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Research and Library Service Bill Paper

16 August 2010

Housing (Amendment) (No. 2) Bill

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The Housing (Amendment) (No.2) Bill was introduced to the Northern Ireland Assembly on 22 June 2010. The Bill contains provisions to facilitate better regulation of the private rented sector by conferring powers on the Department for Social Development to make regulations in respect of a 'light touch' landlord registration scheme and statutory tenancy rent deposit schemes. The Bill also contains provisions to promote more effective housing management through information sharing in respect of anti-social behaviour; introduces new tools for tackling fuel poverty; and clarifies existing legislation in respect of homelessness.

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Executive Summary

1. The [Housing \(Amendment\) \(No.2\) Bill](#) was introduced to the Northern Ireland Assembly on 22 June 2010 and received its [Second Stage](#)¹ on 30 June 2010. This Bill constitutes the second housing amendment Bill introduced to the Northern Ireland Assembly during the current mandate. The first Bill (introduced 9 June 2009), which is now the [Housing \(Amendment\) Act \(Northern Ireland\) 2010](#), received Royal Assent on 13 April 2010.
2. The purpose of the current Bill is to further enhance the legislative framework for housing in Northern Ireland in four main areas. That is, to enable better regulation of the private rented sector; to promote effective housing management around issues such as community safety and anti-social behaviour; to clarify existing law on homelessness; and to provide the local Councils with further tools to tackle fuel poverty.
3. The Department has undertaken two main consultations to inform the content of the Housing (Amendment) (No.2) Bill, i.e. a consultation on “Building Sound Foundations – A Strategy for the Private Rented Sector, and a consultation on the ‘Housing Bill (Northern Ireland)’. The provisions of the Housing (Amendment) (No.2) Bill relating to district councils and the promotion of domestic energy efficiency was originally intended for the Housing and Regeneration Bill.
4. Initially the scope of the Bill was much wider than as introduced. However, many of the proposed provisions, particularly those relating to anti-social behaviour and community safety, will now be subject to further consideration for potential inclusion in future legislation.
5. In summary, the Bill (as introduced) contains the following provisions:
 - To enable the introduction of subordinate legislation to require landlords to include **all necessary information about the terms of the tenancy in the tenant’s rent book**.
 - To enable the Department for Social Development (DSD) to make regulations in respect of **tenancy deposit schemes**, the purpose of which is to safeguard tenancy deposits paid in connection with private tenancies. The Bill also places on private landlords certain obligations in relation to such schemes.
 - To confer on **district councils** the **power to enter dwelling houses** to carry out **fitness inspections**.

¹ Northern Ireland Assembly Official Report, 20 June 2010, www.niassembly.gov.uk/record/reports2009/100630.htm

- To permit DSD, through subordinate legislation, to **modify the procedures involved in determining certain private sector rents** (i.e. rents that are subject to rent control).
- To enable DSD to make regulations providing for a 'light touch' **landlord registration scheme** and the imposition of fines in connection with a failure to register or the provision of false information in connection with an application for registration.
- To provide that regulations in relation to tenancy deposit schemes, determination of rents and landlord registration are **subject to the draft affirmative resolution procedure by the Assembly**.
- In relation to **Houses in Multiple Occupation (HMOs)**, where the Housing Executive believes that a house is occupied by two or more qualifying persons who are not all members of the same family, the Bill will enable the Housing Executive to serve notice requiring that **evidence of a family relationship** between the occupants be provided.
- To enable social landlords to **withhold consent to an application for an exchange of tenancies** where an injunction or anti-social behaviour order is in force.
- To enable any person to **disclose information to the Housing Executive or a Registered Housing Association about certain injunctions, anti-social behaviour orders or orders for possession** where such information is required to enable these social landlords to make decisions on the exchange of tenancies and the house sales scheme.
- The **removal of a technical anomaly in current legislation** in order to clarify that the Housing Executive cannot legally allocate accommodation due to immigration-related legislation.
- To enable the Housing Executive to submit for Departmental approval a **scheme for making arrangements with energy providers** for the supply of electricity, gas or oil to the Executive's tenants (there is already existing provisions in law for Registered Housing Associations in relation to energy brokering on behalf of housing association tenants).
- To provide **district councils** with powers to take any action it thinks appropriate for the purpose of **promoting the efficient use of energy** in residential accommodation within its district. This includes the provision, or securing the provision, of advice and information and the production of energy efficiency action plans. It also includes the provision of financial or other assistance to any body whose functions include the promotion of energy efficiency in residential accommodation.

- To ensure coherence with existing activity, councils will also be **required to take account of work** undertaken by the Housing Executive and DSD in the area of energy efficiency, and to **provide the Housing Executive with any information** it may require in its capacity as the Home Energy Conservation Authority.

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1 Background and Purpose of the Bill

As the title of the Bill suggests, this is the second housing amendment Bill introduced to the Northern Ireland Assembly during the current mandate. The first Bill (introduced 9 June 2009), which is now the [Housing \(Amendment\) Act \(Northern Ireland\) 2010](#), received Royal Assent on 13 April 2010. This Act introduced a range of measures aimed at enhancing the legislative framework in a number of areas, for example, it places a statutory duty on the Northern Ireland Housing Executive to publish a homelessness strategy and its policies and procedures on anti-social behaviour, it amends the legal definition of a House in Multiple Occupation (HMO), and increases the powers of the Department of Social Development in respect of its role in monitoring and regulating Registered Housing Associations.

The purpose of the current [Housing \(Amendment\) \(No.2\) Bill](#)² is to further enhance the legislative framework for housing in Northern Ireland in four main areas. That is, to enable better regulation of the private rented sector; to promote effective housing management around issues such as community safety and anti-social behaviour; to clarify existing law in respect of homelessness; and to introduce further tools for tackling fuel poverty. The Bill was introduced to the Northern Ireland Assembly on 22 June 2010 and received its [Second Stage](#)³ on 30 June 2010.

In summary, the Bill contains the following provisions:

Clause 1 enables the introduction of subordinate legislation to require landlords to include **all necessary information about the terms of the tenancy in the tenant's rent book**.

Clause 2 enables the Department for Social Development (DSD) to make regulations in respect of **tenancy deposit schemes**, the purpose of which is to safeguard tenancy deposits paid in connection with private tenancies. The Bill also places on private landlords certain obligations in relation to such schemes.

Clause 3 confers on **district councils** the **power to enter dwelling houses** to carry out **fitness inspections**;

Clause 4 permits DSD, through subordinate legislation, to **modify the procedures involved in determining certain private sector rents** (i.e. rents that are subject to rent control).

Clause 5 enables DSD to make regulations providing for a 'light touch' **landlord registration scheme** and **Clause 6** contains details regarding the imposition of fines in connection with a failure to register or the provision of false information in connection with an application for registration.

² Housing (Amendment)(No.2) Bill, www.niassembly.gov.uk/legislation/primary/2009/nia32_09.htm

³ Northern Ireland Assembly Official Report, 20 June 2010, www.niassembly.gov.uk/record/reports2009/100630.htm

Clause 7 provides that regulations in relation to tenancy deposit schemes, determination of rents and landlord registration are **subject to the draft affirmative resolution procedure by the Assembly**.

Clause 8 relates to **Houses in Multiple Occupation (HMOs)**. Where the Housing Executive believes that a house is occupied by two or more qualifying persons who are not all members of the same family, the Bill will enable the Housing Executive to serve notice requiring that **evidence of a family relationship** between the occupants be provided.

Clause 9 enables social landlords to **withhold consent to an application for an exchange of tenancies** where an injunction or anti-social behaviour order is in force.

Clause 10 enables any person to **disclose information** to the Housing Executive or a Registered Housing Association about **certain injunctions, anti-social behaviour orders or orders for possession** where such information is required to enable these social landlords to make decisions on the exchange of tenancies and the house sales scheme.

Clause 11 facilitates the removal of a **technical anomaly in current legislation** in order to clarify that the Housing Executive cannot legally allocate accommodation due to immigration-related legislation.

