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## STATUTORY INSTRUMENTS

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# 2006 No. 1459

## The Private Tenancies (Northern Ireland) Order 2006

### PART IV

#### CERTIFICATES OF FITNESS AND RENT CONTROL

##### CHAPTER III

##### TENANCIES SUBJECT TO RENT CONTROL

VALID FROM 01/04/2007

#### *Introductory*

#### **Interpretation: Chapter III**

**39.** In this Chapter—

- “appropriate rent” means an appropriate rent for a rental period;
- “the appropriate standard of fitness” shall be construed in accordance with Article 40(3);
- “controlled tenancy” has the meaning given in Article 40(4);
- “the register of rents” means the register established under Article 46;
- “registered rent”, in relation to a controlled tenancy of a dwelling-house, means the rent entered in the register of rents as an appropriate rent under that tenancy;
- “rent assessment committee” means a committee constituted under Schedule 1;
- “the rent limit” means the rent limit under Article 48;
- “rental period” means a period in respect of which a payment of rent falls to be made.

#### **Tenancies subject to rent control**

**40.—(1)** A tenancy of a dwelling-house is subject to rent control if the tenancy is for the time being a protected tenancy or a statutory tenancy.

**(2)** A tenancy of a dwelling-house is subject to rent control if—

- (a) the tenancy—
  - (i) is not a protected tenancy or a statutory tenancy, but
  - (ii) is a private tenancy granted on or after the commencement of this Order; and
- (b) the dwelling-house—
  - (i) was constructed before 6th November 1956 or was provided by conversion of a building that was constructed before that date, and
  - (ii) does not meet the appropriate standard of fitness.

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- (3) A dwelling-house does not meet the appropriate standard of fitness unless—
  - (a) it is a prescribed dwelling-house, or
  - (b) a certificate of fitness is in effect in respect of it.
- (4) A tenancy which is subject to rent control is referred to in this Chapter as a “controlled tenancy”.

### *Functions of the rent officer and rent assessment committees*

#### **The rent officer and rent assessment committees**

**41.** Schedule 1, which relates to the appointment of the rent officer and the constitution of rent assessment committees, shall have effect.

VALID FROM 01/04/2007

#### **Determination of an appropriate rent**

**42.—(1)** Where the rent officer is satisfied that a dwelling-house is, or is to be, let under a controlled tenancy the rent officer shall make a determination as to what rent is or would be an appropriate rent under that tenancy.

(2) In making a determination under paragraph (1), the rent officer shall consider all the circumstances (other than personal circumstances).

(3) In particular, the rent officer shall have regard to—

- (a) the terms of the tenancy agreement (except those as to rent) which apply to that controlled tenancy;
- (b) the general condition and state of repair of the dwelling-house, including—
  - (i) any notice of unfitness or notice of disrepair having effect in respect of the dwelling-house, and
  - (ii) the certificate of fitness or notice of refusal having effect in respect of the dwelling-house;
- (c) the rents of dwelling-houses let by the Executive which are comparable, or as comparable as may be, to the dwelling-house in question;
- (d) the level of the local reference rent (as determined in accordance with paragraph 4 of Schedule 1A to the Housing Benefit (General) Regulations (Northern Ireland) 1987 (SR 1987 No. 461)) of similar dwelling-houses let under similar tenancies; and
- (e) if any furniture is provided for use under the tenancy, the quantity, quality and condition of the furniture.

(4) For the purposes of the determination it shall be assumed that the number of persons seeking to become tenants of similar dwelling-houses in the locality on the terms (other than those relating to rent) of the controlled tenancy is not substantially greater than the number of such dwelling-houses in the locality which are available for letting on such terms.

(5) There shall be disregarded—

- (a) any disrepair or other defect attributable to a failure by the tenant, or any predecessor in title of his, to comply with any terms of the tenancy;
- (b) any improvement carried out, otherwise than in pursuance of the terms of the tenancy, by the tenant or any predecessor in title of his.

