

Title of Report:	Consultation on Sections 8 & 10 of the Private Tenancies (N.I.) Act 2022
Committee Report Submitted To:	Environmental Services Committee
Date of Meeting:	12th December 2023
For Decision or For Information	For Decision
To be discussed In Committee	NO

Linkage to Council Strategy (2021-25)	
Strategic Theme	Healthy and Engaged Communities
Outcome	Provide a consultation response
Lead Officer	Head of Health & Built Environment

Budgetary Considerations	
Cost of Proposal	N/A
Included in Current Year Estimates	N/A
Capital/Revenue	N/A
Code	N/A
Staffing Costs	N/A

Legal Considerations	
Input of Legal Services Required	No
Legal Opinion Obtained	No

Screening Requirements	Required for new or revised Policies, Plans, Strategies or Service Delivery Proposals.		
Section 75 Screening	Screening Completed:	Yes/No N/A	Date:
	EQIA Required and Completed:	Yes/No N/A	Date:
Rural Needs Assessment (RNA)	Screening Completed	Yes/No N/A	Date:
	RNA Required and Completed:	Yes/No N/A	Date:
Data Protection Impact Assessment (DPIA)	Screening Completed:	Yes/No N/A	Date:
	DPIA Required and Completed:	Yes/No N/A	Date:

1.0 Purpose of Report

- 1.1 The purpose of this report is to provide a response to the Department for Communities (DfC) consultation on Section 8 (Smoke, Heat and Carbon Monoxide Alarms) & Section 10 (Electrical Safety Standards) of the Private Tenancies (N.I.) Act 2022.

2.0 Background

- 2.1 Council Environmental Health Officers are heavily engaged in the regulation of the private rented sector through Council's statutory duties under the Private Tenancies (NI) Order 2006 (as amended by the Private Tenancies Act and Housing Amendment Acts) as well as through statutory nuisance investigations. Council is also the enforcing authority for provisions to regulate landlord registration, security of tenancy deposits and licensing scheme for Houses in Multiple Occupation (HMO).
- 2.2 The overarching objectives of the Private Tenancies Act were to make the private rented sector a safer and more secure housing option for a wider range of households, to ensure better regulation of the sector and offer greater protection to private renters.
- 2.3. Members were updated in March 2023 regarding the implementation of sections 1 – 6 of the Private Tenancies (N.I.) Act 2022 which came into effect on the 1st April 2023.
- 2.4 Not all requirements of the Act were implemented in April 2023. The creation of further regulations is required to bring the remainder of the Act into effect. This is the case for Sections 8 and 10 pertaining to smoke heat and carbon monoxide alarms and electrical safety.
- 2.5 The Department for Communities has launched two consultations on the out-workings of the Private Tenancies Act (NI) 2022 in shaping the technical regulations relating to:
- 2.6 Section 8 – Smoke, heat, and carbon monoxide alarms.
<https://consultations.nidirect.gov.uk/dfc/the-fire-smoke-and-carbon-monoxide-alarms-northern>
- 2.7 Section 10 – Electrical Safety Standards
<https://consultations.nidirect.gov.uk/dfc/electrical-safety-standards-northern-ireland-202x>
- 2.8 The purpose of the consultations is to assess whether the regulations deliver a sound legislative framework (in context of boundaries in the 2022 Act) to improve health and safety standards in private rented properties, and that the accompanying Guidance Notes are easy to follow and provide the necessary information for all stakeholder groups.

3.0 Proposals

3.1 Section 8 – Smoke, heat, and carbon monoxide alarms.

- The proposed Smoke, Heat and Carbon Monoxide Alarms Regulations (NI) set the standards for the number and type of smoke, heat and carbon monoxide alarms to be installed in private rented properties and aim to reduce the risk of fire related incidents.
- It is anticipated these Regulations will come into operation early next year and will apply to all private tenancies. There will be a lead in time of 2 months for landlords to comply.
- It will be an offence for a private landlord to fail to comply with the duty to keep in repair and proper working order sufficient appliances for detecting smoke, heat and carbon monoxide.