Clause 12 enables the Housing Executive to submit for Departmental approval a **scheme for making arrangements with energy providers** for the supply of electricity, gas or oil to the Executive's tenants (there is already existing provisions in law for Registered Housing Associations in relation to energy brokering on behalf of housing association tenants).

Clause 13 provides **district councils** with powers to take any action it thinks appropriate for the purpose of **promoting the efficient use of energy** in residential accommodation within its district. This includes the provision, or securing the provision, of advice and information and the production of energy efficiency action plans. It also includes the provision of financial or other assistance to any body whose functions include the promotion of energy efficiency in residential accommodation. To ensure coherence with existing activity, councils will also be **required to take account of work** undertaken by the Housing Executive and DSD in the area of energy efficiency, and to **provide the Housing Executive with any information** it may require in its capacity as the Home Energy Conservation Authority.

2 Consultations

The Department has undertaken two main consultations to inform the content of the Housing (Amendment) (No.2) Bill, i.e. a consultation on "Building Sound Foundations – A Strategy for the Private Rented Sector, and a consultation on the 'Housing Bill (Northern Ireland)'.

The provisions of the Housing (Amendment) (No.2) Bill relating to district councils and the promotion of domestic energy efficiency was originally intended for the Housing and Regeneration Bill. The draft Housing and Regeneration Bill was published for consultation in March 2010.

Building Sound Foundations – A Strategy for the Private Rented Sector

The first consultation on '[Building Sound Foundations – A Strategy for the Private Rented Sector](#)' was launched on 15 May 2009 and ran until the 7 August 2009. The consultation paper represented the first stage of DSD's plans to encourage the development of a healthy private rented sector capable of responding more effectively to housing need in Northern Ireland. The paper consulted on a number of issues including, for example:

- the application and enforcement of the Private Tenancies (Northern Ireland) Order 2006;
- tenancy management issues, e.g. voluntary accreditation schemes, landlord registration schemes, tenancy deposit schemes; dispute resolution mechanisms;
- raising fitness standards and energy efficiency in the private rented sector;
- an extension to the notice to quit period for long term tenants; and
- the provision of advice and guidance for landlords and tenants.

To facilitate discussions on the proposals the Department also hosted three public consultation workshops in Dungannon, Coleraine and Belfast. In addition to these, three consultation seminars were hosted by the Chartered Institute of Housing. The Housing Rights Service also hosted two separate consultation workshops attended by community and voluntary representatives, housing association and council staff. In addition to feedback from the workshop and seminars, a total of 39 responses to the consultation were received from a wide range of bodies including councils, landlord and tenant representatives, voluntary organisations and political parties⁴.

The Department published the final [Strategy](#) and action plan for the private rented sector in March 2010⁵. Many of the proposed actions in the Strategy which required legislative intervention are contained within Housing (Amendment) (No.2) Bill.

⁴ Information extracted from Department for Social Development. A Strategy for the Private Rented Sector, pp15-17. www.dsdni.gov.uk/hdiv-private-rented-sector-strategy-2010.pdf

⁵ Department for Social Development (2010) Building Sound Foundations – A Strategy for the Private Rented Sector. www.dsdni.gov.uk/hdiv-private-rented-sector-strategy-2010.pdf

Housing Bill (Northern Ireland) Consultation

The Department launched its [consultation paper](#)⁶ on proposals for a further Housing Bill on 7 December 2009, the consultation period ran until the 26 February 2010. Over 40 responses to the consultation were received. The Department highlights that most of the proposals were well-received by stakeholders, with almost universal support for the proposals on fuel poverty and considerable support for a number of the measures relating to the private rented sector.

It is evident that many of the initial proposals for legislation contained within the housing bill consultation paper will not be brought forward in the Housing (Amendment) (No.2) Bill. The Department has stated that the proposals for a Housing Bill have been trimmed considerably partly in response to the extent of the Assembly's legislative programme during the remainder of the mandate, but also as a result of some of the issues raised during the consultation process⁷. These concerns primarily centred on the potential equality implications and the need for further research on a number of the proposals relating to community safety and anti-social behaviour.

The Minister for Social Development further commented upon the Department's rationale for the reducing the size of the Bill during the Second Stage of the Bill on 20 June 2010:

“.....Time constraints mean that it is not possible at this time to take forward all the proposals outlined in the consultation paper. It is only fair to the House that I explain why that is the case. It is due to the demands on the parliamentary draftsman, which were made more acute by the fact that there were six separate pieces of legislation relating to the possible local government reorganisation. In view of the urgency around that matter and given the potential for reorganisation by 2011 and the short time frame between then and now, the parliamentary draftsman was overloaded. Consequently, other legislation would not have had the full due diligence of the parliamentary draftsman in ensuring that the legislation coming before the House was all that it should be. Consequently, opportunities to include other matters in the Bill were frustrated because of the time available to the parliamentary draftsman's office.

Nevertheless, I acknowledge the work of the parliamentary draftsman. Executive approval had been given to the Bill only at the end of April 2010. The Department and the parliamentary draftsman have done good work to ensure that we have legislation before the House at Second Stage. The

⁶ Department for Social Development (2009) The Housing (Northern Ireland) Bill: A Consultation Document. www.dsdni.gov.uk/index/consultations/archived_consultations2/consultation-housing-bill.htm

⁷ Department for Social Development (2010) The Housing Bill (Northern Ireland) Consultation Report, p2.

*turnaround time, from the end of April to the introduction of the Bill in the middle of June, was very short”.*⁸

Outlined below are a number of the proposals which were initially consulted on for inclusion in the Bill, but which may be subject to further consideration for potential inclusion in future legislation. These include:

Private Rented Sector and Homeless Proposals:

- the introduction of **new quality standards** for private rented housing.
- extending the **notice to quit** period for private sector tenants in certain circumstances (e.g. for long term tenants).
- the application of certain conditions to the **direct payment of housing benefit** to landlords.
- increasing the maximum fines for **non-compliance with the registration process for HMOs** up to a maximum of £20,000.
- the provision of safeguards for homeless people in circumstances where the Housing Executive decides to discharge its homelessness duty by **securing accommodation in the private rented sector**.

Community Safety/Anti-Social Behaviour Proposals:

- enabling the Housing Executive and Registered Housing Associations to **extend the trial period of an introductory tenancy** for up to 6 months in cases where an introductory tenant’s conduct is giving cause for concern.
- enabling the **Courts to grant ‘demotion orders’** in respect of Housing Executive and housing association secure tenancies. Such an order would remove the tenant’s security of tenure where the court is satisfied that the tenant or a person living with or visiting the tenant has engaged in, or has threatened to engage in, anti-social behaviour. Such tenants would, in effect, be placed “on notice” that they can be evicted at any time.
- strengthening **the existing forms of injunction** against anti-social behaviour and breach of tenancy agreement.
- providing a **structured discretion for judges** when considering applications for orders of possession of secure tenancies in cases involving anti-social behaviour.
- enabling the Housing Executive to **take such action as it considers necessary for the prevention of crime and anti-social behaviour**, i.e. to

⁸ Northern Ireland Assembly Official Report, Housing (Amendment)(No.2 Bill) Second Stage, 30 June 2010.
www.niassembly.gov.uk/record/reports2009/100630.htm#d

provide the Housing Executive with statutory formal authority to take part in crime prevention initiatives.

Housing Executive and Housing Association Functions:

- enabling the Department to make regulations to prescribe arrangements which may be entered into by the **Housing Executive to delegate its functions and to pool its resources** with other bodies so that there can be a single provider of services in key areas.
- enabling the **Housing Executive to provide indemnities for its members and staff** thereby ensuring that officers of the Housing Executive whose duties require them to be involved in the management of other housing-related bodies are protected should those bodies become, for example, insolvent.
- the **abolition the rent surplus fund**. Registered housing associations have a statutory duty to show in their accounts surpluses arising from increased rental income. It was proposed to repeal the relevant legislation to relieve housing associations of the ‘unnecessary bureaucratic burden’⁹.

