1. How would you like your response to be published? (Please note this question requires a response)

I would like my response to be published.

2. Are you content that any of your suggestions which have been published to the Committee or the Assembly may inspire the text of an amendment?

Yes

3. What is your name?

Kerry Logan

4. What is your email address?

Kerry@housingrights.org.uk

5. Please indicate if you are providing a response:

On behalf of an organisation or business

If on behalf of an organisation or business, please state its name:

Housing Rights

6. Do you think that the Bill will meet its overall policy objectives as above?

- In Part

Please elaborate:

The experience of Housing Rights' clients, many of whom are on low incomes, is that within the private rented sector (PRS) a sub sector exists which is characterised by poor standards, insecurity of tenure and problems with affordability. In our view this Bill is an important first step in a series of legislative reforms to address some of these issues in the PRS, including the above policy objectives of the Bill.

However, as the Department has recognised, further legislative steps will be required in order to fully meet these objectives to address issues such as letting fees, fitness standards, affordability and landlord licensing.

7. If you foresee any unintended consequences of any of the policy objectives of the Bill please describe them here.

List any unintended consequences of any of the policy objectives of the Bill you foresee.

Housing Rights welcomes the objective of making the private rented sector a safer and more secure housing option for those who live there. We welcome this legislation as a first step towards the achievement of this objective. In our view, however it would be inappropriate to view these changes in and of themselves as sufficiently significant to reform the sector, and address the totality of the issues facing the increasingly vulnerable demographics who live there. For this reason, Housing Rights remains of the view that notwithstanding the welcome

improvements made by the provisions in this Bill, it remains inappropriate to consider discharging the statutory duty to homeless applicants by housing them in this sector.

Theme 1: Tenancy Management; Clauses 1&2

8. On Clause 1: Do you think it is suitable for regulation making powers to prescribe the detail required within such a notice or should this detail or certain particulars in it be on the face of the Bill?

- Yes

Please elaborate

Housing Rights appreciates that regulations are commonly used to detail the provisions of a Bill, and recognises the urgency of this Bill passing through the Assembly by the end of the mandate. We believe the detail of the statement of tenancy terms proposed in Clause 1 will be of significant importance. If providing this detail in regulations would enable the Department to consult with stakeholders on the details, we would be supportive of this approach. We would particularly welcome the involvement of tenants and representatives of tenants in this process.

Housing Rights anticipates the required particulars and information will reflect those prescribed in the Tenancy Terms Regulations (Northern Ireland) 2007 and would be supportive of this. In our view **it will be particularly important that information regarding the amount of rates payable, whether this amount is included in the rent, and who is liable for the payment of rates, is included** in order to help tenants applying for rates rebate. Furthermore, given that Clause 3 (2) of the Bill removes the requirement to provide a rent book under Art 5 2006 Order (referred to hereafter as the 2006 Order), i**t will be important that the notice includes other information that is no longer required through the rent book, particularly the landlord's name and contact details. Housing Rights further recommends that these required contact details include the landlord's email address where possible, as well as postal address.** In addition, **it will be important that the statement explicitly states the date that tenancies will come to an end, the notice period required and the circumstances under which the tenancy can be extended.**

9. On Clause 1: If you are you aware of details of similar notices or Statements of Tenancy in other jurisdictions that you feel work well, please provide information.

In Scotland, Private Residential Tenancies require landlords to provide a written copy of the terms of their tenancy and a model agreement is available online which provides mandatory and discretionary terms. In addition, landlords are required to provide tenants with easy-to-read or support notes to help tenants understand their rights during the tenancy. Housing Rights recommends that these and other good practice examples are considered in the developing the detail of the notice of tenancy terms under Clause 1.

10. On Clause 2: How do you feel this clause, which introduces Schedule 1, is, or is not, sufficient to deal with certain past matters (required due to the accidental repeal of Article 4 of the Private Tenancies (NI) 2006 Order – see EFM for details)? Please include any instances, of which you are aware, in which the accidental repeal of Article 4 has had a negative impact?

In Housing Rights' view this Clause provides sufficient protection to tenants whose tenancies were created on or after the repeal of Article 4 of the Private Tenancies (NI) Order 2006 but before the commencement of the Bill. As has been noted above, we anticipate the required particulars and information will reflect those prescribed in the Tenancy Terms Regulations (Northern Ireland) 2007 and would be supportive of this.

The repeal has negatively impacted tenants in a number of ways. For example, tenants lost the right to a right to a written statement of the cost of rent and rates, along with a statement of entitlement to apply for social security help with the payment of these costs. This has led to difficulties for some in applying for and proving liability for the purpose of claiming assistance with housing benefit, Universal Credit Housing Costs and/or rates rebate. Furthermore, the loss of a right to an inventory has made it difficult for some tenants to evidence their right to a return of their deposit at the end of the tenancy.

11. On Clause 2: Please inform us of any other perceived issues in relation to tenancy management that are not in the Bill, that you wish to highlight to the Committee.

