



Consultation Response

**Building Sound Foundations:
A Strategy for the Private Rented Sector
Northern Ireland**

August 2009

EXECUTIVE SUMMARY

- The National Landlords Association (NLA) supports the majority of the proposals outlined in this strategy and welcomes the opportunity to contribute to the Department for Social Development in Northern Ireland's Private-Rented Sector Strategy.
- The NLA would agree with the assertion that there remains a general lack of awareness and appreciation of what current legislation relating to the private-rented sector requires and welcomes the approach proposed by the Department to tackle this problem.
- While we welcome the proposal that local authority engagement with the private-rented sector needs to extend beyond fitness standards, we do have some concerns with this being handled solely by environmental health officers.
- The NLA sees several problems with the introduction and scope of a register of private tenancies in each local authority area.
- The NLA welcomes the approach taken on the mandatory registration of landlords. We agree that such a register would put an unnecessary and unfair focus on those landlords who are already complying with legislation and acting responsibly.
- We agree that a more measured and long term solution to increasing landlord professionalism should be based on the promotion of a voluntary landlord accreditation.
- The NLA supports the proposal that the continuation of paying Housing benefit directly to landlords could be tied to evidence of a landlord's voluntary registration with an appropriate accredited or professional body.
- While the NLA does not object to the Executive putting arrangements in place to start a more systematic collection of data on the reasons for termination of private-rented tenancies, we must question how feasible this would be in practice.
- The NLA can support the proposals to increase the notice to quit period as the number of years spent as a tenant increases. However, we would like to raise certain issues on this topic.
- While the NLA support the majority of the proposals for increasing the standard of fitness in the private-rented sector, we would like to raise a number of concerns over specific proposals and timescales. In particular, we cannot support the proposal to link property condition with Housing Benefit.
- The NLA cannot support the proposal to introduce tenancy deposit protection in Northern Ireland.
- With regard to the Equality Impact Assessment, the NLA agrees that there is no evidence to suggest this strategy will have any adverse or differential impact on any group within society. We believe that it fully complies with equality legislation.

INTRODUCTION

The National Landlords Association (NLA) welcomes the opportunity to contribute to the Department for Social Development in Northern Ireland's Strategy for the Private-Rented Sector. The NLA wants to assist the Department for Social Development in continuing its work establishing the right culture for a professional, educated and effective private-rented sector which can support the Northern Ireland Housing Executive in providing high-quality housing.

The NLA welcomes the aims of this Strategy for the Private-Rented Sector. We are committed to a professional, well managed, service driven sector, strongly grounded in high standards and good practice. We want a private-rented sector that will contribute positively to meeting housing need, support the creation of greater choice in housing tenure; promote sustainable tenancies; be evidenced based and provide value for money for the taxpayer.

The private-rented sector in Northern Ireland should be based on a clear understanding of the rights and responsibilities of landlords and tenants which is underpinned with clear and effective arrangements for the communication of these standards and practices by local authorities and the Northern Ireland Executive.

Therefore, our response to this strategy will focus on all aspects of the proposals outlined, providing examples from across the United Kingdom, in order for Northern Ireland to have a professional, effective and sustainable private-rented sector.

ABOUT US

The NLA exists to protect and promote the interests of private residential landlords. With over 17,000 individual landlords from around the United Kingdom and nearly 100 local authority associates, it provides a comprehensive range of benefits and services to its members and strives to raise standards in private-rented accommodation.

The NLA seeks to safeguard landlords' legitimate interests by making their collective voice heard by local and central government and the media. The NLA seeks a fair legislative and regulatory environment for the private-rented sector while aiming to ensure that landlords are aware of their statutory rights and responsibilities towards their tenants.

UNDERSTANDING THE PRIVATE-RENTED SECTOR

The NLA's membership comprises landlords covering a range of portfolio sizes spread geographically across the United Kingdom. In general, professional landlords approach their properties as businesses and their tenants as customers. In common with any other businesses, landlords make business decisions based on securing value for money in their investments. Whilst a landlord will own the properties they rent to tenants they may use agents to either secure new tenants and/or manage their portfolios on their behalf or they may undertake those functions themselves.

