



Northern Ireland
Assembly

**COMMITTEE FOR
SOCIAL DEVELOPMENT**

**OFFICIAL REPORT
(Hansard)**

**Housing (Amendment) (No. 2) Bill:
Housing Rights Service**

11 November 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
Mr Mickey Brady
Mr Jonathan Craig
Mr Alex Easton
Mr Tommy Gallagher
Ms Anna Lo
Mr Fra McCann

Witnesses:

Ms Fiona Douglas) Housing Rights Service
Ms Nicola McCrudden)

The Chairperson (Mr Hamilton):

The next item is a briefing from the Housing Rights Service on the Housing (Amendment) (No. 2) Bill. Members have been provided with a copy of the Housing Rights Service's paper on the Bill, and all other relevant information is included in members' information packs. Joining us from the Housing Rights Service are Nicola McCrudden and Fiona Douglas. You are both very welcome back to the Committee.

I remind members and witnesses that they should switch off their mobile phones and that

proceedings are being recorded for Hansard.

Nicola and Fiona, I invite you to make some opening remarks on the Housing (Amendment) (No. 2) Bill and to highlight any amendments that you may wish to propose.

Ms Fiona Douglas (Housing Rights Service):

Good morning. I want to express our thanks to the Committee for inviting us to give oral evidence on the Housing (Amendment) (No. 2) Bill. We are happy to learn that the Department has taken on board some of the issues that we raised in our written evidence to the Committee and that it will be taking forward amendments to address them. My presentation will focus on the ongoing issues of concern that we highlighted to the Committee in our written evidence. I will distil those as best I can for the Committee and put forward recommendations for addressing them.

Clause 1 will effectively abolish the requirement under article 4 of the Private Tenancies (Northern Ireland) Order 2006 for private landlords to provide tenants with a separate statement of tenancy terms. The Department states that it intends to make subordinate legislation to require landlords to include all necessary information about the terms of the tenancy in the tenant's rent book.

We agree that there is a need to simplify the arrangements regarding the information that a landlord is required to make available to the tenant. However, the rent book regulations are currently subject to negative resolution. We feel that that warrants thorough scrutiny, given that the Department is doing away with the statement of tenancy terms and is introducing tenant rent book regulations that will amalgamate the statement of tenancy terms into the rent book regulations. The regulations relating to the statement of tenancy terms contain important provisions, and it would be a great loss to tenants and landlords if they were not to be captured in the rent book regulations.

To achieve that level of scrutiny, we recommend an amendment to clause 7. Clause 7 would amend article 72(3) of the Private Tenancies (Northern Ireland) Order 2006, which deals with the regulations that are subject to affirmative resolution. The Bill would amend that article to include

resolutions relating to tenancy deposits and landlord registrations. We recommend that that amendment be extended to include regulations relating to a tenant's rent book to ensure that the rent book regulations are also subject to affirmative resolution.

Clause 2 relates to tenancy deposit schemes. It would insert a new article into the Private Tenancies Order on that. We have concerns about the way that that proposed new article is drafted. There is no statutory requirement on the Department to introduce a tenancy deposit scheme. We know that that is a policy intention of the Department's; therefore, to ensure that it meets that policy objective, we recommend either replacing the word "may" at proposed new article 5A(1) with the word "shall" or including a time frame in the legislation by which the publication of the regulations must be introduced.

Our written evidence to the Committee highlights a further point on tenancy deposit schemes. It relates to proposed new article 5B(6), which would cover the requirements relating to a tenancy deposit scheme. There is a discrepancy with the time frame in which the process must be completed. In England, it is 28 days, but the way that the legislation is drafted in Northern Ireland means that the process is required to be completed within 14 days. It is a minor point, but we felt that we should bring it to the Committee's attention.

Clause 5 would insert in the Private Tenancies (Northern Ireland) Order 2006 a new article 65A, which would enable the Department to make regulations providing for the registration of private landlords. It is our view that landlord registration is the foundation for improved regulation of the private-rented sector. Our concerns about clause 5 mirror those that we expressed on clause 2, which deals with tenancy deposit schemes. As it currently reads, the requirement is discretionary, and we recommend that it be made an inescapable statutory duty either by replacing the word "may" at proposed new article 65A(1) with the word "shall" or by including a time frame in the legislation by which the publication of the regulations must be introduced.