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(6) In paragraph (5) “improvement” includes the replacement of any fixture or fitting.

(7) For the purposes of this Article the rent officer may make such enquiries as he considers appropriate.

VALID FROM 01/04/2007

#### **Procedure after determination**

**43.—**(1) After making a determination under Article 42, the rent officer shall serve a notice on the landlord and tenant under the tenancy informing each of them—

- (a) of the rent that has been determined, and
- (b) of the right to have the determination considered by a rent assessment committee under Article 44.

(2) If, within the period of 14 days from the date of service of a notice under paragraph (1), the landlord or tenant of the dwelling-house states in writing to the rent officer that he wishes to have the determination considered by a rent assessment committee, the rent officer shall refer the determination to a rent assessment committee.

(3) If, on the expiration of that period, the rent officer has not received a statement as mentioned in paragraph (2), the rent officer shall register the rent determined under Article 42 in the register of rents as an appropriate rent under that tenancy of the dwelling-house.

VALID FROM 01/04/2007

#### **Consideration by a rent assessment committee**

**44.—**(1) A rent assessment committee shall consider any determination referred to it under Article 43.

(2) Schedule 2, which relates to the procedure to be followed by a rent assessment committee when considering a determination, shall have effect.

(3) Without prejudice to the generality of Article 72, the Department may make regulations with respect to the consideration of a determination by a rent assessment committee, including regulations which contain provisions to modify Schedule 2.

(4) Having considered whether a rent determined under Article 42 is an appropriate rent under a tenancy of a dwelling-house, the rent assessment committee may confirm or vary the determination.

(5) The rent assessment committee shall notify the landlord and the tenant of the dwelling house, and the rent officer, of its decision.

(6) On receiving the notification, the rent officer shall register the rent, as confirmed or varied, in the register of rents as an appropriate rent under that tenancy of the dwelling-house.

VALID FROM 01/04/2007

#### **Change of circumstances**

**45.—**(1) Where—

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- (a) a dwelling-house is let under a controlled tenancy which is a protected tenancy or a statutory tenancy, and
- (b) it appears to the landlord or tenant that there has been such a change in the circumstances relating to the dwelling-house or the tenancy as to make the registered rent no longer an appropriate rent,

the landlord or tenant may apply to the rent officer to have a further determination made in respect of the rent under that tenancy.

(2) An application under paragraph (1) shall be in such form and contain such particulars as may be prescribed.

(3) For the purposes of paragraph (1) but without prejudice to its generality, failure to comply, within the period specified by the appropriate district council, with a notice of unfitness or a notice of disrepair served in respect of a dwelling-house shall constitute a change of circumstances relating to the dwelling-house or tenancy.

(4) On receipt of an application under paragraph (1), the rent officer shall make a further determination of an appropriate rent under the tenancy.

(5) Paragraphs (2) to (6) of Article 42 and Articles 43 and 44 shall apply for the purposes of paragraph (4) of this Article in the same manner as those provisions apply for the purposes of paragraph (1) of Article 42.

VALID FROM 30/06/2011

#### [<sup>F1</sup>Power to amend Articles 42 to 45

**45A.**—(1) The Department may by regulations modify any provision of Articles 42 to 45 and Schedule 2.

(2) Regulations under this Article may make such consequential modifications of other provisions of this Chapter as appear to the Department to be necessary or appropriate.]

#### Textual Amendments

**F1** Art. 45A inserted (30.6.2011) by [Housing \(Amendment\) Act \(Northern Ireland\) 2011 \(c. 22\)](#), **ss. 5(1), 25(1)**; S.R. 2011/241, **art. 2(1)**, Sch. 1

VALID FROM 01/04/2007

### *The register of rents*

#### **The register of rents**

**46.**—(1) The rent officer shall prepare and keep up to date a register (“the register of rents”), in which there shall be entered, in accordance with Article 43(3) or 44(6), the rents which are appropriate rents of dwelling-houses let under controlled tenancies.

(2) The rent officer shall make the register of rents available for public inspection without charge at such place and at such times as the rent officer considers appropriate.