We note that key aspects of the Departments' proposal in their 2017 proposals for change in the private rented sector, which relate directly to tenancy management are not included in this Bill. We understand they are to be legislated for separately. Specifically, these are to introduce a regulatory framework for all letting agents, and legislation to ban the charging of letting fees in all but prescribed circumstances. We understand, given that the responsibility for letting fees sits between the Department for Communities and Department for Finance, it is likely not be possible to address this issue in this Bill. However, **given the ongoing practice of charging unlawful letting fees, we recommend that suitable legislation is progressed as soon as possible** and we welcome that the Department has stated their intention to do so in the next mandate.

Furthermore, **Housing Rights recommends progressing landlord licencing in the next mandate.** We recommend that, as was initially intended, the Landlord Registration scheme be further developed into a system of Landlord Licensing. This should include a fit and proper person test, suitable management and financial arrangements and mandatory compliance with all relevant legislation. It is our view that this is a crucial step in ensuring adequate tenancy management in the PRS.

Theme 2: Rental Payments and Rental Deposits: Clauses 3, 4, 5, 6 and 7

12. On Clause 3: Do you feel that the clause offers sufficient protection to tenants with regard to the provision of receipts for cash payments?

- Other

Please elaborate

1. **Scope of the rent receipt**

Housing Rights welcomes the requirement in Clause 3(2) for landlords to provide a rent receipt for payments in cash. However, given the fact that tenants are often required to pay other fees at the beginning of the tenancy, **we recommend that this requirement is extended to all cash payments made in connection with a tenancy or prospective tenancy.**

We therefore recommend that the Clause further amends Art 5(1) 2006 Order to add "… any payment of rent in cash, or any other payment in cash made in relation to the tenancy."

Housing Rights further recommends that the receipt should detail the purpose of the payment, in addition to the particulars set out in Art 5(2) 2006 Order as amended by the Clause 3(2). It is our hope that the requirement to detail the purpose of the payment would not only assist tenants wishing to reclaim fees unlawfully charged under The Commission on Disposals of Land Order 1986, but also ensure clarity in cases where payments are being made to cover rent arrears, in addition to rent payments.

Housing Rights therefore recommends that Clause 3 further adds Art 5(2)(d) to the 2006 order with words to the effect of "the purpose of the payment".

2. **Time period for rent receipt**

Housing Rights notes that under Art 5 (3) 2006 Order as amended by Clause 3(2), the rent receipt must be provided (a) at the time the payment is made, or (b) if that is not possible, as soon as reasonably possible after that time. It is our view that there is potential for differing views between a landlord and tenant as to what a reasonable time period would be. **It may therefore be useful to include a prescribed time limit for the prevention of disputes, for example 28 days.**

Housing Rights therefore recommends that Art 5(3)(b) 2006 Order is further amended to read "…as soon as reasonably possible after that time and no later than 28 days after the payment is made."

13. On Clause 3: In your experience what, if any, particular types of tenants pay their rent in cash?

Some Housing Rights clients continue to be asked to pay their rent in cash, in our experience these typically but not exclusively include those living in HMOs, and people who are in receipt of Housing Benefit or UC Housing Costs who pay the shortfall between their rent and the Local Housing Allowance rate in cash. In the past some of these clients have found it difficult to

prove they have met all of their rent payments during the year if they have not been provided with a receipt or a rent book as they only have proof of payment of the Housing Benefit/UC Housing Cost element.

14. On Clause 3: Please provide any suggestions in respect of how tenants can be made aware of their right to be provided with a rent receipt for payments in cash.

Housing Rights recommends that the right to be provided with a rent receipt is included in the notice of tenancy terms provided for under Clause 1. In order for this to be effective, it is crucial that the implementation of Clause 1 results in tenants actually being given the required statement of tenancy terms. Furthermore, tenants could be provided with a tenancy handbook or information pack, as is the case in Scotland, to make them aware of such rights. **Housing Rights' experience as an advice agency is that people often do not seek information of their rights until they experience a problem**. It is therefore important that other avenues are also used to ensure people are aware of their rights, including clear public facing information, programmes of education and direction to online information such as our Housing Advice NI website. Indeed, as noted in our response to Q42, there is a need for all rights created in this new legislation to be publicly communicated in a general awareness campaign for tenants, landlords and other stakeholders.

15. On Clause 3: Please tell us how robust you consider the mechanisms currently in place for tenants to complain, should their landlord or agent refuse to issue a receipt for a cash payment.

Housing Rights notes that there is currently no right to a receipt for tenants who make a cash payment of rent and so there is currently no recourse to make a complaint. However, all tenants currently have the right to a rent book which can function in the same way as a receipt, as well as containing other important pieces of information. While councils have an obligation to enforce this right, there is no direct mechanism for tenants to complain.

