



Northern Ireland
Assembly

**COMMITTEE FOR
SOCIAL DEVELOPMENT**

**OFFICIAL REPORT
(Hansard)**

**Caravans Bill: Formal Clause-by-Clause
Consideration**

21 October 2010

NORTHERN IRELAND ASSEMBLY

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SOCIAL DEVELOPMENT**

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Members present for all or part of the proceedings:

Mr Simon Hamilton (Chairperson)
Ms Carál Ní Chuilín (Deputy Chairperson)
Mr Sydney Anderson
Mrs Mary Bradley
Mr Mickey Brady
Mr Jonathan Craig
Mr Alex Easton
Mr Tommy Gallagher
Ms Anna Lo
Mr Fra McCann

Witnesses:

Mr Colm McQuillan) Northern Ireland Housing Executive
Mr Connor Smith) Northern Ireland Housing Executive
Mr Stephen Martin) Department for Social Development

The Chairperson (Mr Hamilton):

I invite to the table Stephen Martin from the Department's housing division, Colm McQuillan, assistant director, and Connor Smith, assistant principal officer from the Traveller project team at the Housing Executive. You are all welcome.

Members have been provided with a clause-by-clause table, which should be consulted as necessary, along with copies of the Caravans Bill folder. Folders have been updated with all relevant correspondence, including a letter from the Department, dated 19 October 2010, and advice from Legal Services on squatters' rights. I remind members and witnesses that today's proceedings are being recorded by Hansard.

I ask the witnesses to kick off the meeting. Then, we will have what will probably be more of a discussion, rather than the usual question and answer session.

Mr Stephen Martin (Department for Social Development):

The focus of this initial session is the operational impact of the Bill. Colm and Connor are in a much better position than I am to talk about that. Therefore, if you do not mind, I will hand over to them.

Mr Colm McQuillan (Northern Ireland Housing Executive):

The Housing Executive welcomes the Bill. It gives us considerable control and covers the rights of quite a few Travellers who live on our sites, especially on serviced sites. From our perspective, the Bill is welcome.

The potential problems that we may be incur, because of the amendment that has been tabled to clause 1 to change the period of three months to one year, are manageable. That must be put in the context of the number of families affected: we have a relatively small number of families who would, or could potentially be, affected were we to find ourselves in an overholding position or if a legal challenge was levied. We will put in place alternative arrangements for the provision of proper accommodation for Travellers. Last month, we brought a significant paper to our board, which put forward a new approach to making sure that appropriate accommodation, and enough of it, is put in place to meet the needs of that community.

A query was raised on whether we would find ourselves in a position in which we would be carrying out large-scale evictions of families. It has not happened to date, and it will not happen. For the past seven or eight years, in the absence of the Caravans Bill, that has not happened. We have not found ourselves in that position in the past and do not anticipate finding ourselves in that

position in the future. The Bill will not have a significantly adverse effect on the day-to-day management of sites and Traveller accommodation.

The Chairperson:

That is the crux of it. The Committee has been caught between wanting to support a good Bill enthusiastically and not wanting to have an adverse impact in that area. Our discussion and scrutiny of the Bill has morphed from talking about people in caravans at the seaside to talking about Traveller sites every week. Collectively, we have been concerned that the initial Bill, which included a three-month period, and even the amendment, which would extend that to 12 months, might not have enabled the Housing Executive to do its job. Our concern was more about the management side and whether that would lead to a significant change in how the Housing Executive goes about its work.

Some of the figures show that a significant proportion of Travellers remains on emergency and transit sites beyond the 12-month period. We understand why that is the case and do not criticise that in any way. However, we understand the difficulty in managing the whole issue, and, as Mickey said last week, we are faced with a situation that has developed from the failure to resolve that issue over many years. Will you clarify that point for the Committee: are you saying that, in effect, your management of Traveller sites will not significantly change?

Mr C McQuillan:

I can confirm that.

The Chairperson:

A concern was expressed that the 12-month requirement would mean that, after 11 and a half months, people would be moved off sites to nowhere, effectively. We all understand the issues. Will that happen?

Mr C McQuillan:

No; that will not happen. Our major issue is the lack of site provision. As I mentioned, we have put to our board a significant paper on how we will address that shortfall. We are reconsidering all our plans on suitability, areas of highest need and on public lands to determine whether we can

put in place appropriate accommodation to meet the needs of the population. The vast majority of the Traveller population is housed suitably in social housing or on long-term permanent sites, which are covered under clause 1. Although some still live on temporary and emergency halting sites, we are content to manage them there until we find appropriate provision. Although we could so, we have no intention, at this time, of becoming involved in evictions based on the existing site licences. That situation will remain as it is. The basic problem is putting more sites in place. If we are successful in that, the issue will become a moot point in relation to the impact of the Bill.

The Chairperson:

In practice, how will you mitigate the risk of a tenancy being established after 12 months?

Mr C McQuillan:

At present, that is merely a potential or hypothetical issue. It has not been challenged in the courts yet. There would have to be a case that uses the Bill as a challenge. The Housing Executive is actively pursuing long-term sites for all those who are currently staying long term on temporary sites. A number of actions are already in play, such as planning applications, to determine whether we can put in place permanent sites for those individuals and free up existing temporary halt sites and emergency sites. We will have to wait and see how we deal with any potential legal challenge.

The Chairperson:

You might be able to take certain actions under advice in advance, rather than taking the suck-it-and-see approach and waiting until it gets to court. You could make it clear that licences are for 12 months and remind people who move on to the sites, well in advance of the end of that period, that the licence lasts for 12 months only.

Mr C McQuillan:

That is already the practice. We issue the licence, and, at the end of the licence period, we advise that it has expired and that people remain there on a day-to-day basis under our sufferance, as it were.

The Chairperson:

We all understand why that is the case.

Mr C McQuillan:

The legal side is covered by the licence that we issue at present, which is usually for 28 days. We can extend that to three months. After three months, we advise people that they remain there on a day-to-day basis and outside the normal terms of that licence. Under our co-operation policy, however, we allow them to remain on the site.

The Chairperson:

We understand that. Thank you.

Mr Craig:

I have almost got the answer to my question now, Colm. In practice, the Bill will not really make any difference to the way in which you carry out your operation with Travellers. Our concern was whether it would add complexity or make life impossible for you in carrying out what you do in practice.

Mr C McQuillan:

That is correct. We have been managing that issue to a greater or lesser degree for quite a long time. We were aware of the issues well in advance of the Bill. Our major push is to put in place appropriate accommodation that fits the needs of that client group and not to find ourselves on the periphery by using certain types of legislation to move on or put pressure on that client group. The answer is more sites.

Ms Lo:

Colm, I agree with you about the difficulty, which is mainly the lack of sites for Travellers. You said that there was never a problem with mass eviction, but that was before this legislation, which may require you to take that option.

Perhaps the legislation will give some impetus to the Housing Executive to try to find more sites. What is your timescale, because the legislation will be law, possibly by May 2011? How

quickly can you find and establish additional sites?

Mr C McQuillan:

To be honest, the \$64,000 question is whether we can do so within the timescale. We have planning applications at various stages that would offset particular problems in a number of areas. The applications are complex and at an early stage, and we continue to complement them as we see fit at present.

As recently as last month, the Housing Executive board ratified a policy and procedure to continue a full review of all our lands and public lands throughout those areas of need to determine whether we could quickly establish appropriate accommodation for that client group. I cannot say definitively that the situation will not change, because I do not know what will come up. I can say only that we will reflect on what we did in the past and that we do not intend to find ourselves carrying out large-scale evictions from any of our sites.

Ms Lo:

We could be talking about two, three or five years before more permanent sites for Travellers can be found and established.

Mr C McQuillan:

That is if permanent sites are what they require. The issue of permanent sites is covered well by the Bill, in which they are afforded the same protection. Once we establish a permanent site, the Bill affords protection that is very similar to that of Housing Executive tenancies. It is for those who wish to express their culture by way of travelling that we must put in place transit sites.

Our problem is that some of our transit sites are becoming silted up. At present, not all of the individuals on those sites express a wish to remain. Some stay for three, four or five months. The situation is dynamic, which is a sign of the times. Some have stayed on for seven, eight, nine months or a little longer.