It is a myth that landlords see a high turnover of tenants in their properties as beneficial. A high turnover of tenancies generates significant costs for landlords: 'voids' (periods where properties are left empty between tenancies) and any transition costs between tenancies (or in the event of having to end a 'bad'

tenancy), both mean that high tenancy turnovers are inefficient in generating rent. There is also no guarantee new tenants are going to be well-adjusted or dependable. Therefore, the vast majority of professional landlords prefer longer, well-maintained tenancies as they make better business sense.

CHAPTER 3: Changing Nature of the Private-Rented Sector

We would like to take this opportunity to congratulate the Department for Social Development on the significant empirical research that has been undertaken in order to produce this strategy as a whole and this chapter in particular. It is very promising to see the Northern Ireland Executive is basing its private-rented sector strategy on a common-sense approach supported by empirical evidence: a significant and very welcome move away from the myth-driven policies that have been used as a basis for private-rented sector regulation across the United Kingdom in the past.

CHAPTER 4: Private Tenancies (Northern Ireland) Order 2006

The NLA broadly welcomes the proposals put forward in this chapter. Nonetheless, we would like to raise a number of points.

Knowledge and Awareness and Proposals

At paragraph 4.10¹ the Department acknowledges that there “remains a general lack of awareness and appreciation of what the current legislation requires.” The NLA would agree with this assertion. We would like to note that this is not an issue that solely affects Northern Ireland.

The NLA believes one of the main problems is landlords’ ignorance of new regulation. Recent anecdotal evidence shows some English landlords still do not know about tenancy deposit protection or energy performance certificates². This is due largely to two factors: firstly, landlords are, to all intents and purpose, sole traders and operate their businesses in a very isolated fashion where the sharing of information and best practice is not a regular occurrence. Secondly, tenants generally do not know about their current legislative responsibilities or those of their landlords. The result is a spiral of ignorance where neither party to a contract know or understand their legal rights and responsibilities. This is evidenced in the Department’s own research at paragraph 4.11³ where you state that 61% of landlords feel they do not have enough information on the rights and responsibilities of being a landlord.

We welcome the approaches proposed at paragraph 4.12⁴ and would be interested in working with the Northern Ireland Executive to tackle this problem. It is mentioned, at paragraph 4.14⁵, that work is already underway to “develop relevant, easy to use guides for both landlords and tenants.” The NLA has a comprehensive database, known as the Landlord Library⁶, containing fact sheets covering a wide range of matters. Regularly updated, it covers 40 subjects including starting out as a landlord; the regulatory

¹ Page 17

² Mydeposits.co.uk Press Release, “Tenants still 'clueless' about deposit protection”, 6 August 2009, <http://tinyurl.com/l238o3>; NLA Press Release, “Energy performance certificates for rental properties are being ignored”, 30 July 2009, <http://tinyurl.com/lavjao>

³ Ibid

⁴ Ibid

⁵ Page 18

⁶ For further information on NLA Landlord Library see www.landlords.org.uk/services/nlalandlordlibrary.htm

regime; property matters; tenancy support information; safety issues and financial competence as well as comprehensive information on relevant Acts of Parliament and Statutory Instruments and personal development opportunities.

Further, we also have a selection of forms that might be of interest to the Department in the construction of your own material. These include a standard Assured Shorthold Tenancy Agreement, a Fire Safety Logbook and several Court forms.

Other awareness raising suggestions that the Department may consider include regular local landlord forums where landlords operating in a specific locality can come together to share experiences and best practice models among themselves as well as engage with local authority staff. Through our Regional Representative network, the NLA would welcome involvement in this work and would be willing to provide speakers, presentations and possibly chair forums on local authority's behalf. Regular landlord exhibitions have also proved useful in increasing the understanding and professionalism of landlords by giving them the opportunity to see the numerous products and services that are available to assist them in their businesses. Providing training courses and round-table discussions at these exhibitions will further increase individual landlords understanding of the private-rented sector.

In paragraphs 4.12 and 4.13⁷ references have been made to the Department having "more comprehensive networks of private-rented sector stakeholders." As mentioned in the previous paragraph, the NLA has a network of Regional Representatives across the country who are able to provide local knowledge and we would welcome the opportunity to become part of any private-rented sector stakeholder networks.

