

# **A Response to the DFP Consultation Paper on the Review of Rates Liability for the Landlord Sector**

June 2013

## Introduction

1. Housing Rights Service was established in 1964 and is the leading provider of independent specialist housing advice services throughout Northern Ireland. Our services focus on the key areas of preventing homelessness; accessing accommodation; tackling affordability and poor housing conditions. We work to achieve positive change by protecting and promoting the rights of people who are in housing need and our policy work is based on the experience of our clients. HRS has for many years encountered a number of problems experienced by tenants, landlords, and owners who are not fully aware of their liability for domestic rate payments on rental properties. Rates issues are becoming more of a priority for our clients. Currently around 10% of our advice enquiries have a rates element to the query. In addition, one third of our total enquires relate to the private rented sector (PRS).

## Summary

2. Housing Rights Service welcomes this consultation paper and is supportive of the policy intention to simplify the rules governing rate liability for residential landlords. However we don't believe the proposals as presented will significantly realise this objective. We therefore recommend the Department should instigate a phased approach to addressing this complex issue by implementing the proposed changes in the consultation paper with a view to launching in the near future a 'root and branch' review of residential rates liability. This could involve convening a stakeholder group involving tenant, agent and landlord interests to review the future of domestic rates collection arrangements. This review should be aligned with the process to design a new rates relief scheme as part of Welfare Reform.
3. In regard to the specific proposals contained in the consultation paper we support the first proposal to make all rented property with a capital value of £150,000 or under subject to compulsory landlord liability which is already part of the current framework. However in our experience most tenants do not understand what is meant by the term capital value. Nor do they generally know the actual capital value of their dwelling. In fact we find most tenants don't even know what the rates contribution is and whether they are liable as the practice of landlords providing this information is very limited.
4. We also support the modest proposal to remove the criterion relating to frequency of rental payment in legislation however we note that most rental payments are made on a monthly basis and therefore this proposal will have a very limited impact on our clients but we accept it will help Land and Property Services (LPS) in administering the scheme.
5. In addition, we believe that where landlords default on their arrangements to pay rates as set out in tenancy agreements, tenants should no longer be prosecuted for rates liability where it can be proved that they have made rates payments to their landlord in line with their tenancy agreements. (See appendix 1 for a case study which illustrates this issue). We would also question the effectiveness of Article 23 (which deals with the liability of the occupier for rates unpaid by the owner) and Article 24 (the recovery of rates from tenants and lodgers) in the Rates (NI) Order 1977. Our understanding is that these provisions have never been used and therefore, in our opinion, should be revoked. In regard to the other proposals we have no particular views on whether the landlord allowance for mandatory and voluntary liability cases

should be standardised and if this allowance should be awarded whether the property is occupied or vacant.

## **Background**

6. Liability for rates in Northern Ireland is governed by the Rates (NI) Order 1977. Article 18 of that Order provides that the occupier of any hereditament (rateable property) which appears on the valuation list shall be chargeable for rates. While the occupier will usually be liable to rates in the domestic sector this principle is subject to the provisions of Articles 20 and 21 of the Order, which deal with owner/landlord liability. Under Articles 20 and 21 owners /landlords of certain hereditaments which are let out to tenants are liable for rates instead of the occupier. Article 20 creates mandatory liability for landlords/owners, whereas Article 21 provides for voluntary liability by agreement between a landlord and the Department.
7. In a further complication, consideration must also be given to Schedule 8 to the 1977 Order. Even if the landlord/owner is liable to pay rates under the criteria in Article 20, they may not have to do so under this schedule if there is a term in a contract or tenancy agreement which states that the rates will be paid instead by a 'specified person' such as the tenant. A landlord can therefore transfer liability to a tenant or tenants via the rent collected under the tenancy agreement. In this arrangement both parties need to be sure as to who is responsible for paying rates. This is set down in the Order, which technically overrides the provisions of any tenancy agreement. In practice, we find that tenants are often unaware of this transferred liability resulting in a risk of prosecution by LPS.
8. Under Schedule 8, the picture is further muddled if a tenancy existed after the 1977 Order commenced, and the owner has been paying rates. If the contract or tenancy agreement states that the tenant is liable, the tenant will have to pay back to the owner the amount that the owner has already paid to LPS.
9. The provisions of Article 23 (Liability of occupier for rates unpaid by owner) and Article 24 (Recovery of rates from tenants and lodgers) add another layer of complexity where the occupier/tenant becomes responsible for the payment of rates if the owner or landlord fails to make this payment or is in arrears and appear to be ineffective.
10. As we can see, the proposals in the consultation paper, although they go a small way to simplify arrangements in regard to removing the criterion relating to the frequency of rent payments, nevertheless retain a high level of complexity. In our view, confusion will still exist in regard to liability particular in the intersect between primary legislation (Rates Order) and contract law (tenancy agreements).
11. The position will also remain unclear under the proposals in the consultation paper because:
  - Most tenants in our experience will presume that the rates element is included in the usual monthly rental demand and indeed this position is confirmed in official guidance from the Department for Social Development (DSD).<sup>1</sup>