During the second stage of the Bill the Minister for Social Development indicated that that there may be potential for some of these issues to be included in the Bill via amendment, i.e. the extension of the notice to quit for long-term tenants and providing the Housing Executive with statutory authority to take part in crime prevention initiatives:

“.....The proposal to extend the notice of quit period for tenants in the private rented sector was welcomed. There seems to be a consensus on the proposal, which does not appear to be controversial. Given that and the fact that it only seems appropriate to give tenants of long standing a longer notice of quit period, it seems that that area of the Bill might be open to amendment. I look forward to amendments coming forward, and I will share in that conversation. Given that the issue seems to have been consulted on, has no specific equality implications and stacks up against all political and legislative standards, it could be one that we take further....”

“.....I have some sympathy with the views on the fact that the consultation document tested a number of proposals on community safety. I do not intend to go through all those proposals. However, there is some early possibility of amendment to enable the Housing Executive to participate in crime prevention initiatives. It so happens that it does already. My Department funds the Housing Executive to fund community restorative justice schemes in Belfast. I think that the Housing Executive funds six

⁹ The Housing Bill (Northern Ireland) Consultation Report, p27.

separate schemes in respect of alternative measures and a number of other schemes involving Restorative Justice Ireland.

It may be appropriate to confirm that the Housing Executive is so entitled to fund by putting on a statutory basis the Housing Executive's ability to make contributions to community safety initiatives. That would require a more technical amendment of confirmation than one that would move things further along. However, I am certainly prepared to look at that."¹⁰

3 The Contents of the Bill

This section provides a broad overview of the contents of the Housing (Amendment) (No.2) Bill (as introduced). For ease of reference the section is divided as follows:

- Provisions of the Bill relating to the Regulation of the Private Rented Sector (Clauses 1-8);
- Provisions of the Bill relating to Community Safety/Anti-Social Behaviour (Clauses 9 & 10);
- Provisions of the Bill clarifying the law on homelessness (Clause 11); and
- Provisions of the Bill relating to Fuel Poverty (Clauses 12 & 13).

3.1 Provisions Relating to the Regulation of the Private Rented Sector

Abolition of Statement of Tenancy Terms (Clause 1)

Article 4 of the Private Tenancies (Northern Ireland) Order 2006 requires that in all private tenancies which have commenced on or after the 1 April 2007, a statement of tenancy terms must be drawn up by the landlord and provided to the tenant within 28 days of the tenancy commencing. Article 5 of the 2006 Order also requires that the landlord provide the tenant with a rent book within 28 days of the tenancy commencing. Therefore, there is currently a requirement for the landlord to provide two sets of documents to the tenant.

Clause 1 of the Housing (Amendment)(No.2) Bill aims to simplify this process for both landlord and tenant by repealing the requirement for statements of tenancy to be given to every tenant, whilst enabling the Department to make subordinate legislation to require landlords to include all necessary information about the terms of the tenancy in the tenant's rent book. The Bill's [Explanatory and Financial Memorandum](#) states "that this requirement would, in theory, apply to all private tenancies created on or after 1

¹⁰ Northern Ireland Assembly Official Report, Housing (Amendment) (No. 2) Bill, Second Stage, 20 June 2010. www.niassembly.gov.uk/record/reports2009/100630.htm#d

April 2007, the Department recognises that landlords of such tenancies need not be required to issue new rent books when the subordinate legislation comes into operation, providing that they have already given their tenants a statement of tenancy terms in the existing format".¹¹

Research conducted by the University of Ulster and the Northern Ireland Housing Executive in 2006, found that an overwhelming majority of tenants (89%) stated that they were on good terms with their landlord or agent. However, the research revealed that almost three quarters of tenants (73%) had not been provided with a rent book although almost two thirds (62%) had a written tenancy agreement¹². Tenant's lack of awareness regarding their legal rights to tenancy statements and rent books was an issue raised by the Housing Rights Service in response to the 'Building Sound Foundations' consultation. Housing Rights Service highlights that one of the main problems experienced by their clients is the tenant's lack of awareness of their legal entitlement to statements of tenancy terms and rent books¹³.

The private rented sector in Northern Ireland has increased substantially in Northern Ireland over the last number of years. The 2009 House Conditions Survey estimates that there are around 125,000 occupied dwellings in Northern Ireland's private rented sector (17% of total housing stock), a significant increase from 81,000 (12% of total housing stock) in 2006¹⁴. It is perhaps now, more than ever, appropriate that the Department for Social Development takes "a more strategic and focused programme of awareness and appreciation of the law relating to the private rented sector, particularly the Private Tenancies (Northern Ireland) Order 2006".¹⁵ This includes building knowledge and raising awareness amongst both landlords and tenants with respect to legal obligations relating to tenancy terms and rent books.

The Strategy for the Private Rented Sector in Northern Ireland's Action Plan has set the following targets in relation to raising knowledge and awareness¹⁶:

Extract from "Building Sound Foundations: A Strategy for the Private Rented Sector in Northern Ireland" Action Plan.

Action 1: Knowledge and Awareness

- a. to ensure the timely and ongoing provision of relevant information to all private landlords; and
- b. to provide tailored guidance and awareness to appropriate council staff.

Timeframe:

- a. the Department's website at www.dsdni.gov.uk/housing includes a wide range of leaflets, factsheets and practical advice which are enhanced and updated at regular intervals. A series of awareness sessions began in December 2009 with further sessions planned for April 2010 when a

¹¹ Housing (Amendment) (No.2) Bill. Explanatory and Financial Memorandum.

www.niassembly.gov.uk/legislation/primary/2009/niabill32_09_efm.htm

¹² Northern Ireland Housing Executive (2009) Housing Market Review and Perspectives 2009-2012, p15.

¹³ Housing Rights Service (2009) Response to Consultation Document: Building Sound Foundations, p5.

www.housingrights.org.uk/policy/private-rented-sector.html

¹⁴ Northern Ireland Housing Executive (2010) Northern Ireland Housing Market Review and Perspectives, 2010-2013.

www.nihe.gov.uk/housing_market_review_and_perspective_2010-13.pdf

¹⁵ Department for Social Development (2010) Building Sound Foundations: A Strategy for the Private Rented Sector, p4.

¹⁶ Department for Social Development (2010) Building Sound Foundations: A Strategy for the Private Rented Sector, p4.

- new programme will be put in place; and
- b. a rolling programme of awareness sessions to be delivered across council areas during 2010/11. The impact of this awareness alongside compliance and enforcement activity undertaken by councils will be continually monitored.

Tenancy Deposit Schemes (Clause 2)

Most landlords or letting agents require tenants to provide a deposit of at least one months rent as security against damage or non-payment of rent. Private rented sector tenants experience two main problems in respect of tenancy deposits and these are often inter-related, i.e. affordability and unauthorised deposit retention. In terms of affordability, an increasing number of low income households are looking to the private rented sector to meet their housing needs. The proportion of privately rented properties occupied by lone parents had, for example, doubled from 10% in 2001 to 20% in 2006¹⁷.

For many prospective tenants the affordability of advanced rent or deposits for private rented property is a significant problem, as illustrated in the consultation paper on 'Building Sound Foundations':

"A recent survey undertaken by the Northern Ireland Housing Executive¹⁸, provides a valuable insight into this affordability issue.....In all 53% had to pay a deposit and/or rent in advance and the average amount that tenants had to pay upfront to secure accommodation was £439. Two thirds of these were in receipt of Housing Benefit. As approximately 60% of households living in the private rented sector receive housing benefit, their ability to find the necessary deposit and rent in advance is extremely limited. In addition a large proportion of the same group of tenants are also required to pay a top-up between the level of grant charged and the amount of Housing Benefit received."¹⁹

In addition to the issue of affordability, there is also an identified need to address the handling of disputes between tenants and landlords. According to the Housing Rights Service many disputes arise due to the retention of the deposit by the landlord:

"The problem of tenancy deposit retention has long been a major concern for many private tenants. In our experience as availability of private rented accommodation has proliferated so too has the prevalence of deposit retention by landlords. The only recourse available to tenants at present is through the small claims court. We are aware that seeking redress through the court system can prove to be a hindrance and deter many tenants from pursuing what they believe to be a bone-fide claim on their deposit. Therefore Housing Rights Service believes that a tenancy deposit

¹⁷ Northern Ireland Housing Executive (2010) Housing Market Review and Perspectives 2010-2013.

