Northern Ireland Assembly

Committee for Communities

OFFICIAL REPORT (Hansard)

Private Tenancies Bill: Committee Deliberations

30 November 2021

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:
Ms Paula Bradley (Chairperson)
Ms Kellie Armstrong (Deputy Chairperson)
Mr Andy Allen
Mr Mark Durkan
Mr Paul Frew
Ms Aine Murphy
Miss Aisling Reilly

Witnesses:

Ms Karen Barr	Department for Communities
Ms Eilish O'Neill	Department for Communities
Mr David Polley	Department for Communities

The Chairperson (Ms P Bradley): I welcome David Polley, Eilish O'Neill and Karen Barr from the Department for Communities to the meeting. You are all very welcome. It is good to see you.

Ms Eilish O'Neill (Department for Communities): Thank you, Chair.

Mr David Polley (Department for Communities): Thank you.

The Chairperson (Ms P Bradley): At last Thursday's meeting, we dealt with the first five clauses. Today, we will start with clause 6. Will you give us a brief overview of clause 6, David or whoever it might be? *[Laughter.]*

Mr Polley: Karen will do that one.

Ms Karen Barr (Department for Communities): Clause 6 is titled "Certain offences in connection with tenancy deposits to be continuing offences". It amends article 5B of the Private Tenancies (Northern Ireland) Order 2006, making the offences under article 5B(3) and 5B(6) a continuing offence as long as a tenancy deposit breach persists. There will be no time barrier on prosecuting a person who fails to comply with the set requirements.

The Chairperson (Ms P Bradley): OK. Thank you for that, Karen.

OK, members. Respondents were asked whether they were in favour of there being no time barrier on prosecuting a person who fails to comply with the set requirements of the amended article. The

majority replied that they were in favour of there being no time barrier. There seemed to be general support for the provision, as the point was highlighted:

> *"Tenants often do not discover any such failure to protect until after they complete their tenancy (normally a minimum of 6 months), so they are often unable to prosecute this offence, as it has expired."*

I have forgotten my glasses, so I am finding this a bit difficult. There is an amendment proposal from Housing Rights that article 5B of the 2006 Order be:

> *"further amended to explicitly state that deposits protected under an insurance-based scheme must be renewed as needed, to ensure they remain protected for the duration of the tenancy."*

Do members have any comments, especially on the Housing Rights amendment proposal?

Ms Armstrong: Can the team explain something? Clause 6 will amend article 5B, but does Housing Rights' proposed amendment mean that the insurance scheme will be time-limited? How does that work? From your understanding of what Housing Rights is asking for, can we fit that in?

Ms Barr: It is not an amendment that we would consider, simply because it is an operational matter. Schemes can run in whatever way. One scheme takes an insurance premium from a landlord to protect the deposit, and in the next year it will look for a new insurance premium, like with house insurance. Another scheme takes only a one-off insurance premium, and that is supposed to cover the landlord the whole way through. What Housing Rights is asking for is more to do with the operation of the scheme. It is not in the legislation. The schemes are given the authority to be run in whatever way is chosen.

Mr Polley: Housing Rights is pointing out that some landlords forget to keep on paying the annual premiums. That means that the tenancy is not protected. In our view, that is covered by existing legislation, because that is a failure to protect the deposit. That is already an offence, so we would not need to change the legislation to make it one. Is that fair enough, Karen?

Ms Barr: Yes. Totally.

The Chairperson (Ms P Bradley): Thank you.

Mr Frew: This might sound primitive, but what does clause 6 do? If I read article 5B, I struggle to see why you need proposed new paragraph 11A:

> *"A person who commits an offence by failing to comply with the requirements of paragraph (3) or (6) continues to commit".*

It is as if you are just reminding us of that. Can you shed light on that? Does it mean that under clause 6 of the Bill and article 5B of the 2006 Order, which is still in existence, if you are found guilty of this, you are still liable to a fine not exceeding £20,000?

Ms Barr: Yes. In 2014, colleagues in the Department of Justice confirmed that the six-month statute-barred rule applied to the tenancy deposit scheme. Apparently, when no period of limitation is provided in legislation, article 19(1) of the Magistrates' Courts (Northern Ireland) Order 1981 applies, which is a six-month limit for the institution of offences. That was becoming a problem, because tenants sometimes did not find out until the end of their tenancy that their deposit was not protected, and councils wanted to take some landlords to court. We therefore had to insert this clause to remove the statute bar of six months.

Mr Polley: Another way of explaining it is that there are two types of offences. One is that it happens at a point in time. The legislation is written in such a way that, when a landlord fails to protect the deposit at the start of the tenancy, the offence is committed on that day. The statute bar that Karen just explained means that the tenant has six months to complain to the council and the council has six months to do something about it. The problem is that most tenancies last longer than six months, so, if tenants find out at the end of the tenancy that their deposit was not protected, the landlord has broken the law. It is more than six months after it happened, however, so the council can do nothing about it.

We have turned it into the second type of offence, which is a continuing offence. That is to say that the offence is committed every day that the landlord continues not to protect the deposit. The offence therefore continues right up until the end of the tenancy, and that gets us past the six-month issue. I know that there is not much difference. All that we have done is insert the word "continues".

Mr Frew: Yes. I see that now. Both of you have explained that very well. I will read into the record that new paragraph (11A) will state:

> *"A person ... continues to commit the offence throughout any period during which the failure continues."*

That is good. Thank you very much for explaining that really well.

The Chairperson (Ms P Bradley): Are members happy to move on to clause 7?

Members indicated assent.

The Chairperson (Ms P Bradley): All right. I will pass over to you again to give an overview of clause 7.

Ms O'Neill: It is me this time, Chair. Clause 7 is titled "Restriction on rent increases". The clause stipulates that rents can be increased only once in a 12-month period. That is 12 months from the start of the tenancy. The landlord has to give the tenant two months' notice of any increase to the rent, and, under regulations, there will be some exemptions where a landlord has carried out work on the property. The regulations will bring forward those exemptions.

The Chairperson (Ms P Bradley): Thank you, Eilish. I ask members and witnesses to bear with me, because there are quite a lot of comments to read out.

Respondents were asked for their views on restrictions on the frequency of rent increases. There was qualified support, owing to concerns about potential unintended consequences from landlords increasing the rent more often than they would have done and from preventing landlords from making small- and medium-scale improvements to the property if they cannot make even a small increase to the rent for almost a year. For example, views expressed included:

> *"the amount of a rent increase is ... as much of an ... issue, as the frequency of the increase";*

> *"not sure this clause is best way to do so - we support the intention to include a measure within the Bill to address the growing affordability issues facing low-income households";*

> *"should prevent ... landlords taking advantage of tenants – especially with the current housing shortage";*

and:

> *"The proposed restriction on rent increases outlined in Clause 7(5C)(2) is reasonable.*
>
> *However ... not ... the inclusion of Clause 7(5C)(5) which gives powers to restrict a rent increase to once in every two-year period - This is likely to deter a landlord from making ... improvements".*

Respondents were also asked whether they wished to make any other comments about rent, rent deposits and affordability. These comments were among those received:

> *"Greater regulation on rent controls is needed across Northern Ireland as a whole";*

> *"Given the current shortage of PRS supply, and the increasing numbers coming into the sector, the situation is ... volatile and competition is high for any property available";*

> *"It is a free market, landlord ... should be able to manage their own business";*

and:

"The Private Rental Sector could shrink if over regulation made it seem unattractive to landlords."

A worry for us is that, as an unintended consequence, landlords may decide to leave the private rented sector. That is just one of the issues.

Do members want to make any comments on clause 7, "Restriction on rent increases", or will we go straight to the Department to seek its response?

Mr Durkan: Thank you, Chair. When you introduced the clause, you said:

"restrictions on the frequency of rent increases."

That is probably a better title for the clause. I do not know whether the title can be amended, but it is a misnomer. It is not a restriction on rent increases but a restriction on how often increases can be made.

The Chairperson (Ms P Bradley): That is true. It covers the frequency, not the amount.

Mr Allen: What you suggest is the title, is it not?

Mr Frew: No. It is the title of the new article.

The Chairperson (Ms P Bradley): Hold on. I will lift out my copy of the Bill.

Mr Durkan: I read the title as "Restriction on rent increases".

Mr Allen: It states:

"Restriction on frequency of rent increases".

Mr Durkan: Sorry. I had read —.

The Chairperson (Ms P Bradley): There you go.

Mr Frew: That is the title of new article 5C.

Mr Polley: The article that we will insert into the existing legislation is titled "Restriction on frequency of rent increases". As the member pointed out, the clause in the Bill is just titled "Restriction on rent increases". Colleagues, I am fairly sure that that would be straightforward to fix, if it would clarify things.