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<sup>1</sup> See DSD advice [http://www.dsdni.gov.uk/prs\\_newsletter\\_issue\\_1.pdf](http://www.dsdni.gov.uk/prs_newsletter_issue_1.pdf)

- Most tenants believe if a tenancy agreement is agreed with a landlord then this will govern liability for rates payments. Interestingly this position was affirmed by a recent ruling in the Small Claims Court.
- Confusion can exist regarding the facility under Schedule 8 of the 1977 Order where a landlord can transfer liability to a tenant or tenants via the rent collected under the tenancy agreement. This can obscure whether liability for rates is determined by rating legislation or contract law.
- Most ratepayers do not understand the basis of determining the capital value of a property and this value is generally not readily available to prospective tenants when searching for properties or provided to current tenants by landlords, agents or LPS.
- Most tenants do not receive rent books from their landlords which are meant to contain information on rates liability and costs even though this is a legal requirement placed on landlords. In practice this obligation is not enforced and widely discredited.<sup>2</sup>
- Most landlords include an amount towards rates in each monthly rental payment and specify this in the tenancy agreement. However, if the landlord fails to pass these payments on to LPS and arrears accrue on the rates bill, the agency will under these proposals still have to pursue the tenant for the money it has not received (the case study in appendix 1 refers). The tenant's main form of redress in this situation is to sue the landlord for the return of the money paid to her/him which can be a complex and expensive process with no guarantee that the rates element will be returned and the credit history of the tenant purged of this bad debt.

#### **Landlord responsibility for the collection of rates**

12. We argue that the policy intention could be much easier to achieve by making landlords responsible for the collection of rates for all PRS properties of capital value in excess of £150,000. All private landlords would then be automatically eligible for an allowance/discount on rates and are therefore rewarded for collecting rates on behalf of government. This arrangement has the value of clarifying in very simple terms the rules for rates collection resulting in administration savings and greater efficiencies for LPS and the Department.
13. The private rented sector in Northern Ireland is subject to considerable levels of transient occupation which, through direct tenant collection, give rise to major collection difficulties for LPS and the Department. There is a high churn of tenancies in rented accommodation, for example 31% of tenants in the private rented sector spend less than 12 months in a tenancy and 51% spend less than two years.<sup>3</sup> These difficulties reduce substantially in the case of landlord collection, where rates payments can be collected by landlords alongside rent. We note that the preference of the predecessor body of LPS, the Rates Collection Agency, was that

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“Generally, the landlord is responsible for paying the rates and needs to collect an amount from the tenant as part of the rent to cover rates. This should be detailed in the tenancy agreement and rent book.” Pg 4

<sup>2</sup> NIHE research shows that three-quarters (73%) of tenants were not provided with a rent book, which landlords are legally required to provide, free of charge to their tenants and over a third (38%) didn't have a tenancy agreement. Private rented sector in Northern Ireland - Report 4: Living in the private rented sector. NIHE (2009)