¹⁸ Northern Ireland Housing Executive. Living in the Private Rented Sector: the experience of tenants.

¹⁹ Department for Social Development (2009) Building Sound Foundations: A Strategy for the Private Rented Sector, pp38-39.

protection scheme should be devised to ensure deposits are safely managed and not withheld unreasonably.

....Having researched the various tenancy deposit schemes, Housing Rights Service recommends a custodial type scheme similar to the one legislated for in England and Wales. This scheme would be preferential as there would be no cost to either landlords or tenants for its use. The scheme is financed by the interest generated on deposits which are held in a designated bank account.²⁰

Clause 2 of the Housing (Amendment) (No.2) Bill enables the Department to make regulations providing for schemes to safeguard deposits paid by tenants in the private rented sector. It also places certain obligations on private landlords (and any person acting on behalf of a private landlord) relating to the tenancy deposit schemes. Under Clause 2 of the Bill these regulations:

- must provide for the appointment of a body or person (i.e. the scheme administrator) to establish and maintain the scheme;
- must provide that a scheme or an amendment to a scheme does not come into force unless approved by the Department; and
- may permit the information held by a scheme administrator to be disclosed to a prescribed person for prescribed purposes.

Under Clause 2, paragraph 7, a landlord (or any person acting on their behalf) can only require a monetary deposit and not any other form of property as a deposit.

Contravention of this may lead to a fine not exceeding level 4 on the standard scale (i.e. £2,500). A person who contravenes any other provision of Clause 2 could be liable on summary conviction to a fine not exceeding £20,000.

The Department state that with exception of one landlord group and two individuals, all other respondents to the 'Building Sound Foundations' consultation supported the proposals in principle for a rent deposit scheme and an associated disputes handling scheme. In supporting the proposal local councils also suggested that this service should be linked to landlord registration requiring that the dispute service be used before any referral to the Courts Service. Councils also believed that they should be given access to data held by the disputes service to assist them in investigations in to harassment and illegal evictions²¹.

However, the National Landlords Association stated that it was not supportive of the introduction of tenancy deposit protection in Northern Ireland:

²⁰ Housing Rights Service (2008) Policy Briefing: Promoting Responsible Letting in the Private Sector, p10.

²¹ Department for Social Development (2010) Building Sound Foundations: A Strategy for the Private Rented Sector in Northern Ireland, p16.

“Unfortunately the NLA cannot support the introduction of tenancy deposit protection in Northern Ireland.....The NLA considered the introduction of tenancy deposit protection to be a legislative sledgehammer to crack a nut and subsequent analysis has proved that to be true....Nonetheless, should tenancy deposit protection be introduced into Northern Ireland, the NLA would recommend that a scheme akin to the UK model, be developed, ensuring that both a custodial based and insurance-based provider be included. Having two options would allow landlords to choose which scheme benefits their business better and ensures competition between providers to guarantee the best value for money for customers.”²²

An Overview of Tenancy Deposit Protection Schemes in England and Wales

Tenancy deposit protection for assured shorthold tenancies in England and Wales were introduced as part of the [Housing Act 2004](#). Since 6 April 2007, all deposits (for rent up to £25,000 per annum) taken by landlords and agents for assured shorthold tenancies (AST) in England and Wales have had to be protected by an authorised tenancy deposit scheme. In the first two years of operation over 1.5 million deposits have been protected, totalling nearly £1.4 billion with an average deposit of £906²³.

There are two types of tenancy deposit protection schemes available for landlords and letting agents, i.e. insurance based schemes and custodial schemes and all schemes provide a free dispute resolution service. The table below provides a brief illustration of how the schemes operate²⁴:

Insurance-Based Schemes	Custodial Schemes
<ul style="list-style-type: none"> ▪ The tenant pays the deposit to the landlord ▪ The landlord retains the deposit and pays a premium to the insurer <p>Within 14 days of receiving a deposit: The landlord or agent must give the tenant the details about how their deposit is protected including:</p> <ul style="list-style-type: none"> ▪ The contact details of the tenancy deposit scheme selected; ▪ The landlord or agents contact details; ▪ How to apply for a release of the deposit; ▪ Information explaining the purpose of the deposit; ▪ What to do if there is a dispute about the deposit. 	<ul style="list-style-type: none"> ▪ The tenant pays the deposit to the landlord or agent ▪ The landlord or agent then pays a deposit into the scheme. <p>Within 14 days of receiving a deposit: The landlord or agent must give the tenant the details about how their deposit is protected including:</p> <ul style="list-style-type: none"> ▪ The contact details of the tenancy deposit scheme selected; ▪ The landlord or agents contact details; ▪ How to apply for the release of the deposit; ▪ Information explaining the purpose of the deposit; ▪ What to do if there is a dispute about the deposit.

²² National Landlords Association. Consultation response to Building Sound Foundations. August 2009. www.dsdni.gov.uk/nat_landlords_assoc_response.pdf

²³ Department for Communities and Local Government, www.communities.gov.uk/housing/rentingandletting/privaterenting/tenancydepositprotection/

²⁴ Information in this table section extracted from Directgov, www.direct.gov.uk/en/TenancyDeposit/DG_066383

<p>At the end of the tenancy:</p> <ul style="list-style-type: none"> ▪ If an agreement is reached about how the deposit should be divided, the landlord or agent returns all or some of the deposit. ▪ If there is a dispute, the landlord must hand over the disputed amount to the scheme for safekeeping until the dispute is resolved. ▪ If for any reason the landlord fails to comply, the insurance arrangements will ensure the return of the deposit to the tenant if they are entitled to it. 	<p>At the end of the tenancy:</p> <ul style="list-style-type: none"> ▪ If an agreement is reached about how the deposit should be divided, the scheme will return the deposit, divided in the way agreed by both parties. ▪ If there is a dispute, the scheme will hold the deposit until the dispute resolution service or courts decide what is fair. <p>* The interests accrued by deposits in this scheme will be used to pay for the running of the scheme and any surplus will be used to offer interest to the tenant, or landlord if the tenant isn't entitled to it.</p>
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The UK Government has awarded contracts to three companies to run the tenancy deposit schemes:

- The [Deposit Protection Service](#)²⁵: the only custodial protection scheme which is free to use and open to all landlords and letting agents.
- [mydeposits](#)²⁶: a partnership between the National Landlords Association and Hamilton Fraser Insurance.
- The [Tenancy Deposit Scheme](#)²⁷: an insurance-based deposit protection and dispute resolution scheme managed by The Dispute Service.

There have also been calls for a tenancy deposit protection scheme in Scotland. In June 2010, the Scottish Housing Minister Alex Neil stated that Regulations governing approval of tenancy deposit schemes in Scotland would be introduced by means of a Scottish Statutory Instrument. These regulations will be subject to affirmative procedure which will require to give its approval before it can come into effect²⁸. The Scottish Government are currently working with a group of key stakeholders to finalise the regulations²⁹.

Power of Entry to Inspect Dwelling Houses (Clause 3)

The Private Tenancies (Northern Ireland) Order 2006 provides local councils with powers to inspect tenancies for fitness. In response to the consultation on the strategy for the private rented sector, district councils highlighted the need for a power to enter dwelling houses to carry out fitness inspections under Article 36 of the 2006 Order. The Bill's explanatory memorandum highlights that it could be argued that councils already have the powers of entry under section 98 of the Local Government Act (Northern Ireland) 1972. However, councils who responded to the consultation

²⁵ See www.depositprotection.com/

²⁶ See www.mydeposits.co.uk

²⁷ See www.thedisputeservice.co.uk/

²⁸ Scottish Parliament Question S3W – 34355, Claire Baker MSP, "To ask the Scottish Executive whether it plans to consult Parliament on plans for a tenancy deposit scheme. Answer on 18 June 2010. www.scottish.parliament.uk/Apps2/Business/PQA/default.aspx?pq=S3W-34355

²⁹ Scottish Parliament Question S2W-34354, Claire Baker MSP, "To ask the Scottish Executive when it will bring forward detailed plans for a tenancy deposit scheme". Answered on 18 June 2010. www.scottish.parliament.uk/Apps2/Business/PQA/Default.aspx

identified a preference for a stand-alone power of entry attached to their power to conduct fitness inspections. Clause 3 inserts in Article 36 of the 2006 Order to confer powers of entry on persons authorised by district councils to carry out fitness inspections.