On a separate point, we are also pleased that the Northern Ireland Executive has seen that awareness issues within the private-rented sector are not one-sided; that communication with private tenants is also of vital importance to breaking the 'spiral of ignorance'⁸.

Finally, in paragraph 4.17⁹ we are greatly encouraged that the Executive is planning the delivery of a programme to raise the profile of the Private Tenancies Order, its implications and requirements for Councils. A recent Government-commissioned review of the private-rented sector in England¹⁰ suggested one of the main problems that caused landlords to feel isolated was the lack of engagement and understanding of the private-rented sector by local authorities. Dr Rugg suggested that more training of local authority staff was required as well as the local authority's themselves developing more co-ordinated policies for engagement with the sector. Whilst this report was prepared for England, the NLA would argue the same problems probably exist in Northern Ireland (this is certainly supported by assertions made in paragraph 4.17) and are pleased that the Northern Ireland Executive is making strides to rectify the problem.

⁷ Pages 17 - 18

⁸ Paragraph 4.16, page 18

⁹ Page 19

¹⁰ Dr Julie Rugg and David Rhodes, The Private-Rented Sector: Its Contribution and Potential, www.york.ac.uk/inst/chp/publications/PDF/prsreviewweb.pdf

Enforcement, Compliance and Proposals

It states at paragraph 4.21¹¹ that “Councils have also advised that in some instances, when enforcement action has been pursued, the resulting fines or discharges have not always been seen as an effective incentive for landlords to comply with the law.” This is an interesting and somewhat ambiguous statement. Unfortunately, the consultation does not explain the meaning behind this statement and it is not clear whether there are any proposals to deal with this situation. The NLA would be interested in hearing further discussion on this topic and evidence that supports such a hypothesis. While we have no specific data for Northern Ireland, anecdotal evidence in England shows the level of fines that have been handed down has provided an incentive for rogue landlords to comply with the law.

While we welcome the proposals outlined at paragraphs 4.23 and 4.24¹² and agree that local authority engagement with the private-rented sector needs to extend beyond fitness standards we do have some concerns with this being handled solely by Environmental Health Officers. The Rugg Review suggested that more engagements should be made with the sector through Small Business Units rather than purely Environmental Health Departments. The NLA fully supports this view as it will bring landlords into the local small business community rather than constantly being branded with the stigma of falling foul of environmental health. Also, evidence from the Rugg Review suggests that in England illegal (or retaliatory) eviction¹³ is not a particularly significant or extensive problem and we can see no reason why the position in Northern Ireland would be any different.

The proposal contained within paragraph 4.26¹⁴ for the introduction of a register of private tenancies in each Council area, the NLA see several problems. While we can see merit in documenting the number of tenancies created in a particular local authority, such a scheme will only serve as a statistical exercise and not benefit either landlord or tenant. It is suggested in the consultation document that such a register would have the benefit on providing a source of information on (amongst others) the quality and cost of tenancies. On the issue of quality, without local authority staff going to view the properties, then a register cannot provide details on the quality of a property. On the issue of the cost of tenancies, if this information is expected to be provided, the NLA must question how much information is being suggested for the register. Adding this sort of information would be overly onerous on the part of the landlord in terms of time and additional unnecessary bureaucracy.

It is also essential that costs are considered at this point. As mentioned in paragraph 4.25¹⁵ a register will require additional resourcing at a local level in terms of capacity, skills and finance. When considering the Scottish registration example, we can see that it has been unsuccessful. Local authorities do not have sufficient resources to efficiently implement the system and even today, three years on, there are still one in four properties not registered. Further, local authorities know where many of these properties are, but do not have the resources to be able to take effective action against them. If Northern Ireland is considering a registration scheme, which we agree is “unlikely to be a feasible or practical option”¹⁶ at this time, we would urge the Northern Ireland Executive to learn from the errors made in the Republic of Ireland and Scotland schemes and ensure that the same mistakes are not made again.