In the Craigavon case, families have been there for an awfully long time. They want a permanent site, and we are actively looking for a permanent site in that area. We hope to have

something in place within the timescale that you mentioned. We do not have that problem on the other sites. They are not past the year, and, given our experience, we do not anticipate their being a problem. Additional transit sites would address the transient nature of the client group. We do not have a large waiting list of Travellers silting up our sites and expressing a wish to remain there. We have a particular problem in a particular area; namely Craigavon. Outside Craigavon, we do not have the same problem.

The Chairperson:

That last question strayed into more operational issues, rather than focusing on the consequences of the Bill. Members should focus their questions on the Bill. We can talk about Travellers' issues, but only how they relate to the Bill.

Mr S Anderson:

I apologise for being late, but I was meeting more than 100 people. Colm touched on the situation in Craigavon. As a member of Craigavon Borough Council, I declare an interest. As you will be aware, and going by the number of objections that you receive, there are major problems in obtaining the required number of sites. That is a big problem for the future. If you were to go down the line of evictions, it would create a major issue of where the evicted families would go. Evictions encourage illegal encampments, which are also a major problem. You talked about 12-month licences, but, as Jonathan said, nothing changes. After an eviction, people live day to day, and that will continue for ever and a day, or until you get another suitable site for them. Is that what we are saying?

Mr C McQuillan:

Absolutely.

Mr S Anderson:

What about the changes?

Mr C McQuillan:

The Bill will provide the security of tenure that we want for permanent sites for Travellers and caravan dwellers. The anomaly is that there is the potential for individuals to take a case because

they have lived in a certain place for more than 12 months and, therefore, would like to exercise their right to continue living there. We intend to militate against that by putting in place additional sites for those who wish to live in a particular area on a permanent basis. As I said, we brought a significant paper to our board and are putting in place a series of actions to militate against that eventuality, including a recall of all Housing Executive lands in the Craigavon area and in all areas in which there is a need. We have concept plans that we would like to bring to that, and, as you are aware, we have outline planning permission for a particular site in the Craigavon area that would militate against that problem.

We cannot foresee what will happen to Travellers' lifestyles and expectations, which are, in fact, changing. Nearly four years ago, when I took up post and assumed responsibility for Travellers, there were 90 to 100 unauthorised encampments each year throughout Northern Ireland. Last year, with the exception of Craigavon, where, in fact, numbers went down significantly, there were only nine. Therefore, the number of people who access sites has reduced significantly. That reflects a number of factors, including the economic downturn, changing lifestyles and Travellers' expectations.

We are committed to putting in place proper accommodation to meet the needs of that client group. In the past two years, we have opened several major schemes, including 21 brand new units on the Monagh bypass, which took nearly 100 people off the roadside and into a social group housing scheme on which they are all very keen. Our other schemes include outline planning permission for additional group housing schemes on the Glen Road, which will go ahead within the next year. We have upgraded quite a few facilities by installing showers, electricity and other services on sites that we own or on which we co-operate with other landlords. We have invested significantly in that. We expect to be successful in putting in place accommodation that will meet the needs of those who might be affected by the 12- month period. That is what we intend to do. We understand that there will be difficulties in doing so, but we are committed to pushing forward.

Mr S Anderson:

I appreciate the difficult job that you have to do. We are all aware that it is not an easy task. However, do you agree that there are great difficulties in obtaining sites, not only in Craigavon,

but possibly in other areas? It will take time to overcome those problems. I am sure that you know what I am talking about. Do you envisage the Housing Executive taking decisions to evict Travellers from a site at any time after the 12-month period has elapsed, or will that not happen?

Mr C McQuillan:

I cannot guarantee that we will not evict any of our tenants from any of our dwellings or sites at any time in the future. It would be impossible to give such a guarantee because the reasons for moving folk out of one of our properties or sites can vary enormously. It could be for antisocial behaviour and all sorts of bits and pieces. At this point in time, we have no intention —

Mr S Anderson:

I am saying that it is unlikely that you will be in a position to evict because of the lack of sites.

Mr C McQuillan:

We have no intention of forcibly evicting folk at the end of the 12-month period. I am not saying that it will not happen because the circumstances of particular individuals could dictate otherwise. However, that might not necessarily be to do with the timescale, be it three, six or 12 months. It could be to do with other matters. The answer, as we see it, is the provision of additional sites. We have made a commitment to putting in place such additional sites. We put a significant piece of policy to our board to address that. We hope that that will be successful, but who knows? There are many things that the Committee —

Mr S Anderson:

Can you give us a timescale for when you think that you can get some additional sites in place? Do you have any idea?

Mr C McQuillan:

I cannot give you a timescale because there are so many variables that affect that: the capital value of the site, planning permissions or housing need in a particular area, and so forth. We cannot, therefore, put our finger on that. However, we have identified where the need is and are actively pursuing arrangements to offset it, and we understand that it will take time. That would have been our intention regardless of whether the Bill was coming forward. The Bill as it stands

gives protection to those who are on permanent sites, and it also gives us more time than had it not been amended to work that through. Our intention is to put in place the accommodation that is needed for that particular client group. I cannot go any further than that.

Mr F McCann:

First, the group housing sites on the Monagh Bypass and the Glen Road are second to none. They are excellent developments. I appreciate that there could be occasions of antisocial activity or serious breaches of whatever tenancy agreement there might be and that there are concerns that you may have to evict people. However, when you move into the situation of a day-to-day-lease with Travellers, I take it that they will not be moved against their will for as long as there is no other provision into which they can be moved.

Mr C McQuillan:

In the eight years for which we have been responsible for the accommodation needs and unauthorised encampments arrangements, we have taken into account the particular circumstances at the relevant times. We have not and will not move folk on when we do not deem it reasonable or right to do so. I cannot give a cast-iron guarantee that, at the end of a period, we will not have to exercise our rights in doing so. However, I must put that into the context of the number of families with whom we deal who would be affected. It is a relatively small portion of the population. The numbers involved are not large. We are working towards putting in place new group housing schemes that will offset that. Given all the factors that we outlined, of which you are aware, we are also putting in place, as quickly as we can, transit and emergency halting sites that meet the needs of that client population.

Mr F McCann:

It may already be included, but, given the concerns that have been voiced around the table, is there a possibility for a built-in review mechanism for the Department or the Housing Executive of how that operates?

Mr Martin:

That issue is included in the clause-by-clause table, and I am happy to address it when we get to that stage.

The Chairperson:

I thank the witnesses for their evidence. We have heard from the Housing Executive and, recently, we received advice from Legal Services. We now need to determine whether members believe that the Caravans Bill, with the specific proposed amendment, would unacceptably alter the Housing Executive's operational ability to manage and provide Travellers' accommodation. Are members content with the evidence and the assurances that have been given?

Members indicated assent.

The Chairperson:

That is helpful. On that basis, we will proceed with the clause-by-clause scrutiny.

Thank you very much, Colm and Connor. We can release you now. Stephen, however, is in for the long haul.

During the clause-by-clause scrutiny, members will be asked to settle our final position on each clause — not necessarily today, but as we go through the Bill — subject to consequential amendments. The Department has put forward a number of amendments, and the Bill's sponsor has suggested one amendment. When the Committee puts forward an amendment that is not supported by the Department, the Clerk of Bills will take away the proposal and draft the appropriate wording for consideration at a subsequent meeting. If members do not feel that they are able to agree a clause, they must state so clearly during the clause-by-clause scrutiny. In such cases, members will be asked to set out their proposed amendment, and the consideration of the clause may then be deferred until the next meeting. To speed up the process, answer any questions and give advice, the Department will attend all the Committee's sessions on clause-by-clause scrutiny.

As all members have a copy of the clause-by-clause table, we will run through the clauses in the order in which they appear therein.

The Committee Clerk:

The table that is included in members' information packs is all that members should need, and extra copies of the Bill are available.

Clause 1 (Application of this Part)

The Chairperson:

We will begin with amendment A. Clause 1 sets out who will gain the protections of Part 1. As currently drafted, only caravan owner-occupiers who live in their caravans as their main or sole residence and who rent a pitch on a so-called protected site will have the protections of the residential agreement. Amendment A deals with seasonal caravan users on protected sites, and the Committee previously agreed that it would not seek to amend the Bill at this point for that reason and that consideration of the issue would be left until clauses 7, 8 and 15. We will come back and explain that at a later stage. Are members content with that and happy to continue?

Members indicated assent.

