

The Housing Bill (Northern Ireland)

A Consultation Document

Department for Social Development

Housing Division

7 December 2009

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Ministerial foreword

Good housing plays a fundamental role in creating individual well-being, healthy communities and a stable society. This is why I have made housing my policy priority as Minister for Social Development.

I launched the new Housing Agenda in February 2008. I am pleased to say that despite very difficult financial circumstances we are on course in delivering this Agenda: building more social housing than at any other time over the last decade, including an increased number of sites for Shared Future housing, tackling fuel poverty through targeted investment in improving energy efficiency and the household fuel payment, improving access to public services for homeless people through the strategy “Including the Homeless”, helping households in financial difficulty through a new mortgage rescue advice service and developing innovative approaches across a range of housing policies.

I have been able to take forward many of these changes using the existing body of housing law. In some areas, though, new legislation is required and so in June this year, I introduced the Housing (Amendment) Bill into the Northern Ireland Assembly. That Bill aims to enhance and clarify housing law in a number of ways. It is an important step forward in dealing with homelessness in particular and places a clear strategic focus on tackling homelessness and improving existing homelessness services.

I am now seeking your views on proposals for a further Housing Bill. The Bill would aim to improve the operation of the private rented sector for the benefit of both tenants and landlords, provide further tools for tackling fuel poverty and housing need and improve the operation of current housing law around issues such as community safety and anti-social behaviour.

We look forward to hearing your views.

Margaret Ritchie MLA

Minister for Social Development

Executive Summary

The Housing (Amendment) Bill currently being considered by the Northern Ireland Assembly seeks to improve the delivery of homelessness policy and clarify existing housing law in a number of ways.

The Department intends to introduce a further Bill before the Assembly elections in 2011 and the purpose of this consultation document is to seek your views on the proposals for that Bill.

The main focus of the proposed Bill would be the operation of the private rented sector in Northern Ireland. The Bill would also aim to provide new tools to tackle fuel poverty, meet housing need (particularly for those who are homeless) and deal with community safety issues as they relate to both social and private rented housing.

The consultation period will run from 7 December 2009 to 26 February 2010.

Introduction

The Department for Social Development, through its Housing Division, is responsible for providing the financial, legislative and policy framework in which the Northern Ireland Housing Executive and the housing association movement operate. The Housing Executive is responsible for assessing social housing need and drawing up plans to enable that need to be met. Housing associations provide all new social housing as well as specialist housing for elderly people and those with special needs.

There is a considerable body of existing housing law in Northern Ireland to support the delivery of these functions. During the current decade, four pieces of primary housing legislation have been brought forward. The Housing (Northern Ireland) Order 2003 introduced a number of fundamental changes to housing law following a major review carried out during the 1990s. The Private Tenancies (Northern Ireland) Order 2006 aimed to deliver improvements to the operation of the private rented sector. The Housing (Amendment) (Northern Ireland) Order 2006 made provision for the Housing Executive to pay grant to registered housing associations. The Housing (Amendment) Bill, currently being considered by the Northern Ireland Assembly, seeks to improve the delivery of homelessness policy and clarify existing housing law in a number of ways.

The Department intends to introduce a further Bill before the Assembly elections in 2011 and the purpose of this consultation document is to seek your views on those proposals.

The main focus of the proposed Bill would be the operation of the private rented sector in Northern Ireland. The sector has grown considerably in recent years and, given this context, it is important to ensure that Government continues to have the right policies in place to help the sector meet the needs and aspirations of both tenants and landlords. Many of our proposals for the private rented sector are set out in “Building Sound Foundations: a Strategy for the Private Rented Sector”, which is the subject of a separate consultation. This document complements the strategy for the private rented sector with further proposals for the regulation of Houses in Multiple Occupation.

The Bill would also provide different approaches to tackle fuel poverty and meet housing need. The latter aims to modernise the use of existing powers in line with emerging practice from elsewhere in the UK to better meet the housing needs of homeless people.

The proposals related to community safety build on the existing powers available to tackle a range of issues affecting existing tenants as well as those seeking housing. Minor, but important, changes to the delivery of Housing Executive and housing association functions are also included.

The following chapters set out the background to the proposed changes and explain why they are being proposed as well as the intended benefits. We are seeking your views on all these proposals. A list of consultation questions is set out at the end of each chapter to help you focus your response.

The consultation period will run from 7 December 2009 to 26 February 2010. Due to constraints imposed by the legislative timetable, there will not be any scope for extensions to be given and consequently any responses received after the closing date cannot be taken into account. The consultation document has been sent to a wide variety of consultees and is also available on the Department's website (www.dsdni.gov.uk/index/consultations).

Responses can be made in writing, by fax or e-mail using the details set out below.

Unless respondents indicate otherwise, all responses may be published. You should also note that the Department is subject to the Freedom of Information Act 2000. This means that we have to consider any request made to us under the Act for information relating to responses made to this consultation exercise.

If this document is not in a format that suits your needs, please contact us and we can discuss alternative arrangements.

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Chapter 1 - Private rented housing

Issues

The issues covered in this chapter are:

- “Building Sound Foundations: a Strategy for the Private Rented Sector”; and
- Houses in Multiple Occupation.

Context

Building Sound Foundations

On 15 May 2009, the Department for Social Development launched “Building Sound Foundations: a Strategy for the Private Rented Sector”, for consultation. The strategy is the first stage in the Department’s plans to encourage the development of a healthy private rented sector capable of responding more effectively to housing need in Northern Ireland.

The strategy examines the current state of the private rented sector and Government’s interaction with it and seeks views on a range of proposals on the way forward.