Since 1 April 2007 there have been two pieces of legislation governing this right. For tenancies that started before 1st April 2007 a right to a rent book exists under Article 38 of the Rent (Northern Ireland) Order 1978 and the Rent Book Regulations (NI) 2007. For tenancies that began on or after 1 April 2007, Article 5 of the 2006 Order states that a tenant should be provided with a rent book, free of charge, within 28 days of the commencement of their tenancy.

In each case, failure to provide a rent book is an offence and local district councils have responsibility for enforcing the rent book requirements. Guidance encourages district council Environmental Health staff to check that a rent book exists whenever they are carrying out an inspection on a property. Where a landlord fails to provide a rent book the council should firstly provide general information to the landlord and tenant about the legal requirements. Where non-compliance continues the council should issue a written warning followed by enforcement action when necessary.

Housing Rights notes that for tenancies beginning before 1 April 2007 a landlord can be prosecuted by the district council and fined up to £500 for not providing a rent book. When a tenancy has started on or after 1 April 2007 where a landlord, or anyone who demands or

receives rent on their behalf, fails to provide a rent book they may be prosecuted by the local district council. The penalty on conviction is a level 4 fine; which is currently up to £2,500.

As there are 2 different sets of regulations covering tenancies beginning before and after 1st April 2007, fines are on 2 different scales. Housing Rights is concerned that this leads to inconsistencies within the private rented sector based on the date of commencement of the tenancy.

In both cases guidance encourages that informal measures are taken in the first instance. In Housing Rights' experience these informal measures are often quicker and more cost effective for councils. However, it is our clients' experience that enforcement is rarely taken any further beyond these informal measures. The cost and resources required to bring action against a landlord who commits an offence under these regulations is rarely seen as reasonable, when weighed against the impact of not having a rent book on the tenant.

The current regulations also only allow action to be taken if a rent book has not been provided within the required time scale. However, there is no mechanism to complain if the rent book is not filled in and signed by the landlord each time a rent payment is made, either in cash or otherwise. This means as long as a rent book is provided 28 days after the beginning of the tenancy, no offence is committed if a landlord provides no proof of receipt of cash payments for the rest of the duration of the tenancy.

Furthermore, Housing Rights' clients frequently express concern around pursuing complaints against a landlord due to the risk of 'retaliatory eviction'. Retaliatory eviction is where a landlord brings a tenancy to an end because a tenant enforces their statutory rights. This is a particular worry for periodic tenants as landlords can bring a tenancy to an end, following the proper procedure, without requirement to prove any fault on the tenant's part.

Housing Rights therefore welcomes the provisions in Clause 3 of the Bill which makes failure to provide a rent receipt a named offence with the same level of fine levied regardless of tenure. **However, given the experience of our clients that council enforcement is rarely taken beyond informal measures, it is crucial that councils are provided with the resources needed in order to be able to bring action against landlords for committing the offence in each instance when informal measures have failed.**

16. On Clause 4: How appropriate do you consider the limit of no more than 1 month's rent on the amount of deposit that is required in connection with a private tenancy?

Housing Rights welcomes the limit of no more than 1 month's rent on the amount of deposit that is required in connection to a private tenancy, as an important first step in addressing affordability issues faced by private renters struggling to afford deposits. We are hopeful that this will also protect against a scenario where landlords charge higher deposits in line with the extended notice to quit period provided later in the Bill. We further welcome the provision under Art 5ZC(5)(b) which enables the court to order any excess deposit to be repaid to the person who paid it.

17. On Clause 4: Please provide any further comment on the affordability of tenancy deposits.

Housing Rights notes that the practice of asking for more than one month's deposit and rent in advance is often used by landlords as a way of mitigating what they perceive to be risks in renting to certain groups (for example people who do not have access to a guarantor or people with pets). Indeed, research carried out by Housing Rights (Preventing Homelessness and Sustaining Tenancies in the Private Rented Sector: Scoping Project, 2020) found that foreign nationals were often required to pay a higher deposit and/or several months' rent in advance in lieu of providing a guarantor. **Housing Rights therefore recommends that the Department monitor, and if appropriate develop a policy response to assist, groups who may have routinely been charged more than one month's deposit because they are perceived to be high risk, to ensure they are not excluded from the sector.**

Similarly, we recommend that the Department monitor and as appropriate bring forward legislative or policy protections to address other barriers which may arise in place of the practice of charging excessive deposits, such as increased requirements from guarantors (e.g. a high salary and/ or homeownership). Indeed, recently Housing Rights has had clients who have been asked for a guarantor who is a homeowner and has a salary of over £27,000, which many private renters do not have access to. This can also leave people vulnerable to expensive schemes set up by organisations who charge significant amounts to act as a guarantor.

18. On Clause 4: The Bill restricts Deposits to one month's rent. There is no specified restriction to limit the amount of rent in advance required. Please express any views you may hold in that regard.

Given the policy intention behind Clause 4 of addressing affordability issues when accessing tenancies, **Housing Rights recommends that the Bill also limits the amount of Rent in Advance which can be charged to one months' rent in advance.** The charging of excessive amounts of rent in advance can be another barrier to low-income households accessing private tenancies, and Housing Rights is concerned that it may become a more common practice in place of charging higher deposits, if the Bill does not also limit the amount of rent in advance. Furthermore, such a limit would protect against a practice of landlords charging extra rent in advance in line with the extended notice period.

