

Housing (Amendment) (No. 2) Bill

[AS INTRODUCED]

CONTENTS

Private tenancies

1. Abolition of statement of tenancy terms
2. Tenancy deposit schemes
3. Power of entry to inspect dwelling-house
4. Power to modify Articles 42 to 45
5. Registration of landlords
6. Fixed penalty for certain offences
7. Regulations

Miscellaneous

8. Houses in multiple occupation: evidence of family relationship
9. Withholding of consent to mutual exchange of secure tenancies
10. Disclosure of information as to orders, etc. in respect of anti-social behaviour
11. Duty to persons found to be homeless
12. Functions of Executive in relation to energy brokering
13. Functions of district councils in relation to energy efficiency

Supplementary

14. Repeals
15. Commencement
16. Interpretation
17. Short title

Schedule

Repeals

A

B I L L

TO

Amend the law relating to housing.

BE IT ENACTED by being passed by the Northern Ireland Assembly and assented to by Her Majesty as follows:

Private tenancies

Abolition of statement of tenancy terms

1. Article 4 of the Private Tenancies Order (tenant to be given notice regarding certain matters) is repealed.

5 **Tenancy deposit schemes**

2. After Article 5 of the Private Tenancies Order insert—

“Tenancy deposit schemes

Tenancy deposit schemes

10 5A.—(1) The Department may by regulations make provision for securing that one or more tenancy deposit schemes are available for the purpose of safeguarding tenancy deposits paid in connection with private tenancies.

15 (2) A “tenancy deposit scheme” is a scheme which is made for the purpose of safeguarding tenancy deposits paid in connection with private tenancies and facilitating the resolution of disputes arising in connection with such deposits.

(3) Regulations under paragraph (1)—

20 (a) must provide for the appointment of a body or person (“the scheme administrator”) to establish and maintain a scheme of a prescribed description;

(b) must provide that a scheme or an amendment to a scheme does not come into force unless approved by the Department;

- (c) may confer or impose on the scheme administrator such powers or duties in connection with a scheme as are prescribed;
- (d) may provide for information held by a scheme administrator to be disclosed to prescribed persons for prescribed purposes.
- (4) The Department may make payments to a scheme administrator. 5
- (5) In this Article—
 - “money” means money in the form of cash or otherwise;
 - “tenancy deposit”, in relation to a private tenancy, means any money intended to be held (by the landlord or otherwise) as security for—
 - (a) the performance of any obligations of the tenant arising under or in connection with the tenancy, or 10
 - (b) the discharge of any liability of the tenant so arising.
- (6) In this Article references to a landlord in relation to any private tenancy include references to a person acting on behalf of the landlord in relation to the tenancy. 15

Requirements relating to tenancy deposits

- 5B.—(1) Any tenancy deposit paid to a person in connection with a private tenancy must, as from the time when it is received, be dealt with in accordance with an approved scheme.
- (2) A person must not require the payment of a tenancy deposit in connection with a private tenancy which is not to be subject to the requirement in paragraph (1). 20
 - (3) Where a landlord receives a tenancy deposit in connection with a private tenancy, the initial requirements of an approved scheme must be complied with by the landlord in relation to the deposit within the period of 14 days beginning with the date on which it is received. 25
 - (4) For the purposes of this Article “the initial requirements” of an approved scheme are such requirements imposed by the scheme as fall to be complied with by a landlord on receiving such a tenancy deposit.
 - (5) A landlord who has received such a tenancy deposit must give the tenant and any relevant person such information relating to— 30
 - (a) the approved scheme applying to the deposit,
 - (b) compliance by the landlord with the initial requirements of the scheme in relation to the deposit, and
 - (c) the operation of this Article and Article 5A in relation to the deposit, 35
- as may be prescribed.
- (6) The information required by paragraph (5) must be given to the tenant and any relevant person—
 - (a) in the prescribed form or in a form substantially to the same effect, and 40
 - (b) within the period of 28 days beginning with the date on which the deposit is received by the landlord.

(7) A person must not, in connection with a private tenancy, require a deposit which consists of property other than money.

(8) In paragraph (7) “deposit” means a transfer of property intended to be held (by the landlord or otherwise) as security for—

5 (a) the performance of any obligations of the tenant arising under or in connection with the tenancy, or

(b) the discharge of any liability of the tenant so arising.

(9) The provisions of this Article apply despite any agreement to the contrary.

10 (10) A person who contravenes paragraph (7) is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(11) A person who contravenes any other provision of this Article is guilty of an offence and liable on summary conviction to a fine not exceeding £20,000.

15 (12) In this Article—

“approved scheme” means a scheme for the time being in force under Article 5A;

“property” means moveable property;

20 “relevant person” means any person who, in accordance with arrangements made with the tenant, paid the deposit on behalf of the tenant.”.