The strategy also outlines a number of potential changes to the existing legislative framework for the private rented sector which is set out in the Private Tenancies (Northern Ireland) Order 2006. It also includes new proposals across a range of policy areas such as the quality of private rented housing, tenancy management standards and security of tenure, including access and affordability issues.

HMOs

Houses in Multiple Occupation (HMOs) are one part of the private rented sector. Such properties represent an important housing option for a range of individuals, including students, young professionals and migrant workers. Over nearly twenty years,

Government policy on HMOs has focused on improving the standards of accommodation and the way in which this is managed. The proposals presented in this paper aim to build on this existing policy framework and make the existing system of regulation more effective.

BUILDING SOUND FOUNDATIONS

“Building Sound Foundations: a Strategy for the Private Rented Sector” was published for consultation on 15 May 2009 (www.dsdni.gov.uk/index/consultations). The strategy contains a number of proposals which may, subject to the results of the consultation, be included in the proposed Housing Bill.

These may include:

- the establishment of a Northern Ireland accreditation scheme for landlords;
- the establishment of a rent deposit scheme similar to that in other parts of the United Kingdom;
- the introduction of new quality standards for private rented housing;
- extending the notice to quit period in certain circumstances;
- amendments to the Private Tenancies (Northern Ireland) Order 2006; and
- the application of certain conditions to the direct payment of housing benefit to landlords.

HOUSES IN MULTIPLE OCCUPATION

Houses in Multiple Occupation (HMOs) offer an important housing option for a range of individuals. HMOs tend to be concentrated in areas close to universities or centres of employment which attract migrant workers. In many cases, HMOs also provide a first home for young, single people.

HMOs differ from other housing in the private rented sector in two important respects:

- as accommodation primarily for single people, HMO households tend not to be linked by strong family bonds, with an identifiable head of household; and
- traditionally, HMOs have tended to be older and larger properties.

For these reasons, Government has sought to regulate HMOs more fully than other parts of the private rented sector, with a particular focus on the standards of the dwellings, including health and safety issues, the ways in which HMO tenancies are managed and the impact of HMOs on the neighbourhoods in which they are located.

The first steps to regulate HMOs were made in the Housing (Northern Ireland) Order 1992. The Housing (Northern Ireland) Order 2003 included a number of amendments to the 1992 Order and introduced the requirement for an HMO registration scheme. This scheme, currently managed by the Northern Ireland Housing Executive, has been in operation since April 2004. Under the Reform of Public Administration, it is intended that councils will take over responsibility for operating an HMO registration scheme from 2011.

The Housing (Northern Ireland) Order 2003 changed the definition of an HMO. The Housing (Amendment) Bill, currently being considered by the Northern Ireland Assembly, contains a proposal to further amend this definition to ensure it fully reflects the policy intention of targeting regulation on those most at risk.

The proposals in this document build on the existing framework for regulating HMOs with the aim of making the current system of regulation more effective.

There are three specific proposals which are set out in more detail overleaf:

- give the regulatory authority powers to secure documentary evidence of family relationships for the purposes of deciding whether or not a property is an HMO;
- require landlords to notify the appropriate authority of any of their properties which appear to fall within the HMO definition; and
- increase the fine for non-compliance with HMO registration processes up to a maximum of £20,000.

HOUSES IN MULTIPLE OCCUPATION: EVIDENCE OF FAMILY RELATIONSHIPS

Proposal

An amendment to the definition of an HMO is included in the Housing (Amendment) Bill currently being considered by the Northern Ireland Assembly.¹ Subject to this becoming law, we propose to minimise the scope for abuse of this new definition by requiring, where appropriate, clarification of the relationships within a house. The owner or operator of the property will be responsible for ensuring that this clarification is provided in all cases where it is claimed that the occupants are members of three or fewer families. Similar provisions already exist in Scotland.

Background

An HMO is “a house occupied by more than two qualifying persons, being persons who are not all members of the same family” (i.e. if occupied by 3 different people from at least 2 different families).

¹ A copy of the Bill is available on www.niassembly.gov.uk/legislation/primary/2008/nia7_08.htm

For the purposes of the definition of an HMO the Housing (Amendment) Bill seeks to extend the definition of “family” to include uncle, aunt, nephew and niece.

HMOs, as defined in legislation, do not include accommodation occupied by members of an extended family and concern has been expressed that, to evade the regulation regime prescribed for HMOs, unscrupulous landlords might encourage unrelated tenants to claim that a family relationship exists between them.

Intended benefits

The proposal would support the definition of an HMO and help to ensure that safety standards are maintained in such accommodation.

Your views:

We would particularly welcome your views on the best ways for implementing this proposal and on the need for any alternative or additional actions to ensure all homes which meet the HMO definition are registered and meet required standards.

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HOUSES IN MULTIPLE OCCUPATION: NOTIFICATION

Proposal

Require landlords to notify the appropriate authority of any of their properties that appear to fall within the definition of an HMO.

Background

The Housing Executive is currently responsible for the regulation of HMOs to ensure that safety standards are maintained (it is envisaged that, under the Review of Public Administration, responsibility for the regulatory regime will transfer to councils). At present, the onus is on the Housing Executive to identify properties that should be placed on the register of HMOs. This adds unnecessary cost to regulation and diverts resources away from the effective enforcement of safety standards.

Intended benefits

The proposal would help to ensure that safety standards are maintained in HMOs.

Your views:

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HOUSES IN MULTIPLE OCCUPATION: FINES

Proposal

Increase maximum fines for non-compliance with the registration process for HMOs up to a maximum of £20,000.

Background

The Housing Executive is currently responsible for maintaining a register of HMOs to ensure that safety standards are maintained (under the Review of Public Administration, responsibility for the regulatory regime will transfer to councils). A similar regime operates in England where the maximum penalty for non-compliance with the registration process is a fine of £20,000.