¹¹ Page 20

¹² Page 21

¹³ As mentioned at Paragraph 4.23, page 21

¹⁴ Page 21

¹⁵ Ibid

¹⁶ Paragraph 4.26, page 22

CHAPTER 5: Tenancy Management Issues

Mandatory Registration of Landlords

The NLA welcomes the approach taken by the Department on this issue. We agree that such a register “would put an unnecessary and unfair focus on those landlords who are already complying with legislation and acting responsibly.”¹⁷ We also agree that greater efforts are needed to improve and support the professionalism of landlords, through strengthening landlord links with accredited or professional bodies¹⁸. We will deal with this issue in more detail under the “Tenant Responsibility, Proposals and Housing Benefit” section later in the consultation.

The NLA also notes that when considering the cost implication of such a register, the Executive took into account the evidence that 89% of tenants are on good terms with their landlord/agent¹⁹ and we agree with the conclusion that the incidence of bad tenancy management was not sufficient to justify a register.

We further agree with the statements in paragraphs 5.14, 5.16 and 5.17²⁰ that the emphasis for improving the sector should focus on a need to increase the importance of the procedures for the proper implementation and enforcement of existing provisions in the Private Tenancies Order as a more effective way of improving tenancy management. Taking this approach is far more likely to root out the rogue landlords who blight the sector than any form of mandatory register.

Tenant Responsibility, Proposals and Housing Benefit

The NLA welcomes the Executive’s views in paragraphs 5.18 and 5.19²¹ that show a clear understanding of the problems that landlords face when they have problem tenants and the difficulties landlords are forced to deal with when attempting to regain possession of their properties.

Turning to the proposals contained within paragraph 5.20²², we agree that a more measured and long term solution to increasing landlord professionalism, embedding good practice and improving tenancy management should be based on the promotion of voluntary landlord accreditation. The NLA are firm supporters of such schemes but believe that landlord-based accreditation schemes rather than property-based schemes are of greater benefit to the sector as more professional landlords provide higher quality properties. Further, landlord-based accreditation is cheaper and more effective as landlords who have property in more than one local authority area will only have to undertake the accreditation exercise once rather than having to comply with different local authority regimes (as has been seen throughout England) which could have different entry criteria.

At paragraph 5.23²³, the consultation document states that “further work [will be] undertaken with landlords, accredited or professional bodies and advice services to develop firm proposals for a voluntary accreditation scheme.” To this end, the NLA may be able to assist. We have been involved recently in the development and implementation of numerous local authority schemes as well as the London Landlord

¹⁷ Paragraph 5.16, page 27

¹⁸ Page 27

¹⁹ Paragraph 5.3, page 24

²⁰ Pages 27 and 28

²¹ Page 28

²² Ibid

²³ Page 29

Accreditation Scheme (LLAS), Midland Landlord Accreditation Scheme (MLAS) and Landlord Accreditation Wales (LAW) and have then provided speakers and trainers for the associated courses and professional development. The NLA will also shortly be unveiling its own national landlord accreditation scheme. We would be interested in engaging with the Executive on ways we could work together to ensure that Northern Ireland has an attractive, effective and efficient scheme that will increase the professionalism of landlords across the country.

Turning finally to Housing Benefit, the NLA support the proposal that the continuation of paying Housing benefit directly to landlords could be tied to evidence of a landlord's voluntary registration with an appropriate accredited or professional body²⁴. We agree that this would provide a means to promote professionalism, protect the public purse and also assist landlords in attracting more affluent tenants in the absence of Housing Benefit tenants. However, with evidence that 85% of Housing Benefit tenants choose to have their rent paid directly to the landlord²⁵ and 83% of tenants are either satisfied or very satisfied with the overall service provided by their landlord/agent²⁶ then we must question whether such a scheme is necessary and whether there is such a significant incidence of bad management to justify a costly change in Northern Ireland Housing Benefit legislation. As with tenancy deposit protection in England, this might be seen as a sledgehammer to crack a nut approach that in reality is not required.

