

Department for Communities consultation on Private Tenancies Act (Northern Ireland) 2022

payment options

Response from Propertymark

July 2023

Background

1. Propertymark is the UK's leading professional body of property agents, with over 17,500 members representing over 12,800 branches. We are member-led with an executive Board of practicing agents who we work closely with to ensure that we uphold high-standards of professionalism and are able to advocate for legislative change on behalf of the sector. As such, we will be responding to this consultation on behalf of letting agents.

Overview

2. Section 12 of the Private Tenancies Act (Northern Ireland) 2022 provides the Department for Communities with the ability to legislate that landlords and agents offer multiple options for the payment of rent and other payments due that are connected to the tenancy. The Department for Communities is looking to determine if having no choice but to pay rent and other costs in cash is an issue for tenants and if so, how widespread the issue is. Responses to the Department for Communities will help inform a decision on whether regulations are required to ensure tenants are given a choice of payment options.

Summary

3. Propertymark welcomes the opportunity to respond to the consultation on Private Tenancies Act payment options. Working with our members in Northern Ireland, we understand that there are several issues associated with asking for cash only payments and that mandating cash is often the decision of the landlord rather than the letting agent. The untraceable nature of cash payments means cash can be open to abuse and our members often request online bank payments which represents best practice in the industry. While the consultation specifically relates to having cash as a sole payment method, we would encourage legislation or guidance from the Department for Communities to recommend online bank payments over cash, rather than just requiring that a list of options for making payments be provided.

Questions

Q1. Are you aware of any issues with landlords or agents only accepting cash payment methods for rent or other payments relating to tenancies?

4. Yes. There are four issues associated with landlords or letting agents only accepting cash payment methods for rent or other payments relating to tenancies. Firstly, agents who receive cash payments will often pass on the costs associated with processing cash on to tenants or landlords and spend their time processing payments rather than providing other vital property services. Secondly, cash is far less easy to trace which provides loopholes for rogue landlords and non-compliant agents to claim that payments were never received, while a bank transfer can provide proof of payment. This has additional issues if a tenant has a rent guarantor as it may be more difficult to prove whether or not a tenant has paid their rent, leading to a potentially lengthy dispute. Thirdly, cash payments are considered high-risk or indicators of suspicious activity within HMRC's Estate and Letting Agency Business Guidance on Money Laundering supervision¹. While most letting agents will not fall under AML supervision due to the high rent threshold introduced under the Fifth Money Laundering Director, the guidance from HMRC makes it clear that tenants paying with cash maybe a potential indicator that they have obtained their funds illegally. If more tenants pay with cash, it is more difficult to distinguish between tenants who obtained their funds illegally and those who are required by their landlord to pay in cash. Fourthly, agents who maintain large sums of cash at their offices are at greater risk of having rent payments stolen and vulnerable to criminal activity. Providing alternative payments ensures that tenants only pay in cash when they have to, which reduces these issues.

Q2. Have you or your organisation had to intervene in any disputes with landlords or agents and/or tenants due to a disagreement over a method of rent payment?

5. No. However, Propertymark only has limited powers to intervene since there is no legislation requiring landlords or agents to provide alternative methods of rent payment. While we would recommend that cash payments should be avoided, as best practice and as part of Propertymark membership rules around client accounts, we would not be able to stop a landlord from asking for payments in cash only. Since many letting agents would benefit from receiving alternative payments rather than just cash, we do not envision that many agents ask that a tenant pays rent in cash.

¹ [Estate and letting agency business guidance for money laundering supervision - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/estate-and-letting-agency-business-guidance-for-money-laundering-supervision)

Q3. Have tenants complained to you or your organisation about their payment method?

6. No. Tenants and landlords have the ability to raise complaints about Propertymark members, however, we are unaware of any complaints from tenants in Northern Ireland about payment methods. The only instance where we could see an agent demanding a cash payment from the tenant is if the landlord insists to receive payments in cash and the agent does not want to lose the landlord as a client. That being said, while cases are rare, we would still encourage legislation to ensure that a range of payment methods is offered to the tenant.

Q4. If you have answered yes to any of the previous 3 questions, please provide any relevant details.

7. Details have been provided by their perspective question.

Q5. Do you think it would be good practice for a landlord to offer a choice of payment methods?

8. Yes. Offering a choice of payment is beneficial to both the tenant and the letting agent. Providing alternative payments ensures that tenants are protected through a clear audit trail of payments made and tenants will not have to take out large sums of cash for every rental period. Agents benefit from faster and easier payment procedures and will be better able to spot and investigate suspicious activity.

Q6. If yes, do you think this should be included as guidance for landlords or should legislation require landlords to give a choice of payment methods?

9. We would encourage legislation to require that landlords provide a choice of payment methods. Additionally, we would encourage that guidance or best practice be provided that would encourage tenants to pay rent through online banking.

Q7. Why?

10. Legislating that a landlord or letting agent must provide tenants with a choice of payment methods would prevent any unnecessary payments in cash where a tenant has alternative means of paying rent. As we have detailed earlier, there are several negative implications related to cash-only payments which can be mitigated through legislation. However, while we understand the benefits of moving away from cash all together, there may be circumstances where a tenant may have to pay with cash in a minority of circumstances. In that case, we would recommend that the Department for Communities also provide recommendations that payments should be processed

through online banking where possible. Alongside any legislation. This would ensure the preferred payment method of agents is used in the majority of cases, while ensuring the most protections for tenants while also preventing any tenant from being unable to pay rent when they have the correct amount of funds to pay.