The Chairperson:

The Bill, as drafted, would probably extend the protections of Part 1— the residential agreements etc — to users of all Housing Executive Traveller sites. Amendments B(i), B(ii) and B(iii) had been proposed to exclude some or all Traveller sites from the protections in Part 1. Having received departmental and independent legal advice, the Department sought advice from the Human Rights Commission on the compatibility of such amendments with human rights legislation. We now need to determine the Committee's view on those amendments.

The Committee Clerk:

As members will recall, the Human Rights Commission advised that amendments B (i), B(ii) and B(iii) would exempt some Traveller sites from the protections of the Bill and that that would not be compatible with human rights legislation. Therefore, were the Committee to support such amendments, we would get into all sorts of trouble later on. Such amendments might be ruled out of order by the Speaker, and the Bill might no longer be competent. Therefore, the Chairperson will ask the Committee to confirm that it wants to step back from pursuing those amendments.

The Chairperson:

We know that the answer to the question is that we do not intend to support those amendments. Are members happy with that?

Members indicated assent.

The Chairperson:

The Department has proposed a counter amendment, the text of which is in the table. Do you have anything to say, Stephen?

Mr Martin:

The arguments for the counter amendment have been well rehearsed.

The Chairperson:

We have heard the evidence.

Question proposed:

That the Committee recommend to the Assembly that the clause be amended as follows: In page 1, line 8, leave out "3" and insert "12".

Question put and agreed to.

The Chairperson:

Amendment B (iv) was proposed by stakeholders who support the exemption of Travellers' sites from the Bill. That would change Northern Ireland law to give the Housing Executive and district councils additional powers to provide Travellers' caravan sites.

Mr Martin:

That amendment is not required. Prior to 2003, the Housing Executive and district councils had that responsibility. It was transferred in the Housing (Northern Ireland) Order 2003, which inserted section 28A into the Housing (Northern Ireland) Order 1981 to give that responsibility to the Housing Executive. Therefore, the amendment is unnecessary.

The Chairperson:

Are members content not to support that amendment?

Members indicated assent.

Question, That the Committee is content with the clause, subject to the Department's proposed amendment, put and agreed to.

Clause 1, subject to the Department's proposed amendment, agreed to.

Clause 2 (Particulars of agreements)

The Chairperson:

Clause 2 requires caravan site owners to provide eligible caravan owner-occupiers — those on protected sites — with a written statement of their residential agreement. The Committee previously agreed that it did not support amendments C and D. Are we content to hold that position?

Members indicated assent.

The Chairperson:

We move to amendment E. The Committee agreed that the Department should frame an amendment that introduces a requirement for a statutory review of the effectiveness of residential agreements. At the Committee's request, the Department has drafted such an amendment to clause 4. Stephen, do you want to explain that?

Mr Martin:

The last time that we discussed that, the Department made it clear that that amendment was not needed because the Department will undertake the review as a matter of course. However, there is an example in the Wildlife Bill, which is going through the Assembly, of a review clause, and our proposal is based on that clause. It will place a duty on the Department to conduct a review, within the first five years of the Bill's coming into operation, of the schedule and the elements of Part 1 that apply to the residential caravan sector, for which we will be responsible. Thereafter,

we will review at least every five years, because clause 4 gives us the power to amend the schedule and Part 1 through subordinate legislation, subject to draft affirmative resolution. The review will be used to determine whether the Department should exercise those powers, and it will place a duty on us to review.

When we discussed the matter previously, the issue was what would happen in the event of a court case. The clause 4 power is primarily to allow us to keep the law up to date as case law as the courts make decisions about the legislation. The question was asked that, if we set particular review periods, what would happen should we need to do something earlier. This gives us flexibility so that, if there is a big case in three years' time, we could review it at the time without having to wait for five years. In our view, it is a balanced amendment that demonstrates the Department's good faith and gives the Committee some of the reassurances that it needs. However, we will review as a matter of course with or without the amendment.

The Chairperson:

Amendment E is to clause 4 rather than to clause 2. I have jumped ahead. We will bank that explanation and come back to it at a later stage.

Question, That the Committee is content with the clause, put and agreed to.

Clause 2 agreed to.

Clause 3 (Terms of agreements)

The Chairperson:

Clause 3 refers to residential agreements. The Housing Executive, through amendment F, sought clarification that emergency halting and transit sites would be entirely exempt from the residential agreement protections. Failing that, it wanted always to be able to recover a part of one of those sites without having to demonstrate that the caravan owner-occupier had failed to comply with specific tenancy conditions in the Bill.

The Department obtained advice from the Human Rights Commission, and the Committee received independent legal advice on the compatibility of such an amendment with human rights legislation. The Department's amendment to clause 1 was proposed as an alternative to the exemption sought in amendment F, and we discussed that at length. Stephen, I am sure that you

have nothing to add.

Mr Martin:

No, nothing.

The Chairperson:

Are members content not to agree to amendment F?

Members indicated assent.

Question, That the Committee is content with the clause, put and agreed to.

Clause 3 agreed to.

Clause 4 (Power to amend implied terms)

The Chairperson:

Clause 4 allows the Department to amend residential agreements by regulations that would come before the Assembly. At the Committee's request, the Department drafted an amendment that would require statutory review of the effectiveness of residential agreements.

Question proposed:

That the Committee recommend to the Assembly that the clause be amended as follows:

'Clause 4, page 3, line 42, at end insert—

'(6) The Department for Social Development shall—

(a) not later than 5 years after the coming into operation of this Act, and

(b) at least once in every period of 5 years thereafter,

review Parts 1 and 2 of the Schedule and determine whether it should exercise the power to make an order under this section'.

The Chairperson:

As Stephen explained that to us earlier, we need not revisit it, unless members have any questions or issues.

The Committee Clerk:

The review, and maybe the Department will confirm this, would refer only to the residential agreements in Part 1. Therefore, as the amendment is currently drafted, it would not be a review

of the legislation for the seasonal sites. It would be the legislation that applies only to the residential sites.

Mr Martin:

That is absolutely right.

Question put and agreed to.

Question, That the Committee is content with the clause, subject to the Committee's proposed amendment, put and agreed to.

Clause 4, subject to the Committee's proposed amendment, agreed to.

Clause 5 (Successors in title)

The Chairperson:

Clause 5 applies only to caravan owner-occupiers who live in a caravan as their main or sole residence and who rent a pitch on a so-called protected site. Clause 5 allows those owner-occupiers to leave their caravan and the tenancy of the pitch to anyone when they die, whether the inheritor lives in the caravan or not. The Committee agreed that it did not support amendment H. Are we still content to hold that position?

Members indicated assent.

The Chairperson:

Amendment I would specifically prevent users of Housing Executive Traveller sites from leaving the tenancy of their pitch to anyone else following their death, regardless of the duration of a stay at such a site. Again, following advice from the Human Rights Commission, the Department produced a counter amendment that would allow the Housing Executive structured discretion in the application of the clause, for example, such that the inheritor would be obliged to be resident.

Mr Martin:

We tried to find a middle way. The key issue for the Housing Executive was that it was concerned that there would be empty pitches in certain circumstances, and yet there was an obvious need for them. The amendment removes the exemption from the successor to be able to reside on the site. Therefore, if, on a Traveller site, the successor is a Traveller and is prepared to

live there, he or she would be obliged to do so, unless he or she decided to sell or gift. It means that the pitch does not remain empty and can be used by a Traveller.

In drafting the amendment, we discovered an anomaly in the more general situation, whereby the only option for a non-resident successor on a normal park homes site was to sell the caravan and assign the agreement. They could not gift it to another family member. That seemed to be a highly anomalous situation, so we addressed that on the park homes site and the Traveller site.

For a Traveller in those circumstances to be able to live there or sell or gift the caravan, he or she will have to get the Housing Executive's approval for assigning the agreement. A park homes resident will be able to sell or gift the caravan, and, in both circumstances, the site owner will have some control over the assignment of the agreement. That seemed a reasonable step.

Mr Easton:

I have one wee query. There was a 10% commission charge for someone selling a caravan. If the caravan was left to a loved one, would the site owner get a wee cut somewhere along the line?

Mr Martin:

No. The provision in the schedule is clear that no commission is payable on gifting.

Mr Easton:

Happy days.

The Chairperson:

Is commission payable when someone inherits the caravan?

Mr Martin:

No. Commission is payable only when the caravan is sold to another party who is not a qualifying family member. There is no commission on gifting.

Mr Easton:

Mickey and I would not have been too happy about that.