Intended benefits

The proposal would provide a more effective deterrent to non-compliance with the HMO registration process, thereby helping to ensure that safety standards are maintained.

Your views:

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Chapter 1 consultation questions

- 1. Do the proposals achieve the aim of making the existing system of regulating HMOs more effective?**
- 2. Are any alternative or additional actions needed to ensure that all homes which meet the HMO definition are registered and meet required standards?**
- 3. Do you have any views on the best ways to implement the proposals on the evidence of family relationship?**

Chapter 2 - Homelessness

Issue

The issues covered in this chapter are:

- securing accommodation for homeless people in the private rented sector; and
- the homelessness duty owed to persons from abroad.

Context

The Housing (Northern Ireland) Order 1988 remains the central legislative pillar for dealing with homelessness in Northern Ireland.

The Housing (Amendment) Bill, currently being considered by the Northern Ireland Assembly, proposes to amend the 1988 Order in a number of ways, offering, among other things, new rights of appeal for homeless applicants and placing a duty on the Housing Executive to produce a homelessness strategy and for other Government bodies to take account of this strategy in delivering their functions.

The Department for Social Development is also leading on taking forward “Including the Homeless: a Strategy to Promote the Social Inclusion of Homeless People, and those at risk of becoming Homeless, in Northern Ireland” which was published in July 2007.

This consultation document contains proposals to clarify the Housing (Northern Ireland) Order 1988. Article 10 of that Order places a duty on the Housing Executive to “secure that accommodation becomes available” for occupation by homeless applicants deemed to be in priority need and unintentionally homeless. While in most cases the Housing Executive meets that duty by allocating a social housing tenancy, this may not always be the most effective way of meeting an applicant’s needs. However, certain safeguards for applicants are required if the Housing Executive is to meet its duty other than by allocating a tenancy of social housing.

SECURING ACCOMMODATION FOR HOMELESS PEOPLE IN THE PRIVATE RENTED SECTOR

Proposal

Provide safeguards for homeless people in circumstances where the Housing Executive decides to discharge its homelessness duty by securing accommodation in the private rented sector.

Background

The Housing Executive has a statutory duty to deal with homelessness. Legislation requires that, where an eligible person is unintentionally homeless and in priority need (a “full duty applicant”), the Executive shall secure that accommodation becomes available for that person’s occupation. While the Housing Executive normally seeks to meet this duty by offering a secure tenancy in the social rented sector, this may not always be the most effective way to meet an individual’s housing needs or the most efficient use of resources. For this reason, existing legislation provides the Housing Executive with discretion to offer applicants who meet the statutory criteria for homelessness assistance.

It should also be noted that, in cases where a full duty applicant’s entitlement arises through a family member who would be ineligible for assistance because of their immigration status, housing authorities across the United Kingdom, including the Housing Executive, have a specific power to discharge the duty by ensuring that a private rented sector tenancy is available.

The proposed amendment to the Housing (Northern Ireland) Order 1988 would place certain safeguards on the use of the Housing Executive’s existing powers and make it clear that homeless applicants should only be placed in the private rented sector where the accommodation is suitable for their needs and the tenancy will last for at least 12 months.

This proposal would bring the option of offering private rented sector accommodation to homeless applicants into line with existing and emerging practice in other parts of the United Kingdom.

In England, local housing authorities also have a duty to secure that accommodation becomes available for full duty applicants. However, the legislation makes it clear that this duty will come to an end in certain circumstances e.g. where the applicant accepts a private rented sector tenancy of at least 12 months duration. There is no requirement in law for housing authorities in England to offer secure tenancies of social housing to homeless people. However, English housing legislation provides that, where a person who is owed the full homelessness duty makes an application for social housing, the applicant must be given “reasonable priority” on the waiting list.

In Scotland, local housing authorities have been using the private rented sector to discharge their homelessness duties for some time. In June 2008, the Scottish Government published proposals to extend this use of the private rented sector and to give local authorities specific power to discharge their homelessness duty through provision of a private rented sector tenancy with a minimum 12 month duration².

² Consultation on Regulations made under Section 32A of The Housing (Scotland) Act 1987 (<http://www.scotland.gov.uk/Resource/Doc/228769/0061947.pdf>)

Intended benefits

The proposal would facilitate a more flexible response to dealing with homelessness and meeting housing need.

Your views:

HOMELESSNESS DUTY OWED TO PERSONS FROM ABROAD

Proposal

Provide for the Housing Executive's duty under homelessness legislation to come to an end in cases where a person ceases to be eligible for such assistance.

Background

The entitlement of non-United Kingdom nationals to benefits and services, including social housing, is an excepted matter which lies outside the normal remit of the Assembly. However, the Assembly can legislate on excepted matters which are ancillary to transferred matters if the Secretary of State agrees.

Existing legislation requires that, where an eligible person is unintentionally homeless and in priority need (a "full duty applicant"), the Housing Executive shall secure that accommodation becomes available for that person's occupation. Legislation also provides that certain descriptions of persons from abroad are not eligible to be assisted under homelessness legislation in Northern Ireland, depending on factors such as their immigration status and employment history. The provisions relating to the eligibility of persons from abroad reflect legislation which applies to other parts of the United Kingdom and were incorporated in Northern Ireland housing legislation with the agreement of the Secretary of State.