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(3) The register of rents shall contain, in addition to an appropriate rent, the prescribed particulars with regard to the tenancy and the dwelling-house.

(4) The rent officer may, if at any time it appears appropriate to him to do so, amend any entry in the register of rents.

(5) Subject to paragraph (6), where the rent officer amends any entry in the register of rents, the rent officer shall serve a notice of the alteration on the landlord and tenant under the tenancy in question.

(6) Paragraph (5) does not apply to any alteration made in the register of rents in pursuance of Article 55(7).

(7) A copy of an entry in the register of rents purporting to be certified under the hand of the rent officer shall be receivable in evidence in any court and in any proceedings.

(8) A person requiring such a certified copy shall be entitled to obtain it.

#### **Removal of tenancies from the register of rents**

47.—(1) Subject to the following provisions of this Article, where—

(a) in relation to a tenancy of a dwelling-house, a rent is registered in the register of rents, and

(b) the rent officer is satisfied that the dwelling-house is no longer let under that tenancy, the rent officer shall remove any entry relating to that tenancy of the dwelling-house from the register of rents.

(2) For the purposes of paragraph (1) the rent officer may make such enquiries as he considers appropriate.

(3) The rent officer shall give to any person appearing to him to have an interest in the dwelling-house, 14 days' notice of his intention to remove the entry from the register of rents.

(4) Where—

(a) the rent officer removes an entry relating to a tenancy of a dwelling-house from the register of rents, and

(b) no certificate of fitness is in effect in respect of the dwelling-house,

the rent officer may maintain for the purposes of this Order a record of the information contained in the entry in such form as appears appropriate to him.

VALID FROM 01/04/2007

#### *The rent limit*

#### **The rent limit**

48.—(1) The rent recoverable for a rental period of a controlled tenancy of a dwelling-house shall not exceed the rent limit.

(2) Where a rent is registered in the register of rents in respect of a controlled tenancy of a dwelling-house, the rent limit is the registered rent.

(3) Paragraph (4) applies where no rent is registered in respect of a controlled tenancy of a dwelling-house which is a protected tenancy or a statutory tenancy.

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(4) The rent limit is the rent which was payable in accordance with the Rent Order immediately before the commencement of this Order.

#### **Increase of rent**

**49.**—(1) Where the rent for any rental period of a controlled tenancy of a dwelling-house would be less than the rent limit, the amount of the rent may be increased up to the rent limit by a notice of increase served by the landlord on the tenant.

(2) A notice of increase—

- (a) shall be in the prescribed form, and
- (b) shall specify the date on which the increase is to take effect.

(3) The date specified in the notice of increase shall not be earlier than 4 weeks after service of the notice.

#### **Rent in excess of rent limit to be irrecoverable by landlord**

**50.**—(1) Notwithstanding anything in any agreement, any amount by which the rent payable in respect of a controlled tenancy of a dwelling-house exceeds the rent limit for that tenancy shall be irrecoverable from the tenant.

(2) Any person who, in any rent book or similar document, makes an entry showing or purporting to show any tenant as being in arrears in respect of any sum on account of rent which is irrecoverable by virtue of this Article, shall be guilty of an offence under this Order, unless he proves that, at the time of the making of the entry, the landlord had a bona fide claim that the sum was recoverable.

(3) If, where any such entry has been made by or on behalf of the landlord, the landlord on being requested by or on behalf of the tenant to do so, refuses or neglects to cause the entry to be deleted within 7 days, the landlord shall be guilty of an offence under this Order, unless he proves that, at the time of the neglect or refusal to cause the entry to be deleted, he had a bona fide claim that the sum was recoverable.

#### **Recoupment of sums paid in excess of rent limit**

**51.**—(1) This Article applies where a tenant under a controlled tenancy has paid rent in excess of the rent limit for any rental period under that tenancy.

(2) The tenant shall be entitled to recover from the landlord who received the rent, or his personal representatives, any sum by which the amount paid exceeded the rent limit.

