



Northern Ireland  
Assembly

Committee for Communities

# OFFICIAL REPORT (Hansard)

Private Tenancies Bill:  
Committee Deliberations

16 December 2021

# NORTHERN IRELAND ASSEMBLY

## Committee for Communities

### Private Tenancies Bill: Committee Deliberations

16 December 2021

**Members present for all or part of the proceedings:**

Ms Kellie Armstrong (Deputy Chairperson)  
Mr Andy Allen  
Mr Stephen Dunne  
Mr Mark Durkan  
Ms Ciara Ferguson  
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 Deputy Chairperson (Ms Armstrong):** I welcome David Polley, Eilish O'Neill and Karen Barr from the Department. Good morning.

**Mr David Polley (Department for Communities):** Good morning, Chair.

**The Deputy Chairperson (Ms Armstrong):** It is good to see you again. David, we will go through the clauses with you.

Clause 3 is "Tenant to be provided with a rent receipt for payment in cash". I remind members that the Committee, at its meeting on 9 December, concluded that the amendment should include a receipt for all payments related to the private tenancy that are paid in cash to the landlord or agent. The Department has confirmed that the Minister will take forward an amendment to the clause: the insertion of a subclause stating that a receipt is to be provided for all cash payments arising under the tenancy. The Department is developing the text of a proposed amendment and will forward it to the Committee as soon as possible. Thank you so much for that, David, Eilish and Karen.

In relation to the proposed new article 5(3)(b) in clause 3, the Department states that its position remains that removing the text "as soon as reasonably possible" would mean that an offence is automatically committed if the receipt is not provided at the time of payment. The time of payment may be at the tenant's choosing, but the duty to provide a receipt is wholly dependent on the landlord or their agent. This scenario must be provided for: if a tenant insists on payment being made, even though the agent or the landlord does not have the means to issue a receipt. The removal of that text might also mean a landlord or agent having to refuse payment until they are in a position to provide a

receipt at a time of payment, leading to tenants being in rent arrears. The Department, therefore, does not wish to take forward such an amendment.

David, will we see the text of the amendment on all cash payments in time for our meeting on 21 December, or will that need to be taken forward as a Committee amendment?

**Mr Polley:** We have been working with the drafters to get something to you as quickly as possible. Obviously, we want to get it to you in time for that meeting. The Office of the Legislative Counsel (OLC) is working on it. It is a bit more complicated than it might at first seem, but we are getting there. This is Thursday, and 21 December is Tuesday, so you will need it by Monday. That is what we are trying to do, and we will catch up with OLC after this meeting.

**The Deputy Chairperson (Ms Armstrong):** OK. Let us know about that as quickly as possible, because our meeting on 21 December is predicated on getting information through from you. If needs be, given the fact that we will be in recess, we may have to have a meeting before recess ends. We need to get that text as soon as possible.

Do members have any comments on this?

**Mr Frew:** On all of clause 3 or something specific?

**The Deputy Chairperson (Ms Armstrong):** On the wording in the proposed new article 5(3)(b).

**Mr Frew:** Guys, you know my views on this. I do not believe that that text should be included. It leaves it open. I get your arguments; I just do not agree that it needs to be there. I understand what you are trying to do, but I do not think that it should be there, so we are probably at loggerheads on that one.

I cannot speak on behalf of the Committee, but, for my part alone, I do not like the fact that clause 3, which amends the Private Tenancies (Northern Ireland) Order 2006, inserts new article 5(3)(b). That is where we are at.

**Mr Polley:** We understand where you are coming from. The intention in the drafting is that the receipt be given instantly. That was always the intention of the drafting and how it was set up. The guidance will say that tenants should get a receipt when they hand over cash. When you make law that creates an offence, however, you need to cover off strange but reasonable occurrences, which is what we are trying to do. We have talked about those at some length, and we do not want to do that again. Ultimately, we feel that it has to be in there, because there are reasonable circumstances in which a tenant might hand over cash and not get a receipt immediately. The point is that the tenant chooses when the cash can be paid, but the duty is on the landlord. Therefore, if a tenant chooses to do that, reckless and inadvisable though that might be, the duty is on the landlord. If the landlord cannot provide an immediate receipt, the landlord creates the offence, even though the action was that of the tenant. That is at the heart of our concern about the Committee's proposal.

**Mr Frew:** I am thinking out loud, which is always dangerous. For me, what is destructive about article 5(3)(b) is not that it implies that it is not possible to give a receipt at the time of payment — again, I do not agree that it is not possible; a landlord or agent should be able to say, "No. I will not take the money off you at this time, because I do not have the facility to give you a receipt" — but the next part:

*"as soon as reasonably possible after that time."*

Can we have a compromise sentence that provides a defence rather than referring to a reasonable time? What I mean by that is that it should read, "The receipt must be provided at the time the payment is made". If you need a sub-paragraph (b), rather than it being about a time, could it be about a defence of why a landlord would take cash without giving a receipt? I struggle to find a defence or a reason, but you see what I am getting at. It is about apportioning not a reasonable time but a reasonable defence for taking the cash.

**Mr Polley:** It is useful to ask that question. The way in which we have drafted it is roughly along those lines and, maybe, not what you suggested you thought it was. It means that it has to be done as quickly as possible, and, if it is not possible to do it right away, it still has to be done as quickly as possible, which is to say as quickly as a reasonable person would think possible. The landlord would have to explain, ultimately to a council or court, why they did not do it right away. The court would

decide whether it thought that was reasonable excuse for not doing it right away. It is not up to the landlord to define that. The point is that it needs to be done right away.

**Mr Frew:** We are making it an offence — there is no doubt about that — but I cannot see how a landlord or agent who was in court and giving some sort of defence would not be taken in hand by the court anyway, no matter whether 5(3)(b) was in place. Whilst he or she would technically be committing an offence by taking cash and not giving a receipt, in a court of law, there will always be a pleading of a defence, and, if the judge or the court deems that to be a reasonable defence, surely that would still cover the offender.

