

Private Tenancies Bill – Call for Evidence
Response from Propertymark
October 2021

Background

Propertymark is the UK's leading professional body for estate and letting agents, inventory providers, commercial agents, auctioneers and valuers, comprising nearly 18,000 members. We are member-led with a Board which is made up of practicing agents and we work closely with our members to set professional standards through regulation, accredited and recognised qualifications, an industry-leading training programme and mandatory Continuing Professional Development.

Call for Evidence Questions

Question 6: Do you think that the Bill will meet its overall policy objectives?

Propertymark welcomes the introduction of the Bill, which we believe will elevate property standards and letting practices within the private rented sector. We have long called for better regulation of the sector, however we have concerns that the eleven substantive provisions outlined in the Bill may prove too great as an immediate step-change if all proposals are implemented at once and may undermine the policy objectives that the Bill seeks to achieve. This is due to the additional restrictions and burdens placed on private landlords, which while proportionate individually represent a significant change in practice.

In order to make the rented sector safer and more secure for a wider range of households, investment in the private rented sector must be encouraged and sustained. Whilst we believe that the Bill's provisions are likely to improve safety and certainty for tenants, the additional requirements placed on landlords may mean that some choose to exit the sector. This could result in a lack of supply of private rented property and thus we would urge the Northern Ireland Assembly to consider a phased introduction to enable the sector to adjust appropriately and mitigate the risk of a loss of investment.

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

As indicated in our response to Question 6, we believe the Assembly should consider how the provisions set out in the Bill might be introduced such that any unintended, negative consequences – most notably a loss of landlord investment in the private rented sector – can be mitigated. Whilst we agree in principle with the majority of the provisions outlined, the introduction of prescribed forms for the grant and end of a tenancy, the one-month cap on security deposits, extension of notice to quit periods, restriction on rent increases and requirements for fire, smoke and carbon monoxide detection all represent additional restrictions or costs to a landlord, making investment in the sector relatively less attractive. Ensuring landlords have adequate time to adjust to new regulations will be crucial to the success of the Bill and achievement of its ultimate goals.

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

Propertymark considers it suitable for the detail required in notices for the grant or variation of a tenancy to be prescribed by regulation and would caution against including such detail on the face of the Bill. While fundamental principles relating to a tenancy could be included within the Bill, such as

security of tenure, we believe any future amendments to prescribed form or wording is better served by regulation rather than by further primary legislation.

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

Propertymark considers the Private Residential Tenancy model agreement introduced by Scottish Government in 2017 together with the legal requirement for landlords or letting agents to ensure tenants are provided with the Easy Read Notes or Supporting Notes relating to the written terms of the tenancy agreement to have been successful in ensuring tenants are aware of their rights and responsibilities, as well as those of the landlord in terms of the agreement. We would recommend the Assembly consider supplying a template to ensure that the prescribed wording, information and form are adhered to and to minimise inadvertent breaches.

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

Propertymark feels that Clause 2 sufficiently covers the requirement for new or varied private tenancies from 30 June 2011 to be given notice regarding certain matters. We are unaware of any instances in which the inadvertent repeal of Article 4 has had any negative impacts.

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

Propertymark does not have evidence of other issues relating to tenancy management.

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

We regard the introduction of a requirement for a receipt for cash payment to be provided free of charge to be necessary and appropriate and consider there to be three ways in which Clause 3 could be improved to better protect tenants who make use of such payments. Firstly, though we recognise that a deposit protection regime is in place, we would suggest that the wording of Clause 3 could be revised to make clear that cash payments for security deposits should be included under the requirement, as well as payments of rent. Secondly, the Assembly could consider whether provision of a receipt template might be helpful to letting agents, landlords and tenants, to aid adherence with the stipulations within Clause 3(5)(2). Thirdly, we would encourage the Assembly to consider the introduction of mandatory client money protection (CMP) for letting agents to safeguard the money of tenants who do opt to use cash for payments. Though precise details vary across England, Scotland and Wales, letting agents in all three nations are required to have CMP insurance and dedicated client money accounts and offers both tenants and landlords a route to compensation, should an agent misappropriate funds or go out of business.

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

We would suggest that tenants most likely to pay rent in cash are those in lower socio-economic groups, primarily employed in cash-based industries, those who are not in regular employment or those who are paying by way of immoral earnings. Propertymark also recognises that some landlords

may insist upon rent payments in cash in an effort to conceal income, and that in these instances tenants may have particular difficulties in gaining a receipt.