The Chairperson (Ms P Bradley): Yes. That would be good.

Mr Durkan: I suppose that we could amend it so that it is a restriction on rent increases. *[Laughter.]* That might be more satisfactory again.

In the latest deliberations paper, there is a bit saying that the provision is to be put off until perhaps the second phase, which will be in the next mandate. What are the Department's thoughts on that?

Ms O'Neill: OK. Are there any more members' questions, or are you content that I come in on that point?

The Chairperson (Ms P Bradley): Come in on that point, and then we will move on.

Ms O'Neill: Affordability issues have been raised constantly, and the Minister has committed to looking at fair rents for all, which includes social tenants and private tenants. She has asked for work to be taken forward for the next mandate on that. You are absolutely right: I know that comments were made by some stakeholders when they gave their evidence to the Committee that the amount of the increase is every bit as important as the frequency of the increase.

Most landlords have told us that they do not raise the rent during a tenancy. When they get a good tenant into a property who pays the rent and looks after the property, it is in the landlord's interest as well as the tenant's to keep that relationship going for as long as possible. We were aware in the Department, however, of instances in which tenants were phoning us directly about landlords who, without any justification or proper notice, had told them that their rent was being increased.

One of the more extreme examples was when someone was told by a landlord that her rent was going up by £100 a month because he had found out from a friend of his, who was also a landlord, that he was getting more rent for a property than he was. We are concerned about that, and that sort of behaviour should be stamped out. We know that there were concerns among stakeholders that the provision could drive up adverse behaviours — Scotland was quoted as an example of where that was the case — meaning that landlords who would not ordinarily have raised the rent would do so. I know that you were at the housing rights conference, Chair, at which some research from Scotland was presented that found that that had not been the case. In the guidance that will be produced, we would be keen to say to landlords, "Look, this is just where you have a justification for increasing the rent. You can do it only if you fall into one of the exempted categories".

The Chairperson (Ms P Bradley): That is OK. I know about that from personal experience. My daughter was in private rented accommodation for three years, and not once was the rent raised, because she was a good tenant and the landlord wanted to keep her. I know from friends and family in the sector that landlords do not ordinarily put up rent. If they have a good tenant, they do not want to do it.

Mr Frew: I take it that the proposed new article 5C(3) is just a safety net. Can you give me any examples of when you would want to use such regulations?

Ms O'Neill: You are absolutely right: it is in there just as a safety net. One of the more extreme examples would be that, had there been circumstances during the current pandemic in which it was found necessary to restrict the amount by which rents were being increased, that might have been considered. That is an extreme example, however. It is in there to future-proof that part of the regulations, so that, if there was a point in time when it was felt that rent increases needed to be restricted further, that power was in existence. It was not something that, we had contemplated, would be needed any time soon; it is just a belt-and-braces approach.

Mr Frew: OK. Thank you.

Mr Polley: May I just check whether that is —?

Ms Barr: That is a different bit, I think.

Ms O'Neill: Oh.

Mr Polley: I think that Eilish has explained why the proposed new article 5C(5) is there, but did you not ask about article 5C(3)?

Mr Frew: Yes, I did.

Ms Barr: Yes, and that is about the alterations, Eilish.

Ms O'Neill: Apologies. I am jumping ahead of myself. I have notes of points that I wanted to make.

It is for a circumstance in which a landlord had needed to carry out work to a property but had incurred a lot of expense and needed to raise the rent as a result. It is one of the exemptions that we are looking at bringing forward in the regulations.

Mr Polley: If you look at proposed new article 5C(4), it follows on from article 5C(3) and states:

> *"Circumstances specified under paragraph (3) may include, in particular, circumstances in which the dwelling-house let under the tenancy is renovated, refurbished, altered or extended."*

Once we start to get on to the energy-efficiency regulations, those will protect against that as well.

Mr Frew: That is OK. The first answer probably also fits the original question. It seems that paragraphs (3), (4) and (5) go together. Although they do different things, they come as a package: is that right?

Mr Polley: Yes.

Ms O'Neill: Yes.

Mr Frew: I am content. Thank you very much.

Ms Armstrong: Thank you very much, guys. Can you clarify something for me? I am thinking about future-proofing in the legislation. New article 5C(1) states:

"This Article applies to any private tenancy except a controlled tenancy".

It refers to article 40(4) in the 2006 Order, which states:

"A tenancy which is subject to rent control is referred to in this Chapter as a 'controlled tenancy'."

Define "controlled tenancy" for me.

Ms O'Neill: OK. I will have to go back to the Private Tenancies Order. Statutory and controlled tenancies are covered by it. Those are a small and ever-decreasing number of tenancies that existed pre-1978 —

Ms Barr: Before 1945.

Ms O'Neill: — where the property was built before 1945, the tenancy was in place before 1978 and there has been a succession tenancy for which the rent could be controlled by the Rent Officer for Northern Ireland. There are about 500 such tenancies on the rent register.

Ms Armstrong: I am thinking ahead to the next legislation that is to come from the Department. If the Department sets upper limits on rent or on by how much rent can be increased, is there any possibility that the tenancies could come under the definition of "controlled tenancy"?

Ms O'Neill: It is something that we would need to speak to the Departmental Solicitor's Office (DSO) and the Office of the Legislative Counsel (OLC) about. I imagine that, because controlled and statutory tenancies were a specific group at the time at which the Rent (Northern Ireland) Order 1978 was introduced, we may not be able to extend that legislation and something with a much wider remit may be needed.

Mr Polley: In looking at this, we need to think about what we mean when we refer to the different models in different places and about how we use them. That one went back possibly to the Second, if not the First, World War, when there was a feeling that landlords were, in a time of national emergency, putting the arm in with tenants, because we were not building any houses and thus there was a housing shortage. There is a lot more to a statutory or controlled tenancy than the rent control part of it.

Ms Armstrong: The reason that I bring that up is that I have been asking questions to find out how many Housing Executive homes are over 40 years old. We could probably push it out to 60 or 70 years old for some houses that have had continuous tenancies. That is the Housing Executive, but, if there were to be a change to the Housing Executive by which it became a social landlord or whatever, could "controlled tenancy", as defined in the 2006 Order, extend to those homes if they were to become private tenancies at some stage?

Mr Polley: They will always be social tenancies, so they are held under a completely different type of tenancy. The Bill relates to private tenancies.

Ms Armstrong: I know, but —.

Mr Polley: None of the proposals about the future of the Housing Executive that have ever been discussed involve such homes coming under the Private Tenancies Order. They are social tenancies. They are secure and long-term tenancies. They are regulated. They come off the list.

Ms Armstrong: I will hold you to that, David, because we do not know what those proposals look like yet. *[Laughter.]*

Mr Polley: I am happy for you to hold me to that.

Ms Armstrong: I also ask about the requirement to give notice of a rent increase under proposed new article 5D(4). Why two months rather than three months? We have heard from others that it would be better if people could be given three months' notice of their rent going up. We think in particular of people who may be private rented sector tenants but are on housing benefit, given the time that it takes to get changes to that made. Why, under proposed new article 5D(4), can we not shift that period to three months?

Ms O'Neill: At the time of drafting, we thought of two months, because no requirement for notice of an increase had previously been laid down and two months seemed reasonable. I do not think that there is any reason that we could not look at three months' notice. It was just that we had gone from nought to two months in the Bill. We are content to look at that and to refer to our deliberations on the consultation in 2017 to see whether we can find anything.

Ms Armstrong: Renter's Voice indicated that the longer time that tenants can have, the better, because, if the private rent will not be covered by housing benefit, they need to find some way of covering that money and as much time as we can give them in which to do so. If the Department were to consider changing the wording to "not less than 3 months", that would be a great help.

The Chairperson (Ms P Bradley): OK. Is there anything further from you on clause 7? You are happy that we move on? Is everybody happy that we move on?

Ms Armstrong: Yes.

The Chairperson (Ms P Bradley): OK, we will move on to clause 8. The next set of clauses — clauses 8, 9 and 10 — are to do with property management standards. Clause 8 is "Fire, smoke and carbon monoxide alarms, etc." I will go back over to the witnesses. Do you want to give us a quick overview of clause 8?

Ms Barr: Yes. Clause 8 is intended to reduce the risk of injury or death caused by fire, smoke and carbon monoxide. The clause inserts new articles 11A to 11F into the 2006 Order. Those articles set out new requirements on private landlords in relation to the provision of fire, smoke and carbon monoxide detectors and duties on landlords and tenants with regard to those. It also allows the Department to set minimum standards that may include the number, type and condition of appliances to be installed, and it provides that a breach of one of those duties is an offence. It also creates an obligation on the tenant to take proper care of the detection appliances installed and to make good any damage wilfully or negligently done or caused to those appliances by the tenant or any other person lawfully on the premises. The Department will bring forward the proposals in regulations. The regulations will cover the standards that I talked about: the number, type and condition of the alarms.