It should be noted that a person from abroad who is not eligible for social housing or homelessness assistance is unlikely to be eligible for social security benefits such as housing benefit. While housing legislation in England provides that a local authority's homelessness duty will come to an end if a person's eligibility ceases because of a change in their circumstances, there is no such provision in Northern Ireland legislation. This means that the Housing Executive may find itself with a duty (under homelessness legislation) to provide accommodation for individuals who (under immigration legislation) must not be provided with accommodation because they no longer meet the eligibility criteria. This leaves an unsatisfactory situation of administrative limbo for both the

individual applicant and the Housing Executive. Addressing this defect in homelessness legislation would remove the legal anomaly by providing for the Housing Executive's duty in such cases to be formally brought to an end. This would also benefit applicants by bringing them within the scope of the statutory rights to review and appeal which are being introduced in the Housing (Amendment) Bill.

Intended benefits

The proposed amendment would correct a legislative anomaly and ensure that all applicants who are ineligible for assistance as a result of immigration legislation have access to their statutory rights of review and appeal.

Chapter 2 consultation questions

- 1. Do you agree that, like local housing authorities in England and Scotland, the Housing Executive should, where appropriate, discharge its homelessness duty by securing suitable accommodation in the private rented sector subject to certain safeguards?**
- 2. Do you agree that appropriate use of the private rented sector would offer the Housing Executive a useful tool to meet an individual's housing need?**
- 3. Are there particular circumstances where such use of private rented sector accommodation would not be appropriate?**

Chapter 3 – Fuel poverty

Issue

This chapter covers new powers for social housing providers to broker energy at a discounted price for their tenants.

Context

Fuel poverty is where a household needs to spend more than 10% of its income on energy to maintain an acceptable standard of warmth in the home. The causes associated with fuel poverty are high fuel costs, low income and poor energy efficiency.

Fuel poverty damages health and social well-being and those who suffer most are people in vulnerable groups, such as the elderly, children and those who are disabled or have a long-term illness.

Northern Ireland has the highest rate of fuel poverty in the United Kingdom. The 2006 House Condition Survey showed that 34% of households in Northern Ireland are in fuel poverty. The Survey also estimated that 41% of Housing Executive tenants and 21% of housing association tenants are “fuel poor”.

The Fuel Poverty Strategy, published in 2004, highlights Government’s commitment to tackling the issue.

Government across the United Kingdom is also committed to reducing the level of carbon emissions caused by burning fossil fuels such as coal, oil and gas.

The volatility of energy prices in recent years has made the task of alleviating fuel poverty even more challenging. During the early part of 2008, oil prices rose quickly to hit record highs. This had an immediate knock-on effect on the price of all domestic energy. In response, Margaret Ritchie, Minister for Social Development, established a

Fuel Poverty Taskforce to produce recommendations on ways of assisting those vulnerable households most affected by the sharp rises in fuel prices. While its remit focused on short-term actions covering the subsequent winter period, the Taskforce also made a number of recommendations covering the longer term.

Among these longer-term issues was a proposal to give social housing providers powers in law to bulk purchase energy on behalf of their tenants. The intention behind this proposal was to reduce energy bills and so mitigate fuel poverty.

This chapter sets out proposals for acting on and extending this idea.

BROKERING ARRANGEMENTS WITH ENERGY PROVIDERS

Proposal

Give the Housing Executive and registered housing associations powers to broker energy at a discounted price for their tenants.

Background

The Fuel Poverty Taskforce recommended that social housing providers should be given powers in law to bulk purchase energy on behalf of their tenants.

There are a number of ways to act on this recommendation. Given the practical problems associated with buying and storing energy, the most pragmatic solution seems to be to provide the Housing Executive and registered housing associations in Northern Ireland with powers to broker the purchase of energy at a discounted price on behalf of tenants. These powers could be exercised by a social housing provider acting alone or in collaboration with another provider of social housing.

Given the Department's strategic role in domestic energy efficiency and fuel poverty, it is proposed that any social landlord who wishes to use the proposed powers should do so in consultation with the Department, perhaps through the submission of a plan for the Department's consideration and agreement.

This proposal also has the potential to generate additional benefits more widely for Northern Ireland energy consumers as it may encourage more energy providers to enter the domestic energy market.

Intended benefits

Economies of scale would make energy more affordable for tenants of social housing and contribute to the alleviation of fuel poverty in social housing.

Your views:

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Chapter 3 consultation question

Do you agree that giving social housing providers powers to broker the purchase of discounted energy on behalf of their tenants would be a useful tool in alleviating fuel poverty in social housing?

Chapter 4 – Community safety

Issues

The issues covered in this chapter are:

- injunctions against anti-social behaviour, illegal use of premises and breach of tenancy agreement;
- introductory tenancies: extension of trial period;
- demoted tenancies;
- proceedings for possession: judges' discretion;
- exchange of tenancies: grounds for refusal;
- information sharing;
- crime prevention, and
- homelessness duty in cases of anti-social behaviour

Context

The Housing Executive and registered housing associations have a duty of care to protect their tenants from crime and other anti-social behaviour (whether caused by tenants of social housing or not), as well as a duty to protect other people from anti-social behaviour caused by tenants of social housing.

Social landlords therefore have a range of powers at their disposal for dealing with anti-social behaviour. While landlords can seek an order for possession of a secure tenancy where there are statutory grounds (such as causing nuisance or annoyance to neighbours), eviction is a last resort. The existing legislation, which is based on provision made for England and Wales in the Housing Act 1996, enables the Housing Executive, registered housing associations and private sector landlords in Northern Ireland to seek an injunction against any person whose anti-social behaviour affects the landlord's tenants. Such injunctions can be used to restrain tenants from engaging in unacceptable behaviour without depriving them of their homes.

Social landlords in Northern Ireland also have the facility to offer new tenancies on an "introductory" basis, which means that tenants have limited security of tenure during the first 12 months of the tenancy and can lose their homes during that period if their conduct is not satisfactory.