Regulations in Respect of Private Sector Rents (Clause 4)

One of the primary aims of the [Private Tenancies \(Northern Ireland\) Order 2006](#) was to improve standards in the private rented sector by linking the fitness of the property with rent control, thereby encouraging landlords to bring properties up to the fitness standard. The Department for Social Development has power under the 2006 Order to determine certain private sector rents³⁰, an appropriate rent for the property is determined by the [Rent Officer](#)³¹ based on, for example, the general condition and state of repair of the property including any notice fitness or disrepair.

Tenancies subject to rent control – Article 40, Private Tenancies (Northern Ireland) Order 2006

40. —(1) A tenancy of a dwelling-house is subject to rent control if the tenancy is for the time being a protected tenancy or a statutory tenancy.

(2) A tenancy of a dwelling-house is subject to rent control if–

(a) the tenancy–

(i) is not a protected tenancy or a statutory tenancy, but

(ii) is a private tenancy granted on or after the commencement of this Order; and

(b) the dwelling-house–

(i) was constructed before 6th November 1956 or was provided by conversion of a building that was constructed before that date, and

(ii) does not meet the appropriate standard of fitness.

(3) A dwelling-house does not meet the appropriate standard of fitness unless–

(a) it is a prescribed dwelling-house, or

(b) a certificate of fitness is in effect in respect of it.

(4) A tenancy which is subject to rent control is referred to in this Chapter as a "controlled tenancy".

Clause 4 of the Housing (Amendment) (No.2) Bill inserts a new article into the 2006 Order to enable the Department to make regulations modifying certain provisions of the Order which relate to the determination of private sector rents. The Bill's Financial and Explanatory memorandum states that is a necessary step because where changes to the detail of the procedure for amending rents are identified, an amendment to primary legislation must be made and this normally takes around 12 months. The Bill will enable the Department to make subordinate legislation to modify the relevant provisions of the 2006 Order (i.e. Articles 42 to 45). Having due regard to the need for Assembly control over the determination of private sector rents, this subordinate legislation would be subject to the draft affirmative procedure.

³⁰ For further information on rent control see www.nidirect.gov.uk/index/property-and-housing/buying-selling-and-renting-a-home/private-renting/rent-control/what-is-rent-control.htm

³¹ For further information on the Rent Officer see www.dsdni.gov.uk/index/hdiv-housing/the-role-of-the-rent-officer-ni.htm

Landlord Registration (Clause 5)

Clause 5 of the Housing (Amendment) (No.2) Bill enables the Department to make regulations registration scheme for private landlords in Northern Ireland. The introduction of a mandatory landlord registration scheme for private rented sector landlords has received significant attention in recent years. Factors such as increases in the social housing waiting list and housing affordability for first time buyers has stimulated awareness and debate on the private rented sector and its regulation.

Mandatory landlord registration has, for example, been the subject of two recent debates in the Assembly (see Northern Ireland Assembly Official Report [1 October 2007](#) and 13 October 2008). It was also consulted upon via the “Building Sound Foundations” consultation process. In an analysis of the consultation process the Department highlighted that there was significant support for a registration scheme in Northern Ireland:

“With the exception of landlord groups, lenders and the University of Ulster, the majority of respondents provided overwhelming support for a mandatory Northern Ireland register of landlords, complemented by voluntary accreditation. Most respondents felt that this should be proportionate, light touch in nature, not intrusive and inexpensive in order to minimise the burden on landlords. Local councils advised that such a register should have inbuilt data protection allowing relevant information to be used to facilitate good information sharing, better tenancy management and enforced as necessary, but restricted to designated bodies to protect the personal information of landlords. Councils also felt that Housing Benefit should be paid only to registered landlords.”³²

It is evident from the ‘Building Sound Foundations’ consultation document that the Department initially had not been in favour of a mandatory landlord registration scheme. In the consultation paper, the Department maintained that a mandatory registration scheme would not provide the most effective means of targeting those landlords who do not comply with the law and that such landlords are likely to continue to evade registration schemes.

Instead the Department favoured targeting resources at schemes which would support and promote good tenancy management, encourage landlord professionalisation and improve monitoring and enforcement procedures. The Department also proposed that a longer term solution to improving landlord/tenancy management was via voluntary landlord accreditation scheme with incentives to join such as access to legal advice, competitive insurance and advice on tenancies and tenancy disputes³³. Nevertheless,

³² Department for Social Development (2010) Building Sound Foundations: A Strategy for the Private Rented Sector, p16.

³³ Department for Social Development (2010) Building Sound Foundations: A Strategy for the Private Rented Sector in Northern Ireland consultation, p27.

on the 24 March 2010, the Minister for Social Development announced that plans for a mandatory landlord registration scheme for Northern Ireland would progress³⁴.

Landlord and Tenancy Registration Schemes in Other Jurisdictions

The move towards mandatory registration of landlords will bring Northern Ireland into line with landlord and tenancy registration schemes in other jurisdictions. For further detailed information on the various schemes see Assembly Research Paper '[An Overview of Landlord and Tenancy Registration Schemes in the Private Rented Sector](#)' (2009)³⁵.

Scotland

In Scotland, for example, almost all private landlords must apply for registration with their local authority under [Part 8 of the Antisocial Behaviour etc. \(Scotland\) Act 2004](#). The registration scheme came into effect on the 30 April 2006 and it was intended that the scheme should be as 'light touch' as possible in order to minimise its impact on the majority of landlords who provide good services to their tenants³⁶. The scheme has a number of aims: to improve private renting in Scotland by enforcing minimum standards in letting; to oblige those not providing a minimum service to improve, or leave the sector; to allow tenants, neighbours and local authorities to identify and contact landlords and agents of private rented property; and to provide information on the scale and distribution of the private rented sector in Scotland.

England

Recommendations for a 'light touch' mandatory licensing scheme for landlords within the private rented sector were contained within the independent Review of Private Rented Sector Housing (published in 2008 and known as the 'Rugg Review')³⁷. On 13 May 2009 the Labour Government Housing Minister, Margaret Beckett announced that the Department for Communities and Local Government (DCLG) would consult upon proposals to introduce a 'light touch' national register for private landlords with a view to increasing protection for vulnerable tenants and good landlords³⁸.

It was envisaged that the national register would run by an independent organisation and landlords would be required to register for a nominal fee to cover administration costs. It was also anticipated that the register would be web-based and would require

³⁴ Department for Social Development News Release. 'Landlords to be regulated for the first time announces Ritchie'. 24 March 2010. www.northernireland.gov.uk/news/news-dsd/news-dsd-240310-landlords-to-be.htm

³⁵ Northern Ireland Assembly, Research and Library Service (2009) An Overview of Landlord and Tenancy Registration Schemes in the Private Rented Sector. www.niassembly.gov.uk/researchandlibrary/2009/7709.pdf

³⁶ Scottish Executive (2005) Regulation of Private Landlords under the Antisocial Behaviour etc (Scotland) Act 2004, p1. www.scotland.gov.uk/Resource/Doc/55971/0015379.pdf

³⁷ Rugg, J. & Rhodes, D. (2008) The Private Rented Sector: its contribution and potential. www.york.ac.uk/inst/chp/publications/PDF/prsreviewweb.pdf

³⁸ Department of Communities and Local Government Press Release. 'Real Help for Tenants – Margaret Beckett'. 13 May 2009. www.communities.gov.uk/news/corporate/1230528

minimal information such as the name of the landlord, their address and addresses of the properties being let. In return, the web-based system would offer landlords other services such property advertising and free documents (e.g. draft tenancy agreements).