The Chairperson (Ms P Bradley): Thank you, Karen. I will read out quite a long piece, because there was much debate about this. Respondents were asked whether the clause would meet the stated aim of reducing the risk of injury or death caused by fire, smoke and carbon monoxide in private tenancies. The majority of respondents agreed that it would, with the Northern Ireland Fire and Rescue Service stating:

> *"installation of a fire detection and fire alarm system in premises can substantially reduce the risk of death or serious injury from fire."*

Respondents were also asked for their views on the Department having the power to set minimum standards for the purpose of determining whether the duties in the clause have been complied with. Comments included welcoming the clause as some landlords can:

"neglect their responsibilities to ensure their rental properties have working fire, smoke and carbon monoxide alarms (especially in student properties)".

The comments also include:

"As long as the Landlord will only be responsible to repair appliances which they have provided",

but that, if they are:

"provided by the tenant, the tenant should be responsible in repairing them."

Also, it is:

"Necessary for the Department to set minimum standards to enable tenants and councils to confirm if the standards have been met and are appropriate for the property,"

and

"Would be better if these were made clear so tenants can check if their landlord is following the rules."

An amendment was proposed to the wording of new section 11B, as:

"11f states that a landlord is not obliged to repair a device if they don't have knowledge of the disrepair. If landlords performed periodic checks/inspections of properties, they would be aware of the disrepair of items."

When asked whether there were any comments about clause 8, comments included that it:

"does not address the fundamental issue of the Fitness Standard ... does not go far enough to improve physical standards in sector including risk of fire and escape from fire, particularly within flats/apartments falling outside of HMO regime ... Landlords should be able to report tenants who deliberately remove or damage alarms",

that it is a resource issue for district councils, which will:

"require support in terms of ensuring that there is sufficient guidance in place and that staff are adequately trained to regulate these new provisions ... Tenant awareness (combined with effective enforcement) will help to ensure that standards and checks are met".

OK, members. Again, the clause is vital, because we are talking about risk to life. Are there any further comments elaborating on the comments that have been made? Does any member wish to highlight anything further?

Ms Armstrong: Just on standards, my concern is — we will get this with clause 8 and clause 9 — the responsibility for fire, smoke and carbon monoxide alarms in communal areas where you have a building with flats owned by multiple landlords. I know it has been said that the building's owner will be responsible. I am not sure whether, under the legislation, a building owner has responsibility for that. It says that new article 11D may deal with that, but it is not clear enough to me about shared halls or common areas where there are multiple landlords.

Ms Barr: I think that — sorry, I can hear myself in feedback here. It is funny; we were talking about this earlier. I think that there is separate legislation from the Department of Health that covers shared and communal spaces. Eilish and David, you were talking about it earlier.

Mr Polley: There are management agents. There are different scenarios with buildings containing more than one property. We have covered the situation of a private landlord with a private tenancy. Where there is a large block of flats, there will be a management agent. Management agents have responsibilities that, as Karen says, derive from Department of Health legislation, but the fundamental oversight of management agents is done by the Department of Finance and is therefore not within the scope of the Bill. We have gone as far as we can. Some of the questions that were raised relate more to the duties of management agents or the broader general duties under the fire-related legislation.

You will hear from my tone of voice that I am not deeply familiar with that. It is the responsibility of the Department of Health.

Ms Armstrong: That is why I am a bit concerned. Not every type of home with multiple landlords has a management agent. That is one thing. The other thing is we do not want to have a Grenfell situation here, where we have lots of people blaming each other for different things. I am a bit concerned. If the Department of Health and the Department of Finance are not coming up with legislation or anything on that, we may need to get clarification on it because, as the Chair says, this is about people's lives. Hopefully, we will not have any fires or carbon monoxide incidents, but I feel uncomfortable with legislation where nobody knows who is responsible.

The Chairperson (Ms P Bradley): We can ask those questions. I sat on the Heath Committee for a number of years, so I know that public safety and the Fire and Rescue Service fall under that Department. There will be rules and regulations there. As a Committee, perhaps we can write to the Departments of Finance and Health to ask them to clarify those points, because it might be worth putting it in our report that we sought clarification on those issues.

Mr Polley: That would be really useful. You should do that. You will all be aware, however, that work is being done on building safety on foot of Grenfell and the various reviews that were carried out of it. The Executive have said that people in Northern Ireland should have no less protection than people in England will have after all the work is done. That relates mainly to fire safety in taller buildings. DOF runs a programme board that is overseeing all that work — a few bits fall under DFC, but it is mainly outwith that — and that will provide some clarification. I go back to the point that the Bill is a private tenancies Bill; it relates to the relationship between a landlord and a tenant in a flat. Those broader things do not apply, and any attempt to put them in the Bill would be beyond its scope.

Ms O'Neill: It is fair to say, David, that, when the group has been established to draw up the regulations, we will flag up any gaps that are identified wherever they need to be flagged, and we will involve colleagues from other Departments who have responsibility in some of those areas to see where things need to be escalated. You are right, however, that it is a private tenancies Bill to do with private property.

Ms Armstrong: But it is not —.

Mr Polley: As Eilish says, we need to align those things to make sure that everything works together.

Ms Armstrong: I just wonder, under health and safety, which, I know, is health and safety at work, but it also applies to people who have customers — including landlords — concerning safe access and egress. It is not really good enough to say that landlords are not responsible; they are responsible for safe access and egress. If they do not have an appropriate responsibility for fire, smoke and carbon monoxide alarms, if there is a terrible incident, they are not providing safe access and egress. I put it back on the landlord. Businesses are responsible for it under health and safety legislation, and the landlord is a business.

We will write to the Department of Finance and make sure. I am concerned that this is falling between stools and, while there is the programme board, we do not know how long it will take to do it. I worry about that, because access and egress is a tool used in corporate manslaughter, so we should not ignore it.

The Chairperson (Ms P Bradley): It is worth drilling down to get a bit more detail on that.

Mr Frew: I want to talk about the tension between tenants and landlords, because it intrigues me. In the legislation here, you are dealing with human beings. It is essential that we have new article 11E, "General qualification on landlord's duties", and 11F, "Knowledge of disrepair". That is my first question: why do we need article 11F when clause 11(2) of the 2006 Order states:

> *"A landlord is not under a duty to carry out works by virtue of Articles 7 and 9 unless he has actual knowledge (whether because of notice given by the tenant or otherwise) of the need for those works."*

Can you reassure me that 11F in this Bill covers the new section 11A?

Ms Barr: Yes. That is the only reason why it is in, Paul. It covers the new bit about the fire alarms and smoke detectors.

Mr Frew: OK, and the existing wording of article 11 in the 2006 Order obviously covers articles 7 and 9.

Ms Barr: Yes, that is for the duties to repair that are already in the Private Tenancies Order under articles 7 up to 10 right through.

Mr Frew: That brings me to my question on the tension. Are you convinced that 11E does it, with regard to a dispute, where a tenant has wilfully or through negligence damaged a device and this goes on for weeks and months: a dispute between tenant and landlord about who is liable? Ultimately, we all need that device fixed, but there is a dispute between who is to blame for the damage and who is responsible for fixing it. How do you see that playing out, if the legislation is enacted and something goes horribly wrong?

Mr Polley: So your question is about when we have this in place, something gets damaged and the landlord and tenant have a dispute over whose job it is to fix it.

Mr Frew: Yes. Is 11E a sufficient defence for the landlord?

Mr Polley: New article 11B starts off with the duties of the landlord, and it says that the landlord has to keep fire and smoke and carbon monoxide detectors in good repair. In 11C, the tenant has a duty not to wilfully break them, take the batteries out or anything like that.

Mr Frew: In 11C it says that the tenant in private tenancy:

"must make good any damage to those appliances".

Ms Barr: Yes.

Mr Polley: It says:

"must take proper care"

and then is responsible for fixing them, if they have wilfully or negligently broken them. Your question is about when they have an argument as to whether the tenant has wilfully or negligently broken them or if they have just failed.

Mr Frew: Basically, that is what it is. You can imagine that playing out in court when something goes horribly wrong. Is 11E a sufficient defence for the landlord? You can have tenants who will not even remember damaging some bits of devices or properties and then go into dispute with the landlord. Ultimately, those things need to be fixed, and, nine times out of 10, the landlord will just take it on the chin and fix it. However, you can have a problem tenant who, for whatever reason, keeps damaging property, including the detectors. I ask whether 11E is a sufficient defence for the landlord.