Mr F McCann:

You are getting to the age at which you have to be concerned about it. *[Laughter.]*

The Chairperson:

Anyone would think that they had a caravan together. *[Laughter.]*

Mr Brady:

It is a motorhome. *[Laughter.]*

Ms Lo:

Stephen, the 10% commission does not apply to Housing Executive sites anyway.

Mr Martin:

That is an amendment that we have tabled.

The Chairperson:

We have heard evidence and received legal advice about the compatibility of amendment I.

Are members content not to agree to amendment I?

Members indicated assent.

The Chairperson:

The Department's counter-amendment restricts the application of the successors in title provision in respect of access to pitches for Travellers' sites as Stephen explained.

Question proposed:

*That the Committee recommend to the Assembly that the clause be amended as follows:
In clause 5, page 4, line 7, leave out subsections (3) to (5) and insert—*

(3) The following subsections apply where a person entitled to the benefit of and bound by a residential agreement dies at a time when that person is occupying the caravan as that person's only or main residence; and in those subsections—

- (a) that person is referred to as "the deceased";*
- (b) references to "the beneficiary" of the deceased are to the person entitled to the caravan by virtue of the deceased's will or under the law relating to intestacy;*
- (c) references to "a travellers' site" are to a caravan site provided and managed by the Northern Ireland Housing Executive under Article 28A of the Housing (Northern Ireland) Order 1981 (caravan sites for members of Irish Traveller community); and*
- (d) a beneficiary of the deceased is a qualifying person if the beneficiary satisfies the Housing Executive that the beneficiary—*
 - (i) is a member of the Irish Traveller community (within the meaning of Article 5 of the Race Relations (Northern Ireland) Order 1997); and*
 - (ii) intends to occupy the caravan as the beneficiary's only or main residence.*

(4) The agreement has effect for the benefit of and is binding on any person residing with the deceased at the time of death who is—

- (a) the surviving spouse or civil partner of the deceased; or*
- (b) if there is no surviving spouse or civil partner so residing, a member of the deceased's family.*

(5) If—

- (a) there is no person falling within subsection (4); and*
- (b) the agreement relates to a caravan on a caravan site other than a travellers' site,*

the agreement has effect for the benefit of and is binding on the beneficiary of the deceased, but subject to subsection (7).

(6) If—

- (a) there is no person falling within subsection (4);*
- (b) the agreement relates to a caravan on a travellers' site, and*

(c) the beneficiary of the deceased is a qualifying person, the agreement has effect for the benefit of and is binding on the beneficiary of the deceased.

(7) A residential agreement does not have effect for the benefit of or bind a person by virtue of subsection (5) in so far as—

(a) it would, but for this subsection, enable or require that person to occupy the caravan; or

(b) it includes terms implied by virtue of paragraph 5 of Part 1 of the Schedule.

(8) In relation to a residential agreement—

(a) any reference in this Part to the owner includes a reference to any person who is bound by and entitled to the benefit of the agreement by virtue of subsection (1); and

(b) subject to subsection (7), any reference in this Part to the occupier includes a reference to any person who is entitled to the benefit of and bound by the agreement by virtue of any of subsections (2) to (6).’ — [The Department for Social Development.]

The Chairperson:

It is a fairly lengthy amendment, but, given the explanation that we have had, I think that we will be happy to support it.

Question put and agreed to.

Question, That the Committee is content with the clause, subject to the Committee’s proposed amendments, put and agreed to.

Clause 5, subject to the Committee’s proposed amendment, agreed to.

Clause 6 (Jurisdiction)

The Chairperson:

This clause gives the county court jurisdiction in hearing disputes relating to residential agreements. The Committee previously agreed that it would not support amendment J, which would pass jurisdiction on disputes to a body such as the residential property tribunal.

Are members content not to agree to amendment No J?

Members indicated assent.

Question, That the Committee is content with the clause, put and agreed to.

Clause 6 agreed to

Clause 7 (Application of this Part)

The Chairperson:

Clause 7 is in Part 2 of the Bill, which refers to users of seasonal sites. We are off on holiday now, as this is a different part of the Bill.

Ms Lo:

Happy days.

The Chairperson:

These sites are available only for a limited period of the year. Thus, users cannot live in their caravans as their only or main residence. The Bill gives those caravan owner-occupiers the right to written statements of their terms and conditions. The Committee agreed that, although it did not support amendment K, it wished to ensure that seasonal users on protected sites receive the same protection as seasonal users on seasonal sites.

At the Committee's request, the Department drafted an amendment. Stephen, will you speak to that?

Mr Martin:

I will try to keep this simple. The Bill as drafted makes a distinction between protected sites — the assumption is that all protected sites are residential — and seasonal sites. Stakeholders identified a group of people in the middle who were using protected sites for holiday usage. That was largely because some of the site licences are quite old and a bit vague. We have removed that distinction, so there are protected sites to which Part 1 will apply, and all other sites will enjoy the Part 2 protections. We have slightly amended the wording and changed the definition of seasonal sites, so there will be protected sites, and all other caravan sites will be protected by Part 2.

The Chairperson:

Are there any other questions on that?

Mr F McCann:

I might be completely confused, but when we discussed tenancy agreements, a point was raised about the legality of a residents' association and whether it would be recognised by the site owner.

The Chairperson:

That is a distinct amendment, and we will come to that later.

Mr F McCann:

OK.

The Chairperson:

Members appear to have no further questions.

Question proposed:

That the Committee recommend to the Assembly that the clause be amended as follows:

Clause 7, page 5, line 5, leave out from "under" to end of line 7 and insert "—

(a) under which a person is entitled to station a caravan on land forming part of a caravan site and occupy the caravan for a period exceeding 28 days; and

(b) which is not a residential agreement within the meaning of Part 1

Clause 7, page 5, leave out lines 10 to 15"

Question put and agreed to.

Question, That the Committee is content with the clause, subject to the Committee's proposed amendment, put and agreed to.

Clause 7, subject to the Committee's proposed amendment, agreed to.

Clause 8 (Particulars of agreements)

The Chairperson:

Clause 8 requires seasonal caravan site owners to provide written statements to caravan owner-

occupiers of relevant terms and conditions. This is a Department of Enterprise, Trade and Investment (DETI) policy area, and it argued that clause 8 will prevent site owners from enforcing unwritten terms and that existing consumer legislation will protect from other unreasonable contract terms.

Amendment L was proposed by the Committee and drafted by the Department, and it is designed to give seasonal caravan users on protected sites the same protections as seasonal caravan users on seasonal sites. The amendment is linked to clause 7.

Question proposed:

That the Committee recommend to the Assembly that the clause be amended as follows:

In clause 8, page 5, line 19, leave out 'seasonal' and insert 'caravan'.

In clause 8, page 5, line 33, leave out 'seasonal' and insert 'caravan'.

In clause 8, page 6, line 1, leave out 'seasonal' and insert 'caravan'."

Mr F McCann:

For how long does that run? Does it apply for the length of time that a person is on the site, or is the site owner able to review it periodically?

Mr Martin:

The written statement is for the duration.

Question put and agreed to.

The Committee previously agreed that it would not support amendments M and O. Are members content to maintain that position?

Members indicated assent.

The Chairperson:

Amendment N is Mr McCallister's amendment, which requires the owner of a seasonal site to consult a qualifying residents' association on the running of the site. The site owner would not be obliged to take into account the representations of the qualifying residents' association. That

measure is not in place in Great Britain.

The Committee will recall the response from the Committee for Enterprise, Trade and Investment, which supported the principle of consultation with residents' groups in that sector, but neither agreed nor disagreed in respect of the amendment. The Minister for Enterprise, Trade and Investment opposed the amendment, and members have a copy of her letter. We have not discussed or taken a position on that amendment. Do members want to gauge where we stand before proceeding in a particular direction?

Ms Lo:

Why is the Minister opposed to the amendment?

The Chairperson:

I do not propose to speak for anybody, but I do not think that her opposition is to the principle behind the amendment, which is that, if there is a residents' association on the site, there should be consultation. However, there is an issue about enforcing that and what regime could be put in place.

The suggested amendment refers to consulting, but not taking into account the representations. The issue of enforcement is who enforces, how they enforce and what can be done when a site owner does not consult. The argument could be made that it could result in a bureaucratic mess but offer very little benefit.