However, on 10 June 2010 the new Housing Minister, Grant Shapps announced that he would scrap the previous Government's plans for a national register of landlords on the grounds that it would introduce 'too much additional red tape'. The Minister further confirmed that the Government has no additional plans into introduce further regulation of the sector as it was already governed by a well established legal framework³⁹.

Republic of Ireland

Legislation introducing the mandatory registration of *tenancies* in the Republic of Ireland was based on recommendations made by the Commission on the Private Residential Sector (the Commission's [report](#) published was July 2000)⁴⁰. The recommendations included the establishment of a Board to deal with landlord/tenant disputes and the compulsory registration of tenancies.

There is a requirement under the [Residential Tenancies Act 2004](#) on landlords to register the details of their tenancies within one month of their commencement. The register is maintained by a body known as the [Private Residential Tenancies Board](#) (PRTB). The register is available for public inspection, however, the published register does not contain any information that could lead to the disclosure of the landlord or tenant. It is the responsibility of the landlord to register the details of the tenancy with the Board and both landlord and tenant are entitled to a copy of their details entered on the register. Once a tenancy is registered it remains a registered tenancy for as long as the tenancy remains in existence. Once the tenancy has terminated any new tenancy must be registered with the Board. If a tenancy has not previously been terminated it will be deemed to be terminated when it has lasted four years, a new tenancy must commence between the parties and this must be registered.

One of the other main functions of Board is to offer a dispute resolution service between landlords and tenants. This involves mediation, adjudication and tribunal hearings. Landlords can only avail of the dispute service if the tenancy has been registered, tenants can avail of the service regardless of it being registered providing it is not an exempt property.

³⁹ Department for Communities and Local Government. News Release. 'Shapps promise to landlords: no more red tape'. 10 June 2010.

⁴⁰ See

www.environ.ie/en/DevelopmentandHousing/Housing/PrivateRentedHousing/PublicationsDocuments/FileDownload,1994.en.pdf

A Landlord Registration Scheme for Northern Ireland

Clause 5 of the Housing (Amendment) (No.2) Bill permits the Department to make regulations for a landlord registration scheme. Work relating to the regulations is currently being taken forward by a stakeholder group⁴¹. The regulations may make provisions for the following:

- The appointment of a body of person (“the registrar”) to establish and maintain a register.
- The maintenance of the register, including provision as to the information which is to be included or excluded.
- The procedure for registration, including information on the types of landlord who must register and exemptions, the registration process, the information to be provided by landlords.
- The conditions to be satisfied for registration or continued registration.
- The fees (if any) applicable for registration or continued registration.
- Appeals against decisions of the registrar.
- Information held by the registrar which is not included in the register to be disclosed to prescribed persons for prescribed purposes.

The registrar must make the register available for public inspection without charge “at such place and at such times as the registrar considers appropriate”.

A person will commit an offence;

- (a) If they provide false information in connection with an application for registration.
- (b) For letting a house under a private tenancy but failing to register.
- (c) For failing to provide evidence of registration in prescribed circumstances.

A person found guilty of an offence under (a) or (b) is liable for a fine on summary conviction not exceeding Level 4 on the standard scale (£2,500) and for (c) a fine not exceeding Level 2 (£500).

Fixed Penalty for Certain Offences (relating to landlord registration and tenancy deposit schemes) (Clause 6)

Clause 6 inserts a new Article in the Private Tenancies (Northern Ireland) Order which would allow landlords who appear to have breached the registration regulations or a tenancy deposit scheme the opportunity of discharging liability to conviction for the

⁴¹ Northern Ireland Assembly Official Report, Housing (Amendment) (No. 2) Bill, 24 June 2010.
www.niassembly.gov.uk/record/committees2009/SocialDevelopment/100624_HousingAmendmentBill.htm

offence by payment of a fixed penalty. The fixed penalty is payable to the district council whose officer issued the notice.

The fixed penalty payable to a district council with respect to certain offences relating to tenancy deposits is an amount equal to three times the amount of that tenancy deposit. The fixed penalty payable with respect to landlord registration will be an amount determined by the council but should not exceed one-fifth of the maximum fine payable on summary conviction of that offence. A district council may use the amounts payable to it “only for the purposes of its functions under this Order or such other of its functions as may be prescribed”.

Regulations and the Draft Affirmative Regulation Procedure (Clause 7)

Clause 7 provides that regulation in relation to tenancy deposit schemes, determination of rents and landlord registration will be subject to the draft affirmation resolution procedure by the Assembly.

Houses in Multiple Occupation: Evidence of Family Relationship (Clause 8)

Houses in Multiple Occupation (HMOs) are an important housing option for many groups including migrant workers, students and young single people. As such the Government has sought to regulate HMOs more fully than other parts of the private rented sector with a focus on fitness standards and health and safety⁴².

The definition of a House in Multiple Occupation was amended by the Housing (Amendment) Act (Northern Ireland) 2010. An HMO is defined as a house occupied by more than two qualifying persons who are not all members of the same family. Under the Housing ((Northern Ireland) Order 2003 a person is considered to be a member of another’s family if he/she is that person’s spouse (or living together as husband and wife), parent, grandparent, child, grandchild, brother or sister⁴³. The 2010 Act amended this definition to include uncles, aunts, nephews and nieces.

Under Clause 8, where a house is occupied by more than two qualifying persons and the Housing Executive reasonably believes that those persons are not all members of the same family, it may serve notice requiring that evidence of a family relationship between the occupants is provided. This notice may be served upon the owner of the house, the person managing the house or the person ‘having control over the house’. The purpose of Clause 8 is to minimise the scope for abuse of the newly amended definition of an HMO by requiring, where appropriate, clarification of the relationships within a house. If no evidence is provided to the Housing Executive that proves a

⁴² Department for Social Development (2009) The Housing Bill (Northern Ireland) consultation document, p10.

⁴³ A relationship by marriage is treated as a relationship by blood, half-blood relationships are treated as relationship of the whole blood, and the stepchild of a person is treated as his/her child.

family relationship or the evidence is insufficient, the house will be treated as a House in Multiple Occupation, and therefore subject to appropriate regulation.

There is similar scope within English housing legislation, under Section 235 of the [Housing Act 2004](#), which provides local authorities with general enforcement powers to obtain information and documents necessary the authority carrying out its housing function. It is suggested that this power is useful where the local authority suspects dishonesty, stalling tactics or where it needs more evidence or help it decide whether an offence has been committed. This power can be used to obtain documents to prove whether or not the occupiers are family members (e.g. tenancy agreements, passports)⁴⁴.

The Local Government regulation website (for England and Wales) highlights the particular problems faced by migrant workers in relation to HMO. Importantly it highlights that it is not always the landlord who culpable of overcrowding in HMOs:

“Accommodation is often provided by the employer, or someone closely connected to them, so migrant workers, who may not speak English, can be reluctant to talk to local authority officers as they fear losing not only their home, but also their job. Cases have been reported where landlords have moved their tenants out of a house, as soon as a private sector housing officer has got involved.

Migrant workers tend to be poorly paid and sometimes there is not enough work, so their income drops further. One way of increasing their income is to sublet and share their accommodation with other migrant workers. So when enforcing overcrowding standards, it is worth considering that the tenants rather than the landlord may be causing overcrowding”⁴⁵

The Housing Rights Service has identified a number of difficulties relating to the requirement to provide evidence of a familial relationship, particularly for non UK nationals:

“We believe it could be difficult to evidence some family relations within a household particularly extended relations such as uncle, aunt, nephew and niece. Required documentation should be official and in some cases, birth or marriage certificates may suffice. However, this could prove problematic for some HMO occupants in particular for non UK nationals who may not have such paperwork in this country.

