

SCHEDULES

SCHEDULE 2

Section 9.

Energy efficiency regulations

1. The 2006 Order is amended as follows.
2. After Article 11F (as inserted by section 8) insert—

“Energy efficiency

Energy efficiency of dwelling-houses let under a private tenancy

11G.—(1) The Department may by regulations provide that a person may not—

- (a) grant a private tenancy of a dwelling-house to which paragraph (2) applies;
 - (b) continue to let out under a private tenancy a dwelling-house to which paragraph (2) applies.
- (2) This paragraph applies to a dwelling-house—
- (a) in relation to which there is an energy performance certificate, and
 - (b) that falls below such level of energy efficiency (as demonstrated by the energy performance certificate) as is provided for by the regulations.
- (3) Regulations under paragraph (1) may provide for the granting to a person, in respect of a dwelling-house, of—
- (a) an exemption on the ground that the dwelling-house is of such description as is provided for in the regulations;
 - (b) 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”);
 - (c) an exemption on such other grounds as may be provided for in the regulations.
- (4) In paragraph (3)—
- (a) “exemption” means an exemption from a prohibition imposed under paragraph (1);

(b) “specified” means specified in the improvement exemption.

(5) Regulations that provide for exemptions by virtue of paragraph (3) may include, in particular, provision—

- (a) for exemptions to be granted by a prescribed person or prescribed persons (the “authority”);
- (b) about the making of applications to the authority (including provision about the evidence which must or may be provided with applications);
- (c) for exemptions to have effect for a specified period of time (including provision for the authority to determine that period);
- (d) for a limit on the estimated cost of works or measures that may be specified in an improvement exemption (including a limit set by reference to the value of the dwelling-house or any other prescribed circumstances);
- (e) for the authority to maintain a publicly-accessible register of exemptions granted;
- (f) about appeals to a prescribed person or body against decisions regarding exemptions (including provision about how such appeals may be disposed of and the effect of any exemption pending the determination of an appeal);
- (g) about the inspection of dwelling-houses for the purposes of an application for an exemption or for the purposes of an appeal;
- (h) in a case where an application or appeal is made in respect of a dwelling-house which is (on the date the application or appeal is made) let under a private tenancy, for the applicant or appellant to be exempt from a prohibition imposed under paragraph (1)(b) in respect of the dwelling-house pending the determination of the application or appeal;
- (i) about the consequences of providing false or misleading information in an application to the authority or in proceedings on an appeal (including provision creating criminal offences or invalidating exemptions);
- (j) for a person who acquires an estate in a dwelling-house which is (on the date of the acquisition) let under a private tenancy to be exempt from a prohibition imposed under paragraph (1)(b) in respect of that dwelling-house for a prescribed period of time.

(6) The regulations may provide that if—

- (a) a person is granted an improvement exemption, and

- (b) the person complies with prescribed conditions regarding the giving of notice to any tenant of the dwelling-house, or with such other conditions as may be prescribed,

works or measures specified in the exemption are to be regarded, for the purposes of Article 12, as works that the person is under a duty to execute.

(7) The regulations may also include such supplementary, incidental or consequential provision as the Department considers appropriate, including provision modifying any statutory provision.

(8) In this Article—

“private tenancy” does not include a protected tenancy or a statutory tenancy;

“energy performance certificate” means—

- (a) an energy performance certificate within the meaning given by the Energy Performance of Buildings (Certificates and Inspections) Regulations (Northern Ireland) 2008, or
- (b) such other statutory document issued for the purpose of determining or recording the energy performance or efficiency of a dwelling-house as may be prescribed.

(9) In paragraph (8) “statutory document” has the meaning given by section 1(e) of the Interpretation Act (Northern Ireland) 1954.

Private tenancy energy efficiency regulations: power to create offences

11H.—(1) Regulations under Article 11G may provide that a person who breaches a prohibition imposed under paragraph (1) of that Article is guilty of an offence.

(2) Regulations under Article 11G may provide that a person commits an offence if—

- (a) the person is granted an improvement exemption;
- (b) the person fails, without reasonable excuse, to carry out the works or measures specified in the exemption within the period of time so specified;
- (c) Article 11G(2) applies to the dwelling-house immediately after the expiration of that period of time; and
- (d) at any time during which the exemption had effect, the person—
 - (i) granted a private tenancy of the dwelling-house, or
 - (ii) continued to let the dwelling-house out under a private tenancy that was granted before the exemption had effect.

(3) The regulations may provide for inspections of a dwelling-house in respect of which an exemption has been granted by virtue of Article 11G(3)(b), for the purpose of investigating whether an offence created by virtue of this Article has been committed.