It is now proposed to update the powers of the Housing Executive and registered housing associations for dealing with anti-social behaviour by reflecting certain provisions of the Anti-social Behaviour Act 2003 and the Housing Act 2004 which built on the anti-social behaviour provisions of the 1996 Act. In addition to those provisions, it is proposed to give the Housing Executive statutory authority to take part in crime prevention initiatives.

INJUNCTIONS AGAINST ANTI-SOCIAL BEHAVIOUR, ILLEGAL USE OF PREMISES AND BREACH OF TENANCY AGREEMENT

Proposals

- (a) widen the application of the existing form of injunction against anti-social behaviour;
- (b) introduce a new form of injunction against illegal use of premises;
- (c) place injunctions against breach of tenancy agreement on a statutory footing;
- (d) provide for a power of exclusion from any premises to be attached to injunctions;
- (e) provide for a power of arrest to be attached to injunctions, and
- (f) extend the scope of injunctions to cover sites provided for Travellers.

Background

Article 26 of the Housing (Northern Ireland) 2003 enables the Housing Executive, registered housing associations and private landlords to apply to the courts for injunctions to prevent any person from engaging or threatening to engage in conduct causing or likely to cause nuisance or annoyance etc. to persons residing in or visiting the landlord's property, or to persons engaging in lawful activity in the locality of such property. Such injunctions can also be used to prevent the use of premises for illegal or immoral purposes, and to prevent individuals from entering landlords' property or the locality of such property. Injunctions against anti-social behaviour only apply to behaviour which has actually caused nuisance or annoyance or is likely to cause it.

Landlords may also apply for injunctions to prevent tenants from breaching their tenancy agreements, although there is no specific legislative provision for this. At present, injunctions against the breach of a tenancy agreement cannot be used to exclude individuals from any description of premises.

The Housing Executive is currently responsible for providing and managing sites for Travellers. Because the Housing Executive may not own any of the accommodation on such sites, it would be difficult for the Executive to seek an injunction in relation to a Traveller site.

Breach of an injunction is regarded as contempt of court. Where an individual appears to have breached an injunction against anti-social behaviour or an injunction against breach of tenancy agreement, or appears to be about to breach such an injunction, the landlord can apply to the court to issue a summons to the individual, which may take some time.

Intended benefits

The proposed anti-social behaviour injunction would have a wider application than the existing form of injunction as it would cover behaviour capable of causing nuisance or annoyance, and would apply in respect of behaviour relating to or affecting any of a landlord's housing management functions. Such injunctions could also be used to exclude individuals from any premises if there is a threat of violence or risk of harm.

It is envisaged that the new anti-social behaviour injunction should be based on the form of injunction introduced in England and Wales by section 13 of the Anti-social Behaviour Act 2003. Those injunctions cannot be used to prevent the use of premises for illegal or immoral purposes, which is covered by a separate form of injunction against "illegal use of premises". It is therefore proposed that landlords in Northern Ireland should be in a position to apply for injunctions against illegal use of premises as well as anti-social behaviour injunctions.

Placing injunctions against breach of tenancy agreement on a statutory basis would mean that such injunctions could also be used to exclude individuals from any premises where there is a threat of violence or risk of harm and would allow the courts to attach a power of arrest.

The proposed powers of arrest could be attached to individual injunctions if the court considers it appropriate and would enable a police officer to arrest an individual where

there is reason to believe that the individual has breached or intends to breach an injunction against anti-social behaviour, illegal use of premises or breach of tenancy agreement. This would provide a swifter remedy than the existing arrangements which require the landlord to report breaches of injunctions to the court.

Extending the scope of injunctions to cover Traveller sites would help to deal with anti-social behaviour on such sites.

Your views:

INTRODUCTORY TENANCIES: EXTENSION OF TRIAL PERIOD

Proposal

Enable the Housing Executive and registered housing associations to extend the trial period of an introductory tenancy for up to 6 months.

Background

Article 25 of the Housing (Northern Ireland) Order 1983 provides that Housing Executive and registered housing association tenancies are normally “secure” tenancies which cannot be brought to an end except by obtaining a court order for possession. The court will not grant such an order unless the landlord can prove that there are statutory grounds for possession.

Under Chapter II of Part II of the Housing (Northern Ireland) Order 2003, all new Housing Executive and registered housing associations tenancies are let on an “introductory” basis. An introductory tenancy currently lasts for a trial period of 12 months. If an introductory tenant engages in anti-social behaviour during the trial period, the landlord can seek an order for possession which the court will grant without requiring the landlord to prove grounds for possession. Otherwise, an introductory tenancy automatically becomes a secure tenancy when the trial period has expired.

Intended benefits

Landlords could choose to extend the trial period of an introductory tenancy where an introductory tenant’s conduct gives cause for concern but would not warrant an immediate application for an order for possession. This would give such tenants an opportunity, and incentive, to modify their behaviour.

Your views:

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DEMOTED TENANCIES

Proposal

Enable the courts to grant “demotion orders” in respect of Housing Executive and housing association secure tenancies where the court is satisfied that the tenant or a person residing in or visiting the dwelling-house has engaged in, or has threatened to engage in, conduct which would enable the court to grant an injunction against anti-social behaviour or unlawful use of premises and the court considers it reasonable to make such an order. A demotion order would effectively remove the tenant’s security of tenure.