There are other situations, in housing law and other statute, where proof of family relations is required. We suggest that the DSD make enquiries with, for example the Housing Executive, social services and enforcement

⁴⁴ See Local Government Regulation www.lacors.gov.uk/lacors/ContentDetails.aspx?id=16818

⁴⁵ See www.lacors.gov.uk/lacors/ContentDetails.aspx?id=16604

*authorities in other jurisdictions to determine what systems they have in place to evidence family relations.*⁴⁶

3.2 Provisions of the Bill Relating to Community Safety/Anti-Social Behaviour

The Housing Executive and Registered Housing Associations have a duty of care to protect tenants from crime and other anti-social behaviour (whether caused by tenants of social housing or not), as well as a duty to protect other people from anti-social behaviour caused by tenants of social housing⁴⁷. The consultation on the second housing amendment bill set out a wide range of proposals to update the powers of the Housing Executive and Registered Housing Associations for dealing with anti-social behaviour.

The Department's consultation on the housing amendment bill originally contained a wide range of proposals. However, only two of the proposals (relating to restrictions on mutual exchange and the disclosure of information relating to anti-social behaviour) have been included in the Housing (Amendment) (No.2) Bill. The other measures proposed in the consultation document will now be considered for future housing legislation. In evidence to the Committee for Social Development in June 2010, the Department indicated that it became clear during the consultation process that stakeholders felt that many of the proposals could have significant equality implications and should be the subject of further research before being considered for legislation⁴⁸. Therefore the following proposed measures are not included within the Bill:

- Strengthening of existing forms of injunction against anti-social behaviour;
- Enabling the Housing Executive and Registered Housing Associations to extend the period of an introductory tenancy by up to 6 months;
- Enabling the courts to grant demotion orders in respect of Housing Executive and Housing Association secure tenancies;
- Providing a structured discretion for judges when considering applications for orders for possession of secure tenancies in cases involving anti-social behaviour;
- Enabling the Housing Executive to treat individuals as ineligible for the provision social housing under homelessness legislation where evidence of their anti-social behaviour does not emerge until the Executive has completed its assessment of their housing circumstances.

⁴⁶ Housing Rights Service (2010) Consultation to the Housing Bill (Northern Ireland)

⁴⁷ Department for Social Development (2009) The Housing Bill (Northern Ireland) A consultation document, p28.

⁴⁸ Northern Ireland Assembly Official Report. Minutes of Evidence to the Committee for Social Development, 24 June 2010. www.niassembly.gov.uk/record/committees2009/SocialDevelopment/100624_HousingAmendmentBill.htm

A report on the outcome of the Bill's consultation highlights that with respect to these proposals:

“...the Department received a wide and diverse range of views. Some stakeholders identified the impact of anti-social behaviour and asserted that, in the light of this, the measures proposed were not sufficiently robust and wide-ranging, while others expressed concern about measures which, in their view, weakened security of tenure or strengthened existing sanctions. Of particular concern to these latter stakeholders were the use of demotion orders and the proposal to enable the Housing Executive to treat individuals as ineligible to be provided with social housing under the homelessness legislation where evidence of their anti-social behaviour does not emerge until the Executive has completed its assessment of their housing circumstances. Some stakeholders expressed a concern that such measures could have a detrimental impact on young people and, in particular, people with disabilities.

A few stakeholders questioned whether there was evidence to support the need for all the measures proposed and one suggested that other jurisdictions had adopted a mixture of sanctions and support to address a range of anti-social behaviour and suggested that the Department consider moving to such an approach.”⁴⁹

The remainder of this section will provide an overview of the two proposals on anti-social behaviour that are included within the Bill.

Withholding of Consent to Mutual Exchange on the Grounds of Anti-Social Behaviour (Clause 9)

Secure tenants of the Housing Executive and registered housing associations may, with the written consent of the landlord, exchange houses on the basis of mutual assignment of their tenancies. Landlords cannot withhold consent except on one or more of the grounds for refusal under current legislation. For example, under existing law, social landlords can refuse consent to an exchange of tenancies where an order for possession on the grounds of anti-social behaviour has been made against an applicant (or a member of the applicant's household), or where proceedings for possession have been commenced⁵⁰.

However, landlords have no authority to refuse to consent to an exchange where an applicant is the subject of other sanctions relating to anti-social behaviour such as an injunction or anti-social behaviour order. Clause 9 of the Bill outlines new powers to enable social landlords to withhold consent to an application for exchange of tenancies where an injunction or anti-social behaviour order is in force. The Department

⁴⁹ Department for Social Development (2010) The Housing Bill (Northern Ireland) Consultation Report, p14.

⁵⁰ Housing (Amendment) (No.2) Bill. Financial and Explanatory Memorandum.

maintains that for housing management reasons, it may be undesirable to permit individuals with a history of anti-social behaviour to move to other areas⁵¹.

A number of specific points relating to this proposal were raised during the consultation process, these points along with the Departments response are outlined below⁵²:

Point Raised	DSD Response
Will landlords have discretion to treat each application for an exchange of tenancies on its own merits?	Landlords can withhold consent to an exchange of tenancies on certain grounds. The Housing Bill will amend existing legislation to include anti-social behaviour as a new ground on which landlords will be able to withhold consent to an exchange. Landlords will retain scope to consider each case on its merits.
Will this ground (in terms of permitting the withholding of consent to an exchange of tenancies) cover all members of the household or just the tenant?	Social landlords will be able to take into account acts of anti-social behaviour by any member of either household which is party to the prospective exchange of tenancies.

This proposal would bring Northern Ireland into line with arrangements in other jurisdictions in relation to mutual exchanges and anti-social behaviour. Since June 2005 for example, social landlords in England have been permitted to refuse an application for mutual exchange if a relevant injunction or possession order, granted on the grounds of nuisance behaviour, is in force, or if a court action to obtain such an order or a demotion order is pending against the tenant, the proposed assignee or a person who resides with either of them⁵³.

Information Sharing in Respect of Anti-Social Behaviour (Clause 10)

The Bill's explanatory memorandum states that for data protection reasons, social landlords and others are often reluctant to share information about sanctions imposed on individuals for anti-social behaviour. It further maintains that the lack of proper legal provision in this area creates a risk of tenancies being awarded to persons who habitually engage in anti-social behaviour.

The provisions under Clause 8 of the Bill provides that any person may disclose information about certain injunctions, anti-social behaviour orders or orders for possession where such information is required to enable the landlord of a secure tenancy to decide:

- Whether to withhold consent to an exchange of tenancy;
- Whether a tenant is entitled to exercise the right to buy their home; or

⁵¹ Ibid.

⁵² Department for Social Development (2010) The Housing Bill (Northern Ireland) Consultation Report, pp14-15.

⁵³ House of Commons Library (2010) Anti-Social Behaviour in Social Housing, p21.
www.parliament.uk/documents/commons/lib/research/briefings/snsp-00264.pdf

- To take any appropriate action in relation to an application to exchange tenancies or to exercise the right to buy.

This clause also provides that any person may disclose relevant information to the Housing Executive where the information is required to enable the Executive to decide:

- Whether to treat an applicant for an allocation of housing accommodation as ineligible for such an allocation; or
- Whether to treat an applicant for homelessness assistance as ineligible for such an allocation.

The clause also provides that any person may disclose relevant information to a registered housing association to enable the association to decide whether to allocate housing accommodation to any person.

There were some concerns arising from the consultation that the information shared needs to be handled responsibly. In response the Department has stated that,

“the Housing Bill will open a data gateway under the Data Protection Act 1998 which would allow the sharing of information in certain defined circumstances. Arrangements for handling and managing this information will continue to be governed by the Data Protection Act”⁵⁴

3.3 Provisions of the Bill Clarifying the Law on Homelessness

Duty to Persons Found to be Homeless (Clause 11)

The Department’s consultation paper on the proposed provisions of Housing (Amendment) (No.2) Bill states that existing legislation requires that, where an eligible person is unintentionally homeless and in priority need (i.e. a ‘full duty applicant’), the Housing Executive shall secure accommodation for the applicant. However, legislation also provides that certain persons from abroad are not eligible to be assisted under homeless legislation (depending upon certain factors such as their immigration status and employment history).