(3) Without prejudice to any other method of recovery, the tenant shall be entitled to recoup that sum by deducting it from any rent payable by him to the landlord.

(4) But no sum may be recouped by a tenant under paragraph (3) at any time after the expiry of 2 years from the date of payment.

#### **Recoupment where landlord in default**

**52.**—(1) This Article applies where—

- (a) a rent is registered in the register of rents in respect of a controlled tenancy of a dwelling-house granted on or after the commencement of this Order, but
- (b) the landlord failed within the period mentioned in paragraph (4) of Article 33 to meet any requirement to apply to have the dwelling-house inspected in accordance with paragraph (3) of that Article.

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(2) The tenant shall be entitled to recover from the landlord who received the rent, or his personal representatives, any sum by which the rent paid during the period of default exceeded the rent that would have been payable if the rent limit had applied in relation to the tenancy during that period.

(3) In paragraph (2) “the period of default” means the period—

- (a) beginning on the date by which the landlord was required to apply to have the dwelling-house inspected under Article 33(3), and
- (b) ending on the date on which a rent was registered in the register of rents in respect of the tenancy of the dwelling-house.

(4) Without prejudice to any other method of recovery, the tenant shall be entitled to recoup that sum by deducting it from any rent payable by him to the landlord.

(5) But no sum may be recouped by a tenant under paragraph (4) any time after the expiry of 2 years from the date on which a rent is registered in the register of rents in respect of the tenancy.

#### **Recoupment of rates, etc. from tenants**

**53.**—(1) Paragraph (2) applies where any rates in respect of a dwelling-house let under a controlled tenancy which is a protected tenancy or a statutory tenancy are borne by the landlord or a superior landlord.

(2) The amount of rates for any rental period which begins after the expiry or termination of a protected tenancy shall be recoverable, without service of any notice of increase, from the tenant in addition to the sums so recoverable apart from this paragraph.

(3) The amount of rates shall be ascertained in accordance with Schedule 3.

(4) Paragraph (2) applies notwithstanding anything in the contract of tenancy.

(5) Where, under a protected or statutory tenancy, the sums payable by the tenant to the landlord include any sums varying according to the cost from time to time of—

- (a) any services provided by the landlord or a superior landlord, or
- (b) any works of maintenance or repair carried out by the landlord or a superior landlord,

the amount to be registered in the register of rents may be an amount variable in accordance with the terms as to the variation.

#### **Amounts attributable to services**

**54.** In order to assist the Executive to give effect to the housing benefit scheme under Part VII of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7), where a rent is registered in the register of rents, there shall be entered in the register the amount (if any) of the registered rent which, in the opinion of the rent officer or rent assessment committee, is fairly attributable to the provision of services, except any amount which is negligible in the opinion of the rent officer or, as the case may be, the rent assessment committee.

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VALID FROM 01/04/2007

*Rent review*

**Review of registered rents**

**55.**—(1) The rent officer shall, if directed to do so by the Department, conduct a review of registered rents, with a view to determining whether those rents should be increased.

(2) A direction under paragraph (1) may require the rent officer to review the registered rent for all controlled tenancies or for controlled tenancies of such class or description as may be specified in the direction.

(3) When conducting a review the rent officer shall—

- (a) take into account the general level of rents for dwelling-houses let by the Executive,
- (b) the cost of repairs, and
- (c) any other matter appearing to him to be relevant.

(4) Where the rent officer determines under paragraph (1) that any registered rents should be increased, he shall make a recommendation to that effect to the Department.

(5) Where the Department accepts a recommendation under paragraph (4), it shall make an order providing for the increase of those rents—

- (a) by an amount recommended by the rent officer, or
- (b) by such other amount as the Department, after consultation with the rent officer, considers appropriate.

(6) The amount of an increase may be expressed as a percentage.

(7) Where the Department makes an order under paragraph (5), the rent officer shall make such alterations in the register of rents as appear to him to be necessary in consequence of the order.



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