



**Chartered
Institute of
Environmental
Health**

Draft Private Tenancies (Northern Ireland) Order 2005

The CIEH Response

January 2006

The Chartered Institute of Environmental Health is leading environmental health into the future

In 2002 the Chartered Institute established a regional office in NI in order to facilitate direct liaison with the Northern Ireland Assembly, government departments, local authorities and non-governmental organisations within NI, promoting and representing CIEH policies in a NI context.

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1 The Chartered Institute of Environmental Health

- 1.1 Founded in 1883, the Chartered Institute of Environmental Health (CIEH) is a professional and educational body dedicated to the promotion of improvements in environmental and public health. The CIEH also provides information, evidence and policy advice to government departments and others on environmental and public health issues.
- 1.2 The Chartered Institute has over 10,500 members, most of whom work for local authorities in England, Wales and Northern Ireland. The CIEH has a strong role in setting standards for the education and professional development of its members including the accreditation of university courses, continuing professional development and achieving chartered member status.
- 1.3 Further important roles for the CIEH are campaigning for improvements in public and environmental health and facilitating debate on the global environmental issues threatening our health. Most of this work involves communicating the views of the profession to governments and other professional and international organisations including the European Union and the United Nations. The CIEH became the WHO / EURO Collaborating Centre for Environmental Health Management in 1993.
- 1.4 In 2002 the CIEH established a regional office in NI to engage directly with the Northern Ireland Assembly, government departments, local authorities and non-governmental organisations within NI; promoting and representing CIEH policies in a NI context.

2 Introduction

- 2.1 The CIEH broadly welcomes the proposed introduction of the Private Tenancies (Northern Ireland) Order 2005. The provisions contained within the Draft Order will make a positive contribution to the protection of tenants within the Private Rented Sector both in terms of rights and housing conditions.

3 Detailed Comments

3.1 **Article 4 – Tenant to be Given Notice Regarding Certain Matters**

The CIEH welcomes the protection given to tenants by Article 4. Obviously it is considered that “a notice in such form” would be in writing and that “such particulars and other information relating to the tenancy as may be prescribed” must be sufficient for the tenant in question to have an adequate overview of their rights and responsibilities.

The CIEH however would have reservations on how this article could be enforced pro-actively.

3.2 **Article 5 - Tenant to be Provided with a Rent Book**

The CIEH welcomes this provision and it is hoped that, under paragraph (2) (b), the “..... particulars and information relating to the tenancy as may be prescribed” will be at least as detailed as those required under the Rent Book Regulations (NI) 2004.

It would appear that Article 5 (5), in respect of a landlord’s conviction, could be interpreted in two ways. Either it is a recurring offence after conviction on a 14 day cycle or the offence is finally dealt with after a second conviction. We believe that the text needs to be amended to clarify this. We would also be of the view that the option of a recurring offence would be the most appropriate.

3.3 **Article 6 – Application of Articles 7 to 11**

The CIEH welcomes the provision of these default repairing obligations. It appears, however, that restricted tenancies have been excluded from the application of Articles 7 to 11. We would propose that Article 6(b) should be redrafted to include restricted tenancies.

It is assumed that the duties and obligations indicated in Articles 7 to 11 will be used by an enforcing authority in establishing a division of responsibility and will not in themselves be enforced.

3.4 **Article 7 – Landlords Duties to Repair**

It is the view of the CIEH that the provisions of Article 7(1)(C) should be extended to cover appliances, where they have been provided by the landlord. It would appear to be inappropriate that a landlord could avoid his responsibilities by using the proposals in article 7(1)(C)(i).

3.5 **Article 11 – Standard of Repair**

Consideration should be given to the provision of guidance, under Articles 62 and 63, for both landlords and enforcement authorities in respect the standard of repair described in article 11 (1).

3.6 **Article 14 – Notice to Quit**

The Order should specify that all notices to quit should be in writing.

3.7 **Article 15 – Interpretation of Part 3**

In Article 15 an owner is defined as the person receiving the rent. Although uncommon, it is not unknown, for tenants to occupy a dwelling rent free. For instance, there are cases where tenants occupy a dwelling as part of their contract of employment. Also, the rent can sometimes be paid to a third party where the landlord and tenant are in dispute. It would seem inappropriate that an owner could frustrate action in respect of either unfitness or serious disrepair, under Part 3, by claiming that they failed to meet the definition of an owner simply because they did not receive rent. The CIEH would therefore recommend that the definition of owner also includes the person “eligible to receive the rent”.

3.8 **Article 17 –Determining Fitness for Human Habitation**

The present fitness standard is effectively the minimum standard of living accommodation that is considered acceptable. Although it is being replaced in England by the Housing Health and Safety Rating System there is no evidence that comparable provisions are to be enacted in Northern Ireland.

The CIEH therefore would wish to see the fitness standard developed to include effective insulation and the consideration of internal arrangement. In addition, amendments to DoE Housing Circular 1/92, with regard to heating, would allow enforcing authorities to apply a higher standard in protecting people from cold related ill health and would also contribute to a reduction in the levels of fuel poverty.