Ms Barr: In that instance, I wonder whether, if you have a tenancy agreement, Paul, you will say some of this in your tenancy agreement — that they have the duty. Surely that would be a breach if they continually broke that. You could take that as a breach of the tenancy agreement.

Mr Polley: There are two more —.

Mr Frew: Do we need something in there whereby there is some sort of written evidence for the landlord that he or she had requested the tenant to fix or to put on notice that they should fix the detector? At least then, if something were to go wrong, the landlord would be able to produce that written chronological evidence that they had several times requested that the tenant fix it.

Mr Polley: It would be sensible for a landlord to put it in writing. As you said, ultimately, it could come to a dispute in a court if there is a tragedy and an investigation. It would very likely come to a dispute with the tenancy deposit scheme, because the default position is that the landlord would take that

money out of the deposit at the end of the time, and they would need to explain to the tenancy deposit administrator (TDA) that that was reasonable.

Ms O'Neill: I suppose it is a risk to health and safety while the tenancy is ongoing. Karen's point is right: when the draft model tenancy agreement is being produced in a template, it will obviously highlight the roles and responsibilities of the tenant, and that should be highlighted.

Paul, to answer your question, the guidance that will be produced for landlords is the place to cover that. Where there is any dispute, they will have to make sure that there is a proper record of when the breakage or damage was brought to their attention and when they contacted the tenant to have that made good, so that the landlord has some protection. That is far from ideal because, while the thing remains damaged, whether it is an alarm or whatever, there is still a risk to the tenant that the tenant is obliged to repair, going by our legislation.

Mr Frew: You added a good point there regarding the tenancy deposit and the fact that, if there is a dispute and the tenant is in danger because of a faulty device, it would probably be in order for the landlord to use some of the deposit money to fix the detector even if it is not his responsibility at that point and even if he is not responsible for the damage. That would save the safety aspect, because the device would then be fixed. You suggest that it would be in good order to do that.

Mr Polley: Yes. There is another side to this. We have talked about the health and safety of the tenant. That is obviously really important, but, from a landlord's point of view, they do not want their building going on fire either. There is a benefit to the landlord from having properly functioning fire and smoke detectors. It protects their asset. The scenario that you sketched out would be the most likely.

Mr Frew: OK. Thanks very much
.

The Chairperson (Ms P Bradley): OK. Does anybody else want to comment on this, or are we happy to move on to clause 9?

OK, we move on to clause 9, which is "Energy efficiency regulations". Can I get a quick overview of clause 9, please?

Mr Polley: I am doing this one.

Ms Barr: Is it not electrical?

The Chairperson (Ms P Bradley): No, it is energy.

Mr Polley: It is energy efficiency.

Ms Barr: Energy is first. Yes.

Mr Polley: Clause 9 introduces schedule 2 and notes its purpose, with the provision of an enabling power to make regulations concerning the energy efficiency of dwelling houses let under private tenancy.

I will do schedule 2 as well. New article 11G(1) and (2) set out the powers for the Department to make regulations, subject to negative resolution, to detail the requirements for the energy efficiency of dwelling houses let under private tenancy and the minimum level that any energy performance certificate (EPC) should be. New article 11G(3) provides that the Department may, by regulation subject to negative resolution, provide which dwelling houses will be exempt from prohibitions imposed by the regulations. New article 11H(1) and (2) provide that the Department may specify in regulations any offences committed by virtue of non-compliance. An amendment to article 72 provides that, when making regulations, the Department must consult the Department for the Economy, district councils, such persons as appear to the Department to be representative of landlords and any other people that the Department considers appropriate.

The Chairperson (Ms P Bradley): I will read out our responses.

Respondents were asked for their views on clause 9, and among the comments received were:

"it should work in tenants' favour by ensuring properties are as energy efficient as possible ... would anticipate that introduction of energy efficiency regulations and its implementation in the private rented sector would be consulted upon ... represents an important start towards tackling fuel poverty and improving energy efficiency in the private rented sector ... A substantial economic package will likely be required to support private landlords improve standards and avoid costs transferred to tenants. There is also potential for properties in the lowest thermal banding to become vacant and lead to areas of empty homes/dereliction if funding and technology are not available to make necessary improvements ... some check or balance regarding capital expenditure required to meet said regulations where it is not economically viable from an investment point of view to enhance the property to the level of the regulations."

Respondents were also asked if the clause and related schedule 2 would future-proof the legislation sufficiently with regard to energy performance certificates. There was a mixed response on that, with some feeling that it will increase rents or reduce rental housing stocks, and there were thoughts that some EPC checks do not present a true rating.

Members, does anybody want to raise any issues or make comments?

Ms Armstrong: We had it under clause 7. Proposed new article 5C(3) states:

"The Department may by regulations specify circumstances in which paragraph (2) does not apply."

That is to do with rent increases, and you mentioned before that that is about alterations. If a landlord has to make significant alterations to meet energy efficiency standards in the future, will 5C(3) protect the tenant from rent increases to cover that cost?

Mr Polley: New article 5C(3), I think, gives us the power to make regulations that would make an exemption. Basically, it would allow a landlord to put up rents if they had just done a substantial renovation to the building. First of all, we would have to decide whether to use that, and, secondly, as part of that, there would be work to define what we meant by "substantial". During our pre-consultations and in your evidence sessions, there was a bit of discussion about exactly how easy that might be. We were thinking that some of those energy efficiency improvements might be costly.

Ms Armstrong: You say:

"The Department may by regulations specify circumstances in which paragraph (2) does not apply."

You say that that will allow you to let landlords increase the rent for that, but what about stopping a landlord increasing rent for that?

Mr Polley: If we did not want to do it, we would not use that power.

Ms Armstrong: OK.

The Chairperson (Ms P Bradley): Members, are there any other comments on that? Are we happy with everything that was raised there? Mark, do you want to come in?

Mr Durkan: There is one wee thing. I might have raised this before, but I have forgotten my computer, so this stuff is not readily available in front of me. I was trying to follow it on my phone, with great difficulty.

There is a common practice of private landlords availing themselves of government schemes to improve the energy efficiency of their homes. What is not so common — I do not know how rare it is, but it certainly occurs — is where the property qualifies for one of those schemes by virtue of the tenant's financial circumstance: the tenant is on a qualifying benefit, and the landlord applies using the tenant's details. Then, once the work is done and the grant is received, the tenant is out on their ear and the house is on the market. Is there any scope to protect tenants in that situation? If money or investment has been put into that property, what tools are there are to keep it in the private sector, for a limited time at least?

Mr Polley: You are probably talking about the affordable warmth scheme.

Mr Durkan: Yes. *[Inaudible]* the latest.

Mr Polley: The affordable warmth scheme is about making improvements to a landlord's property on the basis of the tenant's circumstances. It is about whether the person in the tenancy, who is considered to be fuel poor, meets the qualifying criteria for the affordable warmth scheme.

The first issue with the affordable warmth scheme is that, despite the number of fuel-poor tenants in the private rented sector, take-up of the scheme among landlords is low. They make up about, I think, 5% of applicants. When I talk to landlords, I typically encourage them to apply. Landlords pay for half of the work under the affordable warmth scheme. If you are a fuel-poor owner-occupier, you would get all of the eligible costs covered. Landlords pay for half the costs, so that is the first control. There is a degree of balance in that landlords are expected to pay for half of it. My initial take on it is that, considering the number of fuel-poor tenants in the private rented sector, the amount that they spend on fuel and the risks to their health of being in cold houses, I would like more landlords to take up the scheme.

On the affordable warmth side, there is a discussion about whether we could implement some sort of clawback if a landlord were to sell a house quickly after making the improvements. Say, to caricature what you suggested could happen, a landlord moved a relatively poor tenant between their three houses and, every time they did so, applied to get some work done to improve those houses.

The other point that I want to make is that, in the context of having to get to net zero and the work that we need to do to the entire housing stock, we will have to start subsidising a lot more energy efficiency work. We need to find a way of making those programmes work in a way that attracts landlords to do work to their houses. In the legislation, there is the stick: we will prohibit the renting of houses that have poor energy efficiency. However, we need to think about, on the other side, encouraging landlords to apply for the schemes that are available and that they can apply for, because they are not doing so.

Mr Durkan: I fully get that.

Mr Polley: The reason for that is that the landlord does not necessarily get the benefit of it. It is possibly as simple as that. Sorry. Go on.

Mr Durkan: I fully get and support the need to incentivise those adaptations, without a doubt, but it is paramount that we ensure that tenants are not exploited in any way.

