

*These notes refer to the Private Tenancies Act (Northern Ireland)
2022 (c.20) which received Royal Assent on 27 April 2022*

Private Tenancies Act (Northern Ireland) 2022

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Schedule 2:

Energy Efficiency Regulations

This Schedule inserts new Articles 11G and 11H into the 2006 Order.

New Article 11G(1) gives to the Department the power, by regulations, to prohibit persons granting a private tenancy of certain houses or continuing to let out certain houses already let on a private tenancy.

Paragraph (2) sets out the houses that the Department can make such rules in relation to. They are houses that have an energy performance certificate and that fall below such level of energy efficiency (as demonstrated by the certificate) as is provided for by the regulations.

Paragraph (3) sets out that the regulations can provide for houses of a description provided for in the regulations, which would otherwise come within the rules prohibiting the letting or continued letting of certain houses, to be exempt from such rules. The regulations can also provide for an exemption that is to have effect for a period of time and is subject to the condition that specified works or measures for improving efficiency in the use of energy in the dwelling-house are carried out within that period (an “improvement exemption”). The regulations can also provide for exemption on such other grounds as may be provided for in the regulations.

Paragraph (5) sets out the provision that regulations that provide exemptions can make in particular. Such regulations may:

- designate a prescribed person or prescribed persons (the “authority”) to make exemptions;
- make provision regarding the making of applications to the authority, including evidence which must or may be provided with applications;
- provide that exemptions can have effect for a specified period of time (including providing for the authority to determine that period);

- provide that an improvement exemption may have a limit on the estimated cost of works or measures that may be specified (including a limit set by reference to the value of the dwelling-house or any other prescribed circumstances);
- provide for the authority to maintain a publicly-accessible register of exemptions granted;
- provide for appeals to a prescribed person or body against decisions regarding exemptions;
- provide for the inspection of dwelling-houses for the purposes of an application for an exemption or for the purposes of an appeal;
- provide for cases where an application or appeal is made in respect of a dwelling-house which is (on the date of application or appeal) let under a private tenancy, for the applicant or appellant to be exempt from a prohibition imposed under paragraph (1)(b) pending the outcome of the application or appeal;
- set out the consequences of providing false or misleading information in an application to the authority or in proceedings on an appeal (including the provision to create criminal offences or invalidate exemptions);
- allow for a person who acquires an estate in a dwelling-house to be exempt from a prohibition in respect of that dwelling-house for a prescribed period of time.

Paragraph (6) sets out that the regulations may provide that if a person is granted an improvement exemption, and complies with any prescribed conditions, the works or measures specified in the exemption are to be regarded, for the purposes of Article 12 of the 2006 Order, as works that the person is under a duty to execute. (Article 12 gives a landlord, and persons authorised by him for the purpose, a right of entry to a premises comprised in the tenancy in order to carry out any works which the landlord *is under a duty to execute*.)

Paragraph (8) provides that, in Article 11G, “private tenancy” does not include a protected tenancy or a statutory tenancy, and “energy performance certificate” has the meaning given by the Energy Performance of Buildings (Certificates and Inspections) Regulations (Northern Ireland) 2008 or, in case the system used for determining domestic energy efficiency changes, such other statutory document issued for the purpose of determining or recording the energy performance or efficiency of dwelling-house as may be prescribed by regulations made by the Department.

New Article 11H(1) gives the Department the power, by regulations, to create offences for breaches of prohibitions imposed by regulations under Article 11G(1).

Paragraph (2) provides that regulations under Article 11G may provide that an offence is committed where a person is granted an improvement exemption which allows a house to be let out and they let that house, but they fail, without a reasonable excuse, to complete the works required within the timescale specified

in the improvement exemption and the house remains insufficiently energy efficient at the end of the specified time period.

Paragraph (3) provides that regulations may allow inspections to a dwelling house which has been granted an improvement exemption to ascertain if the improvements have been made (and therefore if an offence has been committed or not).