Mr F McCann:

Many seasonal holiday parks have unique communities, and they regard themselves as such. Although they remain individual owners of caravans, quite a lot of issues arise that affect the whole site. The recognition of the formation of a tenants' or residents' association on that site is beneficial not only to the caravan owners, but to the park owners, because it allows them to enter into a debate about any major changes, or even minor changes, that may affect those on the site.

The Chairperson:

Perhaps the Department can confirm this, but there is nothing at all to prevent residents on a site

from forming a group.

Mr F McCann:

Are they recognised by the park owners, or are they simply a group of individuals?

Mr Martin:

As the Bill stands, there would be no formal requirement for the park owner to recognise a residential group. However, there is nothing to prevent one from being established.

Mr F McCann:

However, the owner could simply ignore the residents' association.

The Chairperson:

The proposed amendment, and the Committee Clerk may be able to help me with this, does not state that the owner is obliged to do whatever is agreed anyway. Therefore, a residents' association could be set up and the site owner could be required to consult it. However, my understanding is that the proposed amendment does not state that the site owner must take any heed of what is said anyway. This might sound pejorative, but it is almost a sham consultation process.

Mr F McCann:

Initially, I raised the matter because I believed that it did not go far enough in giving recognition to people on the site. The issue is how to fit in that recognition.

The recognition of a residents' association is beneficial to both sides. If there are negotiations between one group that represents hundreds of people on a site, the site owner would have to take on board the large number of people represented by the association, rather than individuals. I do not know how that could be phrased. That is probably a bit more than John is seeking.

The Chairperson:

The proposed amendment does not do what you described. I would argue that it is weak; it does not do anything. If you were to go as far as suggesting that that makes life difficult for a site owner to operate his business —

Mr F McCann:

I am trying to achieve a happy medium. We have spoken throughout this process about the abuses of people on the sites.

The Chairperson:

Those sorts of abuses are precisely what the written agreement targets and will outlaw.

Ms Ní Chuilín:

The principle is that one tenants' association is like any other. No body or agency is compelled to do anything that is asked of it. Surely, it is simply a matter of recognising that relationship. Those agreements have to be tracked, tested and discussed, and, without that recognition, the ability simply to walk away and do nothing will always remain.

Mrs M Bradley:

I can accept all the recommendations being made around the table. However, is there a solid case in the Bill that the rights of caravan owners are totally protected? Would it not be a foolish site owner who knew about the law but still caused problems for someone? The site owner would recognise the people who wanted to come to talk to him or her about certain issues. That is what we are talking about.

The Chairperson:

Are you content not to amend the clause?

Mrs M Bradley:

Yes, if the law is strong enough to protect people's rights. I just want to be sure about that.

The Chairperson:

One can never completely ensure that nothing that is negative will happen. Effectively, the sponsor of the Bill, with the assistance of the Department, is trying to ensure that some of the bad practices that were commonplace will disappear.

Mrs M Bradley:

No one can stop a group of people on a site setting up a small group.

The Chairperson:

The Department confirmed that there is nothing to stop that.

Mr Craig:

We all share the same concern. If a site owner suddenly decides to change the terms and conditions and increases the rates, what is he or she required to do should we pass the legislation as it stands?

Mr Martin:

I am afraid that that part of the Bill relates to a Department of Enterprise, Trade and Investment (DETI) area of policy in which I do not have a great deal of expertise. I remember that the Trading Standards advice to the Committee some months ago was, essentially, that consumer protection law on unfair contracts already exists. The difficulty is in its enforcement, because when cases come to court, there is, often, no documented agreement. The Bill will put in place the requirement for a documented agreement in which express terms will be set out, and it gives teeth to the existing consumer protection law. That is my understanding.

Mr Craig:

Stephen, if a site owner changes that agreement, does he then have to consult with all the owners, not only a residents' group? I have a distinct worry, because I have seen the abuse of that system in other circles. Half a dozen owners can set up a residents' group, but they might be in the pocket of the owner and simply nod in agreement with anything that he says, with the result that everybody is left looking stupid. Is the site owner forced to communicate changes not only to a limited number of individuals but to everybody on the site?

Mr Martin:

I can only explain my understanding of the Bill, and it might be limited in that part. The written statement must include the express terms, which are the specifics, such as when site fees will be increased, and so forth. If a term is not included in the written statement as an expressed term, it

is unenforceable by the owner.

Clause 8(7) allows for the agreement to be varied by agreement between the two parties. If it is varied, however, it remains subject to the same requirements. Anything that is not included in the express terms is unenforceable. Even if something is included in the express terms, but would constitute an unfair contract term, it might not be enforceable. There are protections, but I am no expert on that part of the legislation, and that is my understanding of the evidence from Trading Standards to the Committee. I am afraid that that is as about as far as I can go.

Mr Craig:

A greater worry is that a site owner could issue individual contracts, as opposed to a universal contract. Is that the case?

The Chairperson:

Do you mean different contracts with individual tenants?

Mr Craig:

Is it possible for one contract to state that one individual must pay £2,000 a year for rent while the guy next door pays £10,000?

Mr Martin:

They are individual agreements.

The Chairperson:

The essence of the matter is that there are individual agreements. We always dwell on the bad practices, but a good site with no issues will still have differential fees depending on whether somebody has a sea view or looks on to a main road. That will always be the case, and that might be set out in an existing contract. That individualisation is always there. The Committee Clerk reminds me that the purpose of the Bill is to ensure that the amount that each and every individual expects to pay is expressly written down.

Ms Ní Chuilín:

Are those agreements legally binding?

The Chairperson:

Yes.

Ms Ní Chuilín:

Therefore, regardless of the fact that they are individual agreements, they are legally binding, and everybody knows where they sit. If the amendment is weaker, I do not understand how what Fra proposes would make it impossible for owners to operate the sites.

The Chairperson:

I am simply putting forward a position —

Ms Ní Chuilín:

I know that you are acting as devil's advocate, but I am not clear on that point.

The Chairperson:

I will use a slightly ridiculous example to illustrate the matter. Site owners could make a pertinent point about whom they had to consult and what process was in place for that group, in turn, to consult its members. Somebody might want to put a flower bed beside a caravan, but that is a silly example. If someone wanted to do something that significantly enhanced a site, or if emergency work was necessary, would he or she have to consult the residents' group while a sewerage, water or gas problem developed? The suggested amendment would require the site owner to consult a qualified residents' association on the running of the site. Where is that line drawn? It could enter the realm of the ridiculous.

Ms Ní Chuilín:

The amendment is weak, because it could relate to flower beds and issues such as running the site. If the amendment is meant to refer explicitly to fees, terms and conditions, it should state that. I imagine that on most sites, even those that are poorly run, there are different levels of communications, but there is still communication. The amendment is simply too vague. It could

mean all things to all people and is open to a greater level of abuse. That is my concern. However, if it aims to strengthen the rights of long-term tenants, it should state that and spell out how that would be achieved.

Ms Lo:

It looks like the only enforceable elements would be written in the agreement. Surely, the detail of the operation or management must be included in that agreement. That would provide a safeguard against sudden changes to operation or management. The consultation of residents' groups should be promoted as good practice rather than being part of the law.

The Chairperson:

Do people who go to a seasonal site for a holiday for a few weekends a year do so with the intention of a setting up a residents' association?

Mr F McCann:

Some people go for six weeks in the summer and spend every holiday there.

The Chairperson:

I know that a site is run as a village in many respects. For the vast majority of people, however, the setting up of a residents' association is not their first thought.

Mr F McCann:

I appreciate that, but major decisions are being made —

The Chairperson:

It is a holiday for political activists.

Mr F McCann:

A flower bed is not the kind of issue with which residents' associations would deal, because that would simply involve individuals asking permission from a site owner. There are bigger issues, such as those that Carál mentioned. Everything that is written down is open to interpretation anyway. When the representatives from DETI gave evidence, they said that very few people

were taken to court for infringements because it is almost not worth the effort of doing so. We should be trying to strengthen the legislation to allow, for the first time, people in the seasonal sector to have a say and, particularly, as Alex argued, to give a voice to people who are resident in the sites all year. That would give some teeth to people on the sites.

Stephen referred to clause 8(7), which is gobbledegook to me. Both sides would need six or seven lawyers to get to the bottom of it. Simplification is required so that people can understand what their rights are. Written agreements are open to various interpretations. If someone were to have a major difficulty or problem with a written agreement and the site owner disagreed, it would surely be better to negotiate before incurring the expense of going to court. A residents' association that is recognised on the site could be where such negotiation takes place with the local caravan site owners.