Ms Armstrong: On what Mark said, my concern is that, when the value of the property increases because of work done to make it more energy-efficient, the rent might go up. That is where I see a tenant being taken advantage of. The landlord may bump up the rent not necessarily to repay the cost of work but due to the simple fact that the house is a better domicile as result of it not having mould growing up the walls, being warm and not being damp any more. I am worried about that.

Ms O'Neill: When we draft the regulations, we will look at what has worked in other jurisdictions. We know that, in Scotland, for example, a landlord can carry out work to a property only in between tenancies so that the tenant is not disadvantaged. There also has to be a sufficiently long lead-in time, which means that landlords are able to do the work over a prolonged period, depending on the work that has to be done to the property. As we draft the regulations, we will be very much guided by colleagues in Economy who are working on the energy strategy and by the sector itself.

The Chairperson (Ms P Bradley): Does that mean then that, if something substantial needs to be done to a tenant's house, that cannot happen until there is a break in tenancy?

Ms O'Neill: No. I am just saying that that is what is done in Scotland and it is to give a lead-in time. We will look at how that works and what it looks like in practice. There are current fitness standards that have to be adhered to. I know that I probably opened up a can of worms by mentioning the fitness standards and the fact that we will look at those at the next stage. There are current fitness standards that must be met in order for a tenant to stay in a property. Councils have powers under the current legislation to make a landlord carry out works to a property where those need to be done.

The Chairperson (Ms P Bradley): I cannot wait to see those fitness standards coming through for the Northern Ireland Housing Executive, never mind the private rented sector, but that is another story.

Ms Armstrong: I can take you to a few student premises on University Road at the minute to see the mould growing on the walls.

The Chairperson (Ms P Bradley): Do members want to make any further comments on the energy efficiency regulations? Does the Department want to make any further comments on the comments that have been made?

Mr Polley: There is a lot in this, and it will be an exciting area. I want to establish that we will consult before we do the regulations; we will do that in line with the energy strategy. One of the landlord representatives made the point that, if we make them go too fast, the entire grid will fall over and we will not be able to light our houses, never mind heat them. We will not do that. The changes will be made in line with the energy strategy. If we are going to shift electrification to heat, we will do it in line with the strategy.

As Eilish said, we are aware that this could be quite intrusive for tenants and possibly expensive for some landlords. Therefore, we will do it over time. The time frame is to 2050. There are two parts to that: fuel poverty and where our housing stock needs to be to deliver net zero by 2050, which is thirty years away. That has to be done carefully with lots of consultation, not rushed, and we need to get it right. It is one of the most important parts of the Bill.

The Chairperson (Ms P Bradley): Yes. Thank you for that. If members are agreeable, we will move to the electrical safety standards. Are members happy if we move to clause 10?

Some Members: Yes.

The Chairperson (Ms P Bradley): Can you give us a brief overview of clause 10?

Ms O'Neill: OK, Chair. Clause 10 introduces schedule 3 and notes its purpose, which is the provision of an enabling power for the:

> *"Department for Communities to make regulations concerning electrical safety standards in dwelling-houses let under a private tenancy."*

The Chairperson (Ms P Bradley): Thank you, Eilish. Respondents were asked to give their views on clause 10. One of the issues highlighted was the need for a time period for checks, such as every five years, as in Scotland, and whether it should include fixed wiring checks, electrical installation condition reports (EICR) at least every five years, in addition to portable appliance tests (PAT). Comments included that it should work in the tenant's favour by ensuring that properties are as safe as possible; that the overall standard of the property would be maintained; and mandatory electrical testing, similar to that Scotland, which includes fixed wiring checks, electrical installation condition reports and PATs at least every five years, was welcomed. Another response welcomed the clause, and saw electrical safety as another area where basic safety requirements were long overdue. They welcomed the clause, which has long been campaigned for in the private rental sector, and it brings the sector in line with the private rented sector in England and Scotland. Regular equipment checks already take place in houses in multiple occupation (HMOs) in Northern Ireland.

I will open up for member's questions. I assume Paul Frew wants to come in.

Mr Frew: Yes. I declare an interest as an approved electrician. Schedule 3 is a no-brainer. We need to bring some sort of regulation into electrical testing and standards. I have a dispute around the five years — that might be a bit excessive — but it should be connected to the registration of landlords because that is a natural thing that happens every three years. Three years is most definitely too short a period. I probably sit at six years or nine years, but six is probably closer to your position.

Clause 10 is only an enabling clause, but it is based on schedule 3. When I look at the schedule, it strikes me that the EICR is fine and you have:

> *"electrical fixtures, fittings or appliances provided by the landlord."*

That is fair enough because tumble dryers and washing machines can go on fire. It strikes me that there is a glaring omission in that a lot of the fires in domestic properties will be caused by faulty phone chargers, hot hair straighteners, faulty hairdryers and everything else that can be easily carried about that heats up. That has been missed. It would be a burden on the tenant, but surely we need some regulation there. We do not have that for private homes, but nor do we have EICRs for them. Are we missing a trick with portable equipment that can go on fire?

Ms O'Neill: I feel totally out of my depth in speaking to a qualified electrician on this.

Mr Frew: Do not fear too much: I have been out of the game for 12 years. *[Laughter.]*

Ms O'Neill: You are still an expert.

The Chairperson (Ms P Bradley): It is all right: every Member has a list of things that they need done in their house. *[Laughter.]*

Mr Frew: Come May.

Ms O'Neill: Your view of the frequency of the checks is much appreciated, because it caused some debate during the consultation. Some of the landlords were really not happy that we were looking at introducing the checks. It is not that they did not want the checks carried out, but their frequency was giving rise to some concern. They felt that, as homeowners are not required to carry out those electrical safety checks, they did not want too much of a burden to be placed on them. The link to the registration is a good point and is certainly something that we will look at as we move into the regulations.

You are right that schedule 3 places the burden on the landlord to make sure that the property that they own is protected. We did not include the PAT for exactly the reason that you articulated: as a homeowner, no one comes into my home to check that my personal items, such as hairdryers, are safe. It was not included because the purpose of the provision is to put a burden on the landlord to make sure that the property that they let is safe for the tenant to live in. When it comes down to where a fire starts, is that not an academic point?

Mr Frew: I get why you need the regulation, and I get that there is an exchange and tension between the person who owns the property and the person who lives in the property. However, given that exchange and tension and the causes of fires, I worry about portable items being missed. I worry about the burden for that being placed on the tenant, but it just strikes me as an omission.

Mr Polley: If we were to include something, there would be two ways of doing it. One would be to put a duty on the tenant to pay somebody to electrically test all of their electrical appliances before they were allowed to rent the house. With that, the tenant would be in breach of their contract if they got a new phone and plugged it in before they got somebody to test the plug. You see where I am going: it might be onerous. The other way would be to put a duty on the landlord, so it would be their responsibility to test all of the portable appliances, phone chargers and things like that, which would be equally —

Ms O'Neill: Burdensome on the landlord.

Mr Polley: — burdensome and unfair on the landlord. That would mean that they would have to keep up with the day-to-day business of their tenant. You are not really meant to keep up with the day-to-day business of your tenant: the whole point of a tenancy is that it is the tenant's house and they get on with stuff. It is not that your point is not important; it is just hard to know what we could do.

Mr Frew: I get that. That is why I am struggling and have not committed to any sort of amendment. The rationale is there to do an EICR, but you are also placing a burden on electrical fixtures, fittings and appliances. I know that that means white goods and will probably not range to kettles and toasters unless the property is a holiday let. You can see the glaring omission on the causation of fires: we have not covered it in legislation or regulation. I am teasing that out with you, but I have not settled on a point of view. It was interesting to hear your views, and I get the points that you make, I really do.

Ms O'Neill: Can I just add something? The electrical safety checks will be carried out periodically. If they were carried out every six years, the second time a landlord registered they would have to have

the checks carried out. The tenancy deposit scheme administrators tell us that the average tenancy in Northern Ireland lasts between a year and 18 months. That period may be growing due to supply issues. However, if you take a tenancy of 18 months, you might have two or three tenants during the six-year period who would not have any checks carried out on any personal items that they own. A check would be carried out at a point in time on a particular tenant's items. You could have a tenant who moves from tenancy to tenancy and never has a check carried out on their phone charger or hair straighteners, whereas you could have somebody else who has a check carried out. I do not know whether it would prove a lot at a particular point in time, if that makes sense.

Mr Frew: I get that. Thank you very much.

The Chairperson (Ms P Bradley): Kellie, you wanted to come in.

Ms Armstrong: I know that we are talking about clause 10, but I want to go back to clause 1(2), which inserts article 4A, with the heading:

"Tenant to be given notice regarding certain matters: grant of tenancy".