<sup>3</sup> Average length of residence for tenants in the PRS 2009-10. Source DFP 2013

liability for payment of rates for all domestic property in the public and private rented sectors should rest with the landlord.<sup>4</sup>

14. Payment of rates is a legal obligation<sup>5</sup>, and in 2011-12 court action was taken against 45,902 ratepayers for non-payment of rates.<sup>6</sup> Landlord liability and the collection of rates is a long standing feature of the rating system (originating in legislation going back at least 90 years<sup>7</sup>) which holds for most PRS properties including empty rental properties and HMOs. Northern Ireland Housing Executive (NIHE) and Housing Associations, as social landlords, also collect and pay rates on behalf of their tenants. Landlord liability and the responsibility for the payment and collection of domestic rates can therefore be described as the default position in Northern Ireland.
15. In practice landlords, rather than tenants, are in any case liable for rates since the great majority of PRS properties are below the capital value of £150,000.<sup>8</sup> Recognising this position, LPS actively encourages the minority of tenants who are legally liable under the Rates Order to ask landlords to sign up to Article 21 accounts so that landlords can assume this liability. Unfortunately the take up of this facility is relatively poor as there were only approximately 18,000 properties (5,700 landlords) availing of Article 21 agreements in 2010, worth around £1.9m (DFP 2010).

### **Consultation proposals**

#### ***Making all rented property with a capital value of £150,000 or under subject to compulsory landlord liability***

16. Housing Rights Service supports this proposal and would like to see the Department explore the concept of an owner based liability system for all domestic rented accommodation, previously considered in 2002. We note Minister Wilson's rationale for landlord liability in rating legislation:

"It applies to lower value single family residences and all houses in multiple occupation because this is where problems are likely to occur in collecting rates directly from tenants, who tend to move about more often than most. Direct collection from such occupiers is uneconomic and this holds true today as it did back then, even though the type of households may have changed a lot. The reason we make it a landlord liability is that, for Land and Property Services to pursue tenants, some of whom stay only for very short periods, would be very costly administratively and more likely to result in debt increasing. For that reason, for HMOs, the responsibility lies with the landlord."<sup>9</sup>

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<sup>4</sup> Rate Collection Agency. Review of Articles 20 and 21 of The Rates (NI) Order 1977. Pg 10. [http://www.dfpni.gov.uk/rating-review/article\\_20\\_report.pdf](http://www.dfpni.gov.uk/rating-review/article_20_report.pdf). Accessed 28.05.13

<sup>5</sup> Articles 20 and 21 of the Rates (Northern Ireland) Order 1977, as amended.

<sup>6</sup> Source: LPS annual report and accounts 2011-12

<sup>7</sup> See Assembly Answer AQW 14518/11-15

<sup>8</sup> The average capital value of individual properties held by private sector landlords in 2010 was £92,540. Source: DFP 2010

<sup>9</sup> See Assembly Answer AQO 2574/11-15

It is likely that collection arrangements from tenants will continue to prove problematic particularly in the context of Welfare Reform and will not be restricted to tenants living in properties under the £150,000 capital value threshold.

17. We would question the basis by which such lower capital value residences have been identified as having more transient tenants than properties with higher capital values. Historically many lower capital value lettings have been 'protected tenancies' where the tenant usually has the right to remain in the property for life and, with such security of tenure, would not normally be described as transient.<sup>10</sup> Recent research has also shown a significant increase in lettings activity in the more expensive apartment sector with the market share of such PRS properties now constituting 38% of the total rental activity in the Belfast Metropolitan Area (up from 31% in the July-December 2010 period), with the generally lower value terrace house sector falling from 42% to 39%.<sup>11</sup> The research also found that letting transactions have significantly increased with an increase in rental volumes of 12.8% from the second half of 2011 and an annual increase of approximately 33% - the highest number of rental transactions recorded since the survey started in 2007.<sup>12</sup> 51% of tenants spend on average less than 2 years in the PRS (Family Resources Survey 2009-10; 59% for UK as a whole).