We also highlighted for the Committee that consideration should be given, where appropriate, to extending the register to cover agents and managers. That might apply to, for example, landlords who are resident outside this jurisdiction. They are known as absentee landlords. The

level of sanctions by way of fines for a landlord who does not comply with registration is set at a maximum of £2,500. We consider that to be inadequate when compared with the fine of £20,000 for non-compliance with certain elements of tenancy deposit schemes. Our only experience of landlord registration in Northern Ireland has been the houses in multiple occupation (HMO) scheme. There are widespread significant problems with getting landlords to register to that scheme. The Northern Ireland Housing Executive called for an increased fine of £20,000, and the Housing Rights Service supports that. Therefore, if the fine is to act as a deterrent, we believe that it needs to be raised to that level for landlord registration. We believe that that will ensure that the message goes out to landlords that non-compliance is a serious offence.

I must point out to the Committee that the explanatory text that relates to clause 6, which is on page 5 of our written evidence, is misleading. It should actually state that a proposed new article 68A, which would allow the landlord who appears to have breached the registration regulations or tenancy deposit schemes the opportunity to avoid prosecution by way of a fixed penalty, should be inserted into the Private Tenancies (Northern Ireland) Order 2006.

Clause 6 would introduce a new system of fixed penalties similar to that that is in place for parking offences. To avoid being prosecuted and incurring the associated fine, an opportunity would be given to pay a fixed penalty. As it currently stands, we do not consider that the fixed penalty of £500 for non-compliance with landlord registration is adequate. Therefore, we recommend either one of two things. The fine for non-compliance with certain elements of landlord registration should be appropriate, so we recommend that it be raised to £20,000. That would have the effect of increasing the maximum fixed penalty charge that can be imposed by the council from £500 to £4000. Alternatively, a repeat fixed penalty system could be introduced for persistent offenders whereby they have an opportunity to rectify the situation and are given a time frame within which to do so. If they do not comply, the fixed penalty charge will then be repeated against them.

I discussed clause 7 when I dealt with clause 1. Clause 7 would amend article 72 of the Private Tenancies (Northern Ireland) Order 2006 to provide that regulations that are made on tenancy deposit schemes, determination of rents and landlord registration will be subject to the affirmative resolution procedure. Given the proposals to do away with statements of tenancy

terms and the risk of losing the extremely important information that they contain, which needs to be captured in the new rent book that will be provided to tenants, we recommend that that amendment is extended to cover regulations that relate to the rent book.

Clause 9 would insert into schedule 3A to the Housing (Northern Ireland) Order 1983 a new ground for landlords to withhold consent to exchange of tenancies. We appreciate that the Department has taken on board our concerns and that it is taking forward the necessary amendment.

Clause 10 relates to disclosure of information as to orders, etc, where antisocial behaviour is concerned. We consider that the clause's scope, as it is drafted, is quite wide on the basis that the term "Any person" is included. To narrow that scope, we recommend that that is changed to "prescribed persons". The basis of our concerns is that there may be an opportunity for anybody to contact a landlord and make unfounded accusations. It could lead to the landlord being influenced unfairly against a tenant. Therefore, we recommend that that change be made to the clause.

We consider that there are ongoing issues in those areas. We are happy to take questions from the Committee.

The Chairperson:

That is very helpful. Is it fair to summarise your view as being quite supportive of the Bill? Effectively, you mentioned a few of Fra's favourites, such as the terms "may" and "shall", and a couple of minor amendments to ensure that things are done rather than left hanging. It seems that you have no major or significant objections to any element of the Bill.

Ms Douglas:

No; we broadly support the measures in the Bill.

Ms Ní Chuilín:

I appreciate that the definition of clause 10, as it is drafted, is fairly wide. It should be prescriptive, and, although we do not want anyone being subject to allegations, we need to be fair

across the board. You are not being prescriptive just about housing officers, so could you envisage someone from, for example, a community safety partnership, being involved?

Multi-agency meetings are held in the area that I live in north Belfast, and, although some social housing landlords attend those meetings, most do not, with the exception of the Housing Executive, which always attends. When complaints are persistently made, the housing officers at the meetings take information back to people. Private landlords have started to attend those meetings, and they use that forum when there is both evidence and a persistent trail of complaints to deal with. If it is only housing officers who are involved, the process will be frustrated. I appreciate that we need to be fair, but it should not be too prescriptive.

Ms Nicola McCrudden (Housing Rights Service):

I completely agree, which is why we suggested that “Any person” be amended to “prescribed persons”, such as a housing officer, for example. However, that person could also be a member of the PSNI, a council official or a community representative on those bodies that you talked about. We are concerned that “Any person” was too wide a definition and that the person involved should be a legitimate person working in the sector. We would not want it to be a neighbour, for example, as disputes can arise and unfounded allegations can be made.