**Mr Polley:** If we put in the Bill the provision that that has to be done right away, and we do not include "as soon as reasonably possible", we do not have the line that gives the court the ability to decide whether it is reasonable that the landlord did so a week later. My point is that just because they cannot do it right away does not mean that they do it at their leisure. It is still up to them to get the receipt to the tenant as quickly as possible. That is how we have drafted it.

**Mr Frew:** In the real world, what would happen is that, if a receipt were not handed over immediately, it would be handed over the next time that an interaction takes place, which could be in a month's time when the next rent is given. You can see the convenience of that in most cases where all parties are quite innocent and honourable.

**Mr Polley:** I do not think that that is "as soon as reasonably possible".

**Mr Frew:** Yes, but you can see how, in a real-life scenario, it would play out that way.

**Mr Polley:** Yes.

**Mr Frew:** Why would any landlord drive somewhere to hand over a piece of paper and not get anything in exchange? They would wait until the next time that they have to get rent off that person, be it in one week, two weeks or a month.

**Ms Eilish O'Neill (Department for Communities):** There is, though, a digital or electronic way to issue a receipt. Say, for example, a tenant called at a landlord's house and, because no one was in, posted the rent or whatever other payment in cash, along with a note, through the letter box, and the landlord received that. If the landlord had an email address for the tenant, it would be reasonable to expect an acknowledgment by some digital means that the money had been received. If a receipt was not issued at that time, and the landlord did not have any digital method of contacting the tenant, he could call at the tenant's property and issue a receipt.

**Mr Frew:** You raise a valid point. If I may, I will tease that out with you. Imagine a scenario in which a tenant rolls up to a landlord's house and posts cash through the letter box. To me, that would be inadvisable.

**Ms O'Neill:** Absolutely.

**Mr Frew:** Imagine, however, that a tenant does that. The landlord comes home from a night out, or even a holiday, and finds that cash in his hall. Under new article 5(3), has he committed an offence? If that man comes home from a night out or a week's holiday, sees the cash and does not give a receipt until the next time that he sees the tenant, where does that person stand under new article 5(3)(a) and 5(3)(b)?

**Mr Polley:** If a landlord comes back and finds cash, that is the point at which they receive it. If it is not reasonable for them to give a receipt at that point, because the tenant is not there, they are under a duty to get a receipt to them as quickly as reasonably possible. There are many different interpretations of that. That is up to a court, and that is why we have courts. We will include guidance on that. You gave the example of a landlord saying, "I'll just give it to them next month when they come again". We will make it clear in the guidance that that is an offence and that the landlord is under an obligation to get the receipt to them as quickly as possible.

**Mr Frew:** New article 5(3)(a) states:

*"(3) The receipt must be provided—  
(a) at the time the payment is made, or".*

If you left out "or" and new article 5(3)(b) and a tenant went to court about it, because they had posted the money through a landlord's letter box when the landlord was absent, I would say that the landlord had not committed an offence. That in itself would be a defence in court, because they were not there or privy to the exchange of cash.

**Ms O'Neill:** I imagine that those are some of the scenarios that councils will look at. When a complaint is made to a council about the non-receipt of a receipt and the council carries out its investigations, the landlord can explain how that meets the test of reasonableness. It becomes an offence where the tenant repeatedly does not get a receipt for payments made to the landlord and the landlord does not have any justification for that. Whether it is reasonable for the landlord not to issue the receipt at the point at which they received the cash is a judgement call, which leaves councils a bit of flexibility and capacity to make that call. That is our intention.

**Mr Frew:** That brings me to my point about changing new article 5(3)(b) of the Private Tenancies (Northern Ireland) Order 2006 slightly so that it is about not a reasonable time but a reasonable exchange. Do you see what I am getting at? If a tenant were to post the money through a letter box, the landlord would not be privy to that exchange. There are all sorts of dangers and pitfalls with a tenant doing that, and they should not do that.

**Ms O'Neill:** No.

**Mr Frew:** No action, however, would have been taken by the landlord. In itself, that should be a defence.

I do not know whether that needs to be in the Bill, but that would be the compromise. I do not know how you would word that.

**Mr Polley:** That would mean changing the wording to, "if that is not possible, at the next opportunity", or something like that.

From the Department and the Committee's point of view, we are trying, by going backwards and forwards, to finish this off so that the Committee can complete its report.

**Mr Frew:** Yes, of course. I just do not like new article 5(3)(b). That is the truth of it.

**Mr Polley:** Eilish, our guidance will cover off some scenarios on reasonableness, will it not?

**Ms O'Neill:** The guidance to tenants will say that they should not give over any cash unless they are in a position to get a receipt. The guidance to landlords will say that, when they receive any cash payment, they should provide a receipt and detail any information that is required in legislation. We will not highlight anything to do with reasonableness. We will say that that is what they should do, that that is best practice and that it is only in exceptional circumstances that a receipt cannot be given, and it should be given at the earliest possible opportunity.

The concern that you articulated earlier was about a reasonable time. To us, that is the same as having a reasonable defence. That sounds quite straightforward, but I worry that, when we go back to the drafters and start using words like "defence" or "justification", it will suddenly become more complicated, and we will have to come up with scenarios. That is the only thing.

**Mr Frew:** I get that. That is not my optimum position, but I still do not know that we need, want or should have new article 5(3)(b). I get your arguments and the reason why it is in the Bill; I just do not agree with them. It is as simple as that. I need to meditate on it more.