3.2 Section 10 – Electrical Safety Standards

- The proposed Electrical Safety Standards Regulations (NI) aim to reduce the risks of death and injury due to electrical faults in private rental properties.
- The regulations introduce the requirement for electrical safety standards to be met during the period the property is let and electrical inspections will be required to be completed by a qualified electrician at least every 5 years. The landlord must provide proof the testing has been carried out and if a repair/further investigation is required it must be completed within a specific timescale. It will be an offence for the landlord not to comply with their duties.
- There is no indication of an implementation date yet. Once commenced, it is anticipated there will be a lead in time of 12 months for all tenancies to comply.
- The Act creates new offences for which the Council will have powers to issue fixed penalty notices. The fixed penalty payable in respect of an offence is an amount determined by the Council, being an amount not exceeding one-fifth of the maximum fine payable on summary conviction of that offence, which is a maximum of £500 for smoke, heat and carbon monoxide alarm offence and £1000 for electrical safety offence.

3.3 The introduction of the Private Tenancies Act provides Councils with new enforcement powers to deal with tenancy issues in the private rented sector. This will increase the duties and demands on the Councils enforcement resource which has already experienced an increase in demand on housing and statutory nuisance services over recent years.

3.4 DfC is aware of concerns in terms of resources, however there is no financial support available currently to assist Councils with these additional powers. The Council in its response to the consultation has requested the ability to charge

for enforcement action with regards to electrical safety like that contained in Part II of the Private Tenancies (NI) Order.

- 3.5 The fixed penalty regime introduced for the new offences may provide some income but it will not cover any additional staffing and administrative resources required. Setting the fixed penalty to the maximum amounts is a key consideration in the absence of any financial support to implement this important legislation.
- 3.6 Members will be provided with a further update prior to implementation of the new legislative powers to agree fixed penalty levels.
- 3.7 Attached as Appendices 1 & 2 are suggested responses to the technical matters of the consultations.
- 3.8 The closing date for submission of responses to DfC is 15th January 2023. The original deadline was 5th December 2023 however an extension was requested to accommodate Council's meeting timetable.

4.0 Recommendation

It is recommended that the Environmental Services Committee recommends Council approves the responses to the technical matters of the consultation.

Consultation Response on Private Tenancies (N.I.) Act 2022 - Section 8 Smoke, Heat and Carbon Monoxide Alarms

Summary

The Regulations relating to Section 8 pertain to the installation of sufficient smoke, heat, and carbon monoxide alarms and aim to reduce the risk of fire related incidents in private rented properties. The Regulations and Guidance Notes can be found with the consultation document at <https://consultations.nidirect.gov.uk/dfc/the-fire-smoke-and-carbon-monoxide-alarms-northern>

1. Did you find the regulations/guidance notes easy to follow with regard to Council enforcement responsibilities?

Yes

2. Is the information regarding the enforcement process correct?

Yes

If you answered NO to this question, please explain below what was incorrect.

Causeway Coast & Glens Borough Council largely agrees the enforcement process is correct and makes the following comments:

- In the absence of provision to issue a notice requiring the landlord to carry out works to repair or provide alarms, the enforcement process commences with the decision to prosecute for the offence under Article 11B(4) or offer discharge of liability of conviction by payment of fixed penalty notice, maximum £500. Causeway Coast & Glens Borough Council highlight we will have regard to the Council's Enforcement Policy in determining the most appropriate course of action.
- With reference to Regulation 4(3), there appears to be typing error. i.e. Landlords must install sufficient alarms as specified in accordance with regulation (1) and (2). Should read regulation 4(1) and 4(2).
- With reference to Guidance point 9.1 and 10.1, there appears to be a technical error. The offence is created under 11B(4) of the PTO and not Art 68 (1) which relates to the prosecution of offences including that created under Article 11B(4) for failing to comply with duties under 11B(1).

3. Do you think we have got the landlord and tenant responsibilities right in the Regulations/Guidance?

Yes

If you have answered NO to this question, please comment below on anything that we have missed or got wrong.

Causeway Coast & Glens Borough Council largely agrees with the responsibilities for each party and acknowledges it is the tenant responsibility to test to ensure in proper working order and report to the landlord.