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

We believe that the Landlord Registration Scheme could be a useful tool to ensure that landlords are informed of their responsibilities to provide a receipt for cash payments, particularly via use of the initial information pack and newsletter. Additionally, we would suggest that letting agents have a role in raising awareness of the requirement for a receipt for cash payments. Rights should also be outlined in any supporting notes served to tenants alongside their statement of tenancy, as in the Private Residential Tenancy Statutory Terms Supporting Notes in Scotland.

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

Propertymark considers the complaint mechanism served by local authorities through Environmental Health Departments to be sufficient in the instance of breach of any legal duty, provided they are sufficiently funded.

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

Propertymark considers the security deposit cap of one month's rent to be insufficient. We believe this for three reasons: firstly, Propertymark does not feel that the proposed one-month cap was adequately consulted upon. In its Consultation on the Private Rented Sector in Northern Ireland – Proposals for Change, the Department for Communities suggested that most deposits amounted to one month's rent¹, and the consultation document made no reference to landlords charging a deposit of eight-weeks' rent. This practice was introduced in the Departmental Response to the consultation wherein it was alleged that an extension of the notice to quit to eight weeks could result in landlords charging a deposit of eight-weeks' rent in response.² Given the lack of evidence to suggest that this practice is prevalent, coupled with the mooted extension of notice to quit periods to six months, we would urge the Assembly to reconsider the basis of such a cap and consider a two-month cap as a fair alternative.

Secondly, landlords must be confident that the cost of any damage beyond wear and tear can be recouped if a ready supply of private rented sector property is to be maintained. The principal function of a security deposit is to provide confidence to a landlord that any costs incurred through tenant damage, misuse or neglect of a property can be recovered. Without this assurance, landlords may be discouraged to let their property. It is therefore vital that any deposit cap balances the potential needs of the landlord with the tenant's affordability.

Thirdly, a cap of one month's rent may indirectly discriminate against certain prospective tenants, for example those with pets. It is generally accepted that pets increase the likelihood of damage and tenants with pets can therefore face difficulties finding suitable accommodation. A larger 'pet deposit'

¹ Department for Communities, January 2017: Private Rented Sector in Northern Ireland – Proposals for Change: www.communities-ni.gov.uk/sites/default/files/consultations/communities/private-rented-sector-proposals-for-change-consultation.pdf.

² Department for Communities, 2021: Consultation on the Review of the Role and Regulation of the Private Rented Sector: www.communities-ni.gov.uk/sites/default/files/consultations/communities/private-rented-sector-proposals-for-change-consultation-response.pdf.

has often been seen as a safeguard against the associated risks, and Propertymark believes that any cap should be worded in such a manner that it does not preclude a landlord from charging a reasonable surcharge commensurate to the risk presented by housing a pet.

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

We are aware that security deposits represent a barrier to securing accommodation for some renters, both when entering the market and when moving between tenancies. There are increasing options available for tenants, such as ‘no deposit’ schemes and in England the UK Government is, as part of its review of the private rented sector, developing a ‘lifetime deposit’ model which it is hoped will enable tenants to move from one property to another. Whilst details of the model have not been set out, we have suggested that options might include a tenant guarantee (bridging loan or insurance policy) or employer loan scheme whereby a tenant can repay a deposit through their wage or salary. We would encourage the Assembly to consider these and other options to improve affordability.

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

Propertymark suggests that the Assembly might consider a six-month limit to rent payments in advance, to minimise the risk of money laundering. Such a restriction would also afford some protection to a tenant who has paid rent in advance but chosen to end the tenancy before any further rent is due, for example where twelve months’ rent has been paid, but a tenancy has ended after six. In Scotland, Article 89 of the Rent (Scotland) Act 1984 makes void any demand for rent in advance as a condition of the grant, renewal or continuance of a tenancy, and limits payment of rent in advance to six months’ rent. Any rent paid as a result of such a demand must be returned to the tenant. As indicated in our response to Question 12, we would suggest that mandatory client money protection for letting agents would offer further safeguards for both tenants and landlords in this context.

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

Yes, we feel that the time limits proposed are sufficient.

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

Propertymark’s understanding of Clause 6 is that the period within which a person can be prosecuted for failing to comply with the proposed requirements is limited to that period within which the failure is ongoing. In this sense, we would argue that the question is somewhat misleading to suggest that there is no time barrier on prosecution. If our interpretation of the Clause is correct, we are in favour of the principle.

