view and would welcome legislation which seeks to clarify the law in this area. The Department will be aware that Housing Rights is involved in a test case on this issue, for exactly this purpose – to achieve clarity. However, regardless of the outcome of this case, it is our view that the Department's proposal to bring forward legislation to ban the charging of such fees, is necessary and important.

In welcoming this proposal, it is acknowledged that recent legislation to ban letting fees in Scotland served a similar clarifying purpose. Letting fees were originally made illegal by the Rent (Scotland) Act 1984. However, the charging of letting fees remained a widespread practice. In order to address this, the Scottish Government passing legislation – the Private Rented Housing (Scotland) Act 2011 – which clarified and re-iterated the original ban, with effect from November 2012.

The Department may also find it useful to examine independent research into the impact of ending letting fees on the Scottish market, commissioned by Shelter in 2014.¹⁰ Several landlords and commentators had predicted that the clarification would result in increased

¹⁰ Accessed at:

http://england.shelter.org.uk/data/assets/pdf_file/0010/834832/6636_Scottish_letting_fees_report_v9.pdf

fees for landlords, and/or an increase in rent levels for tenants. Housing Rights note that similar concerns are already being aired here and find the research particularly useful in addressing such concern. The research found the following:

- There was **no difference in rent increases in Scotland**, in the wake of the clarification, and the rest of the UK
- **70% of Scottish landlords who use agents have not noticed any increase in landlord fees** since the clarification
- **59% of letting agencies interviewed had felt “no impact” from the clarification**, and 17% said the impact had been “positive”
- Sector experts felt that the clarification would have a marginal financial impact on letting agents; in fact, Companies House data indicated that **the number of companies operating in the sector actually increased in the year following the ban**
- Any rent-level impacts caused by the ban on fees - if they occurred at all - were small and short-lived. **Supply, demand and wage levels are the significant long-term drivers of rent levels**

Overcrowding

Housing Rights’ notes the Department has not included reference to the issue of overcrowding (noted in the 2015 Discussion Paper) in the current proposals. Housing Rights continues to be concerned about the impact that overcrowding can have on the health and wellbeing of those impacted. **Whilst statistical evidence may not be available which highlights the scale of overcrowding in the private rented sector (in some part due to the hidden nature of this issue), it is the experience of Housing Rights that the key issue is not the scale of overcrowding but rather the severity of the problem where it exists.**

Housing Rights acknowledge the views of other stakeholders raising similar concerns about overcrowding. With reference to the situation for example in areas such as the Holylands (as identified by Belfast City Council¹¹) as well as the situation of certain minority ethnic groups, such as the Roma community (as identified by the Public Health Agency¹²).

Housing Rights has previously, in evidence sessions on the HMO Bill, drawn attention to the need for a statutory definition of overcrowding which harmonises other commonly applied standards.

Regulation 14D (3) of The Housing Benefit Regulations (2006) allows for children of opposite genders to share a room until the age of 10.

Rule 29 of the Housing Selection Scheme awards points for overcrowding where a child aged over 7 is sharing with another child of an opposite gender.

Part X of the Housing Act 1985 states that overcrowding occurs where persons of opposite sexes aged 10 and over must sleep in the same room. Overcrowding has a similar definition in the Republic of Ireland where Section 63 of the Housing Act 1966 states that a property is overcrowded where two persons of opposite genders, being persons of ten years of age or more must sleep in the same room.

¹¹ Please see ‘Overcrowding in Housing Accommodation’ briefing to the Health and Environmental Services Committee, 20th May 2013.

¹² Please see presentation by D. Wright, Public Health Agency accessible at: <http://www.publichealth.hscni.net/sites/default/files/Denise%20Wright%20-%20Roma.pdf>

We are concerned that the various definitions of overcrowding which can be found in legislation cause confusion and urge the Department to consider the need to introduce a statutory definition which mirrors those used in the administration of housing benefit.

PROPERTY STANDARDS

Housing Rights welcomes the Departments proposals in relation to property standards and offers the following specific comments. It is our view, however, **that whilst these proposals are welcome, they do not replace the need for an improved fitness standard.** Separate work is also being carried out by the Department to advance work in this area and Housing Rights continues to encourage the Department to introduce the Housing Health and Safety Standard (HHSRS) across all housing tenures without undue delay.

The following brief comments are made in relation to specific proposals.

- **Housing Rights welcomes the proposal to introduce legislation, as soon as possible, to make it mandatory for private landlords to provide smoke and carbon monoxide detectors, and to carry out periodic electrical checks.**
- To maximise the impact of such legislation, the **Department should consider requiring that periodic electrical checks involve certification (similar to gas safety certificates) so that proof will exist that such checks have been carried out.** This will ensure tenants and others have clear information which demonstrates that appropriate checks have taken place. It is our view that this change would represent a more robust improvement to property standards than the suggested proposal to the Private Tenancies Order which would require electrical certification only as part of the application for a fitness certificate.
- Housing Rights also welcomes the proposal to introduce legislation around EPC ratings, similar to that in England, whereby properties must meet a certain minimum EPC rating in order to be privately let.
- It has been noted that such a proposal would require a regulatory impact assessment to determine how many properties would be below an E rating and what the cost would be to bring such properties up to date. It is imagined that there would have to be certain exemptions from this requirement. Housing Rights would welcome further information on this proposal as work in this area develops.