3.9 **Article 19 – Notice of Disrepair**

The CIEH welcomes the proposals included in Articles 18 and 19. Whilst Article 18 provides district councils with enforcement powers for dealing with unfitness Article 19 has the effect of filling a legislative gap that currently prevents enforcement action in respect of disrepair that is likely to cause a risk of physical injury. It is noted however that the provisions of article 19 are limited in sub-paragraph (4) by a requirement that the local authority may not serve a notice of disrepair unless there is an occupying tenant in the house. There is no similar requirement however under Article 18. The CIEH sees no reason to differentiate in this manner and therefore recommends that article 19 (4) be deleted.

3.10 **Article 21 – Consultation with the Housing Executive**

In a situation where the Executive indicates that it intends exercising its powers there should be a time-bounded review mechanism, such as 21 days, built into the process so as to avoid unnecessary delays.

3.11 **Article 22**

In order to ensure that landlords can not use the appeals process as a delaying tactic the Department should issue appropriate guidance on the grounds for appeal.

3.12 Article 24 – Offence of Failing to Comply

We believe that the use of the word “intentionally” in Article 24 (1) would place an unnecessary and inappropriate burden on the prosecuting authority as it may be difficult to prove intent in many cases.

As with article 5 (5) the CIEH would recommend that failure to comply under Article 24(3) should be treated as a recurring offence.

3.13 Article 25 – Enforcement of Notices

We are of the view that the two month period allowed for an application for registration is too short and should be extended to at least six months.

3.14 Article 28 - Obstruction

As with Article 24 we would recommend that the word “intentionally” is deleted.

This section requires greater clarity with regard to an authorised officer who is continually obstructed in the performance of his/her functions. The procedure should include a warrant permitting access and a recurring penalty for a continuing offence.

3.15 Article 33 and Article 35 – Landlord and Tenants Applications to have a Dwelling Inspected

Part 4, Chapter 2, makes reference to the date of construction or conversion of a dwelling house. We are however of the view that it should not be the responsibility of the enforcing authority to prove the date of construction. The district council should be able to deem a property to be a particular age and put the onus on the owner to prove otherwise. This would be consistent with the provisions of Article 3 of the Rent (NI) Order 1978.

There is an implication under Article 33(3) that an application for a certificate of fitness will be required for each new tenancy granted after the commencement of the Order. Such a requirement would be unnecessary in the overwhelming majority of cases and would be inappropriately burdensome to district councils.

The CIEH would therefore recommend that the legislation clarifies that the certificate of fitness remains effective for all subsequent tenancies until such times as the district council issues a “Notice of Refusal”.

The CIEH also believes that there is potential for confusion between Articles 33(3) and 33(6). In Article 33(3), if the landlord has not already made an application to have the property inspected when it is vacant, he “shall” apply to have it inspected when a tenancy is granted and, in Article 33(4), this application must be made within a set period. However, Article 33(6) states that a landlord “may” apply at any time. It is the understanding of the CIEH that this latter proviso has been inserted so that landlords of properties, let on protected tenancies, can apply to have them inspected to permit applications for rent increases. The CIEH recommends that Article 33(6) be re-worded so as to reduce the potential for confusion among landlords.

3.16 **Article 34**

Article 34 contains a provision that, if a landlord makes an application to have the property inspected, the appropriate district council shall serve on the tenant a copy of the application and a notice informing the tenant that he/she may within 28 days make representation to the council as to whether or not the dwelling is fit. Article 35 contains a similar provision that, if the tenant applies to have the home inspected, then the landlord must be notified and may within 28 days make representation. It is assumed that no inspection can take place until the period for representation has lapsed.

The CIEH has already expressed concerns that the proposed appeals process could be used as a delaying tactic by unscrupulous landlords. It would also be concerned that this process could be similarly used. The CIEH would therefore advocate a period of 21 days for appeal.

3.17 **Article 38**

In Article 21 the district council has an obligation to consult with the Housing Executive before serving a notice of unfitness. Whilst supporting this approach the CIEH believes that there should also be an obligation on the Housing Executive to inform the district council if they intend exercising their powers in respect of a Repair Notice. This would remove any possibility of a duplication of work by two enforcement agencies.

In addition, if a notice of unfitness or repair notice is not complied with, and the certificate of fitness ceases to have effect, it is unclear as to at what stage rent control is applied. The CIEH would therefore recommend that the appropriate district council should send to the Rent Officer a copy of any certificate of fitness or notice of refusal.

3.18 **Article 46 – The Register of Rents**

The appropriate district council and the Housing Executive should be made aware of any amendments made to the Register by the Rent Officer.

3.19 **Article 68 – Prosecution of Offences**

Serious breaches of Environmental Health legislation normally attracts level 5 fines. In line with this the CIEH would recommend that the fines available under the Private Tenancies Order should be upgraded from level 3 and level 4 to level 4 and level 5.

4 Further Considerations

- 4.1 In preparing this paper we have provided only brief detail in support of each of the points raised. However we would welcome providing further, more detailed evidence and input if required.
- 4.2 Correspondence on this report or issues arising from it should be sent to the address at the front of the document and marked for the attention of Gary McFarlane, Director of CIEH Northern Ireland.