CHAPTER 6: Security of Tenure

Proposals

While the NLA does not object to the Department putting arrangements in place to start a more systematic collection of data on the reasons for termination of private-rented tenancies²⁷, we must question how feasible this would be in practice. We do not want to see landlords being forced to complete more forms, have further bureaucratic requirements placed on them and more government intrusion into their business affairs. While we welcome the Northern Ireland Executive's commitment to policy based on empirical research and evidence, we do not want to see such bureaucracy enacted that research-gathering exercises become so onerous on landlords that it dissuades them from entering the sector.

Notice to Quit Period

The NLA can support the proposals to increase the notice to quit period as the number of years spent as a tenant increases. However, we would like to raise certain issues on this topic²⁸. As we have mentioned in "Understanding the Private-Rented Sector" above, landlords do not see a high turnover of tenants in their properties as beneficial because it is inefficient in generating rent. However, we would like to note two concerns. Firstly, any increase in the notice to quit period should apply to both landlord and tenant in order to provide parity in the terms of the contract. It would be unfair and unduly onerous on the landlord if he is required to provide three months notice to a tenant who has been in his property for ten years and the same tenant only required to give 28 days notice.

²⁴ Paragraph 5.22, page 29

²⁵ Ibid

²⁶ Paragraph 5.3, page 24

²⁷ Paragraph 6.9, page 33

²⁸ Paragraph 6.13, page 34

Secondly, the NLA would suggest the Department takes into account the problems associated with security of tenure that exist in the Republic of Ireland after the introduction of the Residential Tenancies Act 2004. The Act states that after a six-month 'probationary' tenancy, the tenant has security of tenure for four years. Anecdotal evidence from the Republic of Ireland suggests that some landlords attempt to avoid the security of tenure issue by ending tenancies every six months, moving the tenant and then beginning a new 'probationary' period. The NLA is concerned that this could result in a disincentive to long-term lets.

CHAPTER 7: Standards of Fitness

While the NLA support the majority of the proposals outlined in this chapter and agree that it would be wise to ensure future energy efficiency standards in the private-rented sector are subject to more rigorous requirements than under current Northern Ireland legislation (more akin to the Decent Homes Standards in England) we would like to raise a number of points in regard to this chapter.

Energy Efficiency

In paragraph 7.9²⁹ the Northern Ireland Executive suggests that the estimated cost to landlords of bringing their properties up to the Decent Homes Standard is £6,000 - £8,000 per property. This outlay could well equal for than a landlord would receive through rent in a year. We would certainly suggest that if such provisions were to come into force then the Northern Ireland Housing Executive should have in place loan and grant schemes to assist landlords in increasing the quality of their properties. The NLA have been involved in the development of a number of loan and grants schemes across the UK and would welcome the opportunity to engage with the Northern Ireland Housing Executive on the construction of such schemes.

With regard to fire safety standards mentioned in paragraph 7.10³⁰ the NLA believes all fire safety guidelines should be in line with to the LACORS Fire Safety Guide which was developed in conjunction with the Chief Fire Officers' Association (CFOA), the Chartered Institute of Environmental Health (CIEH), with support from Communities and Local Government. We believe the essential principle of any guidance should be a risk-based fire prevention strategy where fire precautions meet the inherent fire risks within the properties. This is why the NLA argues the same fire safety standards which apply to a house in multiple occupation should not apply to all private-rented property as was argued in paragraph 7.10.

The NLA would suggest that should the Department deviate from the LACORS Good Practice Guide it should be made explicitly clear why the deviation has occurred and the justification for doing so. Where that cannot be done easily, consideration should be given as to whether the deviation is warranted. As previously mentioned in this response, the NLA has developed a Fire Safety Logbook for landlords to use in order to comply with the LACORS Fire Safety Guide. I include a copy of this Logbook in this response.

²⁹ Page 36

³⁰ Ibid

Proposals

The consultation document proposes at paragraph 7.11³¹ that an interim solution to improve physical standards in the private-rented sector could be achieved by “tweaking” the current fitness standard. The NLA would not recommend interim solutions for such problems for two reasons. Firstly, it has the potential to confuse landlords as to what their requirements are in this relatively new regulatory environment. Secondly, it also has the potential to require landlords to make additional changes once permanent standards have been enacted. This could result in landlords having to make two outlays for standard improvements when one would have sufficed, causing resentment and unwillingness throughout the sector.