19. On Clause 5: Do you feel that extending the time limits outlined in this clause are sufficient and necessary?

- Other

Please elaborate

Housing Rights does not foresee any significant issues with changes extending the time limits under this Clause.

20. On Clause 6: Are you in favour of there being no time barrier on prosecuting a person who fails to comply with the set requirements of the amended Article?

- **Yes**

Please elaborate

Housing Rights welcomes the provision that failure to meet deposit requirements will be a continued offence as long as the failure continues. The current requirements mean that any prosecution for failure to protect must be brought within 6 months of the original offence, which would occur at the start of the tenancy. As tenants often do not discover any such failure to protect until after they complete their tenancy (which is normally a minimum of 6 months in length), they are often unable to prosecute this offence, as it has expired. Indeed, Housing Rights has had clients unable to take action against their landlord due to the restrictive time limit.

Whilst not directly in relation to Q 20, Housing Rights also wish to highlight an additional point with regard to Clause 6. In our experience, Landlords using the insurance-based scheme at times fail to renew the protection after the first year which means the deposit is unprotected for the duration of the tenancy. **Housing Rights therefore recommends that Art 5B 2006 Order is further amended to explicitly state that deposits protected under an insurance-based scheme must be renewed as needed, to ensure they remain protected for the duration of the tenancy.**

21. On Clause 7: The Bill provides for restrictions on the frequency of rent increases (to any private tenancy except a controlled tenancy). What is your view on these restrictions?

1. **<u>Frequency of rent increases</u>**

Housing Rights supports the intention to include a measure within the Bill to address the growing affordability issues facing low-income households in the sector. However, in our view it is not yet clear that the proposed clause to limit the frequency of rent increases is necessarily the best vehicle to do so. Housing Rights notes the findings of ongoing research by Indigo House (Rent Better, Wave 1 Baseline Report, 2020) which explored the impact of a similar provision in the Private Housing (Tenancies) (Scotland) Act 2016. The baseline research found that so far there is little evidence of the provisions which limit rent increases to once a year, contributing to reduced rent increases. Furthermore, qualitative evidence suggested that the change might have had the perverse effect of actually increasing rents more regularly than the previously common practice of landlords increasing rent only upon change of tenancy, or when there had been some investment in the property. Similarly, the Scottish Association of Landlords had separately publicly noted that more landlords have been raising rents every 12 months after this came into force, while previously many had not done so for years.

Nevertheless, it is important to note that researchers have found that it is difficult to isolate policy impact on rent increases given the many varying local demand and supply factors at

play, as well as other broader changes such as fiscal reforms that will also impact on the market. Furthermore, these findings are from the first of three waves of the research project which is due to be completed by the end of 2023.

2. Challenging unfair increases

Additionally, Housing Rights notes that under the Scottish legislation there is provision for tenants to challenge unfair rent increases through a rent officer. As a specialist housing advice agency, it is our experience that the amount of a rent increase is likely to be at least as much of an affordability issue, as the frequency of the increase. Accordingly, **Housing Rights recommends that consideration is given to implementing a provision to challenge unfair rent increases here.**

It should be noted however, that the Rent Better research in Scotland has also found a low uptake of the rent adjudication service through which unfair rent increases can be challenged. It would therefore be important to explore the reasons for this in order to ensure its impact would be maximised in NI. Given the emerging findings in Scotland, **Housing Rights recommends that the proposed Art 5C under Clause 7(2) is replaced with a Clause enabling the Department to introduce regulations to restrict the frequency of rent increases, as well as a mechanism to challenge unfair rent increases,** if it is deemed that this would address rather than unintentionally exacerbate affordability issues. It is our hope the completion of the Rent Better project by the end of 2023, will give a clearer picture of the impact of restricting rent increases in Scotland, and how to avoid any unintended consequences.

22. On Clause 7: What are your views on a rent increase only taking effect if a landlord gives the tenant a written notice that complies with certain requirements?

Housing Rights strongly supports the proposed inclusion in Clause 7(2) to require that a written notice be given to tenants at least 2 months before the date of a rent increase. In our view this requirement is in keeping with the broader intention of the Bill to improve the sector particularly with regard to notice of certain matters to tenants.

Additionally, in our view this is particularly important in the context of the increased notice to quit period under Clause 11 of the Bill, in order to avoid a scenario where a landlord would increase the rent in the hope that the tenant will leave early and the landlord can therefore avoid the extended notice period. For this reason, **Housing Rights recommends that, should the notice to quit period be extended to 12 weeks (see Housing Rights policy recommendations with regard to Clause 11) the same period is required for the notice of a rent increase.**

It is our view that Art 5D should be given effect in the Bill, even if a decision is made to address rent increases (frequency and amount) via regulations as a consequence of the enabling clause proposed above with regard to Art 5C. The requirement that a rent increase only takes effect after a landlord gives a tenant written notice of 2 months would have a positive impact on tenant experiences in the sector regardless of the other changes proposed.

