

*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

Section 3:

Tenant to be provided with a receipt for payment in cash

Section 3 inserts a new Article 5 into the 2006 Order in substitution for the current Article 5. The new Article introduces a requirement that, where rent or certain other payments in connection with a tenancy are paid in cash, the landlord (or prospective landlord or former landlord as the case may be) of the tenancy must provide the tenant (or prospective tenant or former tenant), free of charge, with a written receipt detailing the payment date, what the payment was for, the amount paid, and, if any amount remains outstanding, that amount or, if no further amount remains outstanding, that fact.

Article 5(3) provides that where a payment of a single sum covers two or more payments then the receipt must state how the sum is apportioned between each payment and, in respect of each payment, if any amount remains outstanding, that amount, and if no further amount is due, that fact.

Article 5(4) provides that, in the case of a payment in satisfaction (or part satisfaction) of an obligation arising under a tenancy, where it is not possible for the person giving the receipt to state with certainty the amount that was required to satisfy the obligation, then the amount outstanding or the fact that nothing remains outstanding, as the case may be, should be stated to the best of that person's knowledge and belief.

Article 5(5) requires that the receipt must be provided at the time the payment is made or, if that is not possible, as soon as reasonably possible after that time.

Article 5(7) provides that an offence is committed under the 2006 Order where a landlord fails to provide a receipt with the correct information or provides a receipt late. If the landlord has appointed a person to provide the receipt that person is also guilty in such circumstances (in addition to the landlord being guilty).

Article 5(8) defines landlord and tenant to include both former and prospective landlords and tenants.

The section also inserts new Articles 5ZA and 5ZB into the 2006 Order. The former concerns offences related to a continued failure by a landlord to give a written receipt under Article 5.

Under paragraph (1), a landlord who fails to give a written receipt with the correct information and is convicted in respect of that failure is deemed to have committed a further offence under Article 5 in respect of that failure where the failure continues for more than 14 days after conviction.

Under paragraphs (2) and (3), a landlord who receives a fixed penalty notice in respect of a failure to give a written receipt with the correct information and pays it but continues in that failure for more than 14 days after payment is guilty of an offence under the 2006 Order.

New Article 5ZB provides a defence in certain circumstances to a person charged with an offence under Article 5(7) or Article 5ZA(3), where a payment in cash was made in respect of rent and the tenancy in the case is a controlled tenancy.

Where the person is charged with an offence under Article 5(7), if the written receipt was given on time, the only incorrect information on the receipt relates to the amount of rent outstanding, and the incorrectly stated outstanding amount reflects the difference between the contractual rent and the rent limit, then it is a defence to prove that the landlord had a bona fide claim to that difference.

Where a person is charged with an offence under Article 5ZA(3), if the written receipt was given at any time before the end of the 14 day period beginning with the payment of the fixed penalty (including before the fixed penalty notice was given), the only incorrect information on the receipt relates to the amount of rent outstanding, and the incorrectly stated outstanding amount reflects the difference between the contractual rent and the rent limit, then it is a defence to prove that the landlord had a bona fide claim to that difference.

In consequence of the new Article 5 and new Articles 5ZA and 5ZB, this section amends Articles 50 and 66 of the 2006 Order. Article 50(2) provides that where a landlord makes an entry in a rent book or similar document that shows the tenant as being in arrears of an amount that, on account of the rent limit, the tenant does not owe, the landlord is guilty of an offence (subject to a bona fide claim defence). Subsection (3) amends Article 50 to insert a new paragraph (4) that clarifies that “similar document” in paragraph (2) of that Article does not include a receipt under Article 5(2) (and thereby ensures that the prosecution and punishment of offences in relation to receipts for cash payments are carried out only under Articles 5 to 5ZB).

Article 66(1) includes provision that the service of a document, required or authorised to be served under the 2006 Order on a landlord, is deemed to be so served if it is served on any agent of the landlord named as such in the rent book. As the substitution of a new Article 5 removes the requirement for landlords to give tenants a rent book, it is no longer appropriate to refer in Article 66(1)(a) to “the rent book”; and therefore subsection (4) of this section changes it to “a

rent book” (acknowledging that certain landlords and tenants may continue to operate a rent book system voluntarily).

Subsections (5) and (6) of this section amend Articles 68 and 68A of the 2006 Order respectively. The amendment of Article 68(1) ensures that the offences under Articles 5(7) and 5ZA(3) (including where further offences under Article 5 are deemed to have been committed) are punishable on summary conviction with a fine not exceeding level 4 on the standard scale. By providing that those offences are “offences under this Order”, they come within Article 68(3) and as such can be prosecuted by district councils.

The amendment of Article 68A provides that fixed penalty notices can be given in respect of the two offences, with the exception that a fixed penalty notice may not be given in respect of offences under Article 5(7) where they are deemed to have been committed by virtue of Article 5ZA(1). In the latter case the only available option is summary conviction. The amendment also provides that the maximum fixed penalty amount is one-fifth of the maximum fine payable on summary conviction.