Power of entry to inspect dwelling-house

25 **3.** In Article 36 of the Private Tenancies Order (functions of council on application to have dwelling-house inspected) after paragraph (1) insert—

“(1A) A person authorised by the appropriate district council in relation to this Article may, at any reasonable time and having given at least 24 hours' notice to the occupier, and to the owner if known, enter a dwelling-house for the purpose of an inspection under paragraph (1).

30 (1B) An authorisation under paragraph (1A)—

(a) shall be in writing; and

(b) shall, if so required, be produced for inspection by the occupier or anyone acting on his behalf.”.

Power to modify Articles 42 to 45

35 **4.**—(1) After Article 45 of the Private Tenancies Order insert—

“Power to amend Articles 42 to 45

45A.—(1) The Department may by regulations modify any provision of Articles 42 to 45 and Schedule 2.

40 (2) Regulations under this Article may make such consequential modifications of other provisions of this Chapter as appear to the Department to be necessary or appropriate.”.

(2) In Article 44(3) omit the words from “including” to the end.

Registration of landlords

5. After Article 65 of the Private Tenancies Order insert—

“Registration of landlords

Registration of landlords	5
65A.—(1) The Department may by regulations provide for the registration of landlords of dwelling-houses let under a private tenancy.	
(2) Regulations under this Article may in particular make provision for—	
(a) the appointment of a body or person (“the registrar”) to establish and maintain a register;	10
(b) the maintenance of the register, including provision as to the information which is to be included in, or excluded from, the register;	
(c) imposing a requirement to register on all landlords mentioned in paragraph (1), subject to any prescribed exceptions;	15
(d) the procedure for registration, including provision about applications for registration and the provision of information by persons applying for registration;	
(e) the conditions to be satisfied for registration or continued registration;	20
(f) the fees (if any) payable for registration or continued registration;	
(g) appeals against decisions of the registrar under the regulations;	
(h) information held by the registrar which is not included in the register to be disclosed to prescribed persons for prescribed purposes.	25
(3) The registrar must make the register available for public inspection without charge at such place and at such times as the registrar considers appropriate.	
(4) A person commits an offence if—	30
(a) he provides false information in connection with an application for registration under this Article;	
(b) not being a person registered under this Article, he lets a dwelling-house under a private tenancy;	
(c) being a person registered under this Article, he fails to provide evidence of registration in prescribed circumstances.	35
(5) A person guilty of an offence under paragraph (4)(a) or (b) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.	
(6) A person guilty of an offence under paragraph (4)(c) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.”.	40

Fixed penalty for certain offences

6. After Article 68 of the Private Tenancies Order insert—

“Fixed penalty for certain offences

5 68A.—(1) This Article applies where on any occasion an authorised officer of a district council has reason to believe that a person (“P”) has committed—

- (a) an offence under Article 5B(10) or (11); or
- (b) an offence under Article 65A(4).

10 (2) The authorised officer may give P a notice in the prescribed form offering P the opportunity of discharging any liability to conviction for the offence by payment of a fixed penalty.

(3) A fixed penalty payable under this Article is payable to the district council whose officer gave the notice.

15 (4) Where P is given a notice under this Article in respect of an offence—

- (a) no proceedings may be instituted for that offence before the expiration of the period of 14 days, or such other period as may be specified in the notice, following the date of the notice; and
- (b) P may not be convicted of that offence if P pays the fixed penalty before the expiration of that period.

(5) A notice under this Article must give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence.

(6) A notice under this Article must also state—

- (a) the period during which, by virtue of paragraph (4), proceedings will not be taken for the offence;
- (b) the amount of the fixed penalty; and
- (c) the person to whom and the address at which the fixed penalty may be paid.

30 (7) The fixed penalty payable to a district council under this Article in respect of an offence under Article 5B(11) in relation to a tenancy deposit received or required by a landlord is an amount equal to three times the amount of that tenancy deposit.

35 (8) The fixed penalty payable to a district council under this Article in respect of an offence under Article 5B(10) or 65A(4) is an amount determined by the council, being an amount not exceeding one-fifth of the maximum fine payable on summary conviction of that offence.

(9) In any proceedings a certificate which—

- (a) purports to be signed on behalf of the clerk of the council, and
- (b) states that payment of a fixed penalty was or was not received by a date specified in the certificate,

is evidence of the facts stated.

(10) A district council may use amounts paid to it in pursuance of notices under this Article only for the purposes of its functions under this Order or such other of its functions as may be prescribed.

(11) In this Article “authorised officer”, in relation to a district council, means an officer of the council who is authorised in writing by the council for the purposes of this Article.”. 5

Regulations

7. In Article 72 of the Private Tenancies Order (regulations) for paragraph (3) substitute— 10

“(3) Regulations under Article 5A, 45A or 65A shall not be made unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.”.