23. On Clause 7: Do you feel it is appropriate that the Department will be given the power to specify circumstances in which the restrictions on rent increases will not apply (for example, if house is renovated/extended)?

- Other

Please Elaborate

If a restriction on the frequency of rent increases is deemed to address affordability issues, Housing Rights would recommend that consideration be given to limiting the circumstances under which the restriction will not apply further than is currently provided in the Bill. In doing so, the wording should prevent a scenario whereby it is argued that minor adaptations are significant enough to merit a rent increase. The proposed Art 5C(4) provides that such circumstances may include the tenancy being "renovated, refurbished, altered or extended". Housing Rights recommends that this is amended to reference that such renovations, refurbishments etc are sufficiently substantial. We note for example in the Republic of Ireland, the Residential Tenancies Act 2004 s20(1) includes a similar exception for a 'substantial change in the nature of the accommodation.'

24. On Clause 7: Are there any other comments you wish to make in respect of rent, rent deposits and affordability?

Housing Rights welcomes the Minister's indication during the Second Stage of the Bill that work is ongoing to explore rent controls. Affordability issues are chief among the concerns of Housing Rights' PRS clients and we welcome the Minister's commitment to addressing this. However, we understand that, given the complexities of effectively implementing measures to control rent, it will likely not be possible to include such a provision in this Bill. Again, Housing Rights recommends that consideration is given to learning from approaches in other jurisdictions, for example from the issues in the Scottish approach to Rent Pressure Zone which has not yet proven effective (Indigo House, Rent Better, Wave 1 Baseline Report, 2020).

Theme 3: Property Management Standards: Clauses 8, 9 and 10

25. On Clause 8: In your view will this clause meet its stated aim of reducing the risk of injury or death caused by fire, smoke and carbon monoxide in private tenancies?

- Yes

Please elaborate

Housing Rights supports Clause 8 and the addition of requirements regarding fire, smoke and carbon monoxide detectors through Art 11B – 11F 2006 Order, particularly Art 11B which requires landlords to keep in repair and proper working order, appliances for detecting and warning of fire, smoke and carbon monoxide.

26. Clause 8 gives the Department the power to set minimum standards for the purpose of determining whether the duties of this clause have been complied with. What is your view on this?

This technical area is outside our immediate area of expertise.

27. On Clause 8: The clause refers to the landlord's 'knowledge of disrepair'. What is your view of this provision?

Whilst it would be reasonable under normal circumstances for tenants to make landlords aware of the need for repairs, Housing Rights notes the experience of some tenants whose circumstances place them in a vulnerable position, for example due to mental ill-health, and who therefore may experience difficulties in doing so. It is our view that while such a provision may be proportionate, it highlights the unsuitability of this sector as a long-term housing option for homeless households.

28. On Clause 8: In respect of tenancies granted before this clause comes into operation – the requirements and duties of the clause only apply from a date in the future to be prescribed by the Department in regulations. What is your view on this provision?

Housing Rights appreciates that it is necessary to give Landlords with pre-existing tenancies time to bring their property up to the Standards required under Clause 8. However, this date should be as soon as is reasonably possible after the legislation comes into force.

29. Are there any other comments you wish to make on Clause 8? (For example, good practice from other jurisdictions; need for support for tenants and landlords to understand their duties; mechanisms to allow tenants to complain if the duties are not fulfilled).

While Housing Rights welcomes Clause 8, we note that improvements in the Bill do not address the fundamental issue of the Fitness Standard in Northern Ireland which is lower than any other jurisdiction in the UK.

Furthermore, it is crucial that Landlords and Tenants understand their rights and responsibilities. This information could be included in the notice of tenancy terms provided for under Clause 1. Housing Rights believes that any fitness standards are only as good as their enforcement. There is therefore a need for local councils to be equipped with adequate resources to enable them to properly enforce these standard and thereby protect tenants.

30. What is your view on Clause 9, which introduces Schedule 2 and will enable the Department to make regulations concerning the energy efficiency of dwelling houses let under a private tenancy?

Housing Rights welcomes Clause 9 and the new requirements under Schedule 2 for a minimum level of energy efficiency in private tenancies by adding Art 11G and 11H to the 2006 order. We note the stipulation in Schedule 2 (5) of the Bill that landlords be involved in consultation with the Department in relation to these regulations. It is our view that it may also be helpful if tenants, and representatives of tenants are given the opportunity to be involved in the consultation process.

Housing Rights notes that the 2016 NIHE House Conditions Survey found that the housing tenure with the highest proportion of households experiencing fuel poverty in NI was the

private rented sector at 26%. This is reflective of Housing Rights client experience, many of whom have been impacted by poor energy efficiency levels in PRS properties, which exacerbate affordability issues faced by low income private renters. Participants in Housing Rights' research (Preventing Homelessness and Sustaining Tenancies in the Private Rented Sector: Scoping Project, 2020) reported generally poor conditions with regard to fuel efficiency which impacted on their household resources. More money used to pay for heating poorly insulated houses meant that there were fewer resources to spend on other essentials and impacted on their ability to pay their rent, and therefore risking eviction.