However, we seek further clarification and guidance regarding Article 11D of the PTO: Landlord's duties: private tenancy of part of a building, i.e. where a dwelling-house let under a private tenancy consists of a part of a building, the duties imposed on the landlord by Article 11B may require the landlord to position appliances in a part or parts of the building not comprised in the tenancy.

Given there are many incidents of fires in blocks of flats and high-rise buildings with potentially serious consequences, Causeway Coast & Glens Borough Council seeks clarity either within the regulations and/or guidance in relation to position, numbers, types of alarms required for common parts of buildings and the enforcement process.

4. Is there anything else you would like to add or comment on in respect of the introduction of these new Regulations/Guidance Notes?

Yes

If you have answered YES, please comment below.

With reference to Guidance point 8.9, Council seeks further clarification regarding the extra protections considered necessary for flue transferring through bedrooms. It is suggested an example of the circumstances would be appropriate.

Causeway Coast & Glens Borough Council highlights the provision of sufficient alarms and the specification of interlinked alarms in private rented properties will be a significant change for landlords. It is acknowledged the specification deviates from the current building control requirement which is to be 'hard wired' however Causeway Coast & Glens Borough Council agrees the requirement to provide smoke and heat alarms interlinked either hard wired or battery sealed or combination of both is a significant step forward to reduce the risk of fire related incidents.

It is also highlighted the current Northern Ireland Fire and Rescue (NIFRS) scheme of installing smoke alarms may not be compliant with the requirements and therefore unable to provide service to the private rented sector.

The introduction of the Private Tenancies Act provides Councils with new enforcement powers to deal with tenancy issues in the private rented sector. This has increased the duties and demands on the Causeway Coast & Glens Borough Council's enforcement resource which has already experienced an increase demand on housing and statutory nuisance services over recent years, coupled with competing priorities on other duties with the Health & Built Environment Department. Causeway Coast & Glens Borough Council reiterates the concerns in terms of resources in the absence of no financial support available to assist Councils with these additional powers.

Causeway Coast & Glens Borough Council agrees the regulations should not apply to Houses in Multiple Occupation (HMO) properties as they are already well regulated. The Department has made it clear the regulations will also not apply to single lets. Causeway Coast & Glens Borough Council is not aware of any specific legislation/guidance in relation to single lets and require clarification on how private tenancies provided as emergency housing accommodation by Northern Ireland Housing Executive (NIHE) intend to be regulated. It is our view single lets should be afforded the same protections and safeguards as private rented and social tenants and avoid creating a two-tier system.

Consultation on Private Tenancies Act 2022 Section 10 Electrical Safety Standards

Summary

The Regulations for Section 10 introduce certified 5-yearly checks of a private rented property's hard-wired electrical installation by a qualified electrician. The Regulations and Guidance Notes can be found with the consultation document at

<https://consultations.nidirect.gov.uk/dfc/electrical-safety-standards-northern-ireland-202x>

1. Did you find the regulations/guidance notes, which explain the enforcement process, easy to follow?

Yes

If you answered NO to this question, please explain below what was not clear.

Causeway Coast & Glens Borough Council welcomes the mandatory requirement to ensure periodic electrical safety checks in private rental properties conducted by suitably qualified professionals, as currently there is no such legal requirement. This is in contrast with regulation of Houses in Multiple Occupation (HMO's) properties and the private rented sector in other jurisdictions.

Causeway Coast & Glens Borough Council largely agrees the regulation and guidance clearly sets out the enforcement process and makes the following comments:

- Causeway Coast & Glens Borough Council considers the regulations clearly set out the duties of private landlords to ensure electrical safety standards are met and set an interval of periodic testing every 5 years by a qualified person, with the first inspection to take place before tenancy commences or by 1st January 2025 if existing tenancy.

The guidance clearly states the electrical standards to be met are set out in the 18th Edition of the Wiring Regulations.