Housing legislation in England, for example, provides that a local authority’s homeless duty will come to an end if a person’s eligibility ceases because of a change in their circumstances. However, there is no such provision in Northern Ireland legislation. The Department maintains that this legislative anomaly means that the Housing Executive may find itself with a duty (under homelessness legislation) to provide accommodation for individuals who (under immigration legislation) must not be provided with accommodation because they no longer meet the eligibility criteria⁵⁵.

⁵⁴ Department for Social Development (2010) The Housing Bill (Northern Ireland) Consultation Report, p15.

⁵⁵ Department for Social Development (2009) The Housing Bill (Northern Ireland) Consultation Document, p21.

Clause 11 of the Housing (Amendment) (No.2) Bill proposes to address the anomaly by bringing the Housing Executive's homelessness duty to an end where the applicant is no longer eligible for assistance.

The Housing Executive estimates that this measure will impact on less than 10 applicants per year and that this number will decline further after April 2011 when the UK's transitional arrangements in relation to A8 nations (from countries which joined the European Union in 2004) ends⁵⁶.

Some stakeholder responses to the consultation questioned UK immigration policy which determines the entitlements to social assistance for non-UK nationals. The Department has stated that it acknowledges the points made by consultees but highlighted that it is important to note that immigration is an excepted matter with is outside the statutory competence of the Northern Ireland Executive and Northern Ireland Assembly⁵⁷:

*“the Housing Executive has no legal means of allocating accommodation to persons ineligible for such accommodation by virtue of immigration-related legislation. In practice, this proposal will do nothing to alter this position. Instead, it aims to recognise this position by bringing the Housing Executive's homelessness duty to an end in these limited circumstances”.*⁵⁸

3.4 Provisions of the Bill Relating to Fuel Poverty and Energy Efficiency

Functions of the Housing Executive in Relation to Energy Brokering (Clause 12)

In 2008, the Minister for Social Development established a Fuel Poverty Task Force to examine ways of alleviating increasing levels of fuel poverty caused by the rising costs of home heating fuels in Northern Ireland. Around the same time, the Consumer Council for Northern Ireland, the Housing Executive and Bryson House Charitable Group initiated a feasibility study of an energy brokering scheme in Northern Ireland, whereby social landlords could attempt to secure cheaper energy for their tenants⁵⁹.

The subsequent energy brokering report, '[People Power](#)' was published in June 2010 and made five key recommendations⁶⁰:

⁵⁶ Department for Social Development (2010) The Housing (Amendment) (No.2) Bill, Consultation Report, p9.

⁵⁷ Department for Social Development (2010) The Housing (Amendment) (No.2) Bill, Consultation Report, p8.

⁵⁸ Department for Social Development (2010) The Housing (Amendment) (No.2) Bill, Consultation Report, p9.

⁵⁹ Northern Ireland Housing Executive, the Consumer Council for Northern Ireland and Bryson House Charitable Group (2010).

'Energy Brokering Report: People Power, Feasibility Study', p3 www.consumerCouncil.org.uk/publications/

⁶⁰ Ibid, p6.

1. Low consumer switching capacity in natural gas and electricity is a physical barrier to full domestic competition and there must be a push for swifter development by energy companies and the Utility Regulator in this area. The main obstacle to lower domestic energy prices is lack of alternative suppliers in the market. New suppliers, which will be necessary to support brokering schemes, will not enter the market until the appropriate switching mechanisms are in place. This has to be a priority action for everyone concerned with the domestic energy market in Northern Ireland.
2. In the short term, housing bodies would find it a valuable option if they could enter into Preferred Supplier Arrangements or Affinity Deals. The current Energy Saving Trust Tool Kit and knowledge from previous experience from Great Britain could be used to develop a working group to test and develop such arrangements.
3. In the medium to long term, these arrangements could be developed to allow the bulk buying of energy to provide lower prices to the consumer. This could be further facilitated if local and central government procurement bodies could link their energy purchasing, in particular the government estate, as a base load to leverage a better deal for domestic consumers under one contractual tariff arrangement.
4. Task a working group to develop a pilot project for vulnerable customers to bulk order and spread payment for their home heating oil using support organisations such as the Credit Union.
5. Commission a fully costed business plan to support and guide the development of the initiatives recommended above.

Clause 12 of the Housing (Amendment) (No.2) Bill contains powers to enable the Housing Executive to broker energy at a discounted price for tenants. It is believed that economies of scale would make energy more affordable for tenants of social housing and would contribute to the alleviation of fuel poverty in social housing. The Department further maintains that the proposal also has the potential to generate wider benefits for energy consumers in Northern Ireland as it may encourage more energy providers to enter the local domestic energy market⁶¹.

The report 'People Power' provides examples of how such brokering schemes operate in other jurisdictions (e.g. such as Dundee City Council's brokerage scheme for its housing tenants). The report maintains that there are two forms of brokerage that may be viable for the Northern Ireland market:

- to broker a deal directly with a utility company on behalf of residents or tenants.
- to use the services of a professional broker who negotiates on behalf of an organisation.

The follow extracts from the report provides illustrative examples of how energy brokering operates both Scotland and the Netherlands⁶²:

⁶¹ Department for Social Development (2010) The Housing Bill (Northern Ireland) Consultation Report, p24.

⁶² Northern Ireland Housing Executive, the Consumer Council for Northern Ireland and Bryson House Charitable Group (2010). 'Energy Brokering Report: People Power, Feasibility Study', pp6-8.

Dundee City Council

Dundee City Council has established Preferred Supplier Arrangements with Scottish and Southern Energy (SSE) for the supply of gas and electricity to empty and newly connected Council properties. The scheme went live in January 2001 and the Council entered into a second, three year contract with SSE in January 2004. SSE pays a commission payment to the Council for every new customer signed up.

A loyalty payment is also made each year that a tenant remains as an SSE customer following the initial signing. The income is used to provide grant funded energy efficiency measures for those in greatest need and a free energy advice service for all tenants. Dundee City Council hopes to expand the service provided to help meet the targets of the Dundee Fuel Poverty Strategy. At the time of the review a forecast indicated that Dundee City Council would receive income of £70,000 per year over the three years (from a housing stock of 14,000 properties).

WoonEnergie

WoonEnergie is an organisation based in the Netherlands which acts as an energy broker for housing association tenants. The organisation was established by the Dutch federation of housing associations (Aedes) which was concerned that the competitive energy market was not bringing tangible benefits to social housing tenants. The WoonEnergie concept works with the housing associations offering their tenants cheaper energy and then WoonEnergie takes over the marketing and customer service. The housing association tenants authorise WoonEnergie to act on their behalf in contracting an energy supplier who then invoices tenants directly within the terms of the contract.

The report suggests that the benefit of using a broker is that they have expertise and existing relationships within the market and experience of energy trading and highlights that the success of energy brokering is dependent on the amount of energy and combination of sources (gas and electricity) to be supplied and that the greater the volume the better the chance of negotiating the best tariff deal⁶³.

Functions of District Councils in Relation to Energy Efficiency (Clause 13)

The proposal in relation to energy efficiency recognises that a number of councils have undertaken a range of actions on energy efficiency and fuel poverty and seeks to formalise this position in legislation. An illustrative example of recent council activity in relation to energy efficiency and fuel poverty includes the Belfast City Council 'Be Warm' saving stamp scheme which helps householders save for home heating oil. Participants can purchase special oil stamps from a range of retailers, collect them on a savings card and then use the value of the stamps to pay for all or part of the home heating oil⁶⁴.

Under Clause 13 of the Bill, district councils may take any action it thinks appropriate for the purpose of promoting the efficient use of energy in residential accommodation in its district. It may, in particular:

- Provide financial or other assistance to any body whose functions include the promotion of energy efficiency in residential accommodation;
- Provide, or secure the provision of advice;

⁶³ Northern Ireland Housing Executive, the Consumer Council for Northern Ireland and Bryson House Charitable Group (2010). 'Energy Brokering Report: People Power, Feasibility Study', p8.

⁶⁴ See www.belfastcity.gov.uk/bewarm/index.asp

- Disseminate, or securing the dissemination, of information; and
- Produce action plans to improve energy efficiency in residential accommodation in its district.