Turning to timescales contained within paragraphs 7.12 and 7.13³² the NLA agree with 2015 as the proposed date by which all private-rented property should meet the Decent Homes Standard. However, we would suggest that the timescale for working with stakeholders to develop necessary arrangements and put in place relevant processes, legislation and promote awareness should be shorter to give time for any legislation to come into force and be practically implemented in order to meet the 2015 date for property standards.

The NLA can see no merit in incorporating housing standards into Housing Benefit claims. If this is also done with the proposals to incorporate accreditation and membership of professional bodies into the Housing Benefit mix as suggested at paragraph 5.22³³, then the bureaucratic hoops landlords will need to navigate in order to secure a Housing Benefitted tenant will become so onerous that it may dissuade them from entering this part of the sector. Further, if such a proposal was to be implemented, then by reducing the Housing Benefit a landlord receives because of the poor property condition, the landlord will have no money with which to improve the property’s condition and thus the property will fall into further disrepair.

Finally, it is proposed in paragraph 7.14³⁴ that the “Department will explore all possible means to unlock access to Housing Benefit information to allow relevant properties attracting Housing Benefit to be identified and inspected to ensure they meet the necessary fitness standards.” The NLA is somewhat concerned about this provision and the scope of who would get access to the information. This issue has been discussed at length in the Rugg Review and it has been suggested that only certain prescribed organisations, such as local authorities, the police and the Northern Ireland Housing Executive, would be allowed access to the information. Landlords do not want their personal data being available to a wide range of organisations, and if such proposals were enacted then it would likely have a significant impact on the number of people interested in entering the sector.

CHAPTER 8: Improving Accessibility to the PRS

More Vulnerable Tenants

The NLA welcomes the Northern Ireland Smartmove scheme³⁵ that has been trialling in North Belfast and Londonderry. The scheme gives security to both landlords and tenants. Landlords have the security and support from the Housing Executive that should problems arise with low income tenants then they will

³¹ Page 36

³² Pages 36 and 37

³³ Page 29

³⁴ Page 37

³⁵ Paragraph 8.9, page 40

have access to a deposit in order to re-coup costs lost through repairs due to the tenant's actions. Similarly, the scheme will allow low-income households to access quality accommodation without being dependent on the social sector as well as having support from the Housing Executive on how to successfully manage a tenancy, empowering them to gain control of their own affairs and hopefully assisting them in financial inclusion and breaking the cycle of homelessness and poverty.

However, when considering Annex 7³⁶ we would be interested to know why 310 potential tenants were removed from the waiting list and why only 219 of the 310 tenancies created by the scheme were still currently live at the time of the evaluation. The NLA would like to know why these problems have occurred and how they have been rectified before we could support the schemes extension to incorporate all of Northern Ireland.

Proposals

Unfortunately, the NLA cannot support the introduction of tenancy deposit protection in Northern Ireland. When considering the position in England and Wales since the introduction of tenancy deposit protection, using your own figures³⁷, only 0.16% of tenancies protected have required adjudication. The NLA considered the introduction of tenancy deposit protection to be a legislative sledgehammer to crack a nut and subsequent analysis has proved that to be true. We would not recommend the Northern Ireland Executive spends £500,000 on introducing a scheme for a perceived, rather than actual, problem. Even by the Executive's own statistics, 83% of deposits were returned in full to tenants at the end of the tenancy³⁸ and it is reasonable to surmise that a large number of the remaining 17% warranted a deduction in their deposit.

Nonetheless, should tenancy deposit protection be introduced into Northern Ireland, the NLA would recommend that a scheme akin to the UK model, be developed, ensuring that both a custodial-based and insurance-based provider be included. Having two options will allow landlords to choose which scheme benefits their businesses better and ensures competition between providers to guarantee the best value for money for consumers.

CHAPTER 9: Equality Impact Assessment

The NLA agree that there is no evidence to suggest that this strategy will have any adverse or differential impact on any group within society. We believe that it fully complies with equality legislation.

³⁶ Page 43

³⁷ Table 9: Tenancy Deposit Take-up in England & Wales, page 40

³⁸ Table 8, page 38