If a prescribed form of words is used for that tenancy agreement, I would expect there to be something in it that requires tenants to use only electrical equipment that is in good working order and tells the tenant that it is their responsibility to ensure that it remains in good working order and does not overburden plugs and nothing is used that has exposed wires or anything like that. Will the Department provide a template that includes that?

Mr Polley: We talked about a model tenancy agreement. It could include something like that.

Ms Armstrong: That may be one thing —.

Ms O'Neill: Yes. That is a really good point. I will be honest with you: it is not something that I had thought about. That is exactly where you would put something of that nature, that there is a burden of responsibility on tenants to ensure that they use stuff that is safe.

Ms Armstrong: OK.

The Chairperson (Ms P Bradley): All right. Members, is anybody due in the Chamber at 10.30 am? There are statements from the Ministers of Agriculture and Infrastructure. Are you all right to stay with us for a little while longer, and we might just get this done and wrapped up?

Just to update the record, Aine Murphy joined the meeting early on after it started, and an apology was received from Ciara Ferguson.

Are we happy to move on to clause 11, members? Yes. All right, then. Can you give us quick overview of clause 11?

Ms Barr: Yes. Clause 11 amends article 14 of the Private Tenancies Order 2006, as well as inserting new article 14A. It will provide extra protection to tenants and extend the mandatory notice-to-quit period for landlords to provide to tenants to eight weeks after the first 12 months and until the tenancy is 10 years old. The notice to quit for tenancies that are longer than 10 years remains unchanged at 12 weeks. It includes a provision to alter the notice-to-quit period by way of regulations and apply specific extensions if the relevant period is extended, which is subject to the draft affirmative procedure and imposes a duty that the Department must consult on any new provisions with landlord and tenant representatives and appropriate bodies before laying any drafts before the Assembly.

The Chairperson (Ms P Bradley): Thank you, Karen. This is another one that might have a bit of discussion around it. There were a lot of responses on it, so bear with me. Respondents were asked for their views on clause 11. The views that were expressed varied depending on whether they were from a landlord's or tenant's perspective. One respondent welcomed the standardisation of such notices and the amendment of minimum notice periods for tenants to provide to landlords. Concern was raised about how it would be enforced and that there should be a requirement on a tenant to give similar notice or be held financially responsible. Some would welcome additional proposals on grounds for eviction, similar to those in other jurisdictions, in order to reduce the number of evictions.

Respondents were also asked for their views on a range of periods regarding notices to quit depending on how long a tenant has been in a property. Renters' Voice was adamant that the

> *"Clause does not go far enough to increase security for private rented households";*

that there was

> *"Significant value in continuing with the 12 weeks' notice to quit required by landlords under Section 1 of the Private Tenancies (Coronavirus Modifications) Act (Northern Ireland) 2020";*

that the notice-to-quit period should be 12 weeks instead of the eight weeks, as currently provided for in clause 11(4), and that, for those that are under a year,

> *"It may be appropriate to consider...a notice period which is longer than 4 weeks but less than the period required for tenancies which are longer than 12 months."*

It was also stated that there should be a different range of periods for families as opposed to single people and couples and that, where there are arrears or antisocial behaviour damage, it should be only one month's notice. In addition, it was stated that quick eviction is required and that HMOs should be excluded from the extended notice-to-quit proposals, as that segment of the market is categorised by shorter-term lets.

Respondents were also asked for their views on the clause that gives the Department the power to alter notice-to-quit periods in some tenancies. The comments included that the circumstances in which that would or would not apply needed to be made clear. There were concerns about the exemptions for landlords retaking their property for sale or for personal or family occupation. It was stated that the proposal would be acceptable if tenants in rental arrears were excluded from the extended notice-to-quit period, and that the Department should not interfere in a private contract agreement between a landlord and a tenant.

There is a lot of commentary around that. It was raised at the Housing Rights conference. There is a good point about families, who will find it harder to find somewhere else, especially when you look at schools and everything else that they would have to change. That four-week notice to quit would not help them in any way.

Do members have anything that they want to add, or do they want to reinforce any comments that have been made? If not, we will go directly to the Department. Will you look at the queries that have been raised and give us any answers that, you think, we need to hear?

Mr Polley: I will start at the beginning. We will launch a consultation today or tomorrow on notices to quit. The Minister will write to the Committee about that, but we thought that we would tell you now. It is around the lengths of time, given everything that has changed since the Department originally consulted on that, including the entirely changed context around the private rented sector, and that we have now moved to 12 weeks for two years. The Minister has been clear that she does not think that eight weeks is sufficient time for a notice to quit and has asked us to consult on that. We carried out some research over the summer, and we will start a short, sharp and focused consultation on notices to quit. That should inform the passage of the Bill as it goes through the Assembly. I hope that it will help the Committee. You will all know about the clause that allows the Minister to amend the notice to quit by up to six months, with considered exemptions, without coming back and doing new primary legislation.

You have summarised briefly the considerable number of comments that were made around that area. There is a feeling from a lot of people that eight weeks is still short but that, if you go longer than that, it is important to take into account exemptions to consider different circumstances.

The Chairperson (Ms P Bradley): It is welcome news that you will consult on that. That was the evidence that we received during our consultation. I do not know how that will help us as we try to get this finalised; it will make that clause difficult for us when we get to the clause-by-clause consideration. What is your time frame on that? When does that close, and when will we get the results?

Mr Polley: It will be an eight-week consultation, and it will start as soon as possible: if not today, then tomorrow. The difficulty with such things is more the difficulty of getting them online and in an

accessible and appropriate format than the actual content. That would finish towards the end of January. It really is a very short, focused consultation. I cannot emphasise that enough.

Ms Armstrong: That is beyond our Committee Stage.

The Chairperson (Ms P Bradley): Will that go beyond our Committee Stage?

Mr Polley: I think so, yes.

The Chairperson (Ms P Bradley): OK, right. That makes things a little awkward.

Ms Armstrong: If the Department is taking that forward, I propose that it comes back with new wording of that clause stating that, until such times as it is amended, everybody gets a three- or six-month notice period. We cannot go forward with any of the provisions of that clause without that consultation, because it could throw up something completely different that it is outside the Committee's scope to deal with. In the meantime, other than removing that clause, the option is to keep it in with a basic suck-it-and-see, wait until the consultation is over and then deal with it at Consideration Stage.

Mr Frew: It is good to have agile government. It is good that you are listening to consultation. It is good that you have realised that there are issues with a clause of a Bill. That is all very good — and refreshing, might I add? However, the consultation being eight weeks raises all sorts of questions. The Committee will do its work and pass it on to the Assembly, as it should always do. We need real, good clarification from the Minister at Consideration Stage as to the intent of and rationale for the consultation.

How does the consultation tie in with any regulation? You will need the Bill to receive Royal Assent to be able to make regulations. There is a chicken-and-egg scenario in that the Bill gets passed and then you regulate for changes. What will be passed? That goes to Kellie's point on the time definitions.

Mr Polley: We are all victims of the fact that we are coming up against the end of the mandate and trying to cram a lot of work into a shortened Assembly term. We also have to be realistic that everyone has lost time because of coronavirus. I know that it is not a position that the Committee wants to be in; it is fairly unusual for us as well. We would normally slow the whole thing down and wait until things could be done in the correct order.

The Bill extends the notice-to-quit period to eight weeks for tenancies of more than 12 months but less than 10 years; it will stay at 12 weeks for tenancies of more than 10 years. The Bill improves the protections for tenants. It includes a clause to allow for that to be looked at. That regulation power could be used only after the Bill becomes an Act. That will not happen when the Assembly passes it. There will be a period whilst it goes through the process to receive Royal Assent. When that power becomes available to a Minister will depend on when the Bill is passed and when Royal Assent is received.

Ms O'Neill: The coronavirus emergency regulations have been extended until May 2022. Until that time, all landlords will still be required to give 12 weeks' notice to quit to their private tenants.

The Chairperson (Ms P Bradley): That gives some comfort, but it is just not ideal for any of us that we are in this position.

Ms O'Neill: No, it is not.

The Chairperson (Ms P Bradley): The Committee will have a discussion in closed session as to what we would like to see the Minister put in on that and what we put into our report on it.

Mr Frew: This question is not on that issue but still on clause 11: are you minded to do anything about students with tenancies of less than 12 months?

Ms Barr: There is a question in the consultation that asks for views on whether four weeks is sufficient for tenancies of under 12 months, which is the norm and is in the Bill. At the moment, we are keeping it as it is: four weeks' notice for tenancies of under 12 months.