Mr Easton:

I can see everyone's point of view.

Mr F McCann:

You are definitely a politician.

The Chairperson:

Set up a residents' group.

Mr Easton:

The Chairperson said that a whole pile of silly issues might end up with a residents' association, which could be detrimental to the running of a caravan park. Equally, the more important issues that Fra mentioned would be covered in the agreement anyway. I have no major issue with the establishment of a residents' group, but the amendment is weak. The only people who will set up a residents' group will be the permanent residents; not people who stay for six weeks a year.

The Chairperson:

It is in the interest of those folk to do so, given their experience.

Mr Easton:

They can do it anyway.

The Chairperson:

As they live in an area in the same way as social housing tenants or owner occupiers, they have the right to do that.

Mr Brady:

The group would be a conduit between residents and the owner. However, if individual contracts are legally enforceable, as with contracts of employment, I presume that each individual who signed a mutual contract would have legal redress to challenge a change to its terms and conditions. I agree with Carál's point that there are residents' associations everywhere. A residents' group will try to negotiate and sort out any issues.

Mr Craig:

It is a lobbying group.

Mr Brady:

If there is stalemate between an individual and the owner, however, that group is not necessarily able to progress the matter any further. It is important that people have the protection of legal redress. I am in favour of residents' groups in circumstances in which people feel that it they are applicable. However, they are a negotiating tool rather than one of enforcement.

The Chairperson:

That is the point that I was making earlier. In the letter from the Minister of Enterprise, Trade and Investment, she also makes that point.

Mr Brady:

I do not want to agree with the Minister of Enterprise, Trade and Investment that much.

[Laughter.]

The Chairperson:

I thought that you thought that she was a lovely girl. Having taken soundings from her officials, she made the point about the way —

Mr Brady:

If Alex and I go on holiday in a caravan together, he might be able to convince me.

Ms Ní Chuilín:

Perish the thought.

The Chairperson:

For a game of chess.

Mr F McCann:

Groomsport: here we come.

The Chairperson:

Alex is sweating now.

Mr Brady:

We will gloss over that one.

The Chairperson:

The Minister of Enterprise, Trade and Investment made a point about enforceability: what happens if someone does not consult about a flower bed?

Ms Ní Chuilín:

That is a moot point. It does not matter what form the residents' association takes. In principle, the owner, boss or employer does not have to implement anything. For that reason, the amendment weakens the Bill because it is too vague.

Mr Craig:

It is too vague.

Ms Ní Chuilín:

The rights of tenants should have been made more implicit. An opportunity has been missed.

The Chairperson:

Tenants have those rights anyway.

Mr Brady:

It is a bit like when unions negotiate with employers. If there is no redress or no solution is reached, the person ends up at an industrial tribunal, which is the same as going to court. It is the same principle. People try to sort out the problem first, and, if they cannot, inevitably, they have to —

The Chairperson:

A situation in which a residents' association always comes up against the site owner indicates a more fundamental problem on the site that may run counter to some of the individual agreements anyway. Individual agreements are as likely to catch those problems as residents' associations.

Mrs M Bradley:

People who go to sites for the season or during the children's holidays will not want to set up residents' groups. We are having the discussion, but we do not even know whether caravan owners who live on permanent sites would want to bother with a residents' group if they knew that the Bill gave them proper cover. We are grasping at straws.

The Committee Clerk:

Qualifying residents' associations are built into the Bill. Members will recall that two ladies from Seahaven gave evidence to the Committee in June and stated that they would be involved.

The Chairperson:

There is a distinct difference. I assume that we are not supportive of proposed amendment N.

The Chairperson:

Sorry for the delay; the Committee Clerk and I were discussing our next caravan holiday.

Mr F McCann:

Will it be a foursome?

Mr Craig:

It sounds as though it would be easier to buy a tourer.

The Chairperson:

I am thinking about how to handle this issue, because different views have been expressed. Some people are completely opposed; others think that the clause is not strong enough. I know what my view is, and I think that I detect the views of others. However, I have to keep the process right. Is it appropriate that the Committee Clerk takes the —

Ms Ní Chuilín:

Will we park this one?

The Chairperson:

Will we park it and come back with something else?

Ms Ní Chuilín:

Yes.

The Chairperson:

We do not want to prejudice anybody's position, although folks have expressed their view. If somebody has expressed the view that a clause does not do one thing and that they would like it to do something else, it is only right that we look at a corresponding amendment and, subsequently, take a firm view either way.

Mr F McCann:

There has been a difference of opinion about the way in which we should go about it, but there is general agreement that we are trying to strengthen the rights of people on the sites.

The Chairperson:

Ultimately, the conclusion may be that we are happy with the legislation, as amended.

Ms Ní Chuilín:

Will we wait to see the words of the proposed amendment?

The Chairperson:

I will look at an option or two.

Ms Ní Chuilín:

I am happy with that.

The Chairperson:

That does not prejudice anybody's position or box us in.

Ms Lo:

Is it OK to say that site owners will be "encouraged" to consult as good practice?

The Chairperson:

A range of options is available.

Clause 9 (Application of this Part)

The Chairperson:

We move on now to Part 3. Clause 9 includes the provisions that protect residential occupiers on protected sites from eviction and harassment. No amendments have been proposed, and there is nothing further from the Department.

Question, That the Committee is content with the clause, put and agreed to.

Clause 9 agreed to.

Clause 10 (Protection of occupiers against eviction and harassment)

The Chairperson:

Clause 10 relates to the protection of those living on residential or protected sites from eviction and harassment. Amendment P, as proposed by the Northern Ireland Local Government Association (NILGA), would give councils the powers to investigate and prosecute complaints related to eviction and harassment.

Question proposed:

*That the Committee recommend to the Assembly that the clause be amended as follows:
In page 7, line 43, at end insert—*

“(12) Proceedings for an offence under this section may be instituted by the district council in whose district the site is situated.”

Mr Martin:

We are happy to facilitate NILGA’s wishes on this. As it brings the powers broadly into line with their existing powers in the private rented sector, it makes sense.

Question put and agreed to.

Question, That the Committee is content with the clause, subject to the Department’s proposed amendment, put and agreed to.

Clause 10, subject to the Department’s proposed amendment, agreed to.

Clause 11 (Provision for suspension of eviction orders)

The Chairperson:

Clause 11 allows the courts to suspend eviction orders for the residential sector for up to one year. No amendments have been proposed.

Question, That the Committee is content with the clause, put and agreed to.

Clause 11 agreed to.

Clause 12 (Supplementary)

The Chairperson:

Clause 12 states that the county courts have jurisdiction in respect of disputes in the residential sector. No amendments were proposed, and we have not received anything from the Department.

Question, That the Committee is content with the clause, put and agreed to.

Clause 12 agreed to.

Clause 13 (Meaning of “caravan” in this Act)

The Chairperson:

Clause 13 refers to the meaning of a caravan.

Ms Ní Chuilín:

We get to the meaning only in clause 13. That should be in clause 1. *[Laughter.]*

The Chairperson:

The meaning of caravans is an existential question, perhaps one for a philosophy student. *[Laughter.]* Clause 13 brings the legal definition into line with England and Wales. The Environment Committee considered that clause and proposed no amendments.

Mr Easton:

I raised this issue last week. The definition will now be similar to that in England and Wales. Are park homes included?

Mr Martin:

Yes, twin units are included.

Mr Easton:

OK. At Seahaven, the situation is that a caravan owner pays a certain annual rate, but a park home owner, even though a park home has a caravan chassis and is a caravan, pays more. If the definition is changed, will park homes be classified as caravans?

Mr Martin:

That is a matter for rates legislation. The definition will apply only to the Bill and the Caravans Act 1963. The definition of a caravan in other legislation will not be affected by Part 4.

The Chairperson:

The status quo will remain.

Ms Lo:

Is a motorhome totally different from a caravan?

The Chairperson:

It is just a car or vehicle.

Question, That the Committee is content with the clause, put and agreed to.

Clause 13 agreed to.

Clause 14 (Definition of “caravan” in Caravans Act)

The Chairperson:

Clause 14 applies a new definition of a caravan to existing legislation. The Environment Committee considered the clause and proposed no amendments.

Question, That the Committee is content with the clause, put and agreed to.

Clause 14 agreed to.