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

Propertymark believes the proposed restriction on rent increases outlined in Clause 7(5C)(2) to be reasonable. However, we do not agree with the inclusion of Clause 7(5C)(5) which gives powers to restrict a rent increase to once in every two-year period. This is likely to deter a landlord from making small- and medium-scale improvements to a property (the like of which would fall outside of the proposed exemption on renovated or extended property) if they are unable to recoup any investment

through the rent. We would also caution that the likely consequence of such a restriction is that every tenancy will be served a rent increase, whether supported by inflation or other market forces or not.

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

Propertymark agrees with the requirement to provide written notice of a rent increase. We would urge the Assembly to consider the merits of a rent increase template, such as Form 4 provided by the UK Government for periodic tenancies in England and the Rent Increase Notice in Scotland, to minimise any inadvertent breaches of the requirement and provide guidance for tenants in the event that they do not agree with the increase. We would also recommend that the process by which a tenant can challenge a rent increase is included in any supporting notes or guidance issued alongside the statement of tenancy.

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

As outlined in our response to Question 21, we do not agree with the proposed powers to limit rent increases to every two years. However, if such a restriction was to be enforced, the exemption set out under Clause 7 would be crucial to encourage large-scale improvements to be undertaken. Without such an exemption, we feel that required remedial works of this scale will be deferred or avoided if a landlord is unable to adjust the rent commensurate with the improvements made to a property.

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

Propertymark believes that affordability within the private rented sector is largely a product of market forces. We therefore recommend that the impact of any proposed amendments on landlords is fully scrutinised to mitigate a reduction of investment and consequently stock within the sector.

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

Yes, Propertymark considers it crucial that properties in the private rented sector are installed with working fire, smoke and carbon monoxide detectors, where appropriate, and the principle of Clause 8(11B) is welcome. Propertymark recommends that subsequent regulations and guidance are issued making it clear to landlords the required standards of the smoke, heat and carbon monoxide detectors and that they must comply with the British Safety Standards at the time of installation. The guidance must also make clear the expected number of detectors and rooms in which they should be positioned relative to the size of the property.

We feel that the wording of Clause 8(11B) could be improved to clarify that a landlord's duty is to *supply* or *install* appropriate, working detectors, provided that is the intention. However, we are concerned that the extent of duties conveyed to a landlord to keep such appliances in proper working order is unreasonable and impractical. Whilst we recognise the requirement for knowledge of disrepair, we feel that a landlord's duty to install working fire, smoke and carbon monoxide detectors at the outset of a tenancy is sufficient and avoids any potential ambiguity which could arise from Clause 8(11C).

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

Propertymark believes that the minimum standard relating to fire, smoke and carbon monoxide detectors should be the requirement to install sufficient working, safety-compliant hard-wired or long-life battery-operated detectors upon commencement of any new tenancy.

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

As indicated in our responses to Questions 25 and 26, we have concerns that the Bill extends landlords' duties too far with regard to maintenance of detectors. We believe that there is less scope for any confusion of responsibilities if a landlord's duty is constrained to installing sufficient, working detectors at the start of a tenancy, and a tenant takes responsibility for monitoring functioning thereafter. A landlord should be required to replace a long-life battery-operated detector having reached its expiry (which can be up to ten years) or when replacement is required to ensure continued compliance with British Safety Standards.

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

We agree with this proposal but suggest that, additionally, the Assembly consider setting a 'backstop date' by which all private tenancies, irrespective of start date, must have sufficient working fire, smoke and carbon monoxide detectors installed.

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

Propertymark notes that, while legislation varies across England, Scotland and Wales, as a minimum, landlords in all nations are required to install sufficient, working detectors where appropriate at the outset of a new tenancy. Thereafter, the tenant is responsible for a detector's maintenance unless a replacement is required, wherein the landlord must be made aware of the need and arrange for a new one to be installed. These regimes have been operational for some time and have provided clear direction for the sector whilst elevating safety standards and reducing the risks to life from fire, smoke and carbon monoxide. We would advocate a similar approach in Northern Ireland.

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

Propertymark welcomes the proposal to introduce energy efficiency regulations for the private rented sector and has no further comment on Clause 9. We would anticipate that introduction of energy efficiency regulations and its implementation in the private rented sector would be consulted upon and look forward to responding to the proposals when they are available.

Question 31: On Clause 9, in your view does this clause and related schedule future-proof the legislation sufficiently with regard to energy performance certificates?

Yes, we believe they do.