- With regards to Regulation 3(4) and 3(5), Causeway Coast & Glens Borough Council is of the opinion, upon completion of further investigative or remedial works, this should necessitate a duty to provide a copy of the final 'report' i.e. Minor Electrical Installation Works Certificate (MEIWC) to the tenant and council, as opposed to 'written confirmation'. A **report** (MEIWC) would clearly demonstrate the specific works completed and provide assurances the electrical installation is safe. For example, in the past officers have experienced receipt of scant written notes deeming electricians are safe and meet the standards without evidence to demonstrate the required investigation has been carried out or nature of repairs completed.
- Causeway Coast & Glens Borough Council considers clarification is required in the guidance with regards to the service of a remedial notice. Regulation 4(1) details the council must serve a remedial notice where there are reasonable grounds to believe the landlord failed to comply with *one or more duties under Regulation 3(1)(a)(b)(c), 3(4), 3(5), 3(6)*. Omitting the duties set out in Regulation 3(3). In contrast the language used in the Guidance, point 8.1, states "*if council believes a landlord is in breach of one or more of their duties set out in the Regulations, they must serve notice..*" The guidance should be consistent with the requirements of the regulations. Council is of the opinion the duties contained in Regulation 3(3) should be included, like other duties specified in Regulation 4(1). This would provide an option to serve a remedial notice, for example, requiring the landlord to supply a copy of report to tenant within 28 days.

Appendix 2

This would be in addition to the option of prosecution and offering a fixed penalty notice for the offence failing to comply with duty under Regulation 3.

- It is Causeway Coast & Glens Borough Council's view the requirement to suspend the remedial notice upon written representation from landlord to allow the council to consider for 7 days and then allow a further 21 days from the date notice upheld, allows for the potential for the process to be delayed, and perhaps could be used to the advantage of the landlord to stall the process, at the detriment of the occupants.

2. Do you agree the process outlined within the Regulations and Guidance is in line with what you currently progress under the Private Tenancies (NI) Order 2006 in respect of enforcement action?

No

If you have answered NO to this question, it would be appreciated if you could comment below on what should be amended.

Causeway Coast & Glens Borough Council is already heavily involved in the regulation of the private sector under the legislative framework of the Private Tenancies (NI) Order 2006 (PTO). Officers have considered the proposed enforcement processes in comparison to those within the PTO:

- Under Part III of the Order, the district council may serve a Notice of Unfitness (NOU) or a Notice of Disrepair (NOD) on the 'owner', defined as *the person who for the time being receives or is entitled to receive the rent of the dwelling-house or building, whether on his own account or as agent or trustee for any other person.*

In contrast, The Electrical Safety Regulations place the duty on the 'landlord' and remedial notice to be served on the same. There is no definition of 'landlord' in the regulations or the guidance therefore it is assumed it will be the same as that defined in the Private Tenancies (NI) Order 2006, ie *"the landlord" as includes any person from time to time deriving title under the original landlord and also includes, in relation to any dwelling-house, any person other than the tenant who is, or but for Part III of the Rent Order would be, entitled to possession of the dwelling-house;*

It is Causeway Coast & Glens Borough Council's view the guidance and/or the regulations should provide clarity on the definition of the landlord for the purpose of enforcement.

- Under Article 26 of the PTO, there is the ability for council to charge for expenses incurred in respect of service of NOU and NOD.

The expenses are those incurred in–

- (a) determining whether to serve the notice,
- (b) identifying the works to be specified in the notice, and
- (c) serving the notice.

It is expected there will be cases that officers will be required to seek the expert advice of a qualified electrician to determine whether to serve a remedial notice and specify the works required. This will be at a cost to the ratepayer. It is Causeway Coast & Glens Borough Council's view the regulations should make provision for the ability to charge for enforcement action, similar to that associated with the service of notices under Part III of the Private Tenancies Order.

Appendix 2

- Under Article 27 of PTO there is the provision of powers of entry to persons authorised by council, having given the appropriate notice to the occupier and the owner, for the purpose of survey and examination and for carrying out work in default as required by NOU or NOD. Article 28 also provides an offence for obstruction of an officer under Part III. This differs to Regulation 6, in that there is no power of entry for authorised persons for works in default/urgent works which may be carried out by the council. The council may only carry out works with consent given by the tenant. It is our view; some vulnerable tenants may not consent fearing retaliation eviction by the landlord.
- It is clear within Regulation 5(3) if the landlord is prevented from entering the dwelling by the tenant/s, the landlord will not be considered to have failed to have taken all reasonable steps to comply with the notice solely by reason of a failure to bring legal proceedings to secure entry.