DISPUTE RESOLUTION

Housing Rights is pleased that the proposals for the private rented sector acknowledge the importance of providing a dispute resolution mechanism in the private rented sector. In our work, Housing Rights has witnessed the detrimental impact that the absence of such a service has on work to safeguard rights, sustain tenancies and maintain effective tenant/landlord relationships.

In February 2017, Housing Rights held a seminar the potential for such a service in Northern Ireland. Featuring contributions from the Scottish Housing and Property Chamber (formerly Private Rented Housing Panel) and the Residential Tenancies Board (formerly Private Residential Tenancies Board) based in Dublin, the seminar also heard from those with expertise in proportionate dispute resolution which underlined the key principles which

should inform any new system. Copies of presentations delivered during the seminar and a note of all contributions are available on Housing Rights' website.¹³

Whilst recognising that this proposal represents part of larger policy development in this area, Housing Rights wishes to make the following specific comments in relation to the linkage proposed in the proposals between dispute resolution and other proposals.

- Housing Rights notes that the development of dispute resolution mechanisms are specifically proposed as a potential safeguard for tenants in the development of other proposals, some of which may be perceived as having the impact of damaging or limiting tenants' rights. Examples of such proposals include those which would introduce an accelerated eviction procedure and those which would provide for rent increases. It is our view that alongside the examination of the appropriateness of such proposals, serious consideration should be given to the chronology of their development. Housing Rights notes that in the case of, for example, the eviction process, the proposal is to 'introduce legislation for a Fast Track Eviction Scheme'; whilst the proposal for dispute resolution is only to 'examine the financial viability of establishing an independent housing panel'. **It is our view that to truly act as a safeguard, an independent housing panel must be in place prior to (or at minimum, at the same time as) changes to the eviction process.**
- **Housing Rights also notes that meaningful consideration is given to the menu of options which dispute resolution can offer, to ensure that appropriate mechanisms align to provide effective safeguards.** Given the voluntary nature of parties' participation in mediation for example, it may not be an appropriate mechanism by which to address issues around eviction. **It is our view that there is valuable learning available from the Scottish model;** which whilst currently limited in the areas under which dispute resolution can be used, is due to be expanded significantly at the end of 2017.

Housing Rights is keen to emphasise our view that the development of an Independent Housing Panel has the potential to be transformative. The Department may therefore wish to be aware that such is our belief in the importance of this proposal that Housing Rights has committed resources to a piece of research which specifically relates to this proposal.

The research intends to consider the current options for dispute resolution in NI, alternative systems in operation elsewhere including Scotland, Republic of Ireland, New Zealand etc., the case for an Independent Housing Panel in Northern Ireland (including financial and non-financial costs and benefits, and; what such a Panel could look like in Northern Ireland.

Work has already begun with a study trip to Scotland to talk with key stakeholders and it is anticipated that the final paper will be completed by early autumn 2017. One of the key areas emerging from the research, even at this early stage, is the important role occupied by dispute resolution provision as part of the wider access to justice model. Housing Rights therefore wishes to underline the continued importance of access to specialist advice as a preventative tool in dispute resolution.

It is our view that this paper will assist the Department in progressing this proposal and Housing Rights would welcome further discussions with the Department on this issue.

¹³ Accessible at: <http://housingrights.org.uk/news/dispute-resolution-event-summary>

PRIVATE TENANCIES ORDER (ANNEX A)

Housing Rights welcomes proposals to strengthen and clarify the Private Tenancies Order. It is our view that the proposed amendment which relates to the prosecution of offences i.e. Article 68(3) – change ‘councils may’ to ‘councils shall’ is particularly welcome and we would welcome the opportunity to work further with the Department and relevant other stakeholders such as the local councils, to progress this proposal.

It is our view that due care must be taken to avoid amendments which could have unintended or undesired consequences. Housing Rights is concerned that the proposal which relates to the function of the appropriate district council, could be one such proposal. The proposal is to create an offence, similar to that in Article 28 for Article 36 if a person obstructs an authorised officer of the council from entering the property. Whilst no information is available regarding the policy intent of this proposal, it is concerning that in practice such a person would most likely be a tenant, for whom the obstruction may be related to an existing unresolved issue with the landlord.

Housing Rights views the impact of such a proposal, which would criminalise a tenant, to therefore be unnecessary and disproportionate. It is our view that a more effective and proportionate response to this policy issue would be to consider this issue in the context of dispute resolution. In Scotland, for example, as a response to concerns from landlords, provision was made for issues concerning right of access to a property to be resolved through dispute resolution mechanisms.