Background

Under Chapter II of Part II of the Housing (NI) Order 2003, all new Housing Executive and registered housing associations tenancies are let on an “introductory” basis. An introductory tenancy lasts for a trial period of 12 months. If an introductory tenant engages in anti-social behaviour during the trial period, the landlord can seek an order for possession which the court will grant without any requirement to prove grounds for possession. Otherwise, an introductory tenancy automatically becomes a “secure” tenancy when the trial period has expired. Secure tenancies cannot be brought to an end except by obtaining a court order for possession which the court will not grant unless the landlord can prove that there are statutory grounds for possession. Seeking an order for possession of a secure tenancy can be a lengthy and expensive procedure.

Intended benefits

Landlords may wish to apply for a demotion order where the conduct of a secure tenant gives cause for concern but the landlord would be reluctant to seek immediate possession. While “demoted” tenants could remain in the accommodation at the landlord’s discretion, they would be made aware that they could be evicted at short notice. This would give such tenants an opportunity, and incentive, to modify their behaviour.

Your views:

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PROCEEDINGS FOR POSSESSION: JUDGE'S DISCRETION

Proposal

Require the court to take account of the following factors when considering applications for orders for possession of secure tenancies in cases involving anti-social behaviour:

- the effect of any nuisance or annoyance;
- the likely effect of such nuisance or annoyance continuing, and
- the likely effect of a repeat of the nuisance.

Background

Where a secure tenant of the Housing Executive or a registered housing association has been guilty of serious anti-social behaviour, the landlord may wish to regain possession of the property. A secure tenancy cannot be brought to an end except by obtaining a court order for possession and the court will not make such an order unless the landlord can provide evidence of statutory grounds for possession. The grounds for possession include conduct by tenants or persons residing with them which causes or is likely to cause nuisance or annoyance to persons residing, visiting or otherwise engaging in a lawful activity in the locality.

Intended benefits

The provision of clear guidelines for judges in possession cases should help to ensure that decisions are more consistent.

Your views:

EXCHANGE OF TENANCIES: GROUNDS FOR REFUSAL

Proposal

Enable the Housing Executive and registered housing associations to withhold consent to an exchange of tenancies where certain orders for possession, anti-social behaviour orders, demotion orders or injunctions have been made in respect of either party to the proposed exchange or a member of their households.

Background

Secure tenants of the Housing Executive and registered housing associations may, with the written consent of the landlord, exchange houses on the basis of mutual assignment of their tenancies. Landlords cannot withhold consent except on one or more of the grounds for refusal specified in the legislation.

Intended benefits

The new ground for refusal could be used as a sanction against anti-social behaviour. There may also be, in individual cases, valid housing management reasons to prevent anti-social tenants from exercising an automatic right to exchange houses with other tenants.

Your views:

INFORMATION SHARING

Proposal

Permit the disclosure of information about possession orders, demotion orders, injunctions etc where such information is required to enable the Housing Executive and registered housing associations to withhold consent to a mutual exchange or to refuse to complete a house sale.

Background

Exchange of tenancies (Housing Executive and registered housing associations)

Secure tenants of the Housing Executive and registered housing associations may, with the written consent of the landlord, exchange houses on the basis of mutual assignment of their tenancies. The landlord can withhold consent on certain grounds which are set out in legislation.

Restrictions on House Sales (Housing Executive)

The Housing Executive's House Sales Scheme provides that a tenant cannot exercise the right to buy at any time when:

- (a) the Executive has, within the previous three months, served on the tenant a statutory notice seeking possession on grounds relating to anti-social behaviour, or is in the process of carrying out investigations which may lead to the serving of such a notice;
- (b) proceedings for possession of the tenant's dwelling are pending, or
- (c) the tenant is obliged to give up possession of the dwelling in pursuance of an order of the court (or will be obliged to do so at a date specified in the order).

Restrictions on House Sales (registered housing associations)

The scheme which requires registered housing associations to allow their tenants to buy their homes provides that a tenant cannot exercise the right to buy at any time when:

- (a) the association has, within the previous three months, served on the tenant a statutory notice seeking possession on grounds relating to anti-social behaviour;
- (b) proceedings for possession of the tenant's dwelling are pending, or

- (c) the tenant is obliged to give up possession of the dwelling in pursuance of an order of the court or will be obliged to do so at a date specified in the order, or
- (d) the association is actively considering whether it would be appropriate to serve – at some time within the next three months – a statutory notice seeking possession on grounds relating to anti-social behaviour.

Intended benefits

Disclosure of information about possession orders, demotion orders, injunctions etc would enable the Housing Executive and registered housing associations to prevent an exchange of tenancies or a house sale where this is necessary as a sanction against anti-social behaviour or there are housing management reasons for preventing anti-social tenants from exchanging houses or purchasing their homes.

Your views:

CRIME PREVENTION

Proposal

Give the Housing Executive power to take such action as it considers necessary for the prevention of crime and anti-social behaviour.

Background

From time to time, the Housing Executive participates in crime prevention initiatives which may involve, for example, the provision of home security measures for elderly citizens living in high-crime areas or persons who are vulnerable to hate crime. However, the Executive has no specific statutory authority to take part in such schemes.

Intended benefits

Giving the Executive a statutory power to take part in crime prevention schemes would give it the proper authority to operate crime prevention initiatives.

Your views:

HOMELESSNESS DUTY IN CASES OF ANTI-SOCIAL BEHAVIOUR

Proposal

Individuals who are unsuitable to be tenants of social housing because of their unacceptable behaviour should not be in a position to access Housing Executive or housing association tenancies via the homelessness legislation, even if evidence of their unsuitability does not emerge until after the Executive has established that their housing circumstances are such that they would otherwise meet the statutory criteria for homelessness assistance.

Background

The Housing Executive has a statutory duty under the Housing (Northern Ireland) Order 1988 to secure that housing becomes available for homeless persons who are:

- eligible for assistance;
- in priority need (ie with dependent children or vulnerable in some way), and
- unintentionally homeless.