The Chairperson:

That is a fair point. It is about testing to make sure that we have the right choice of words so that the provision is neither too inclusive nor too exclusive.

Mr F McCann:

My question is on tenancy deposit schemes and how you feel they should operate in practice. By the time that this process is over, there will be a number of suggestions about who should actually hold the money. Should a committee be set up to oversee it, or should it be handled by a bank, a credit union, or should an amalgamation of different people be involved? Do you have any ideas on that?

Ms McCrudden:

My understanding is that the Department is thinking of having a system that is along the lines of

what currently operates in England, where two different schemes operate. First, there are custodial schemes in which deposits are paid in and held by non-profit making bodies that are responsible for paying that money back and negotiating with the landlord and the tenant. Secondly, there are insurance-based schemes whereby the landlord can put the money into a private company to cover any losses. Our preference would probably be the custodial scheme, but we can see the merits in landlords having a number of options available to them.

We are currently working with the Department and other organisations on the detail. That process has only just begun, but we are engaging with the Department and the councils to come up with models that suit the circumstances here.

Mr F McCann:

There was some talk a while ago that deposits could be put into a central fund and the interest used for training purposes in the private-rented sector. That suggestion may have been made about HMOs; I cannot remember. If the custodial route is not taken, the scheme will be wide open, and landlords could go to any private company through the insurance route.

Ms McCrudden:

That is a fair point. The custodial scheme in England worked very well because it built up a bank of money, and interest levels meant that it was almost self-financing. Obviously, in the current economic climate, not as much interest is gained on that money. However, that is still a fair point.

Mr F McCann:

You will have heard the earlier debate on mandatory registration, and you know that the Bill is now an enabling piece of legislation. The Department seems to be moving ahead with making legislation for mandatory registration, yet it is leaving compliance restrictions to another time. What are your thoughts on that?

Ms McCrudden:

Fiona talked through the issues and concerns that we have about the level of fines and sanctions that would be imposed. As the old saying goes, the devil will be in the detail of the regulations,

the conditions that are attached to registration, and what would happen if a landlord does not comply with those conditions. I am not sure what the thought process is on that or whether those details have been further developed.

In our original submission to the Department, we suggested that perhaps a code of practice or guidance could be attached to the registration scheme. Therefore, when a landlord registers, he would be supplied with information outlining all the current legal requirements with which he is obliged to comply. Similar information could also be given to tenants. Currently, there is a lack of information, and a lot of problems occur because landlords and tenants are simply unaware of their rights. Therefore, that recommendation would be one way round that.

If a landlord fails to comply, that could then be brought to the attention of the enforcement body. Again, the devil will be in the detail, but that will not be in the Bill. A bit of work needs to be done on that.

Mr F McCann:

Over the past year or so, there has been some talk — it has probably been more than talk — that the Department and the Executive are moving down the road of using the private-rented sector to ease the housing waiting list. From your experience, do you think that it would be better to ensure that a registration scheme is in place before going down that road?

Ms Douglas:

Given the level of social housing stock and the issues with its ability to meet need, the registration scheme is a priority for our clients who are renting in the bottom end of the market. There is going to be a greater reliance on the private-rented sector. Therefore, the scheme is a big priority for our clients.

Ms McCrudden:

Chairman, this comes down to the “may” or “shall” issue. The current wording means that the registration scheme would be discretionary. As you rightly said, if there is a change following the elections, the scheme may not be brought forward. I am sure that the Assembly is behind the scheme. However, we would like registration to be a statutory duty, and, if that does not happen,

we would like to see a timescale put in place so that, within perhaps 12 months of the legislation being enacted, the registration scheme would be up and running.

Tenancy deposits are a slightly different issue, because it is slightly more complicated to set them up. However, we would be happy to see a scheme in place up to 24 months after the legislation is enacted.

Mr F McCann:

One of the crucial things coming through is that, although a lot of the Bill is good, some of it could be stronger. There is no real time frame attached to any of the provisions.

The Chairperson:

I made the point earlier that HMO registration is mandatory. It may be called a mandatory scheme, but it still has its weaknesses. Although the provision is necessary and supported by everybody — some support going a bit further and others support a light-touch approach — is it fair to say that there will be inherent problems in administering the registration scheme and that we cannot expect an overnight panacea to all our problems? Is this at least a start.