We therefore welcome this clause as a first step to addressing issues of energy efficiency and thermal comfort in the PRS, whilst noting that many of the substantive areas lie outside of this Bill.

31. On Clause 9: In your view does this clause and related schedule future-proof the legislation sufficiently with regard to energy performance certificates (EPC)?

Other

Please elaborate

The specifics of energy performance certificates lie outside of the areas of our immediate expertise.

32. On Clause 9: Please share any thoughts you have on what minimum EPC banding should be applied. Are there any examples of good practice from other jurisdictions you would wish to highlight?

Housing Rights anticipates that, at a minimum, the EPC banding will be brought into line with the 'E' level required under Houses in Multiple Occupation Act (Northern Ireland) 2016. While this would be a welcome first step, Housing Rights notes that the energy efficiency-based Fuel Poverty (England) Regulations 2014 requires all fuel poor homes in England to achieve a minimum energy efficiency rating of Band C by 31 December 2030. Similarly, the Scottish government draft Energy Efficiency (Private Rented) Property (Scotland Regulations) 2019 propose a requirement that all private rental properties have a minimum EPC rating of E by 31 March 2022, and have a minimum EPC rating of D by 31 March 2025. **We therefore recommend that consideration is not only given to the minimum EPC banding which should be implemented immediately, but also to implementing a higher standard at a future date.**

33. On Clause 10: Please give us your views on this clause which introduces Schedule 3 and enables the Department to make regulations concerning electrical safety standards in private tenancies

Housing Rights welcomes Clause 10 which provides through Schedule 3, for electrical safety standard duties to be imposed on Landlords, through the addition of Art 11I, Art 11J and Art 11K to the 2006 order. It is our view that it may also be helpful if tenants, and representatives of tenants are given the opportunity to be involved in the consultation processes.

34. On Clause 10: Please give us any thoughts you may have on how compliance with the standards should be monitored and enforced.

Housing Rights recommends that in order 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, as proposed in the Bill. This would ensure tenants and others have clear information which demonstrates that appropriate checks have taken place.

35. On Clause 10: Please share any further comments on property standards/property fitness in the private rented sector.

The experience of Housing Right's clients highlights the extent to which the current standard of fitness for PRS properties in Northern Ireland is outdated and does not ensure tenants are provided with a good quality home. Furthermore, we do not believe that the PRS is sufficiently regulated to drive the required improvement in standards within the sector.

The Northern Ireland Housing Executive's House Condition Survey 2016, found that the PRS had the higher proportion of non-decent homes (10.7% of PRS properties, equating to 14,300 properties), compared to 3.1% of social sector properties. Our client experience also continues to highlight that issues with poor standard housing are disproportionately high in the PRS. Indeed, between April 2019 and March 2020, Housing Rights dealt with over 2,700 issues relating to housing conditions and 72% of these originated in the PRS, compared to 22% in the social rented sector.

Consideration should also be given to bringing all PRS properties up to HMO standards, for example by mirroring the requirements in the Houses in Multiple Occupation (Living Accommodation Standard) Regulations (NI) 2019, that the space heating system is adequate to maintain a temperature of 21°C when the outdoor temperature reaches -1°C, and that the heating is under the control of the occupant, is safe, efficient and affordable.

Housing Rights further notes that any Fitness Standard is only as good as its enforcement and believes that there is a clear link between raising the housing standards in the private rented sector and the licensing of private landlords. Housing Rights believes that the effectiveness of enhanced fitness standards in the PRS would be most effective if compliance were included in a system of landlord licensing. For this reason, it is our view that landlords licencing has a key role to play in improving standards in PRS properties and recommends that the Department considers implementing such a system in the near future.

Theme 4: Security of Tenure; Clause 11

36. Clause 11 amends Article 14 of the 2006 Order so that the Article will only deal with notices to quit given by landlords and that they must be in a certain form and contain certain information. What is your view on this?

Housing Rights welcomes the differentiation, brought about by this amendment, between the notice to quit periods required by landlords and tenants, which we believe to be appropriate given that the consequences of failing to secure a new tenancy (for example the risk of homelessness) are significantly more personally acute for a tenant than for a landlord who

fails to find a new tenant. We would welcome further information as to what the form and information will include and view it as important that the notice be given in writing.

37. On Clause 11: What is your view on the range of time periods regarding notices to quit depending on how long the tenant has been in the house?