Causeway Coast & Glens Borough Council seek clarification on whether Article 12(2) of the PTO is applicable for landlords attempting to secure entry to the dwelling for the purpose of electrical repairs. And if so, the guidance should clearly state if the landlord is expected to utilise this provision to demonstrate reasonable steps have been taken to gain entry to carry out repairs specified in any remedial notice.

- Causeway Coast & Glens Borough Council highlights the difficulties encountered following prosecution of offences alongside the continuation of the offence. The regulations differ to the PTO in that there is no process for further prosecution of a continuing offence. It is our view this should be included in the regulations to avoid protracted process of serving another remedial notice and going through the entire process again.

3. Do you think there is a step missing that could help you with the Enforcement process (if permissible for us to work in under the powers in the primary legislation)?

Yes

If you have answered YES to this question, please detail below so we can give that consideration.

Within the regulations provisions to deal with urgent works are; the discretionary power for council to arrange to carry out works; prosecute the landlord for failing to comply with duties, or; offer discharge of liability to conviction by the payment of Fixed Penalty Notice, maximum £1000

Causeway Coast & Glens Borough Council considers it beneficial to make provision to allow councils to require the landlord to arrange urgent inspection/testing in the intervening period of testing and to obtain and supply report to the council, thereafter, following the enforcement process.

It is our view the onus should always be on the landlord to ensure and demonstrate the electrical safety standards are met and installation is safe.

4. If the council has reasonable grounds to serve a remedial notice the tenant should receive a copy as per Regulation 4(4). Do you believe the tenant needs to get a copy of the remedial notice at this stage?

Yes

This is consistent with service of Notice of Unfitness and Notice of Disrepair under Part III of the PTO

5. Is there anything else you would like to add or comment on in respect of the introduction of these new Regulations/Guidance Notes?

Yes

If you have answered YES, please comment below.

- With reference to Regulation 3(3) & 3(4), Causeway Coast & Glens Borough Council wishes to acknowledge the demands placed on the industry to produce reports in a timely manner and to carry out remedial works within the specified 28 days. The Department should carefully consider if the specified time periods are practically achievable or what other measures can be taken across other Departments to ensure sufficient trained and qualified persons are available to carry out regular testing and provision of reports.
- It is acknowledged the necessity of an appropriate lead-in period for all existing tenancies to obtain first inspection. In our view one year is considered reasonable.
- The additional duties placed upon landlords will require appropriate communication by the Department to landlords, agents and tenants.
- Causeway Coast & Glens Borough Council agrees the regulations should not apply to HMO properties as they are already well regulated. The Department has made to clear the regulations will also not apply to single lets. The Council is not aware of any specific legislation/guidance in relation to single lets and require clarification on how private tenancies provided as emergency housing accommodation by NIHE intend to be regulated. It is our view single lets should be afforded the same protections and safeguards as private rented and social tenants and avoid creating a two-tier system.
- Causeway Coast & Glens Borough Council seeks clarification and guidance how the regulations apply to common parts of buildings, outside flats etc.
- To avoid any misinterpretation, Causeway Coast & Glens Borough Council suggests the guidance should be clear that an Electrical Installation Condition Report (EICR) is the minimum standard required and expected.
- The introduction of the Private Tenancies Act provides Councils with new enforcement powers to deal with tenancy issues in the private rented sector. This has increased the duties and demands on Causeway Coast & Glens Borough Council's enforcement resource which has already experienced an increased demand on housing and statutory nuisance services over recent years, coupled with competing priorities on other duties within the Health & Built Environment Department. Causeway Coast & Glens Borough Council reiterates the concerns in terms of resources in the absence of no financial support available to assist Councils with these additional powers.
- Causeway Coast & Glens Borough Council requests that the Department provide or arrange for the training of council officers prior to the commencement of the regulations.