***Removing the criteria for rent to be payable or collected at intervals shorter than quarterly***

18. We welcome this proposal and believe it will assist in a small way to improve ratepayers' understanding of liability and partially ease the administrative burden on LPS. It is commendable that the Department is sufficiently concerned to clarify the confusion that exists in regard to liability being determined by the frequency of rental payments particularly for lower value single household residences. These must be paid at quarterly intervals, or less, to bring them within the ambit of compulsory landlord liability. However we do not believe the removal of this criterion will significantly simplify the system as in practice the vast majority of rental payments are made on a monthly basis anyway. We would welcome evidence showing the proportion of rental payments that are made at intervals longer than quarterly. In our experience there are very few instances of this arrangement.

***Standardising the landlord allowance for both mandatory liability cases and voluntary agreements at 10%***

19. We appreciate there is a greater collection burden in the transient rental sector (most specifically in HMOs given the higher turnover of occupiers), and therefore incentivising landlords to accept liability on these properties greatly facilitates the collection of rates revenue. It is therefore considered necessary by the Department to recognise the important role that landlords in the rented sector play by providing these discounts, particularly where

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<sup>10</sup> Protected (and statutory) tenancies are defined with reference to Rent Restriction Acts which were enacted between 1920 and 1956 in order to control the rents of PRS properties with low rateable values. The 1978 Rent Order excluded from rent control any dwelling with a Net Annual Value of over £140 where a new tenancy had commenced after 1978.

<sup>11</sup> Performance of the private rental market. Belfast Metropolitan Area January - June 2012. NIHE, PropertyNews.com & the Centre for Research on Property and Planning at the University of Ulster. 2012. Pg 3

<sup>12</sup> Ibid. Pg1

they enter into a voluntary agreement with LPS. Housing Rights Service has no particular proposals to make in this section as it believes this issue is primarily one for the Department and landlord representative bodies to consider.

20. Nevertheless, we believe it is worth considering that one potential impact of this proposal to reduce the landlord allowance is an increase in the rent that landlords charge to tenants. It is argued by the Department that this is unlikely to have a significant impact on tenants however we are not aware if any modelling has been provided to substantiate this and we would welcome sight of the evidence base for this assertion.

***Awarding the allowance/discount whether the property is occupied or vacant.***

21. Housing Rights Service does not have a particular position on this issue however we would point to the difficulties faced by LPS in determining whether a particular property is occupied or vacant particularly in highly transient rental areas. We question whether a potential loophole exists in regard to owners of empty properties, not intending to sell or occupy the properties, who nevertheless state it is their intention is to seek tenants without ever doing so, and enter a voluntary agreement in order to benefit from an allowance.

**Lack of information available to tenants**

22. In our experience landlords and letting agents often fail to explain to their tenants where the responsibility for payment of rates rests and we believe confusion will continue to exist in regard to the responsibility for the provision of this information. As Minister Sammy Wilson has stated in regard to disputes over liability “..... when they do arise it is generally because the landlord has not made the rates position clear to the tenant when a tenancy agreement is entered into.”<sup>13</sup> Unfortunately this confusion will still occur under the proposals in this consultation paper. In our view the Department and LPS should consider ways of informing tenants about their liability particularly in situations where landlords have defaulted on collection arrangements set out in tenancy agreements and other forms of contract. No records are apparently held by LPS on the number of cases taken for non-payment of rates where a dispute exists between the landlord and tenant of the property over rates liability.<sup>14</sup> However a significant number of cases must be involved in order to have triggered this review of landlord liability. We note the legal requirement in Scotland for landlords to provide all new tenants with a Tenant Information Pack which could be a means of addressing this information deficit in regards to rates liability and we welcome the suggestion in this regard of the Minister when he stated: “Maybe one thing we ought to place on landlords is an obligation to make it clear to tenants who is responsible for paying rates and who is not responsible”.<sup>15</sup>
23. One of our concerns, as evidenced in our casework, is the lack of information made available by LPS to tenants who, without realising it, become liable for rates, when a landlord defaults. We would welcome a discussion with the Department and LPS on how an administrative solution to