Clause 15 (Interpretation)

The Chairperson:

Clause 15 is in Part 5 and defines terms that are used in the Bill such as “residential agreement”, “occupier”, and so on. Previously, the Committee agreed that it did not support the National Caravan Council’s proposed amendment, amendment Q, which would define protected sites as those not including Travellers’ sites. Are we happy to maintain that position?

Members indicated assent.

The Chairperson:

Amendment R was proposed by the Committee and drafted by the Department. It is designed to give seasonal caravan users on protected sites the same protections as those of seasonal caravan users on seasonal sites. The amendment is linked to clauses 7 and 8.

Question proposed:

*That the Committee recommend to the Assembly that the clause be amended as follows:
In page 10, line 26, leave out “protected site or a seasonal site” and insert “caravan site”.
In page 10, line 32, leave out “seasonal site” and insert “site in respect of which the relevant planning permission of site licence—*

(a) is expressed to be granted for holiday use only; or

(b) is otherwise so expressed or subject to such conditions that there are times of the year when no caravan may be stationed on the land for human habitation;”

In page 10, leave out line 36.

Mr Martin:

They are, in fact, a series of linked amendments that are consequential to the amendments to clauses 7 and 8.

Question put and agreed to

Question, That the Committee is content with the clause, subject to the Department’s proposed amendments, put and agreed to.

Clause 15, subject to the Department’s proposed amendments, agreed to.

Clause 16 (Commencement)

The Chairperson:

Clause 16 commences the provisions of the Bill six months after Royal Assent. The Committee has already stated that it does not support early or late commencement of the Bill’s provisions.

Question, That the Committee is content with the clause, put and agreed to.

Clause 16 agreed to.

Clause 17 agreed to.

Schedule (Part 1)

The Chairperson:

Part 1 of the schedule sets out the terms of the residential agreement. Those apply only to caravan owner-occupiers who live in a caravan as their main or sole residence and who rent a pitch on a so-called protected site. The terms include: methods of termination for the contract; re-siting for emergency works; pitch fee controls; owner and occupier obligations; and conditions for setting up and consulting a qualifying residents' association. The Committee previously agreed that it did not support amendments S and T, which relate to the commission that is charged on sales. Are members happy enough with that?

Members indicated assent.

Question proposed:

That the Committee recommend to the Assembly that the clause be amended as follows: In schedule 1, page 14, line 11, leave out "the rate of 10% and insert "a rate not exceeding 10% of the sale price".

The Chairperson:

Information from the British Holiday and Home Parks Association and the Assembly's Research Services has been provided on typical caravan sale prices for park homes and smaller caravans. The Department has proposed a drafting amendment, amendment U, which clarifies the policy intention that commission should be no more than 10%. Was that a drafting error, Stephen?

Mr Martin:

It was an oversight.

Question put and agreed to.

Question proposed:

In page 14, line 15, at end insert—

"(11) In relation to a caravan on a travellers' site (within the meaning given by section 5(3)(c),

this paragraph applies with the omission of—

(a) sub-paragraph (9); and

(b) in paragraph (10), the words ‘Except to the extent mentioned in sub-paragraph (9),’.”

The Chairperson:

Amendment V is a departmental amendment that clarifies the policy intention of the Bill. The Bill was not designed to produce a situation in which Travellers who stay on a Housing Executive service site are charged commission when they sell their caravans. The amendment, therefore, removes the requirement for Travellers on service sites to pay commission to the Housing Executive. Do you have anything to add, Stephen?

Mr Martin:

It is a fairly simple amendment that gives effect to exactly what you described, Chairperson.

Question put and agreed to.

The Chairperson:

In relation to amendment W, the Committee agreed to consider an amendment that would require levels of commission to be set out in residential agreements. The Department advises that the proposed amendment undermines other aspects of the Bill in respect of express terms and implied terms as set out in the schedule. Stephen, do you want to elaborate a wee bit on that?

Mr Martin:

I will try to keep it simple. The schedule sets out the implied terms. We were talking earlier about the seasonal sector. There is commonality in the residential sector because Part 1 of the schedule will apply to all residential agreements. It is suggested that if commission is agreed at a lesser level, it should be cited in the agreement. That creates what is called an express term. Clause 3 sets out that an express term cannot override an implied term. By trying to do that, we would make the Bill work against itself, because the key principle is that the schedule sets out the implied terms that will apply, no matter what. However, there could be an express term that runs against it.

There is also a further difficulty. As members mentioned, there have been some concerns about the level of commission. In future, the Government could decide that the commission level should come down. If, in five years' time, there is a review and the Government decide to reduce the commission level to 7.5%, but an express term in a number of agreements states that it should be 8.5%, that will cause difficulty. To prevent eroding the key principle of the Bill, which is that an express term cannot override an applied term, and to prevent further problems down the line, the amendment is not workable.

The Chairperson:

Are members happy enough with that explanation and not to pursue the amendment?

Members indicated assent.

The Chairperson:

The Committee previously agreed that it did not support amendments X, Y, Z and AA. In respect of amendment AA, members may wish to consider the response from Trading Standards on the rights and responsibilities of caravan users and site owners in respect of caravan removal. It sets out that unreasonable costs of removal, and so on, are likely to be deemed unfair and could be the subject of criminal proceedings. We raised some issues about that previously. Are members happy to maintain that position?

Members indicated assent.

The Chairperson:

In respect of amendment BB, the Housing Executive sought exemptions from the gifting provisions of the Bill for Housing Executive Traveller sites on the basis of the acute need to provide pitches for Travellers who pursue a nomadic lifestyle. The Department suggests that such an exemption would not be compatible with human rights legislation and that the controls in the Caravans Bill that allow gifting permission to be withheld in certain circumstances are sufficient.

Mr Martin:

That summarises the amendment extremely well.

The Chairperson:

Are members content not to agree to amendment BB?

Members indicated assent.

The Chairperson:

We move on to amendment CC.

Question proposed:

That the Committee recommend to the Assembly that Part 1 of the schedule be amended as follows:

In page 15, line 5, at end insert "or to any amenities on the site"

The Chairperson:

In respect of amendment CC, the Housing Executive also sought to specify, for example, the refurbishment of amenity blocks as essential or emergency works.

Mr Martin:

The only point worth noting is that it would apply to all residential sites.

The Chairperson:

Park homes as well.

Mr Martin:

A court would have to deem it to be reasonable, so the site owner would have to do quite a lot of work to justify the request.

Question put and agreed to.

The Chairperson:

The next amendment is DD.

Question proposed:

That the Committee recommend to the Assembly that Part 1 of the schedule be amended as follows:

In page 14, line 30, leave out “the protected site” and insert “any protected site of the owner”.

The Chairperson:

As regards amendment DD, the Housing Executive sought to have the authority to require Travellers to relocate to other sites during essential or emergency works.

Mr Martin:

Again, that will apply across the piece. Therefore, if a site owner in the park home sector had more than one site, he could apply to the court for a period to re-site a caravan, if it were reasonable to do so, to that other park during emergency works, and so on. That is unlikely, because the only organisation that will meet that requirement will be the Housing Executive, but, if the market expands, there may be a situation in which it is called for in another sector.

Mr F McCann:

You said that it may never be used or come into being, but, if it did, would the person who is being moved from one site to another have the right to move back again when the work is completed?

Mr Martin:

Yes, absolutely. That is already enshrined in the Bill.

Ms Lo:

Does your use of “reasonable” cover distance?

Mr Martin:

Yes. A site owner would have to demonstrate to a court that it would be reasonable. It is unlikely that a court would find it reasonable to move someone, for example, from Downpatrick to Strabane. That would be unreasonable. However, were it reasonable for a particular period

and for a clear purpose, that would be OK.

Ms Lo:

Who will cover the costs?

Mr Martin:

As set out in the Bill, the site owner must cover the cost of relocation.

Question put and agreed to.

Question, That the Committee is content with Part 1 of the Schedule, subject to the Department's proposed amendments, put and agreed to.

Part 1 of the schedule, subject to the Department's proposed amendments, put and agreed to.

Schedule (Part 2)

The Chairperson:

Part 2 of the schedule sets out the terms which may be implied by the court in respect of a residential agreement, including sums payable by the occupier in pursuance of the residential agreement, the yearly review of pitch fees, the improvement of facilities on the site and the preservation of the amenity. No amendments have been proposed.

Question, That the Committee is content with Part 2 of the Schedule, put and agreed to.

Part 2 of the Schedule agreed to.