**Ms O'Neill:** OK.

**The Deputy Chairperson (Ms Armstrong):** I do not see any more indications.

**Mr Polley:** Does anyone else want to ask us questions about that?

**The Deputy Chairperson (Ms Armstrong):** I am just checking now. If any of the members who are on StarLeaf want to ask questions, they should raise their hand. I cannot see your faces, so you will need to do the digital hand-waving at me. There is nobody, David. We will move on.

Also on clause 3, the Committee proposed an amendment that would prevent a landlord from requesting only cash payments or, alternatively, an amendment that would place a statutory duty on a landlord to offer a choice, potentially from a list of agreed options, for the method of payment for rent and other payments related to the tenancy. I remind members that the Committee sought legal advice in preparation for a potential Committee amendment on that, should it be necessary.

The Department states that, with the time frame available for the passage of the Bill, it would be unable to undertake an impact analysis of the current position, the types of payments and agreements between landlords and tenants, how and why a change in line with the Committee's proposed amendment would be beneficial and to whom, how many other legislative measures existing and/or proposed, including contract law, may interact and impact, and any comparative analysis of other jurisdictions where such arrangements are in place. Therefore, the Department does not wish to take forward the amendment that has been proposed by the Committee. The Department will, however, ensure that the Department's guidance to landlords and tenants will reiterate that landlords should offer a choice in the method of payment.

David, do you have anything that you want to add to that?

**Mr Polley:** Just that what the Committee is talking about would, quite late in the day, add an entirely separate clause to the Bill. The amendment was raised only at the last Committee meeting, or possibly the one before that. As we tried to set out, our scoping and looking into it revealed that there is quite a lot of stuff to be worked through. That is not to say that you could not work through those things, but we have a limited time frame. As I said, it would be a whole new clause. It could not be done by tweaking a bit of the legislation. We are not minded to try to put that into the Bill.

**The Deputy Chairperson (Ms Armstrong):** Members, are there any comments on this?

**Mr Frew:** We have not had our legal advice yet.

**The Deputy Chairperson (Ms Armstrong):** We will deal with that in closed session.

**Mr Frew:** I am still out on this one. I am still keen to explore some sort of clause. I agree with you that it should not be incorporated within clause 3, with regard to the amendment of the old article 5, but I am still considering it.

**The Deputy Chairperson (Ms Armstrong):** I do not see any other members indicating at this stage. We will probably deal with this a wee bit more, David, and we may come back to you guys on it.

**Mr Polley:** We expect to hear more from you after you have received your legal advice. Is that fair to say?

**The Deputy Chairperson (Ms Armstrong):** Yes.

We move to clause 7, "Restriction on rent increases". After consideration of the officials' response on the matter, the Committee agreed that it no longer wanted to seek a change to the name of the clause. The Department then advised that it was content to look at increasing the notice period to three months and that it would discuss this with the Minister and drafters. The Department has confirmed that it will prepare an amendment to increase the notice period in clause 5D(4) to three months. It is developing the text of a proposed amendment and will forward this to the Committee as soon as possible. Again, David, we intend to meet on 21 December.

**Mr Polley:** You will definitely get that before 21 December. We have it already, and we will send it to you. We were going to wait to see whether we had to send you anything else after this meeting, and, just to try to keep things simple, we were going to incorporate everything into one letter.

**Ms O'Neill:** We received it late yesterday; otherwise it would have been with the Committee.

**Mr Polley:** Yes, we got it sorted out late yesterday.

**The Deputy Chairperson (Ms Armstrong):** Do members have any comments on that? We welcome that because that is one of our suggestions.

Clause 8 is "Fire, smoke and carbon monoxide alarms, etc.". The Committee requested that the Department provide further information on the review of building regulations and fire safety standards and that it advise members on the time frame and progress of the review. David, will you talk us through the response from the Department of Finance, please?

**Mr Polley:** Yes. We got this from the team in the Department of Finance, and we have been working with it a bit more on this general area. This is part of the broader work that is going on in relation to building safety. Some members might be aware that DOF is leading a programme board to make sure that people in Northern Ireland are as protected in terms of fire safety, especially in taller buildings, as elsewhere. This comes from the outworkings of the Grenfell fire and the judicial review of that. As you will see, the Department of Finance has split it into parts and is working on the first part. It is trying to get the statutory rule through in this mandate, and it will then move on to the second part.

I entirely understand the Committee's interest in it. I am also interested in it, obviously, because we work in housing, so there are impacts from this on the Housing Executive and on our housing associations. Within housing, we are taking forward little bits of that programme of work. Mark O'Donnell, my grade 3, sits on that programme board, and this is all part of that broader part of work. The point that we want to make to the Committee about the Private Tenancies Bill is that, whilst it is very interesting, very relevant and very important, it is about the context within which private tenancies exist, not the private tenancies themselves, so we do not think that there is any reason why we should not progress with what we have in the Private Tenancies Bill while that work goes on.

**The Deputy Chairperson (Ms Armstrong):** Are you content that, when the Department of Finance does its work, the current wording in clause 8 will enable that to happen, whatever the impacts are on private landlords?

**Mr Polley:** Yes. I think that it future-proofs it, in fact, because, at the minute, there are scenarios in which there are more protections outside the door of the actual tenancy. You will have seen, however, from the Department of Finance's response that there is not currently an obligation to have a fire detection system in large blocks of apartments, some of which are sublet as private tenancies. That will be part of the second part of the Department of Finance's work. Our text is future-proofed so that, if that changes, our text will align with it. It says that there may be an obligation to do stuff outside, in the shared areas. I do not have it to hand now. The point is this: no matter what scenario happens after the consultation in the next stage, our text is future-proofed to deal with it.

**The Deputy Chairperson (Ms Armstrong):** Have members any comments? To be honest, we are probably covered on that one, David. That is fine. Thank you very much.

We move to clause 9 and schedule 2, "Energy efficiency regulations". The amended schedule 2 was provided to the Committee during its meeting on 9 December, and it was agreed that it would be considered today. The Committee is not obliged, however, to come to a decision on the amended schedule, as we did not take evidence on this version. David, will you talk us through the new schedule 2?