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<sup>13</sup> See Assembly answer AQW 14523/11-15

<http://aims.niassembly.gov.uk/questions/printquestionsummary.aspx?docid=143741>

<sup>14</sup> See Assembly Answer AQW 14522/11-15

<http://aims.niassembly.gov.uk/questions/printquestionsummary.aspx?docid=143739>

<sup>15</sup> Op cit 9 AQO 2574/11-15

this issue can be found. We would like to see an early warning system developed by LPS which can alert tenants to a failure by landlords to make rates payments and an assurance from the Department that tenants will no longer be prosecuted for rates liability where it can be proved that they have made rates payments to their landlord in line with their tenancy agreements.

## **Conclusion**

24. It is argued by the Department that current rules have proved to be complicated to administer and difficult for landlords/owners and tenants /occupiers to understand who is legally liable for rates on rented domestic property. Unfortunately this position is likely to continue under the proposals in the consultation paper and we argue that rather than simply advocating this 'sticking plaster' approach, the Department should also instigate a fundamental review of domestic rates collection under the Rates (NI) Order 1977. We will be pleased to provide additional information in support of this response and would like to thank the officials involved in managing this consultation for their courtesy and assistance in meeting our information requests.

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## Appendix 1

### Case study

Jeanette was forced to leave her private rented accommodation in January 2012 when the landlord sold the property, after living there for 2 years 10 months. Initially the landlord asked her to leave after providing only 2 days' notice, but she insisted on the statutory minimum notice period of 28 days. She had been a model tenant, and paid her rent on time, so she was annoyed by this action.

Previously, in the final months of tenancy, Jeanette noticed that letters from Land and Property Services (LPS) were being sent to her flat, addressed to the landlord, but assumed these related to the sale of the property and had passed them to the estate agent. Jeanette was eventually told that these were demands for payments of rates arrears on the property amounting to approximately £5,500, covering the period November 2009 to January 2012.

Jeanette and the landlord had signed and renewed a tenancy agreement which specifically states that the landlord was liable for rates. The relevant clause in the agreement reads: 'The Landlord shall pay all rates, taxes and assessments on the premises.' Naturally, she was shocked to find out from LPS that she was liable for these arrears. Jeanette had diligently paid rent, which included an element for rates, to the landlord, assuming that the landlord was making payments to cover his rates liability. LPS explained the legal position which stipulates that, if rates are not paid by the estate agent or landlord, then the responsibility falls to the tenant, even if, as in her case, the tenant had already paid the rates already to the landlord as part of the monthly rental. In May 2012, LPS warned Jeanette that, if she did not begin making payments to clear these arrears, a Court Summons would follow. At that point, the former landlord agreed a repayment plan with LPS to clear the rates arrears however the outstanding debt remained in the tenants name until cleared, which at the rate of repayment would be mid-2015. The landlord then made only one payment and then defaulted. Jeanette had no knowledge of this until she received a Court Summons. Jeanette, worried about this summons, contacted Housing Rights Service and we agreed to support her case.

Jeanette attended Court on that day, only to find that the case had been adjourned without her knowledge. The Court officials were unable to tell her why the case was adjourned. LPS subsequently informed her that the landlord has reinstated a repayment plan over a three year period and no legal action would therefore be taken against her.

Jeanette is very unhappy with the way LPS dealt with her case - she found staff very inflexible and unhelpful. She couldn't understand why LPS allowed the rate arrears to build up for over two years before making any attempt to collect the rates for her accommodation. She argued that if she had been informed, say after 6 months, that the landlord was not making rate payments, she could and would have taken up the matter up with the estate agent in order to address the issue. Jeanette can't understand why the law pertaining to non-payment of rates allows liability to rest with the private tenant even if the tenancy agreement clearly states this is not the tenants responsibility and they have already paid rates as part of the rent - which she is hoping will be re-examined as part of a wider review of the Rates (NI) Order 1977.