If the Housing Executive is satisfied that a person meets all of the above criteria, the Executive owes that person what it calls the “full housing duty”. The Housing Executive normally meets the full housing duty by providing a secure tenancy in social housing, although Chapter 2 of this Paper deals with the other ways in which the Executive may choose to meet the duty.

Article 22A(1)(c) of the Housing (Northern Ireland) Order 1981 provides that persons who are unsuitable to be tenants of social housing because of their unacceptable behaviour are not eligible to be allocated such housing via the waiting list and Article 7A of the 1988 Order makes similar provision in respect of homelessness. Specifically, Article 7A(1)(c) provides that a person may be treated as ineligible for homelessness assistance if the Housing Executive uses its power under Article 7A(5) to decide that an applicant has been guilty of unacceptable behaviour serious enough to make the

applicant unsuitable to be a tenant of the Executive. In this context “homelessness assistance” means an allocation of social housing, although this is only one of the different types of assistance that can be provided for homeless people under the 1988 Order.

The provisions outlined above are intended to ensure that persons who indulge in anti-social behaviour do not become tenants of social housing. However, Article 7A(7) of the 1988 Order provides that persons who are ineligible for homelessness assistance because of their unacceptable behaviour, but have priority need, must be treated in the same way as eligible persons who are in priority need but are “intentionally homeless” i.e. they must be provided with temporary accommodation plus advice and assistance to enable them to make their own housing arrangements. This meets the policy objective of ensuring that anti-social individuals have no entitlement to social housing, while at the same time ensuring that homeless people with priority need receive a level of assistance which is, at least, in line with the basic legal requirements.

While Article 7A(5) of the 1988 Order allows the Housing Executive to treat “applicants” as ineligible for homelessness assistance on the basis of their unacceptable behaviour, an individual cannot be described as an “applicant” after the Executive has completed an assessment of their housing circumstances. This means that the Housing Executive cannot invoke the eligibility provisions where, for example, a person who is awaiting re-housing having been found to be owed the full housing duty damages temporary accommodation provided by the Executive or threatens other hostel residents. The Housing (Amendment) Bill introduced in the Assembly on 9 June 2009 therefore provides for an amendment to the form of words used in Article 7A(5) which would allow the Housing Executive to treat “persons” rather than “applicants” as ineligible for homelessness assistance on the basis of their unacceptable behaviour.

While the amendment to Article 7A(5) is intended to resolve the “person/applicant” issue, a question would remain around the legal propriety of the Housing Executive exercising its discretion under Article 7A(1)(c) of the 1988 Order to treat an individual as ineligible for homelessness assistance in circumstances where the person concerned has already been found to satisfy the relevant statutory criteria and the Executive

therefore owes that person the full housing duty. Where individuals who have applied to the Housing Executive for homelessness assistance display anti-social tendencies *after* a decision has been taken that they are owed the full duty, but *before* they are re-housed, existing legislation allows the Housing Executive no option other than to treat the individual in accordance with the full duty i.e. to allocate a tenancy of social housing (even though the landlord might wish to initiate proceedings for possession immediately) or to attempt to secure accommodation for the individual in the private rented sector.

The Department would welcome views on the most appropriate way to treat individuals who have been found to be unintentionally homeless and in priority need but are not considered suitable persons to hold tenancies of social housing, including your views as to the need for any further legislation in this area. For example, it might be appropriate to make specific provision that the full homelessness duty is deemed to be discharged in circumstances where the Housing Executive has decided that a person is to be treated as ineligible for an allocation of accommodation pursuant to Article 22A (6) of the Housing (NI) Order 1981, or to amend the 1988 Order to allow the Housing Executive to treat such individuals in the same way as eligible persons who are in priority need but are “intentionally homeless” i.e. to provide temporary accommodation plus advice and assistance to enable them to make their own housing arrangements.

Intended benefits

Ensure that tenancies of social housing are not allocated to individuals who are likely to engage in anti-social behaviour.

Your views:

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Chapter 4 consultation questions

- 1. Do you agree that the proposals on community safety and anti-social behaviour are reasonable and provide social housing providers with appropriate tools to ensure their tenants and others can peacefully enjoy their homes?**
- 2. Are there any additional proposals which should be considered?**

Chapter 5 – Housing Executive functions

Issues

The issues covered in this chapter are:

- partnership between the Housing Executive and other bodies; and
- indemnities for Housing Executive staff serving on other bodies.

Context

The purpose of the proposals outlined in this chapter is to allow Government services to be more joined-up, particularly, but not exclusively, in dealing with homelessness. Meeting the often complex needs of service users and citizens requires public bodies to work across organisational boundaries. This approach does not always sit well with systems of accountability which tend to constrain such innovation.

The proposals outlined are designed to overcome some of these barriers to joined-up working by allowing the Housing Executive to enter into partnerships with other Government bodies and pool resources where required and providing indemnities to Housing Executive staff and members who participate in the work of other housing-related organisations.

PARTNERSHIP BETWEEN THE HOUSING EXECUTIVE AND OTHER BODIES

Proposal

Enable the Department to make regulations prescribing arrangements which may be entered into by the Housing Executive and other bodies in relation to the exercise of certain functions, if the arrangements are likely to lead to an improvement in the way in which those functions are exercised.

Background

While the Health and Social Care Board, the Probation Board for Northern Ireland and registered housing associations are required to co-operate with the Housing Executive if requested to do so in connection with the Executive's homelessness functions, there is no specific statutory provision which would enable the Housing Executive to work in partnership with such bodies.

