

**Housing  
Rights**

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**Briefing Paper**

**Private Tenancies Bill  
October 2021**

## 1.0 INTRODUCTION

Housing Rights is Northern Ireland's leading independent provider of specialist housing advice. For 57 years we have been helping people to find and keep a home. We believe that prevention is better than the cure, and work to prevent homelessness wherever possible. Housing Rights' policy work is based on the views and experience of the people who contact us for advice, a disproportionate number of whom live in the private rented sector (PRS).

The experience of our clients, many of whom are on low incomes, is that within the private rented sector a sub sector exists which is characterised by poor standards, insecurity of tenure and problems with affordability. We therefore strongly welcome the introduction of the Private Tenancies Bill as the first in a series of legislative reforms to improve standards, security of tenure and affordability in the PRS.

## 2.0 KEY RECOMMENDATIONS ON THE BILL

	In addition to welcoming each of the clauses in the Private Tenancies Bill, in Housing Rights view:
<b><u>Clause 1</u></b> <b><i>Notice regarding certain matters</i></b>	<ul style="list-style-type: none"> <li>• Tenants, and representatives of tenants, should be involved in determining the form and information in the notice of tenancy terms and variation of terms</li> <li>• The notice of tenancy terms should include key information no longer required in a rent book as well as information regarding rates and the date when the tenancy will end</li> </ul>
<b><u>Clause 3</u></b> <b><i>Rent receipt for payment in cash</i></b>	<ul style="list-style-type: none"> <li>• The requirement to provide a receipt for payments in cash should be extended to all cash payments made in connection with a tenancy and should detail the purpose of the payment</li> <li>• A time limit of 28 days should be placed on the provision of the receipt</li> </ul>
<b><u>Clause 4</u></b> <b><i>Tenancy deposits</i></b>	<ul style="list-style-type: none"> <li>• It should be explicitly stated that deposits protected under an insurance-based scheme must be renewed as needed, to ensure they remain protected for the duration of the tenancy</li> <li>• The amount of rent in advance which can be charged at the beginning of a tenancy should also be limited to the equivalent of one months' rent</li> </ul>
<b><u>Clause 7</u></b> <b><i>Rent increases</i></b>	<ul style="list-style-type: none"> <li>• The proposed Art 5C under Clause 7(2) should be 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</li> </ul>

	<ul style="list-style-type: none"> <li>• Should the notice to quit period be extended to 12 weeks, the same period should be required for the notice of a rent increase</li> </ul>
<b>Clause 9 &amp; 10</b> <b><i>Energy Efficiency &amp; Electrical Safety Standards</i></b>	<ul style="list-style-type: none"> <li>• It may be helpful if tenants, and representatives of tenants are given the opportunity to be involved in the consultation process for the regulations relating to these clauses</li> </ul>
<b>Clause 11</b> <b><i>Notice to quit requirements</i></b>	<ul style="list-style-type: none"> <li>• The impact of the increased notice period required by landlords would be greater if extended to 12 weeks rather than 8 weeks</li> <li>• The notice to quit period required by landlords for tenancies under 12 months should also be extended</li> <li>• Notice to quit periods required by landlords should also apply to Fixed Term Tenancies</li> <li>• The extension of the notice to quit period required by a tenant to 12 weeks would not be proportionate</li> <li>• The extended notice to quit period required by landlords should be reflected within the homelessness legislation</li> </ul>
<b>Clause 13</b> <b><i>Commencement</i></b>	<ul style="list-style-type: none"> <li>• A time limit should be included in Clause 13 (3) regarding the date provisions will come into operation</li> </ul>

### 3.0 NOTICE REGARDING CERTAIN MATTERS

#### **Clause 1: Tenant to be given notice regarding certain matters: grant of tenancy**

Housing Rights welcomes the amendment made by Clause 1(2) to insert Art 4A into the Private Tenancies (Northern Ireland) Order 2006 (referred to here after as the 2006 Order), to provide that a landlord must give a tenant notice with information relating to the tenancy within 28 days. Housing Rights further notes that under the proposed Art 4A (2) (a) and (b), this notice must be in a prescribed form and contain the prescribed particulars and other prescribed information relating to the tenancy. **We anticipate these particulars and information will reflect those prescribed in the Tenancy Terms Regulations (Northern Ireland) 2007 and would be supportive of this.** Housing Rights understands that the Department intend to consult on the regulations which will determine the prescribed particulars and we would welcome the involvement of tenants and tenant representatives.