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

Propertymark would urge the Assembly to set out detailed proposals for energy efficiency regulations for the private rented sector to enable evidence to be contributed to inform such a policy. We note the 2016 Northern Ireland Housing Condition Survey's estimate that there are 83,000 homes within Northern Ireland's private rented sector that fall below an energy efficiency rating of Band C, and that the cost of elevating these homes to a Band C is likely to cost £500 million, or an average of £6,000 per property.³ We would suggest that energy efficiency regulations should take this into consideration and that the introduction of any initial standard must be as part of a viable timetable and alongside adequate funding schemes to enable improvements to be made without making tenants worse off through increased rents. The Assembly might also consider the introduction of an exemption register which would include any property that could not viably meet the standards to ensure that stock is not lost from the private rented sector. In doing so, the Assembly might consider details such as consent and cost exemptions, as well as the duration of any exemption.

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

Propertymark agrees with the proposal to develop electrical safety standards for the private rented sector. As with the introduction of energy efficiency regulations, we would welcome the opportunity to consider and respond to details of such regulation in due course.

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

Propertymark would suggest that mandatory electrical safety inspections could be carried out not less than once every five years by qualified and competent individuals who belong to one of the Assembly-approved registration bodies to ensure that standards are met and maintained. Such inspections would be recorded, and any remedial work undertaken noted. The Assembly could consider whether a record or report should be provided at the commencement of a new tenancy and within a specified timeframe following each subsequent five-yearly inspection if applicable. Local authorities should have access to any reports and should have adequate funding to monitor and enforce compliance with any regulations introduced.

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

Propertymark anticipates further reform of property and fitness standards within the private rented sector through future legislation. We also note the work to devolve landlord registration to local authorities and support such an approach provided sufficient funding is available to enforce regulations. Pivotal to elevating standards across the sector is the regulation of letting agents, who would hold a minimum qualification in order to practice, undertake an annual continuing professional development (CPD) requirement and promote good quality management standards and compliance.

³ Building Research Establishment, March 2021: Cost of Carbon Savings in Northern Ireland's Housing Stock: www.nihe.gov.uk/Documents/Research/Single-Downloads/Cost-of-carbon-savings-in-NI-housing.aspx.

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

PropertyMark suggests that the Assembly should consider the provision of a template(s) for notices to quit if both wording and form are to be prescribed. This would help to minimise the number of invalid notices being served, and we would refer the Assembly to the UK Government's Form 6a and Scottish Government's Notice to Leave in this regard.

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

We have concerns that the suggested approach to notice periods may do little to improve security for tenants, as the Bill intends. The approach represents a significant change from the reciprocal arrangement in place until the implementation of the Private Tenancies (Coronavirus Modifications) Act (Northern Ireland) 2020. The proposal that tenancies of less than twelve months should be granted four weeks' notice, while tenancies of more than twelve months could require up to six months' notice does not encourage landlords to let property for longer than twelve months. The consequence of such an approach could therefore be that longer-term tenancy options are reduced.

We understand that a further consultation may be launched later this year on the extension of minimum notice periods to six months, and that additional work is underway on the establishment of grounds for eviction. We look forward to seeing the details of these proposals but would urge the Assembly to consider greater parity in notice periods so that behaviour is not distorted inadvertently, and landlord confidence not undermined.

PropertyMark recognises the need to provide tenants with sufficient time to secure alternative accommodation but has no evidence to suggest that six-month notice periods are necessary. Given the Private Tenancies (Coronavirus Modifications) Act (Northern Ireland) 2020 will have been in force for two years once it expires, a pragmatic solution – provided it is supported by evidence – might be to make permanent the provision for twelve-week notice periods for tenancies over twelve months.

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

We would urge the Assembly to set out clear, unequivocal notice periods for tenancies in regulation, whether dependent on duration or not, to avoid invalid notices from being served. Given the somewhat complex proposals, we would also suggest that consideration should be given as to whether a template(s) of prescribed forms of notice to quit could be provided to further reduce any opportunity for error.

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

We have no additional comments.

Question 40: Please give us any views or comments you wish to make on Clauses 12, 13 or 14.

PropertyMark has no comments on Clauses 12, 13 or 14.

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

We feel the offences and penalties outlined in the Bill are appropriate and proportionate.

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

Propertymark welcomes the introduction of the Private Tenancies Bill and has long called for greater regulation of the private rented sector in Northern Ireland. As indicated, we do have some concerns that its introduction represents a significant shift for the sector and would urge the Assembly to consider implementation in stages so that agents and landlords are able to adjust to and apply the new regime effectively and without unintended consequences.