Miscellaneous

Houses in multiple occupation: evidence of family relationship 15

8.—(1) At the end of Article 75 of the Housing (Northern Ireland) Order 1992 (definition of house in multiple occupation) insert—

“(3) Where—

- (a) a house is occupied by more than 2 qualifying persons; and
- (b) the Executive reasonably believes that those persons are not all members of the same family, 20

the Executive may serve a notice under this paragraph complying with paragraphs (4) and (5).

(4) The notice may be served on—

- (a) the person having control of the house; 25
- (b) the person managing the house; or
- (c) the owner of the house.

(5) The notice shall—

- (a) state the Executive’s belief referred to in paragraph (3)(b) and the grounds for that belief, 30
- (b) inform the person on whom the notice is served that he may, within 56 days of the date of service of the notice or such longer period as the Executive may in any case determine, provide the Executive with evidence that all the qualifying persons occupying the house are members of the same family, and 35
- (c) inform the person of the effect of paragraphs (6) to (8).

(6) Paragraph (7) applies if—

- (a) the Executive serves a notice under paragraph (3) in respect of a house; and
- (b) either— 40

(i) no evidence is provided to the Executive as mentioned in paragraph (5)(b), or

(ii) any evidence so provided is in the opinion of the Executive insufficient to cause the Executive to change its belief.

5 (7) Subject to paragraph (8), as from the expiry of the period mentioned in paragraph (5)(b) the house is to be treated as a house in multiple occupation for the purposes of this Part.

(8) Paragraph (7) does not apply or (as the case may be) ceases to apply if—

10 (a) the Executive ceases (for whatever reason) to hold the belief mentioned in paragraph (3)(b); or

(b) a court determines that the house is not a house in multiple occupation.”.

Withholding of consent to mutual exchange of secure tenancies

15 **9.—**(1) In Schedule 3A to the Housing (Northern Ireland) Order 1983 (NI 15) (grounds for withholding consent to assignment by way of exchange) after Ground 2 insert—

“Ground 2A

Either—

20 (a) a relevant order or suspended Ground 2 possession order is in force, or

(b) an application is pending before any court for a relevant order or a Ground 2 possession order to be made,

25 in respect of the tenant or the proposed assignee or a person who is residing with either of them.

A “relevant order” means—

(a) an injunction under Chapter 4 of Part 2 of the Housing (Northern Ireland) Order 2003 (injunctions against anti-social behaviour);

(b) an injunction against breach of a tenancy agreement;

30 (c) an anti-social behaviour order under Article 3 or 6 of the Anti-social Behaviour (Northern Ireland) Order 2004;

(d) an interim anti-social behaviour order under Article 4 or 6A of that Order.

35 A “Ground 2 possession order” means an order for possession under Ground 2 in Schedule 3.

Where the tenancy of the tenant or the proposed assignee is a joint tenancy, any reference to that person includes (where the context permits) a reference to any of the joint tenants.”.

40 (2) The amendment made by this section applies in relation to applications for consent under Article 32A of that Order (assignments by way of exchange) which are made on or after the day on which this section comes into operation.

Disclosure of information as to orders, etc. in respect of anti-social behaviour

10.—(1) Any person may disclose relevant information to a landlord under a secure tenancy if the information is disclosed for the purpose of enabling the landlord—

- (a) to decide whether Ground 2A in Schedule 3A to the Housing (Northern Ireland) Order 1983 (NI 15) (withholding of consent to mutual exchange where order in force or application pending in connection with anti-social behaviour) can be invoked in relation to the tenant under the tenancy; 5
- (b) to decide whether a tenant is entitled to exercise a right under a scheme for house sales under Article 3 or 3A of the Housing (Northern Ireland) Order 1983; or 10
- (c) to take any appropriate action in relation to the tenant in reliance on the Ground mentioned in paragraph (a) or a scheme mentioned in paragraph (b). 15

(2) Any person may disclose relevant information to the Executive if the information is disclosed for the purpose of enabling the Executive to decide— 15

- (a) whether to treat an applicant for an allocation of housing accommodation as ineligible for such an allocation by virtue of Article 22A(6) of the Housing (Northern Ireland) Order 1981 (NI 3); or
- (b) whether to treat an applicant for assistance under Part 2 of the Housing (Northern Ireland) Order 1988 (NI 23) (homelessness) as ineligible for that assistance by virtue of Article 7A(5) of that Order. 20

(3) Any person may disclose relevant information to a registered housing association if the information is disclosed for the purpose of enabling the housing association to decide whether to allocate housing accommodation to any person. 25

(4) In this section—

- (a) “registered housing association” has the same meaning as in Part 2 of the Housing (Northern Ireland) Order 1992 (NI 15);
- (b) “relevant information” means information relating to any order or application mentioned in Ground 2A in Schedule 3A to the Housing (Northern Ireland) Order 1983 and relevant for the purposes of any of the provisions mentioned in subsection (1) or (2) or the decision mentioned in subsection (3), including (in particular) information identifying the person in respect of whom any such order or application has been made; 30
- (c) “secure tenancy” has the meaning given by Article 25 of the Housing (Northern Ireland) Order 1983; and 35
- (d) any reference to the tenant under a secure tenancy is, in relation to a joint tenancy, a reference to any of the joint tenants.