In Housing Rights' 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, **it 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.

### **Clause 1 continued: Tenant to be given notice regarding certain matters; variation of certain terms**

Housing Rights welcomes the proposed addition of Art 4B to the 2006 Order through Clause 1 (2), providing a requirement to give notice of variation of terms within 28 days.

Housing Rights further welcomes the further addition through Clause 1 (2) of Art 4C to the 2006 Order which would ensure that continued failure by a landlord to provide the notices required under Art 4A and 4B, would be deemed to be a further offence.

### **Clause 2: Tenant to be given notice regarding certain past matters**

Housing Rights welcomes Clause 2 which inserts Schedule 1 to the 2006 order to ensure that tenants who would have received a statement of tenancy terms under Art 4 2006 Order, but did not because of its accidental repeal, and who are still in a private tenancy, receive notice from their landlord regarding certain past matters.

## **4.0 RENT RECEIPTS**

### **Clause 3: Tenant to be provided with a rent receipt for payment in cash**

#### **4.1 *Scope of the rent receipt***

Housing Rights welcomes Clause 3 (2) which amends Art 5 2006 Order to require landlords to provide a rent receipt for payments in cash. However, given the fact that tenants are often required to pay other fees, particularly 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.**

**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 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.

**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 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”**

#### 4.2 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.”**

## 5.0 TENANCY DEPOSITS

### **Clause 4: Limit on tenancy deposit amount; Breach of tenancy deposit limit; recoverability of excess**

Housing Rights welcomes Clause 4(2) as an important first step in addressing affordability issues faced by private renters struggling to afford deposits by adding Art 5ZC (1) to the 2006 Order which limits the amount of deposit which can be charged to the equivalent of 1 month’s rent. 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. 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.

Given the policy intention behind Clause 4 of addressing affordability issues when accessing tenancies, **Housing Rights believes it is important that the Bill also limits the amount of rent in advance which can be charged to one month’s rent.** The charging of excessive amounts of rent in advance is another barrier to low-income households accessing private tenancies, and Housing Rights is concerned that it may become even 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.

Housing Rights also 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 found that foreign nationals were often required to pay several months’ rent in advance and/or a

higher deposit in lieu of providing a guarantor.<sup>1</sup> 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 at Housing Rights we have had clients who have been asked for a guarantor who is a homeowner and has a salary of over £27,000, which many people do not have access to. This also leaves people vulnerable to expensive schemes set up by organisations who charge significant amounts to act as a guarantor.

### **Clause 5: Tenancy deposit schemes: time limits**

Housing Rights does not foresee any significant issues with changes under Clause 5 which amends Art 5B 2006 order to give landlords 28 days to comply with the initial requirements of an approved tenancy deposit scheme, under Art 5B (3) and 35 days to provide information about the deposit protection to the tenant under Art 5B (6)(b).

### **Clause 6: Certain offences in connection with tenancy deposits to be continuing offences**

Housing Rights welcomes Clause 6 which, through the addition of Art 5B (11A) to the 2006 Order, provides that failure to meet deposit requirements will be a continued offence as long as the failure continues.

In our experience, Landlords using the insurance-based scheme at times fail to renew the protection after the first year, meaning the deposit is unprotected for the remainder of the tenancy. **Housing Rights therefore recommends that Art 5B 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.**

## **6.0 RENT INCREASES**

### **Clause 7: Restriction on rent increases**

#### **6.1 Frequency of rent increases**

Clause 7(2) proposes to restrict rent increases to once in any 12-month period through the addition of Art 5C(2) to the 2006 order. 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

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<sup>1</sup> [Preventing Homelessness and Sustaining Tenancies in the PRS.pdf \(housingrights.org.uk\)](https://www.housingrights.org.uk/wp-content/uploads/2021/09/1-Preventing-Homelessness-and-Sustaining-Tenancies-in-the-PRS.pdf)

Rights note the findings of recent research by Indigo House entitled ‘Rent Better’<sup>2</sup> which explored the impact of a similar provision in the Private Housing (Tenancies) (Scotland) Act 2016, which limits rent increases to once in every 12 months along with a requirement of three months’ notice of the increase. The baseline research found that so far there is little evidence of the legislation contributing to reduced rent increases,<sup>3</sup> and that initial qualitative evidence suggests that the change may have had the perverse effect of actually increasing rents more regularly than the previously common practice of increases only upon change of tenancy, or when there had been some investment in the property.<sup>4</sup> Similarly, the Scottish Association of Landlords noted that after this change came into force, more landlords have been raising rents every 12 months, while previously many didn’t raise them for years.<sup>5</sup>

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.