Mr Frew: Four weeks. So you are not minded to amend the clause. You will wait for the responses to that question in the consultation.

Mr Polley: Yes, there is a consultation question on that.

Ms O'Neill: Yes, but not specifically for students; it is for tenancies that are less than 12 months. It is a wider question, Paul.

Our information is that student tenancies on the north coast are shorter because landlords rent out their properties during the summer months. My experience as the parent of students over the years is that, in the wider student body, students sign 12-month contracts when shorter contract periods may actually suit them better. However, landlords with properties that they do not rent out over the summer are more content with 12-month contracts for student tenancies.

Mr Polley: Eilish makes an important point. There were comments about having a different set of rules for students. I have not seen those fully articulated yet, but I know that the National Union of Students - Union of Students in Ireland (NUS-USI) is running a campaign. From our point of view, it would be difficult to start to change the rules depending on the educational status of a tenant. The Department wants to improve the protections for tenants, no matter what they do or who they are.

Ms Armstrong: The issue for students is that there are no get-out clauses in their contracts. They pay the whole 12 months. It does not matter how much notice they give; they are still hit for the full length of the contract. For instance, if someone starts uni in September or October, finds that it is not for them and leaves in November, they still have to foot the bill for a full 12-month rent. The notice to quit is just irrelevant to them. We would love to see the end of that type of thing. We saw how effective it was when university accommodation providers allowed people to break out of their contracts early during COVID.

Mr Polley: In almost all cases like that, tenants will have signed a contract for 12 months. The under-12-months part of the Bill will apply only where there is no written contract or there is a shorter tenancy that is turned into a periodic tenancy. In almost all instances, students will have agreed a 12-month contract that states that the tenancy will end after 12 months. They will essentially have received a 12-month notice to quit. They might also —

Ms Armstrong: Yes, but, if they want to get out earlier, they are penalised. Giving students legislation that allows them that breakout clause would be a massive improvement.

Mr Frew: Yes. Some students who take up a house in September have to keep it right through the following summer, even though term time has ended. That is an expense.

There is another aspect to that. I got the wording of my question wrong when I said "students". Some people who work in hospitals have been seconded to gain experience. You will find that contracts for rented properties around hospital sites are tweaked. There is a difference there. Teaching staff may also be seconded or take up temporary roles whilst people are off on long-term sick or maternity leave. That can have an impact on rented sector properties in areas, especially where there are larger schools. Although the numbers might be minute, that occurs. Do you have any thoughts on those scenarios?

Mr Polley: You are right. One of the questions that came up in the consultation was why we treat tenancies of less than 12 months differently. You just outlined a series of reasons why some people need flexible, short-term tenancies. Some landlords are willing to provide those. We do not want to overly constrain that, because those types of tenancies are important for the people who need them.

To answer a slightly different question, we decided to split it into three tenancies of up to 12 months, between one year and 10 years and 10 years and above, because we did not want to regulate out of existence those shorter, more flexible arrangements.

Mr Frew: OK. Thank you.

The Chairperson (Ms P Bradley): OK. There are no other comments about clause 11 at this stage. No doubt, we will have a wee bit of a chat about it after the meeting or on Thursday.

We will move on to clauses 12, 13 and 14. We will put those together for your briefing. Is that OK?

Mr Polley: Karen, do you want to comment on that? We did not think that we you would get this far, so we did not arrange who would speak. *[Laughter.]*

Ms Barr: Clause 12, "Interpretation", defines the Department responsible for the Bill and attracts the definitions used in the 2006 Order. Clause 13, "Commencement", provides that the Act comes into operation on the day after the day on which it receives Royal Assent. There is a wee bit that is probably different about that. Clause 14, "Short title", cites that the Bill would become the Private Tenancies Act (Northern Ireland) 2021.

The Chairperson (Ms P Bradley): Well done. Thank you. The views on clause 13 that we received include:

> *"Given the urgency with which all stakeholders agree these reforms are necessary, it may be helpful to include a time limit in this Clause (similar to Art 72(4) of the 2006 Order)."*

We received the view that:

> *"This does not give a clear picture of what is being changed from and to what."*

We also received the view that amendments are needed to ensure that the Department for Communities commences clauses by a specific date.

There were no comments on clauses 12 or 14. Do you have anything prepared on the concerns that were raised on clause 13?

Mr Polley: Commencement was raised a couple of times. Obviously, some people want things to start as quickly as possible. Now that we have gone through with the Committee what is involved, you will see that there are certain provisions on which we need to carry out consultation before we can commence, especially with councils, which will enforce it, but also with landlords and letting agents to be fair to them, to give them time and to inform them of what their new duties will be. We will also want to consult tenants and tenants' representatives and make sure that organisations such as Housing Rights are fully aware of the changes. Some things will take more work.

What we are commencing is the power for us to make regulations. We had a good discussion about the importance of getting things like electrical safety right and making sure, in consultation with the people who know about these things, that everything is properly defined and all the detail is filled out. While we might be giving ourselves the power to commence the powers early, those will be powers to make regulations.

The Chairperson (Ms P Bradley): OK. Thank you.

Ms Armstrong: My question is about commencement and the discussion with district councils. Bear with me: this is bigger picture stuff. At the minute, Departments do budget planning for the next three years. I do not disagree that there needs to be consultation with councils; there absolutely should be. My concern is that we could miss the window for the Budget. The consultation will happen with the councils on the responsibilities that they will have to take on. They will require a certain level of funding to deliver those actions, but we may have missed the window for them to be included in that funding envelope. I am concerned that, given the timings, we will not be running this work in parallel with the Budget. Are there any concerns about that? What is the Department planning to do to anticipate councils' budgets in order that they can deliver what they will be required to once this commences?

Ms O'Neill: It would be remiss of me not to say that councils do not get any funding directly from the Department to carry out the functions that they have under the Private Tenancies Order, where duties and not powers are placed on councils.

A project group has been established to look at the transfer to councils of responsibility for the landlord registration scheme and the fee income that that registration scheme attracts. That is a bigger piece of work that would give councils a funding stream to enable them to do property inspections and enforce a lot of the responsibilities that they already have. That project group was established, I think, the

week before we went into the first lockdown. We have held several meetings and commissioned some work to see what the legislation on that could look like. The view is that we have to do something whereby councils, which are at the front end and have big responsibilities in all of this, are properly funded to do the work that is required to make the private rented sector a better place for tenants and, indeed, landlords.

David may elaborate on budget planning. I am looking at this purely from the point of view of what we, in the housing division, do on private tenancies. We do not give councils any money. We are constantly in conversation with our colleagues in the councils about their having powers but no duties, about their lack of funding and about the strain that a lot of this can place on their resources. That is why we are looking at the registration scheme, the fee and how that income can best be used, and trying to tie everything together.

Mr Polley: That is a brilliant question, Kellie, because it allows us to talk about an important thing that will enable all of this. As Eilish said, the short answer is that we do not directly fund the councils. They pay for all of this out of their own resources: that is not just the things in this amendment Bill, but everything that is already in the Private Tenancies Order. The consistent message that comes back to us is that councils do not feel properly resourced to protect tenants in their local areas in line with the expectations of the legislation, which has been in place for quite a long time.

As you know, we have a landlord registration scheme. Landlords pay to register. That scheme is currently run by the Department, so the money comes to us. That leaves us in a position in which we have the resources but councils have the powers. We want to fix that. As part of our next phase, notwithstanding the fact that we have already started discussions with councils about how we might be do it, we are planning to move the landlord register to councils.

Ms O'Neill: With their agreement, David; we have to qualify that. *[Laughter.]*

Mr Polley: With their agreement. Maybe I should say that that is our ambition; I do not know how to put it.

Ms O'Neill: Yes; "our ambition" is probably a better way to phrase it.

Ms Armstrong: The Department knows the number of landlords and how much money comes in from the register. I will ask a clarification question. When we get to commencement, this will fall to the councils. A landlord who is based in Belfast may well have private tenancies in my constituency of Strangford. Where would that register money go? Would it go to Belfast City Council, Ards and North Down Borough Council, or Newry, Mourne and Down District Council?

On top of that, we are all very aware of what has happened in the past. The Department for Infrastructure, for instance, gave councils money to clean streets and things like that. Under litter legislation, they have the power to clean roads, but some do not do it. If we do not give them the money, how can we possibly stand over the fact that they will do this for tenants? They could say that they do not have the budget to do it. Often, they say to me, "We don't have the money to do that, Kellie, so we can't do it". I would be concerned if there was no commitment to fund that, even if it is just in the early days before it moves over to being funded from the landlord register. I just want to get clarification on that. We might go to commencement and it will make no difference; it could just be a piece of paper that means nothing for tenants.