Paragraph (4) gives the Department the power, by regulations, to set out circumstances which may or may not constitute a reasonable excuse for failing to carry out the works or measures specified within the period of time granted in an improvement exemption. Such circumstances may include circumstances where the person ceases to hold an estate in the property.

Paragraph (5) sets out limits on the punishments that may be prescribed for offences created by regulations under Article 11G. Such offences may not be triable on indictment, punished with imprisonment or punishable with a fine exceeding level 5 on the standard scale. This final limit is subject, in the case of an offence in respect of the continued letting out of a dwelling-house, to paragraphs (6) to (9) however.

Paragraph (6) provides that paragraphs (7) and (8) apply where regulations under Article 11G create an offence in respect of the continued letting out of a dwelling-house.

Paragraph (7) sets out that the regulations must provide that in cases where an offence has been committed in granting a private tenancy or letting out a house, a person is convicted in respect of that offence, after that initial conviction the house continues to be let and the offender is convicted in respect of that continued letting, the punishment is a fine not exceeding one hundredth of the level 5 fine on the standard scale for each day or part of day the offence continues. This allows the punishment to be linked to the length of time that the letting continues after the initial conviction.

Paragraph (8) sets out that the regulations must provide that where a person receives and pays a fixed penalty notice in respect of the granting or continued letting of a dwelling-house but continues to let out the house in defiance of the prohibition, on conviction they can be fined for this 'post payment' offence with a fine not exceeding one hundredth of the level 5 fine on the standard scale for each day or part of day the offence continues.

Paragraph (9) provides that any fine imposed by virtue of paragraph (7) or (8) may result in a fine which exceeds level 5 on the standard scale depending on the length of the continuing offence.

Paragraph 3 of the Schedule amends Article 68(3) (prosecution by appropriate district council) of the 2006 Order to provide that district councils may prosecute any offence created by regulations under Article 11G.

Paragraph 4 amends Article 68A to provide that fixed penalty notices can be given in respect of offences created by regulations under Article 11G. Although

this general provision is subject to a new paragraph (1A) which provides that a fixed penalty notice for such offences may not be given in certain circumstances.

New paragraph (1A) provides that where a person has been convicted of an offence in respect of the granting or letting of a dwelling-house and the suspicion is that the person continues to let out the house in contravention of a prohibition, a fixed penalty notice may not be given in respect of the suspected continued letting. Where a person has been convicted, any subsequent action in respect of a suspected continued letting must be way of prosecution, a fixed penalty notice may not be given.

Sub-paragraph (c) inserts paragraphs (8A), (8B) and (8C) into Article 68A of the 2006 Order.

Paragraph (8A) provides that the amount of fixed penalty notices for offences created by regulations under Article 11G will be determined by the district council. This can be an amount not exceeding one fifth of the amount prescribed as the maximum fine for that offence but subject to (8B) and (8C).

Paragraph (8B) sets out the circumstances where paragraph (8C) applies - where a person grants a tenancy or continues to let out a dwelling house under a private tenancy in breach of a prohibition imposed under Article 11G(1)(a) or (b) ('the initial breach') and the person is given a fixed penalty and pays it but after having paid it an authorised officer has reason to believe that the person is still committing an offence by continuing to let out the dwelling house in respect of which the initial breach was committed.

Paragraph (8C) provides that where it applies the penalty payable is an amount determined by the council being an amount not exceeding one-five-hundredth of the maximum fine for that offence for every day or part of a day for which it appears to the officer that the letting has continued after payment and accordingly the penalty payable may exceed one-fifth of the amount prescribed as the maximum fine for that offence.

Paragraph 5 amends Article 72(3) of the 2006 Order to insert a reference to Article 11G; the effect of this amendment is to provide that regulations may not be made under Article 11G unless a draft has been laid before and approved by resolution of the Assembly. Paragraph 5 also amends Article 72 to provide that before making regulations under Article 11G the

Department must consult the Department for the Economy, the Department of Finance, district councils, such persons as appear to the Department to be representative of landlords, such persons as appear to the Department to be representative of tenants and any other people the Department considers appropriate.