(4) The regulations may set out circumstances in which a person is, or is not, to be regarded as having a reasonable excuse for the purposes of an offence created by virtue of paragraph (2) (including circumstances where a person ceases to hold an estate in the dwelling-house).

(5) Any offence created by regulations under Article 11G—

- (a) is not to be triable on indictment or punishable with imprisonment;
- (b) is not to be punishable with a fine exceeding level 5 on the standard scale (but, in the case of an offence in respect of a prohibition imposed under Article 11G(1)(b), this is subject to paragraphs (6) to (9)).

(6) Paragraphs (7) and (8) apply where regulations under Article 11G create an offence in respect of a prohibition imposed under Article 11G(1)(b).

(7) The regulations must provide that where—

- (a) a person is convicted of an offence in respect of the granting of a private tenancy, or the letting out of a dwelling-house under a private tenancy, in breach of a prohibition imposed under Article 11G(1)(a) or (b) (“the initial conviction”),
- (b) after the initial conviction, the person continues to let out the dwelling-house under the tenancy, and
- (c) the person is convicted of an offence in respect of that continued letting in breach of a prohibition imposed under Article 11G(1)(b) (“the continuing offence”),

the continuing offence is to be punishable with a fine not exceeding one-hundredth of level 5 on the standard scale for every day or part of a day for which the letting continues after the initial conviction.

(8) The regulations must also provide that where—

- (a) a person grants a private 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),
- (b) the person is given a fixed penalty notice under Article 68A in respect of an offence on the grounds of that breach,
- (c) the person pays the fixed penalty stated in the notice,
- (d) after payment of the fixed penalty, the person continues to let out the dwelling-house under the tenancy in breach of a prohibition imposed under Article 11G(1)(b), and

- (e) the person is convicted of an offence in respect of that continued breach (“the post-payment offence”),

the post-payment offence is to be punishable with a fine not exceeding one-hundredth of level 5 on the standard scale for every day or part of a day for which the breach continues after payment.

(9) A fine imposed by virtue of paragraph (7) or (8) may exceed level 5 on the standard scale.”.

3. In Article 68(3) (prosecution by appropriate district council), after “this Order” insert “(including any offence created by regulations under Article 11G)”.

4. In Article 68A (fixed penalty for certain offences)—

(a) in paragraph (1), after sub-paragraph (aa) (as inserted by section 8) insert—

“(ab) an offence created by regulations under Article 11G (but this is subject to paragraph (1A))”;

(b) after paragraph (1) insert—

“(1A) This Article does not apply where—

(a) P has been convicted of an offence in respect of the granting of a private tenancy, or the letting out of a dwelling-house under a private tenancy, in breach of a prohibition imposed under Article 11G(1)(a) or (b) (“the initial offence”),

(b) an authorised officer has reason to believe that, after that conviction, P has committed an offence in respect of a prohibition imposed under Article 11G(1)(b) (“the continuing offence”), and

(c) it appears to the authorised officer that the continuing offence has been committed by P continuing to let out the dwelling-house under the tenancy in respect of which the initial offence was committed.”;

(c) after paragraph (8) insert—

“(8A) The fixed penalty payable to a district council under this Article in respect of an offence created by regulations under Article 11G is an amount determined by the council, being an amount not exceeding one-fifth of the amount prescribed as the maximum fine for that offence; but this is subject to paragraphs (8B) and (8C).

(8B) Paragraph (8C) applies where—

(a) P grants a private 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”),

(b) P is given a fixed penalty notice under this Article in respect of an offence on the grounds of the initial breach,

(c) P pays the fixed penalty stated in the notice,

- (d) an authorised officer has reason to believe that, after payment of the fixed penalty, P has committed an offence in respect of a prohibition imposed under Article 11G(1)(b) (“the continuing offence”), and
- (e) it appears to the authorised officer that the continuing offence has been committed by P continuing to let out the dwelling-house under the tenancy in respect of which the initial breach was committed.

(8C) Where this paragraph applies, the penalty payable is an amount determined by the council, being an amount not exceeding one-five-hundredth of the amount prescribed as 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).”.

5. In Article 72 (provisions concerning regulations)—

- (a) in paragraph (3), before “14” (as inserted by section 11) insert “11G,”;
- (b) after paragraph (5) (as inserted by section 7) insert—
 - “(6) Before making regulations under Article 11G, the Department must consult—
 - (a) the Department for the Economy and the Department of Finance,
 - (b) district councils,
 - (c) such persons as appear to the Department to be representative of landlords,
 - (d) such persons as appear to the Department to be representative of tenants, and
 - (e) such other persons as the Department considers appropriate (which may include landlords or tenants).”.