**Mr Polley:** Yes, I am delighted to. My first point is that this will be done by regulation. This is a schedule that allows the Department to make regulations. Those regulations will be draft affirmative and will be made after full consultation. They will also be made in alignment with the energy strategy and things like that to make sure that they are workable. This is complex, and it is quite an imposition on landlords, or it will be over the next few decades, so we want to get it right. We need to take our time over it and make sure that it works well.

The second point that I want to make is that the Department would like the Committee to take a view on the amended schedule. The Committee does not have to take a view on it, but we would value the Committee's support on this amendment as it goes to the Assembly.

Let us just run through it. The first bit is a basic prohibition. It prohibits someone from letting out — letting or continuing to let — a dwelling house of inadequate energy efficiency. So, if we were to bring something in, and you were already letting out such a house, you would be caught under that provision. We have not changed that in the proposed amendment. It is as it stands in the original Bill.

The second bit says that this is based on the energy performance certificate (EPC). It is already a legal requirement to have an EPC in order to let out or sell a house. We will say that the EPC, which you already must have, needs by a certain date to be at a certain level to represent the starting level of energy efficiency. That has not changed. Those first two points are the basic architecture of what we propose, and they have not changed.

We have added a lot more detail to some of the following sections, and that is to allow us to make a more comprehensive set of regulations that, over time, will allow us to incrementally drive up the energy efficiency of the private rented stock to where it needs to be in order to tackle fuel poverty. The private rented sector has some of the buildings with the worst energy efficiency, and they are lived in by some of the most vulnerable people. We need, generally, to get our whole domestic energy efficiency up to a level that allows us to deliver net zero carbon by 2050.

The next section talks about exemptions to the prohibition. Those are set out on the basis of the type of house. They could be, for example, the way in which the building is constructed, which would limit the type of energy efficiency that you could have. It could be because they are listed, inside and/or out, or protected in some other way. We have exemptions for that sort of thing.

The second thing is that we have introduced — this is new in the amendment — the concept of an "improvement exemption", which would say that, notwithstanding the fact that it might be impossible, or very difficult, to get right away to where the energy efficiency needs to be, that you will be allowed to continue to let out the house while you make a series of improvements over time. We have said that we can link that to a cost limit. We would expect the landlord to spend a certain amount over a certain period, and they could get an exemption as they incrementally make improvements to the energy efficiency of the house.

We say that there can be other types of exemption. We are thinking of where the tenant who is in the house refuses, and has a reasonable reason for refusing, to allow building work to take place within the house, meaning that the landlord has to wait for a change of tenancy. It is also possible that a landlord might need permissions from some other party, permits or something like that. If, for example, you were renting out an apartment in a large block of apartments, you would need the permission of the leaseholder to do the work, and that might not be forthcoming. Another scenario is that a landlord might need listed building consent or something like that to do certain work. Those are the sorts of things that we would be looking to create exemptions over. The point is that what has changed is that, in the way it was drafted, if a building was exempt, that was it, and if it was classified, it was completely exempt. We have now introduced the concept of gradual improvement and of doing as much as you can. Even if it is not possible to get to where you need to be, we should think about making those landlords do as much as possible within the constraints of the building.

The next section deals with other aspects of the regulations. Those relate to the process. There will be an authority to oversee it. There will be processes for applications. There will be a register of the exemptions, which will be publicly available so that tenants can check. We will allow inspections, so there will be powers of inspection. The exemptions will not be endless. They can be time-bound, so, if you get an improvement exemption and say, "I will do this amount of work", but after a certain period you have to come back, and say, "Maybe I'll have to do more work now", it will gradually increase your energy efficiency.

There is a bit more detail on the improvement exemptions. There are powers on appeals and disputes. At the end, there is temporary exemption for a situation when somebody suddenly becomes a landlord and has to sort all those matters out. That matches the provision in houses in multiple occupation (HMO) licensing legislation.

There is then a bit that relates to article 12 of the 2006 Order, which is about a landlord getting access to a building and a tenant having a duty to allow a landlord to carry out necessary works. It defines those things as "necessary works", although, ultimately, there might be circumstances when it might not be possible to get in, so we might need to consider an exemption for that. We define "EPC" and future-proof it in the event that the EPC system changes or a different system comes in.

There is quite a long bit at the end about offences. As you probably know better than we do, you more or less need to set out what the offences are and how they will be dealt with in the primary legislation. There is quite a lot of detail in that section. The regulations can create offences, so there are the offences of not only the letting-out scenario but the continuing-to-let scenario. That gets more complex because it depends on how long you have continued to let.

We have introduced specific sections that deal with what happens if you get an improvement exemption but at the end of an exemption period you have not done what you promised to do. There is information on fixed penalty notices, which are a way of avoiding going to court, and what happens if you pay a fixed penalty notice but continue to let the property. All those sorts of things are dealt with. You will see that there are various scenarios in that, but the basic principles are on continuing to let and letting. Fixed penalty notices are introduced, as are how to deal with them and what happens when you pay the fixed penalty notice but continue to let. All those scenarios are dealt with.

I feel that that was a whistle-stop tour, Chair.

**The Deputy Chairperson (Ms Armstrong):** Do members have any queries on that?

David, if, as a result of this work, the value of the property is increased and we then take into consideration the local housing allowance (LHA), are there any protections for the tenants following the energy efficiency improvements so that they do not see a significant hike in the rent — I know that there is another piece of legislation on that to come in the next mandate — and it maybe goes beyond the LHA and makes it impractical?