Ms O'Neill: I will let David answer the bigger question about budgets and budget allocation. At the minute, the legislation on the landlord registration fee is very clear about what income from that fee can be used for: it can only be used for the promotion of the landlord registration scheme. The money comes into a central pot in the Department. We do not allocate that or look to see where the landlords live. It comes into a central pot and is used for the administration of the fee.

If we get to the point at which the budget is being allocated, which I hope we will, we will have conversations with councils then. We have started conversations with councils about what the fee should be, how frequently registration should take place, what changes need to be made to the legislation to reflect what the money can be used for — such as a planned programme of inspections — and whether responsibility for the property will be in the council area that the property is in or in the area that the landlord's home address is in. Those conversations are taking place. Research work to further inform those conversations was undertaken at the start of the first lockdown.

David, I will happily pass over to you the broader question on funding.

Mr Polley: I was going to make those points. The money from the landlord registration fee has to be used for the purposes of running the register. Whilst resources will be made available to councils, if we use the model that we are talking to councils about, it will only be possible to use it for certain purposes. It will not be made generally available through any sort of block grant whereby they can decide whether or not to use it for that purpose; it will be specific to that purpose.

Councils would also have duties associated with that transfer of responsibilities. The model would be more along the lines of that for HMOs. What was decided there was that certain councils would do it on behalf of others. Because of where most HMOs are, that is mainly run from Belfast, and there is another office on the north coast. We are in discussions with councils, and there are different models that they may want to use. People who operate HMOs pay a licence fee to Belfast City Council, which uses that money to fund the checks and things like that that it does. We think that that model works quite well.

Ms Armstrong: HMOs are unique to particular areas of Northern Ireland. I admit that there are not so many HMOs in Strangford, but what we do have in Strangford is mileage. Will rural proofing be built in to ensure that, in rural areas, there are not private tenancies out in the middle of nowhere?

Given that discussion, would it not be better to put a timescale on commencement so that tenants will know whom they can turn to if they have issues with their landlords and so that landlords know to whom they are responsible? Otherwise, it will drag on a bit. Should we say that section whatever will come into effect six months or 12 months after it receives Royal Assent? Should there be a date on it?

Ms O'Neill: I appreciate what you are saying. In an ideal world, we would love to be in a position to do that. However, we do not want to put in a commencement date, only for the work that we are doing to prove to be complex or require a lot of consultation, and, then, for it to look like we have to rush something to meet a commencement date.

We are keen to commence the legislation as soon as we possibly can. We have been working on it for some time, and it was stalled for a number of years. We are really keen to get it in as quickly as we possibly can, and we give that assurance to the Committee. Sometimes, if you put in a commencement date, that can drive perverse behaviours. If we are trying to meet a deadline, we may rush to do things and not do them as well or to the detail that we would have ideally liked to.

Mr Polley: I will sound very much like a civil servant, but we would be worried about just making up a number and, then, rushing to meet it and doing something wrong. We want to get it right.

Some of the things will take a lot more consideration. For example, we will need to go out to a full consultation on the energy efficiency provisions and spend a lot of time talking to the Department for the Economy and about the green growth strategy and things like that. We do not know what will happen with the climate change Bills yet. Their trajectories might even change what we want to do with the energy efficiency parts of the Bill. Other bits could be more straightforward and be done more quickly.

Ms Armstrong: My concern is about commencement and when the responsibility comes to councils. Consultation will have taken place so, hopefully, the councils will have agreed to whatever comes forward. However, if they get a commencement date and take responsibility in the middle of a financial year, they will not have the money to take it forward until the following April. I am very aware of the timing. I am sure that you guys will take that into account, but I would have loved to have seen a date in the Bill to move things forward.

I know that there is still a bit of work to do on the consultation on clause 11 and the requirements for notice. However, so many tenants are looking forward to this legislation that it would be lovely if as many of its provisions as possible have a commencement date, so that tenants know who they can go to, when they will finally get their receipts and when all that stuff will happen.

Some of it will come in after Royal Assent, but quite a bit will be left behind. With a future Minister having to bring the provisions in, it would be nice for some of it to have a commencement date within 12 months. I appreciate where you are coming from. Having been a councillor and knowing how councils' budget processes work, I ask that you, please, work with them on when their budgets are set. If we give them something mid-year, they will not be able to take it up.

The Chairperson (Ms P Bradley): It is really good to have Committee members who have been councillors. I was a councillor for seven years before becoming an MLA. That is why, on almost everything that Departments hand to councils, the first question that I ask is, "Who will pay for that?". I know what it is like to be a councillor and to receive powers from the Assembly without the money following. That happens more often than we would like. When I was on the Social Development Committee, I remember the HMO legislation and the question of whether the finances for it would follow. I agree with Kellie that, if we give powers to councils, they must be funded. Lots of our colleagues sit on those councils, so we get a barrage of questions on it.

We have lost our quorum. Aisling and Aine left at 10.30 am — they have stuff to do in the Chamber — and Andy has just left. Therefore, we cannot make any more decisions. However, as a little final part, we can highlight a few issues that came up on offences and penalties created by the Bill. One proposal is that:

> *"clear guidance is issued to local councils on how and when enforcement powers should be used."*

Another is that:

> *"The penalties should be spelled out clearly, and should be high enough to be a genuine deterrent."*

One individual said:

> *"Offences and penalties seem relate to the landlord. Should also be penalties for tenant offences".*

Another stated:

> *"It would be helpful if there was a way to find out if a landlord has previous convictions for these offences."*

We can leave those with you, and if you want, you can get back to us with your comments.

I am conscious that we do not have a quorum — therefore, we cannot make any decisions or ask the Minister or Department to do whatever we need them to do — but are there any further comments before we wrap up the session?

Mr Durkan: Could we go way back to clause 1?

The Chairperson (Ms P Bradley): Mark wants to go back to clause 1. We are going to start at the beginning again.

Mr Frew: Always living in the past. *[Laughter.]*

The Chairperson (Ms P Bradley): Remember what we say here is being reported by Hansard. Go ahead, Mark.

Mr Durkan: I am saying nothing.

The Department needs to publish the guidance and links to supporting materials for landlords and tenants. Do we know what the guidance will be yet? Obviously, the exact detail of the guidance will depend on the outcome of the Bill. All our focus has been on rent, which is natural enough because that is the transaction between the tenant and landlord. However, there is an issue with rates. In the not-too-distant past, I have seen that rates can prove difficult, initially, for landlords and, ultimately, for tenants, who were working on the assumption that the housing benefit element of universal credit was covering their rates. It does not; there is a separate process to apply for that sort of assistance.

Mr Polley: The guidance could usefully cover that to make sure that everyone knows what is going on. We talked earlier about producing a model tenancy agreement that sets out things other than the real basics. You have to consider that there are different steps. There are things that absolutely have to be in it. Some of those are blindingly obvious. Who is the landlord? That is not always that obvious, to be honest. Where is the tenancy? What exactly are they renting? What is the extent of it? The

dates, what the rent is and when it should be paid are also the sorts of things that we might make mandatory.

There is then another set of things. We talked about electrical safety and things like that. It would be really useful to put things like rates in the guidance, because things like that are becoming more complicated. Rates are not always part of the rent. It is only mandatory to make that arrangement up to a certain level. It is customarily carried out for all tenancies in Northern Ireland, but it might not be. Things like that need to be clear.

Mr Durkan: It has caused difficulty and problems even for letting agents, people for whom this is their bread and butter.

Ms O'Neill: We try to communicate the message through our landlord newsletter so that landlords can let their tenants know that tenants have to make a separate application to claim for their rates payments and that it is not included in their housing costs. We also communicated it through the tenancy deposits scheme administrators. It has caused people real difficulties; absolutely.

The Chairperson (Ms P Bradley): OK. Thank you for joining us today. It is really good that we got that wrapped up. Will you be able to furnish us, before this Thursday's meeting, with responses to some of the queries that were raised last Thursday?

Ms O'Neill: We are working on those at the moment. We hope to be able to come back to you with anything that we can, Chair.

Mr Polley: Would you rather have the responses to last Thursday's queries as quickly as possible, rather than all the responses altogether?

The Chairperson (Ms P Bradley): Yes. When you have them, fire them through to us. That would be great. Give us whatever you have for this Thursday, whether it is all of them or not. Please get that through to us. We will probably have a closed session with the Bill Clerk on Thursday, so that will help us with that.

Mr Polley: Yes.

The Chairperson (Ms P Bradley): That is grand. Thank you, folks.

Ms O'Neill: Thank you.

Ms Barr: Thank you very much.

Mr Polley: Thank you, Chair.