## 6.2 Challenging unfair increases

Housing Rights further 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 similar provision 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.<sup>6</sup> It would 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 in 2023 will give a clearer picture of the impact of restricting rent increases in Scotland, and how to avoid unintended consequences.

<sup>2</sup> <https://rentbetter.indigohousegroup.com/wp-content/uploads/sites/3/2020/11/Wave-1-Baseline-Report-published.pdf>

<sup>3</sup> *Ibid* p32

<sup>4</sup> *Ibid* p34

<sup>5</sup> [Industry apprehensive about Scotland's rent control plan - Property Investor Post](#)

<sup>6</sup> <https://rentbetter.indigohousegroup.com/wp-content/uploads/sites/3/2020/11/Wave-1-Baseline-Report-published.pdf> p39

### 6.3 Written notice of increase

Nevertheless, Housing Rights strongly supports the requirement in Clause 7(2) that a written notice be given to tenants at least 2 months before the date of a rent increase through Art 5D of the 2006 order. 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, 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 recommendations below regarding 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.

## **7.0 FIRE SAFETY, ENERGY EFFICIENCY AND ELECTRICAL SAEFTY**

### **Clause 8: Fire, smoke and carbon monoxide**

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.

### **Clause 9: Energy Efficiency Regulations**

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.

### **Clause 10: Electrical safety standards Regulations**

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. Again, 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.

## 8.0 NOTICE TO QUIT REQUIREMENTS

### **Clause 11: Validity requirements for notices to quit given by landlords and tenants**

Housing Rights notes that Clause 11 is draft affirmative and would welcome the opportunity to be involved in further work to refine the regulations.

#### 8.1 Length of notice to quit period by landlords extended

Housing Rights welcomes Clause 11(4), which amends Art 14(1A)(a) and (b) 2006 Order 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 would be the case for the following reasons;**

- 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.<sup>7</sup> Low-income private renters also find it difficult to access alternative accommodation because of the supply of this type of accommodation.<sup>8</sup> 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.<sup>9</sup>
- 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 4<sup>th</sup> 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.

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<sup>7</sup> <https://www.housingrights.org.uk/sites/default/files/policydocs/Preventing%20Homelessness%20and%20Sustaining%20Tenancies%20in%20the%20PRS.pdf>

<sup>8</sup> [Falling behind Executive Summary 10 October.pdf \(housingrights.org.uk\)](#)

<sup>9</sup> The proportion of single parent households living in the PRS has increased from 23% in 2003 to 45% in 2019. The proportion of households with 2 adults and children has more than trebled since 2003 from 6% in 2003 to 19% in 2019. (Statistics from the Family Resource Survey)

**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.”**

*8.1.1 Provision to further extend the notice to quit period*

Housing Rights further 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.

*8.1.2 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.

*8.1.3 Prescribed form of notice to quit*

Housing Rights notes that Clause 11(3) further amends Art 14(1) of the 2006 Order to require that the notice is given 'in the prescribed form and contains the prescribed information' and we would welcome clarity as to what that prescribed form and information will be.

*8.1.4 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. This is necessary 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 also 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.

### 8.1.5 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.**<sup>10</sup>

### 8.2 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.

<sup>10</sup>[https://www.niauditoffice.gov.uk/sites/niao/files/media-files/Homelessness%20in%20Northern%20Ireland%20Full%20Report\\_0.pdf](https://www.niauditoffice.gov.uk/sites/niao/files/media-files/Homelessness%20in%20Northern%20Ireland%20Full%20Report_0.pdf)

8.2.1 Provisions 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.

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.**

## 9.0 COMMENCEMENT

### Clause 13: Commencement

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. **Given the urgency with which all stakeholders agree these reforms are necessary, it may be helpful to ensure a time limit is included 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.**

# Housing Rights

11

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