**Mr Polley:** Not in this bit. This is about compelling landlords to carry out energy efficiency work. You are right: although it should increase the value of the house, it will also cost them money, and they will have to pay for that. There are a few things in there, though. There could be a cash limit to an improvement exemption gradually over time. The point of that is to not suddenly shock the landlord with a cost that is so large that it will drive them out of the sector and they will stop letting the house, with the result that we lose supply or they feel that they need to put the rent up steeply in order to pay for it. The idea of doing it gradually over 30 years is meant to mitigate that risk, but there is nothing in this part that refers to restrictions on rent increases.

As you say, we will look at that in phase 2. I have to make the point, however, that there is the question of who pays, generally, for energy efficiency improvements in the domestic dwellings sector and of how they are paid for. That discussion is ongoing. The affordable warmth scheme is available, and that pays for up to half the cost for a private sector landlord. It is not well used. Part of the reason for that might be due to the availability of grants or low-cost loans and things like that, which will have to be considered, but in broad policy terms, over the next 30 years, we will have to consider how we do the transition in a way that does not render the private rented sector unaffordable for tenants.

**Ms O'Neill:** David, it is worth saying that we will be working with our colleagues as they develop the energy strategy. They are looking at the schemes and programmes that will be introduced to help a range of householders, not just private landlords but owner-occupiers and landlords in the social sector who also have to carry out work to their properties in order to meet our reduction targets.

**Mr Polley:** Chair, those are the things that we will have to work out. That is why we are talking about consulting on aligning things. It will take over 30 years. One of the reasons why we have taken the amendment is that we identified from the responses to the Committee that people assumed that we would do it in a certain way in order to try to mitigate the risks, and we wanted to make sure that our regulations allow us to do it in that way. In particular, the point of the improvement amendment is to allow the work to bring things up to standard to be done gradually over time rather than creating a situation where a landlord is forced to do a lot of work very quickly at great expense, which would create a shock.

**The Deputy Chairperson (Ms Armstrong):** On the schedule, what discussions have there been with Department of Finance officials about the building regulations? Has there been any crossover on that?

**Mr Polley:** Yes. We discussed it with the Department, which is one of the reasons why there is a bit in the schedule about future-proofing EPCs. Other places have looked at EPCs. Scotland reviewed its EPC system. I am not sure whether you want to get into this or even whether I can. The EPC system will need to evolve and change as we go through to get us towards 2050 and for it to serve that purpose. Scotland reviewed its system, asked whether it should be replaced with something different and decided to change it instead. It is possible that something like that might happen here, which is why that bit is in the schedule. It is based on the EPC system as it is as the minute.

**The Deputy Chairperson (Ms Armstrong):** As you say, it is about future-proofing as well. No problem. Does anyone else want to come in on clause 9? We will discuss it later, David, so at this

stage, thank you very much for providing us with that. As a Committee, we will look at that, so we might come back to you if there is anything further.

**Mr Polley:** OK. Thank you.

**The Deputy Chairperson (Ms Armstrong):** Clause 10 is "Electrical safety standards regulations". Members, last week the Committee discussed whether all regulations on the clause should be laid before the Assembly. We should receive the report of the Examiner of Statutory Rules (ESR) on the Bill shortly to aid our consideration of that point. Is there anything that you wish to say on that today, David?

**Mr Polley:** We wanted to check that this is the Committee's proposal that possibly all regulations should be draft affirmative. At the minute, only parts of them are.

**The Deputy Chairperson (Ms Armstrong):** Yes.

**Mr Polley:** OK. We would have to make another amendment to the Bill for that.

**The Deputy Chairperson (Ms Armstrong):** OK. We will discuss that in closed session. No problem.

Clause 11 is "Validity requirements for notices to quit given by landlords and tenants". Members, given the potential implications of an amendment that could extend the notice to quit period to six months, the Committee was minded to consider tabling an amendment that changes the notice to quit period provided in the Bill from eight weeks to 12 weeks, as is the case in the Private Tenancies (Coronavirus Modifications) Act (Northern Ireland) 2020. The Committee is seeking the views of Assembly legal services on whether amendments of the type proposed by the Committee would engage article 1 of protocol 1 of the European Convention on Human Rights (ECHR) and the potential consequences of that. The Department would like, however, to explore further the Committee's consideration of an amendment similar to the Private Tenancies (Coronavirus Modifications) Act (Northern Ireland) 2020. The Committee had also requested that the Department provide a timeline showing how it intends to ensure that the responses from the consultation are available to the Committee and to MLAs in good time before the Bill's Consideration Stage.

The Department states that it wishes to reserve its position on any amended notice to quit period until there is an outcome to its recently launched consultation, which closes on 25 January 2022. The Department states that it is difficult to provide a definitive response to the Committee's request for a timeline in advance of the outcome of that notice to quit consultation and has highlighted the reasons for that in its response. David, will you take us through that, please?

**Mr Polley:** When the Department is doing a consultation, it will reserve its position on any potential amendments until that consultation concludes. The Committee signalled that it is thinking about making the basic notice to quit 12 weeks, so we want to explore in exactly what set of circumstances that would happen, and we put those in our letter. The first point is that we have split it into landlords and tenants. Landlords give notice, and tenants give notice. Is the Committee saying that the measure is just for landlords, or is it for landlords and tenants?

The second point is that the Bill, as it is written, sets out different notice to quit periods for different lengths of time, if the tenancy is a different age or if tenants have been in a tenancy for different lengths of time. We propose changing those to a short 12-month introductory period, a period of 12 months to 10 years and then a period of over 10 years. How does the Committee's proposal fit within that framework?

The third point is that, as you will have seen, we have suggested that any longer notices to quit would need consideration of exemptions, so we are wondering whether the Committee is considering those. On that point, if you were going to say that the period would be longer but with exemptions, we would need to work out what those exemptions are and do quite a lot of detailed work to define them and things like that. That is a concern to the Department to the extent that the Bill could progress saying that there will be exemptions or that there could be exemptions but that we do not know exactly what they are or that they are not well defined yet or something like that. That would mean that the Attorney General would be faced with a Bill that, on the face of it, has a longer notice to quit period but does not actually have those balancing measures in place yet. They would want to consider those altogether to see whether it is in within competence.