Intended benefits

The proposal would enable the Housing Executive and other bodies to delegate functions, to pool resources and to transfer resources from one body to another so that there can be a single provider of services in key areas.

Your views:

INDEMNITIES FOR HOUSING EXECUTIVE STAFF SERVING ON OTHER BODIES

Proposal

Enable the Housing Executive to provide indemnities to some or all of its members and staff.

Background

The Housing Executive requires certain of its officers, as part of their official duties, to become involved in the governance of institutions and bodies which are involved in housing-related activities but have no direct connection with the Executive. Officers of the Housing Executive who are involved in the governance of external companies or bodies may be obliged by law to act primarily or solely in the interests of those institutions and, at present, the Executive cannot lawfully indemnify its officers in such circumstances.

Intended benefits

The proposal would ensure that Housing Executive staff who are involved in the management of other housing-related bodies would be protected in the event of, for example, those bodies becoming insolvent.

Your views:

Chapter 5 consultation question

Do you agree that the Housing Executive should be able to work in partnership with other bodies, particularly in terms of tackling homelessness?

Chapter 6 – Housing Associations

Issue

The issue covered in this chapter is the repeal in law of the Rent Surplus Fund.

Context

Article 37 of the Housing (Northern Ireland) Order 1992 places an obligation on registered housing associations to show separately in their accounts certain surpluses on rental income arising from properties built with grant-funding from the Department.

This provision is no longer required and the Department for Social Development has sought to withdraw it by administrative means. However, it would also be useful to repeal Article 37 of the Housing (Northern Ireland) Order 1992 and remove it from the statute book.

RENT SURPLUS FUND

Proposal

Repeal primary legislation relating to the Rent Surplus Fund.

Background

Registered housing associations have a statutory duty to show in their accounts surpluses arising from increased rental income (such surpluses are known as “the Rent Surplus Fund”). While similar legislation at one time applied to the rest of the United Kingdom, that legislation has been repealed.

Intended benefits

Repeal of the relevant legislation would remove an unnecessary bureaucratic burden from registered housing associations.

Your views:

Chapter 6 consultation question

Do you agree that provisions in primary legislation relating to the Rent Surplus Fund should be repealed?

Chapter 7 – Equality

NORTHERN IRELAND ACT 1998

Section 75 of the Northern Ireland Act 1998 requires the Department in carrying out its functions to have **due regard** to the need to promote equality of opportunity:

- between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;
- between men and women generally;
- between persons with a disability and persons without; and
- between persons with dependants and persons without.

Without prejudice to the obligations set out above, the Department is also required, in carrying out its functions relating to Northern Ireland, to have **regard** to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group.

The Department has undertaken an equality screening of the proposals contained in this document to determine if they are likely to have a significant impact on equality of opportunity. This screening has not identified any adverse differential impact of the proposals on the equality categories outlined above.³

RURAL PROOFING

The Department considers that the impact of the proposals contained in this document would be felt mainly in urban areas. There does not appear to be any potential for an adverse differential impact on rural areas.

We would welcome your views on these findings and any evidence of adverse differential impacts arising from any of the proposals within this document.

The Department's equality screening document is available at www.dsdni.gov.uk/index/consultations and on request from:

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³ Differential impact occurs where a Section 75 group has been affected differently by a policy.

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Chapter 7 consultation questions

- 1. Do you have any evidence to suggest that the proposals within this document would create an adverse differential equality impact on any of the nine equality categories under Section 75 of the Northern Ireland Act 1998?**
- 2. Do you have any evidence to suggest that the proposals within this document would create an adverse differential impact on rural areas?**

Chapter 8 – Summary of consultation questions

Chapter 1 – Private rented housing - consultation questions

- 1. Do the proposals achieve the aim of making the existing system of regulating Houses in Multiple Occupation more effective?**

- 2. Are any alternative or additional actions needed to ensure that all homes which meet the HMO definition are registered and meet required standards?**

- 3. Do you have any views on the best ways to implement the proposals on the evidence of family relationship?**

Other related issues:

Chapter 2 – Homelessness - consultation questions

- 1. Do you agree that, like local housing authorities in England and Scotland, the Housing Executive should, where appropriate, discharge its homelessness duty by securing suitable accommodation in the private rented sector subject to certain safeguards?**

- 2. Do you agree that appropriate use of the private rented sector would offer the Housing Executive a useful tool to meet an individual's housing need?**

- 3. Are there particular circumstances where such use of private rented sector accommodation would not be appropriate?**

Other related issues:

Chapter 3 – Fuel poverty - consultation question

Do you agree that giving social housing providers powers to broker the purchase of discounted energy on behalf of their tenants would be a useful tool in alleviating fuel poverty in social housing?

Other related issues:

Chapter 4 – Community safety - consultation questions

- 1. Do you agree that the proposals on community safety and anti-social behaviour are reasonable and provide social housing providers with appropriate tools to ensure their tenants and others can peacefully enjoy their homes?**

- 2. Are there any additional proposals which should be considered?**

Other related issues:

Chapter 5 – Housing Executive functions - consultation question

Do you agree that the Housing Executive should be able to work in partnership with other bodies, particularly in terms of tackling homelessness?

Other related issues:

Chapter 6 – Housing associations - consultation question

Do you agree that provisions in primary legislation relating to the rent surplus fund should be repealed?

Other related issues:

Chapter 7 – Equality - consultation questions

- 1. Do you have any evidence to suggest that the proposals within this document would create an adverse differential equality impact on any of the nine equality categories under Section 75 of the Northern Ireland Act 1998?**
- 2. Do you have any evidence to suggest that the proposals within this document would create an adverse differential impact on rural areas?**

Other related issues:

Written responses

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