TENANCY DEPOSITS (ANNEX B)

Housing Rights welcomes the proposals referenced in this document regarding tenancy deposit protection, noting that many of those suggested have been called for by Housing Rights and other stakeholders and will contribute to more robust protection for tenants. These proposals include those which relate to retrospective protection, prosecution time bar, fixed penalties and court decisions.

Housing Rights has the following additional comments to offer in relation to other proposals contained in Annex B.

- In relation to the proposal regarding monies in designated accounts, please see comments made earlier in this response regarding involving tenants.
- Housing Rights welcomes the proposal to amend legislation to allow part of the penalty to be paid to the tenant.

For further information about any of the issues raised in this response, please contact Housing Rights’ Policy & Practice Manager, Kate McCauley by email: kate@housingrights.org.uk or by telephone: 028 90 245640

APPENDIX

Overview

The First-tier Tribunal for Scotland (Housing and Property Chamber) was formed to deal with determinations of rent or repair issues in private sector housing as well as assistance in exercising a landlord's right of entry. The Chamber also provides relatively informal and flexible proceedings to help resolve issues that arise between homeowners and property factors.

Part 3 of the Housing (Scotland) Act 2014 transfers jurisdiction for civil cases relating to the private rented sector from the sheriff court to the First-tier Tribunal. The Chamber will start to hear more private rented sector cases from December 2017 including the new letting agents' regime; transfer of jurisdiction from the sheriff courts; and new private tenancies.

The Housing and Property Chamber completely replaces the Court for issues within the Chamber's remit. The decision of the Chamber's Tribunal has the same weight as a Court Order.

Housing Tribunals

Each tribunal is made up of up to three panel members. The President reviews each case and decides how many panel members should be involved. There is always a Legal Member on every panel, and they may be joined by a Surveyor and/or a Housing Member.

Panel Members are appointed by the Judicial Appointments Board, through the same process as Judges are appointed. Legal members are required to have 'softer skills': housing knowledge, flexibility, ability to talk to 'lay people', be inquisitorial and proactive.

The Chamber will be additional Panel Members to meet anticipated demand following upcoming legislative changes which will see all evictions in the PRS going through the Chamber – new tenancy being introduced in 2017: Scottish Private Residential Tenancy (SPRT).

The Chamber trains all its Panel Members, with a lot of the training done in house as it is very specialised. Training topics include: conflict resolution, interview techniques, legal updates and mediation.

Future Developments

The Private Housing (Tenancies) (Scotland) Act 2016 introduces a new Scottish Private Residential Tenancy, (SPRT) which is expected to be introduced at the end of 2017 and deliver improved security of tenure for PRS tenants. The SPRT will become the standard tenancy agreement between residential landlords and tenants and will replace the most common types of residential tenancies in Scotland – the Short Assured Tenancy and the Assured Tenancy.

The key points to note regarding the SPRT are:

- There will be no minimum period of let and no pre-tenancy notices will be needed.
- There will be a model tenancy agreement which may be used by landlords and tenants.
- Tenancies will continue indefinitely unless the tenant wants to leave or the landlord proves one of the prescribed grounds for repossession. The grounds for repossession include the landlord or lender looking to sell the home or extensively refurbish it or a breach of the tenancy agreement by the tenant or change in the tenant's status: the 'no fault' ground for termination will be removed.
- Only one notice to leave will be needed to end the tenancy. Tenants must give four weeks' notice to leave no matter how long it lasted. When a landlord actions one of the grounds for repossession, the notice periods are as follows:
 - if the tenancy lasted for six months or more, usually 12 weeks' notice;
 - if the tenancy lasted for less than six months, four weeks' notice; and,
 - regardless of the length of the tenancy, four weeks' notice where the tenant:
 - -is not occupying the property as their home; or
 - -has failed to pay three consecutive months' rent in full or is in breach of the tenancy agreement; or
 - -has behaved antisocially or committed a relevant criminal offence or associates with a person in the let property who has a relevant conviction or engaged in anti-social behaviour.
- Rents may be reviewed once a year; the landlord must give the tenant at least three months' notice of the increased rent. Tenants can challenge the proposed rent increase by seeking an order determining the rent from a rent officer. The rent officer must determine the open market rent which is "fairly attributable"; appeals can be made against such orders to the First Tier Tribunal.
- Local authorities can apply to the Scottish Ministers to designate areas as rent pressure zones to regulate existing but not initial rents. If the local authority is successful, the rent pressure zone can be put in place for a maximum of five years. Landlords within the area affected will be able to raise rents by at least a minimum of CPI + 1%.
- If certain conditions are met, partners, family members aged 16 and over and resident carers may succeed to a private residential tenancy on the death of the tenant.

As noted above, the Housing and Property Chamber are currently recruiting additional Panel Members to meet the anticipated demand following these impending legislative changes.