1. Length of notice to quit period required by landlords for tenancies over 12 months

Housing Rights welcomes the amendment in Clause 11(4) to provide that for tenancies between 12 months and 10 years, landlords are required to give 8 weeks' notice to quit. **However, Housing Rights believes that the impact of the change would be greater if the notice to quit period was 12 weeks, instead of the 8 weeks** currently provided in Clause 11 (4). It is our suggestion that this may be the case for the following reasons;

I. In our view, an extension to 12 weeks would be important to **provide tenants adequate time to secure alternative accommodation**, which is particularly important for low-income private renters who are facing increasing barriers in accessing tenancies (Housing Rights, Preventing Homelessness and Sustaining Tenancies in the Private Rented Sector: Scoping Project, 2020). Low-income private renters also find it difficult to access alternative accommodation because of the supply of this type of accommodation (Housing Rights, Falling Behind: Exploring the gap between Local Housing Allowance and the availability of affordable private rented accommodation in Northern Ireland). This is of particular concern for families with children who increasingly rely upon the PRS and often have additional pressures on their ability to find suitable tenancies, such as proximity to schools. Indeed, the proportion of single parent households living in the PRS has increased from 23% in 2003 to 45% in 2019 (NISRA, Family Resources Survey Data).

   In October 2021 Property Pal reported fewer than half of rental properties available compared to 2019 and each property four times the average enquiries sent via PropertyPal. This, alongside the reported annual rent growth of 5.6%, is reflective of Housing Rights client experience, some of whom have struggled to access a suitable tenancy in time even with the 12 weeks' notice afforded under Section 1 of the Private Tenancies (Coronavirus Modifications) Act (Northern Ireland) 2020.

II. Housing Rights further views there to be **significant value in continuing with the 12 weeks' notice to quit required by landlords under Section 1 of the Private Tenancies (Coronavirus Modifications) Act (Northern Ireland) 2020** until 4th May 2022. Efforts have been made by the Department, advice agencies and other stakeholders to ensure landlords and tenants are aware of the requirements under the emergency legislation and Housing Rights believes there is merit in considering the value of not mixing this messaging by introducing a different timeframe in subsequent legislation.

Housing Rights therefore recommends that consideration is given to further amending Article 14 (1A) (b) and (c) 2006 Order to "12 weeks if the tenancy has been in existence for more than 12 months."

2.Length of notice period required by landlords for tenancies under 12 months

Housing Rights notes that Clause 11(4) further amends Art 14(1A) (a) of the 2006 Order to provide that for tenancies of 12 months or less, a landlord is only required to give 4 weeks' notice to quit.

Housing Rights is concerned that 4 weeks remains an insufficient notice period for some tenants, particularly those on low incomes, who have been in a property for 12 months or less, given the barriers to finding and accessing a new PRS tenancy as outlined above. Furthermore, a tenant who has been in a property for under 12 months will have recently paid the various fees and costs associated with moving into a new tenancy which can exacerbate affordability issues.

Housing Rights therefore suggests that consideration be given to extending the notice to quit period beyond 4 weeks for tenancies under 12 months. In our view it would be preferable for all private tenants to be given 12 weeks' notice, however we accept that principles of tenancy law provide increased rights for tenancies over one year. It may be appropriate to consider for example, a notice period which is longer than 4 weeks but less than the period required for tenancies which are longer than 12 months.

3.Notice periods required by landlords in fixed-term tenancies

Under the 2006 Order, Landlords are not required to give a notice to quit in the case of fixed term tenancies (i.e. a tenancy that has an agreed end date), even though it is best practice to do so. **Housing Rights recommends that the Bill is further amended to require that landlords give a notice to quit with the requisite number of weeks if they do not wish to extend the tenancy beyond the fixed term.**

The welcome extension of the notice to quit periods in the Bill, heightens the need to ensure this extra protection applies to those in a fixed term tenancy, both to avoid an unequal distribution of rights for those within and out with a fixed term agreement, and to ensure that landlords cannot circumvent the need to give tenants adequate notice to leave the property by making all of their tenancies fixed term. Furthermore, in specifically including fixed term tenancies within this requirement, the requirements for all actors in the sector will become simpler and easier to understand and will prevent unnecessary disputes and difficulties.

We note that in England, under s21(1) Housing Act 1988, it is explicitly stated that the two-month notice to leave required by landlords applies to fixed term tenancies. In Housing Rights view, a similar provision in this Bill would avoid the ambiguity which arose under the Private Tenancies (Coronavirus Modifications) Act (NI) 2020 as to whether the extended 12 week notice to quit period required by landlords applied to fixed term tenancies.

4.Length of notice to quit required by tenants

Housing Rights welcomes the amendment made by Clause 11 (7) to add Art 14A (1) to the 2006 Order, providing a tenant will only be required to give a 4 weeks' notice to quit in order to leave a tenancy of 10 years or less. Given the imbalance of supply and demand, it is likely that it is easier for a landlord to secure a new tenant than for a tenant to secure a new tenancy. Furthermore, the consequences of failing to secure a new tenancy and risk homelessness are significantly more personally acute for a tenant than for a landlord who fails to find a new tenant. **We therefore believe it is appropriate that the length of notice required by tenants is shorter than that required by landlords.**

38. Clause 11 gives the Department power, by regulations, to alter notice to quit periods in some tenancies. What is your view on this?