**The Deputy Chairperson (Ms Armstrong):** We will go into closed session to discuss that, and we are seeking legal advice. As you will appreciate, the legal advice is privileged, unless we get to a situation where we say, "I will show you mine if you show me yours". *[Laughter.]* For legal reasons, I mean. Members, do you have any comments on that? I am checking whether any member who is on StarLeaf wants to come in. The Committee was particularly interested in the period under 12 months.

**Mr Frew:** Remind me of something; I was distracted for a short period, so please forgive me. Tenancies under 12 months are not just for students; they can be for hospital workers, doctors, medics and teachers who may have a placement to cover maternity leave or long-term sickness. What are you minded to do on that? I have forgotten.

**Ms O'Neill:** We retained the four-week notice to quit for those tenancies that will fall into the categories that you have just highlighted where a shorter-term tenancy suits the tenant and suits the landlord and a longer notice to quit period may not be required to tie a landlord into giving a 12-week notice to quit where the tenancy has maybe already been agreed for six months. That seemed, on the face of it, not to make a lot of practical sense, because we are aware of people who move for work reasons and take out a short-term tenancy. Most students have tenancies for 12 months, unless they are in Coleraine university, where there are shorter-term tenancies because the landlord is able to let the property out during the summer. We were not differentiating; we were saying that, if a tenancy is 12 months or below, the four weeks' notice to quit would remain, just for the purpose of proportionality.

**Mr Polley:** Yes. The proposal is that once the 2006 Order is amended by our Bill, as long as the Bill goes through as it is drafted, there will be a four-week notice to quit for tenancy of one to 12 months. For tenancies of 12 months to 10 years, there will be an eight-week notice to quit, and for tenancies that are longer than 10 years, it will be 12 weeks. That is for a landlord to give to a tenant. For tenancies of 12 months to 10 years, it will be different if a tenant gives notice to a landlord saying that they can leave more quickly.

To add to Eilish's point, it is also worth noting that the shorter tenancies tend to be under contract as well. If you enter a six-month tenancy, you would normally have a contract that says that the tenancy will end in six months. That essentially operates as a notice to quit, depending on how it is drafted and written. Most people in a short-term tenancy already receive a notice to quit on the day that they start the tenancy, if you can follow that.

**Mr Frew:** Yes. I get that.

**Ms O'Neill:** The majority of tenancy agreements start as a 12-month agreement. If the tenancy is not formally reviewed, it falls into the periodic tenancy group. Where you have a 12-month contract, as David said, there is a date when your tenancy starts and you know in advance when your tenancy is due to end. Any discussions with the landlord about the tenancy continuing beyond that date will take place before that date. Landlords tell us that well over 90% of tenancies end when it is the tenant who gives notice. The additional time was for those tenants who do not want to leave their home to enable them to have the additional time to find somewhere else. The eight weeks do not have any exemptions. It is a two-month notice to quit without any built-in exemptions, as is currently set out in the Bill.

**The Deputy Chairperson (Ms Armstrong):** We talked about energy efficiency and the break in tenancy when tenants are changing. If short-term tenants are there for under 12 months and intend to continue their tenancy but the landlords tells them, "No. That's it. The end of the contract is the end of the contract. Off you go", we still have the issue that the notice to quit period is four weeks because the tenancy is under 12 months. The four-week period ties in with the definition of homelessness, but it puts an extraordinary amount of stress on the tenant to find an alternative premises that will suit their housing benefit levels and LHA rates and all that. Public funding could be available to assist landlords with the work that they need to do to improve the energy rating of the premises. There is a concern that, effectively, someone's contract can finish and a landlord could immediately put that person out into homelessness status. We want to make sure that there is protection in those circumstances, but you are saying that, if someone has signed a contract with an end date, the tenant cannot give an earlier notice to quit without —.

**Ms O'Neill:** The tenant could negotiate. We know from some landlords that that has happened. The tenant's circumstances may have changed, so they went to the landlord and the landlord accommodated a move. In some circumstances, the landlord will say, "No, you are tied into a 12-

month contract and you have to continue to pay the rent". It is down to contract law. They are different scenarios.

**The Deputy Chairperson (Ms Armstrong):** OK. It means that, at the end of the contract period, whatever that is, the landlord, irrespective of what the tenant would like to negotiate, can say, "I am going for the energy efficiency grant at this stage. I need the place cleared so that I can get that done". We will deal with that further in the closed session.

Do members have any comments on that? I am not seeing anyone else coming forward. Thank you, David, Eilish and Karen.

**Mr Frew:** Can I —?

**The Deputy Chairperson (Ms Armstrong):** Sorry, Paul. Go ahead.

**Mr Frew:** Sorry for doing this, folks. Can I take you back to my favourite — clause 3? Sorry, it is my ignorance, and I think that we have been through the conversation, but I cannot remember it. Please, forgive me; it is my head. The clause states "reasonably possible". Where does that lie in relation to proposed new clause 5ZB, which mentions 14 days? I maybe asked that question last week; I cannot remember. I know that that is about controlled tenancies and that that might be the difference, but surely we could do something in proposed new clauses 5ZA or 5ZB to cater for your requirements in article 5(3)(b) of the Order without having them in that article.