Duty to persons found to be homeless

11. In Article 10 of the Housing (Northern Ireland) Order 1988 (NI 23) (duty to persons found to be homeless) after paragraph (2) insert— 40

“(2ZA) The Executive shall cease to be subject to the duty under paragraph (2) if the applicant ceases to be eligible for assistance under this Part by virtue of Article 7A(1)(a) or (b).”.

Functions of Executive in relation to energy brokering

12.—(1) The Executive may submit to the Department a scheme for the making by the Executive of energy brokering arrangements.

5 (2) The Department may approve a scheme submitted under subsection (1) with or without modifications.

(3) The Executive may submit to the Department proposals for amending a scheme approved under subsection (2) or a scheme replacing any such scheme and subsection (2) shall have effect in relation to those proposals or a scheme replacing an existing scheme as they have effect in relation to a scheme.

10 (4) Subject to subsection (5), the Executive shall give effect to a scheme for the time being approved by the Department.

(5) The Executive may, with the approval of the Department, terminate a scheme under this section; but the termination of a scheme does not affect the continued operation of any arrangements made under the scheme.

15 (6) In this section “energy brokering arrangements” means arrangements which—

(a) are made by the Executive with an energy supplier;

20 (b) involve the making available by the energy supplier to premises occupied by tenants of the Executive of supplies of electricity, gas or oil (as the case may be) on terms set out in, or determined in accordance with, the arrangements.

(7) Those arrangements may also provide for the payment of sums to the Executive by the energy supplier concerned.

25 (8) Any sums received by the Executive by virtue of subsection (7) shall be used for the purposes of the functions of the Executive under this section or for such other purposes as the Department may approve.

(9) In this section “energy supplier” means—

(a) the holder of a licence under Article 10(1)(c) of the Electricity (Northern Ireland) Order 1992 (NI 1);

30 (b) the holder of a licence under Article 8(1)(c) of the Gas (Northern Ireland) Order 1996 (NI 2);

(c) a supplier of domestic heating oil.

Functions of district councils in relation to energy efficiency

35 **13.**—(1) A district council may take such action as it thinks appropriate for the purpose of promoting the efficient use of energy in residential accommodation in its district.

(2) In particular, a district council may for that purpose—

(a) provide financial or other assistance to any body whose functions include the promotion of energy efficiency in residential accommodation;

40 (b) provide, or secure the provision of, advice; and

(c) disseminate, or secure the dissemination of, information.

(3) A district council may produce action plans to improve energy efficiency in residential accommodation in its district.

(4) In carrying out its functions under subsections (2) and (3) a district council shall have regard to—

(a) any report published by the Executive under section 2 of the Home Energy Conservation Act 1995 (c. 10); and 5

(b) any strategy published by the Department in connection with the exercise of its functions under Article 5 of the Energy Efficiency (Northern Ireland) Order 1999 (NI 3).

(5) A council shall provide the Executive with such information as the Executive may require for the purpose of carrying out its functions as energy conservation authority in Northern Ireland under the Home Energy Conservation Act 1995. 10

(6) In this section—

“residential accommodation” has the meaning given by section 1 of the Home Energy Conservation Act 1995; 15

“financial assistance” means grants or loans of such amounts and on such terms and conditions (including, in the case of grants, conditions as to repayment) as may be determined by the council.

Supplementary 20

Repeals

14. The statutory provisions set out in the Schedule are repealed to the extent specified in the second column of that Schedule.

Commencement

15.—(1) The preceding sections of this Act (and the Schedule) come into operation on such day or days as the Department may by order appoint. 25

(2) An order under subsection (1) may contain such transitional or saving provisions as the Department thinks appropriate.

Interpretation

16. In this Act— 30

“the Department” means the Department for Social Development;

“the Executive” means the Northern Ireland Housing Executive;

“the Private Tenancies Order” means the Private Tenancies (Northern Ireland) Order 2006 (NI 10).

Short title 35

17. This Act may be cited as the Housing (Amendment) (No. 2) Act (Northern Ireland) 2010.

SCHEDULE

Section 14.

REPEALS

	Short Title	Extent of repeal
5	The Private Tenancies (Northern Ireland) Order 2006 (NI 10)	Article 4. In Article 44(3) the words from “including” to the end. In Article 68(1) “4(5),”.