1. Provision to extend the notice period required by landlords

Housing Rights notes that Clause 11 (5) adds Art 14 (3) and (4) to the 2006 Order, which provides scope for subsequent regulations to extend the notice to quit period required by landlords up to 6 months. Housing Rights welcomes this provision and would welcome the opportunity to be involved in discussions regarding a further extension.

2.Provision to extend the notice period required by tenants

Housing Rights notes that Clause 11 (7) also proposes to add Art 14A (4) – (6) to the 2006 Order which would provide scope for subsequent regulations to extend the notice to quit period required by tenants in tenancies which are longer than 12 months, but not more than 10 years, by up 12 weeks.

As outlined above, given the imbalance of supply and demand, it is likely that it is easier for a landlord to secure a new tenant than for a tenant to secure a new tenancy. Furthermore, the consequences of failing to secure a new tenancy and risk homelessness are significantly more acute for a tenant than for a landlord who fails to find a new tenant. **Therefore, even if the notice to quit period required by landlords were further extended, in our view the extension of the notice period required by tenants would not be proportionate**.

39. On Clause 11: Are there any wider issues relating to security of tenure that are not contained with the Bill that you would wish to bring to the Committee's attention?

1. Homelessness Legislation

In order to ensure the extension of the notice to quit period required by landlords is maximised in terms of providing extra protection to private renters, **Housing Rights recommends that the extended period is reflected within the homelessness legislation.** I.e. Art 3(6) of the Housing (Northern Ireland) Order 1988 should be amended to extend the period of time that a person is considered 'threatened with homelessness' if they are likely to become homeless within 8 weeks (or the period required under Art 14 (1) (b) of the amended 2006 Order). In our view this extended period should also be reflected in the Northern Ireland Housing Executive (NIHE) Guidance regard homeless assessments.

This would enable the NIHE to assist households threatened with homelessness at the stage of being given a notice to quit, by giving them more time to take steps to sustain or secure reasonable accommodation for an individual as soon as they receive a notice to quit. **Consideration of how to ensure the extended notice to quit period can protect private renters who are threatened with homelessness is of particular importance given that loss of rented accommodation is one of the top three causes of homelessness in Northern Ireland.**

2.Indefinite Tenancies

While Housing Rights recognises that it will not be possible to do so in the time constraints of the current mandate, we strongly recommend that consideration is given to further strengthening security of tenure in the private rented sector through the introduction of indefinite tenancies in the private rented sector which can only be ended on prescribed grounds, learning from the model implemented in Scotland under the Private Housing (Tenancies) (Scotland) Act 2016. Indeed, we note that indefinite tenancies have also been proposed in the Republic of Ireland's Housing for All Strategy 2021.

Clause 12-14

40. Please give us any views or comments you wish to make on Clauses 12 (Interpretation), 13 (Commencement) or 14 (Short title).

Housing Rights notes that under Clause 13(3) the majority of provisions in the Bill do not come into operation until such day that the Department for Communities appoint. G**iven the urgency with which all stakeholders agree these reforms are necessary, it may be helpful to include a time limit in this Clause (similar to Art 72(4) of the 2006 Order). Such a timescale would give tenants, landlords and other actors a timeframe within which to prepare for the changes outlined in the Bill.**

41. Do you have any views or comments on the offences and penalties created by the Bill?

Housing Rights views the prosecution and fixed fine measures set out in Article 68 and 68A of the 2006 Order as robust and with appropriate enforcement should act as a deterrent against failure to comply with the responsibilities set out in the Bill. However, in our experience enforcement is key for the effectiveness of these clauses. It is often the experience of our service users that informal measures are taken by local councils to ensure landlords provide information and documents required under current legislation. However, when informal measures are not successful, further enforcement powers are not always used by local councils.

Housing Rights would recommend that clear guidance is issued to local councils on how and when enforcement powers should be used. Local councils should also be provided with the resources needed to adequately pursue enforcement in each case that it is necessary.

42. Please share with us any other views or comments you wish to make in connection with the Bill.

Housing Rights recently hosted a seminar focusing on security to tenure in the PRS with expert speakers from Scotland and Wales who spoke about the government approach in their jurisdictions, including the impact of the introduction of similar legislation.

A significant takeaway from the event, in terms of learning for this Bill, was t**he importance of ensuring that stakeholders are aware of the changes introduced by the legislation, and in doing so, efforts are made to ensure that comprehensive information is provided not just to landlords and tenants but also to all stakeholders** e.g. Environmental Health Officers, advice workers etc. As an organisation which provides information and advice to landlords, tenants as well as other practitioners, Housing Rights endorses this position. We would therefore encourage the Committee to recommend that the Department for Communities take steps to provide resources to this end. For example ring-fenced resources to support the information and training needs of all stakeholders to make sure they are aware of their rights and responsibilities under the legislation and thus, that the provision in the Bill are translated into practice.