**Mr Polley:** Proposed new clause 5ZB suggests that, because the rent increase is controlled — I need to be careful and make sure that I get this right. Because the Department controls the rent increase, it is possible —. That is going to be a minority interest, because approximately 500 controlled tenancies remain. We are talking about one of those, where the rent is paid in cash and the tenant pays the wrong amount. I think that we are talking about where the receipt does not contain all the information that is set out in article 5(2) of the Order. There is a possible defence for the landlord in that very particular set of circumstances: it might be more understandable, because the rent is controlled, that they have —

**Mr Frew:** I get that proposed new clause 5ZB is about controlled tenancies.

**Mr Polley:** — a bit longer to allow them to catch up with what they are meant to do.

**Mr Frew:** My principal question is this: can you not provide defence in a new clause? Can you not, in the same way in which you have proposed new clauses 5ZA and 5ZB in clause 3, have a new subsection to cater for defence in the scenarios that we talked about?

**Ms O'Neill:** I am looking to Karen to keep me right on this, because controlled tenancies are a bit of a quagmire. The Rent Officer for Northern Ireland makes a determination on the rent. The time frame was to allow for scenarios where the rent is reduced because work has to be carried out to the property by the landlord, and the landlord carries out the work and then immediately puts the rent up without the Rent Officer having sent out the determination to say whether the rent can be increased.

**Mr Frew:** Sorry, I have thrown you. I do not mean to blaze a trail of destruction through your Bill. It is clear that proposed new clause 5ZB is about controlled tenancies. Is it not beyond the realms of reality that we could have another clause that is about not controlled tenancies but is just a defence?

**Mr Polley:** Are you asking whether we could extend to everybody the defence that the controlled tenancy landlords are getting?

**Mr Frew:** Not necessarily. It is about having a defined set of defences for the scenario where a tenant pays cash and does not receive a receipt.

**Ms Karen Barr (Department for Communities):** That is what we spoke about earlier, Paul. It is the same thing: having the defence instead of the words "as reasonably possible".

**Mr Frew:** Yes. You are right: instead of amending article 5(3)(b) of the Order, could you have a new subsection that outlines and lists defences? That is just a thought that came into my head. I do not mean to blaze a trail of destruction.

**Mr Polley:** You will see where we are in the process and how detailed new clause 5ZB is. It starts to interact with lots of other things.

**Mr Frew:** I get that, but you produced a brand new schedule 2 —.

**Mr Polley:** You would need to list the reasons.

**Mr Frew:** You produced a brand new schedule 2, so it is not beyond the realms of reality that you could create a new subsection.

**Mr Polley:** You can tell by my face that I have not slept for a month. *[Laughter.]* If you were going to do that, you would need to think of all the reasons, and you would need to know them before we get the Bill through. It would be exclusive. It is quite possible that we would not think of some or that a new set of circumstances would emerge.

**Ms O'Neill:** You could not cover everything. It is about having flexibility.

**Mr Polley:** We are entrusting the test of reasonableness to a court. I understand that at the heart of your concern is the fact that you think that the Assembly should have some control over that, rather than us saying *[Inaudible.]*

**Ms Barr:** I will come in there, David. The part about the controlled tenancies is there because we are getting rid of the rent book. Article 50 of the Private Tenancies Order already made that defence, where a landlord may have a wrong amount in a rent book because of the controlled tenancies. Our Bill had to include that; it is a consequence of the Order. We were able to do it because it was there, but, as David and Eilish said, to create an offence for all the other things would take a lot of drafting. We would need to talk it through quite a bit with *[Inaudible.]*

**Ms O'Neill:** We still think that to leave the element of discretion to the council that the complaint would be made to would give them greater powers — *[Inaudible.]*

**Mr Frew:** I get that. I am throwing in an option at a very late stage. I have been thinking about it whilst you have been talking over the past hour or so. I am trying to offer what might be a solution, but I can see how messy that would be and how much work it would take. Notwithstanding that, I just do not like that part of clause 3. I am trying to find solutions. I am probably complicating the matter even further. I am just throwing it out there.

**The Deputy Chairperson (Ms Armstrong):** At this point, David, Eilish and Karen, thank you very much for your briefing. It has been helpful; we appreciate it.

The Committee is going into closed session because it needs to discuss a few bits and pieces. Will you be available if we need to come back to you after the closed session?

**Mr Polley:** Yes.

**The Deputy Chairperson (Ms Armstrong):** We will certainly let you know if we want you to come back or if you can have your freedom. For now, thank you very much. Members, we will move into closed session. Andy Allen has joined us. Andy, you usually declare an interest. I will give you the opportunity if you want to do that now before we move into closed session.

**Mr Allen:** Thanks, Chair. I declare an interest as a private landlord.

**The Deputy Chairperson (Ms Armstrong):** I wanted to keep you right on that, Andy.

*The Committee went into closed session from 10.12 am until 11.26 am.*

**The Deputy Chairperson (Ms Armstrong):** We are back in open session and are again joined by David, Eilish and Karen. Thank you very much for waiting for us, folks. We have had a lot of discussion.

We have a couple of questions, David. Hopefully this will not take too long. We just want to clarify this. Everyone keep me right and make sure that I am using the right references. The first thing that we wondered is whether there is a conflict in article 14 where there is a tenancy agreement of less than 12 months. Is there a requirement to change all future contracts to provide notice to quit four weeks before the end of that contract? Is there any conflict there?

**Mr Polley:** This is about the notice to quit.

**The Deputy Chairperson (Ms Armstrong):** Yes.

**Mr Polley:** In clause 11?

**The Deputy Chairperson (Ms Armstrong):** It is article 14.

**Mr Polley:** Sorry, Chair, but can you ask the question again?

**The Deputy Chairperson (Ms Armstrong):** It is clause 11 of the Bill and relates to article 14 of the Order.

**Mr Polley:** It is the proposed new article 14A.

**The Deputy Chairperson (Ms Armstrong):** Is there a conflict for future contracts coming up? Will all new contracts need to provide written notice to quit four weeks before their end? Will that need to be written into all future contracts? Is there any conflict there?