Schedule (Part 3)

The Chairperson:

Part 3 of the schedule refers to the sale of a caravan on a protected site. This part of the schedule sets out a duty to forward requests in respect of a prospective purchaser to the site owner for approval. No amendments have been proposed.

Question, That the Committee is content with Part 3 of the schedule, put and agreed to.

Part 3 of the schedule agreed to.

The Chairperson:

Amendment EE, proposed by the Northern Ireland Human Rights Commission, would repeal the

Unauthorised Encampments (Northern Ireland) Order 2005. Do you have any comments on that, Stephen?

Mr Martin:

There are just two issues. The first is the potential scope of the amendment; the second is that the 2005 Order works very well. We monitor it, and we monitor the equality impact. Safeguards are built into the 2005 Order, so that people can only be moved on if there is somewhere for them to be moved on to. The police's use of the Order is proportionate. We do not feel the need to act on that, and, as Colm McQuillan said earlier, the number of unauthorised encampments has fallen, and the problem is being managed well. If the 2005 Order were to be repealed, that would create all kinds of difficulties.

The Chairperson:

Are members content not to agree to amendment EE?

Members indicated assent.

The Chairperson:

Amendment FF, which was separately proposed by the Housing Executive and the Human Rights Commission, would remove the requirement for the Housing Executive to obtain a licence for a Travellers' caravan site. The Minister of the Environment has written in respect of the proposed change and appears to support it, in so far as simplification is necessary to support the transfer of responsibility for Travellers' sites from councils to the Housing Executive. Do you wish to add anything, Stephen?

Mr Martin:

The amendment completes the work that was done in 2003, and it should have happened then. The Bill presents an opportunity to redress that. The other point is that, under the Caravans Act (Northern Ireland) 1963, which requires site licences, a site licence cannot be sought until planning permission has been completed. During the planning process, there will be much negotiation and discussion. It adds a considerable amount of time to the process, but the Housing Executive is already duty-bound in law to consider the health and safety aspects, which are a key site licensing requirement. Previously, councils did not require a site licence before, and it does

seem anomalous. The Minister stated his intention to complete the unfinished business of 2003 and support the Housing Executive's efforts to secure more sites in a timely way that would help to make this change. He will be keen to hear the Committee's views.

The Chairperson:

It is, potentially, quite a controversial amendment. However, the legal anomaly has appeared, and councils now have the power to grant the licence. The amendment, perhaps, focuses on Travellers' caravan sites, but councils can grant licences for seasonal sites as well: is that correct?

Mr Martin:

Yes. Although there are certain exemptions, most sites require a licence.

The Chairperson:

That gives councils a sense of control or protection over what happens with Traveller sites. They have the ability to grant the licence, and it gives a stronger sense of input from local government than would be the case through the planning process.

Mr Martin:

Our reading of the letter from Minister Poots is that the planning process should be adequate for proper engagement to take place between local government and the Housing Executive. However, everybody will have a different view on that.

The Chairperson:

Thank you for saying that. That leads me to point out that, having had some years of experience of the planning process, I do not necessarily agree with that. The cognisance given by the Planning Service to the concerns of local councils, or those of ratepayers expressed via local councils is, to put it politely, sporadic at best.

Notwithstanding the conversation that we had earlier — I understand the problems with Travellers' sites — I am concerned that the interests of a wider community, as expressed through its council and its councillors, would be significantly weakened. The current position, however it

has arisen, would be significantly weakened if councils did not have the ability to grant licences.

Councils should look at each scenario in a sensible way and try to work with the Housing Executive to overcome any issues in a particular area. I encourage councils to do that, but there is a need for local checks and balances, given the understandable sensitivities that often accompany such issues.

Mr Craig:

I am happy to propose that we oppose the amendment. Believe it or not, there is only one caravan site in the whole of Lagan Valley. There were issues with that site, and, had it not been for our ability to use our licence power, those would never have been resolved. The removal of that power would mean that local government would lose its ability to intervene in such issues. Councils have few enough powers as it is. Why take one of them away?

Ms Lo:

My view is quite different. The planning system would allow local opposition and enable local councils to voice their concerns. Eventually, it would be up to the council to approve or not to approve the proposals.

Mr Craig:

The council is only a consultee in the planning process. So, that would remove its teeth.

Ms Lo:

Earlier, we said that we need more sites for Travellers, but now we are saying that we need to keep control of sites. I am strongly in favour of the amendment.

Ms Ní Chuilín:

We should put it to a vote.

Mr Brady:

I want to repeat a point that I made last week. If councils had taken the bull by the horns a number of years ago and sorted out everything in conjunction with government, it would not be

an issue.

Fortunately, or unfortunately, I have never been a councillor. My experience of working with councils is that their attitude to Travellers is not particularly good. We are talking about particular councils with particular attitudes to Travellers. That is just a personal observation.

Jonathan mentioned that there is one site in the whole of Lagan Valley. In Newry, there are no sites, because Travellers there have been settled.

Mr Craig:

The site that I mentioned is not a Travellers' site.

Mr Brady:

I am making a general point about the attitudes of councils to Travellers.

Mr Craig:

You could park your caravan down the road from me.

Mr Brady:

Only with Alex's agreement.

Mr F McCann:

Jonathan, I take it that there is no distinction between the caravan sites that you are talking about and the Travellers sites when it comes to the provisional licence. I declare an interest as a member of Belfast City Council, where I have witnessed some debates in which there has been fairly fierce opposition to Travellers. That has been the case in many councils. My difficulty is that many councils would use the power of licence to ensure that Travellers do not get on to sites in their territory. That is why there are Travellers in only a certain number of council areas.

The Chairperson:

I expressed my view as an individual, not as Chairperson. I understand the arguments. The amendment rises or falls based on the planning process. If the Committee and the House were to

support the amendment, that would be saying that the checks and balances that have been put in place during the current regime would be diminished on the basis of what is included in the planning process. Having served as a councillor for several years, I can testify that it is not as simple as it might appear to those who do not have such experience. Sometimes councils win; sometimes they lose.

We have already parked another part of the Bill. Is the Committee happy to park this as well, rather than taking a firm position now? Is the Committee happy that I, as Chairperson, speak to the Environment Minister about the implications for planning and about the point that Anna made about the controls being in place?

Members indicated assent.

Mr Craig:

The controls are not in place, but you can speak to him about it.

The Chairperson:

Jonathan, the point is that, if members are saying that they are content that the planning system has the checks and balances —

Mr Craig:

The difficulty is that, if the RPA had gone ahead, all that responsibility would have landed on the laps of councils anyway. Technically, this would have had no impact on councils, because they would have been directly responsible for planning anyway. They would have had the final say on whether a site received planning permission. Currently, they play a part only in the consultation process, and, removing the little power that they have would be counterproductive. I assume that, ultimately, we will agree something, and they will be handed those powers anyway.

Mr Martin:

I will clarify the position. The Department seeks an exemption from site-licensing requirements for sites that are provided by the Housing Executive specifically for Travellers. District councils currently operate that exemption for their sites. All other sites will still have to go through the site-licensing process.

The Chairperson:

I understand that, but there is still an issue. Are we happy to park that on the basis of having conversations with DOE?

Members indicated assent.

The Chairperson:

We will return to amendment FF at a later stage. There is no harm in parking it, because we have already parked amendment N.

Mr F McCann:

You are doing some parking this morning.

The Chairperson:

That makes only two. We are nearly there. The last one is amendment GG. The Housing Executive proposed the amendment, which removes the arrangements by which Travellers staying on a Housing Executive site of more than 400 sq yds are required to apply for site licences individually. Mr Poots has written stating that he does not support a change to the relevant positions. Members have a copy of that letter.

Mr Martin:

I do not fully understand the issue. Given that the Minister of the Environment stated that there is good reason for not changing it, we do not have any basis for challenging that. We do not propose putting forward any amendment.

The Chairperson:

I appreciate your candour, and I assure you that you are not the only person in the room not to understand fully.

Mr Martin:

I should point out that amendment GG has not been provided to members, but the Chairperson

accurately outlined it. The Minister for Social Development had written to Minister Poots to ask whether it could be changed. A fair summary of Minister Poots's reply is that he felt that it would not be a good idea.

The Chairperson:

Are members content not to support amendment GG?

Members indicated assent.

The Chairperson:

Several outstanding amendments remain, and clause-by-clause scrutiny will resume at a later meeting. Stephen, thank you very much for your help.