**Mr Polley:** I suppose that how this works is that, for contracts going forward, the expectation will be that the notice to quit will not be valid unless it is given in line with this Bill. In the periodic tenancies, however — the ones that have been rolled forward — the notice to quit will be set out in this Bill.

**The Deputy Chairperson (Ms Armstrong):** OK. All new contracts will therefore not need —. Can you explain that again? Rolling forward, this will cover —.

**Mr Polley:** Eilish and Karen can correct me at any point, but if this were to come into force in May, and somebody is in a tenancy today —. Your question is this: if somebody is currently in a tenancy with a contract, what will happen once this Bill comes into force? Is that essentially your question?

**The Deputy Chairperson (Ms Armstrong):** We are thinking about whether there will be any conflict, because it will be stipulated that all future new contracts will have to have the four weeks' notice written into them.

**Mr Polley:** For the tenancies with people in them now, the notice to quit is in the contract, unless people are in a periodic tenancy, in which case the new notice to quit, which is in the Bill, will apply. Let us bear in mind that, at the minute, we have the 12-week notice period. Karen, is that right?

**Ms Barr:** Yes. As we talked about before, if they are in a 12-month fixed-term tenancy, they do not have to give notice, but if it is a periodic tenancy, they will have to give four weeks' notice, once the Bill has come into effect, because that will stay the same.

**The Deputy Chairperson (Ms Armstrong):** OK. Are members happy with that?

*Members indicated assent.*

**The Deputy Chairperson (Ms Armstrong):** The Committee is considering proposing a new clause relating to method of payment. We will send you the text of the amendment, because we do not want any surprises, and we would like you guys to consider it. We appreciate that the Christmas recess is coming up. In the interim, rather than having to call you back for a one-item meeting, the Committee is giving Claire McCanny from the Bill Office permission between meetings to discuss with you —

officials and drafters — any issues, concerns, agreements or whatever about the text of that amendment. As a Committee, we are asking whether Claire can do that. We have discussed the amendment today, and we are quite satisfied with it, but we do not want to surprise you. We would like you to have a look at it.

**Mr Polley:** OK. Thank you.

**The Deputy Chairperson (Ms Armstrong):** The legal opinion on the amendment has not come forward as yet, so we would rather make any changes or have your considerations in place before we finalise things with the legal people.

There is one other thing that we would like to ask of you, and we hope that it will not add to your work. We are asking for a wee bit of homework in advance. The explanatory and financial memorandum (EFM) normally provides a breakdown of what happens with different amendments. We are going to have to vote 18 times on amendments to schedule 2. We are therefore asking whether it will be possible to provide the Committee with a written breakdown of each of the amendments to schedule 2 so that we know which bit does what. You will probably have to do that for the amended EFM anyway, so we are asking whether it would be possible to see that. That would mean that members have that understanding in advance, following on from what you have said today about the amendments, so that we can then vote on them.

**Mr Polley:** Yes. OK.

**The Deputy Chairperson (Ms Armstrong):** I am glad that you are saying "OK", David. *[Laughter.]* As I say, it is hopefully homework in advance.

**Mr Frew:** You have not seen any amendments yet. *[Laughter.]*

**Mr Polley:** OK. I will find out what the 18 amendments are and start there.

**The Deputy Chairperson (Ms Armstrong):** It is that lovely schedule 2. If you can talk anyone around into putting the amendments into one vote, it might be a different thing. That would be up to the Speaker, however.

That is all the questions that we have at this stage. I ask you one last time, by 21 December, what it is that you can give us and what it is that you cannot give us.

**Mr Polley:** OK. We will send the amendment to clause 7 to you right after that meeting. We have already drafted a letter, but the only reason that we have not sent it is because we were waiting to see whether there was anything else to include after this session. We will give you that amendment, and we will then contact the OLC and let the Committee Clerk know later on today. We want to give you the proposed amendment to clause 3. The OLC is working on it. We need to catch up with the OLC after this session to see whether it is possible to get it to you in time for 21 December. I will let the Committee Clerk know as soon as I know the answer to that.

**The Deputy Chairperson (Ms Armstrong):** That will be useful, because we will need to know whether there is enough for us to take on board and proceed with an agenda for 21 December. That would be very welcome. If you get that to the Committee Clerk, we can confirm how we are going to proceed.

**Mr Frew:** We will probably need to know that before the end of this meeting, because you are to read out the date and time of the next meeting.

**The Deputy Chairperson (Ms Armstrong):** I know.

**The Committee Clerk:** It is about whether the Committee would be minded to wait before determining whether we go ahead with the meeting on 21 December. The team will email all members, but we can get agreement on that at the end.

**The Deputy Chairperson (Ms Armstrong):** OK. No problem. If you can get that to us, David, that will certainly help.

**Mr Polley:** I will try to do that right away. When I finish talking to you now, I will contact OLC. I understand the point that you want to know before you have finished everything else in the meeting.

**Mr Frew:** It has to be that way.

**The Deputy Chairperson (Ms Armstrong):** It has to be that way, because we are getting so close to our clause-by-clause consideration. Of course, if you want to come back on 4 January, we can all do that. *[Laughter.]* I do not want to, but we are running out of time.

That is all that we have, unless any other members have something to mention to David, Eilish and Karen, now that we have them and their expertise in front of us. At this stage, David, that is what we have for you. We will get the text of the new method of payment clause over to you. We will then hopefully leave things with Claire McCanny. The Committee has given her permission to discuss with you on our behalf. If you guys are happy to do that for the Committee, that will be brilliant.

**Mr Polley:** OK. Thank you very much.

**The Deputy Chairperson (Ms Armstrong):** At this stage, we will let you have your freedom. We may be meeting you on Tuesday. We will see what comes forward.

**Mr Polley:** I hope so. Don't I?

**The Deputy Chairperson (Ms Armstrong):** We hope so too. Hopefully, we will get something through. We will make that decision later. Thank you very much.