Ms McCrudden:

It is certainly a start. We have always seen the registration of landlords as the foundation. After bringing it in and making the scheme operational, only then will we be able to see what the problems are. This is enabling legislation. Therefore, further regulations can be made if we find that that is necessary further down the line.

Ms Lo:

If I may, I want to go back to the earlier point that Fra made about the tenancy deposit scheme. We have talked about two different types of schemes: insurance or custodial. Whatever the scheme, we need one that works fast. I have received a number of complaints from Queen's graduates who have had their deposits withheld. Those graduates may be moving out of Belfast and going home, and they perhaps go to places as far as Malaysia or to other parts of the UK to get jobs. They are waiting for their deposits to be returned so that they can use that money as a deposit for their next house. If that wait drags on for months, they are going to be short a months'

rent. Which scheme do you think would see deposits returned more quickly? An insurance scheme may take a long, long time.

Ms McCrudden:

There are schemes operating across the water in which there is vast experience of that situation, so it may be that we should look overseas at how other schemes operate. I agree that the quicker that tenants can get their deposits back, the better. As you said, they are moving on and trying to find accommodation elsewhere, and that money is often needed for a down payment.

The Chairperson:

I will almost play devil's advocate. A lot of the Bill will put an increased burden on private landlords, not least the proposals on registration, the deposit scheme and security of tenure. Those are viewed universally at this Table as positive developments, but, undoubtedly, private landlords will say that they will put greater restrictions on them. Is there any evidence that similar changes in other jurisdictions, including the introduction of mandatory registration, were a disincentive for private landlords and people moving out of that sector? We have made the point regularly, and Mickey made it earlier, that private landlords are now an essential part of the housing mix here. We need them, and, in some respects, we need them to expand. We need to be mindful of anything that might discourage private landlords.

Ms McCrudden:

Under the current registration scheme, landlords have to provide only their details, so we do not see how that is onerous on them. Landlords should be used to handling deposits and will have to administer those deposits anyway, and, under the Bill's provisions on tenancy deposit schemes, they will have to comply with the requirement to put deposits into a scheme. They should be doing that anyway, so I am not sure how that could act as a disincentive for landlords.

Undoubtedly, some landlords might feel that that is too much and that they do not want to get involved, perhaps because they have only one property, which they inherited. I feel that the larger landlords will be more geared up towards the scheme, and my understanding is that there is an even bigger demand for the private-rented sector than ever before. Hopefully, it will be an expanding market, because demand has increased more than supply. I appreciate that we do not

want to introduce regulations on landlords that are too onerous and that force them out of the sector, but I do not feel that the provisions, as they are currently written, will do that.

The Chairperson:

Have you seen no evidence from other jurisdictions that such changes have led to a disincentive for private landlords?

Ms McCrudden:

I cannot comment on that; I would need to do some research.

Mr F McCann:

To pick up on that point, it was suggested a while ago that, because it is in the interests of landlords with only one or two houses to ensure that they provide quality accommodation, they would be excluded from any registration scheme. Do you have any thoughts on that?

Ms McCrudden:

We have always supported the need to introduce mandatory registration for all landlords. The fact that someone is a tenant does not mean that they should be treated differently, regardless of whether their landlord has one property or 40 properties on their books.

Ms Douglas:

One of the biggest issues with compliance is knowledge and awareness. Registration is a way of targeting effectively the information to landlords, and, when dealing with issues on which the tenant needs some sort of redress, having the landlord's details is essential. As Nicola said, if mandatory registration were not applied to landlords, it would lessen the rights of the tenant whose landlord is not registered compared with the rights of a tenant whose landlord is registered.

Mr S Anderson:

How big is the problem of landlords who are registered outside the jurisdiction? You said that you wanted the register extended to cover agents and managers. If a landlord outside the jurisdiction were to rent their property through an agent, do you think that they should give the name of the agent or just their name as the landlord?

Ms McCrudden:

The councils experience difficulties in trying to enforce requirements on landlords who live outside the jurisdiction. It is not impossible, but it makes their job extremely difficult, given the administrative and staff time that is involved. It can also be quite difficult to get landlords into court if they live in a different jurisdiction.

We have proposed a form of registration that is similar to that for HMOs. For example, a landlord living in the South of Ireland or in a completely separate country, such as Spain, France or wherever, could appoint an agent to manage the property, and enforcement action could be taken against that person. Therefore, the landlord pays an agent who lives in the country where the property is, and that agent takes on landlord responsibilities. We propose the introduction of such a system here.

The Chairperson:

Finally, and moving off the Bill, the Committee will shortly consider homeless review regulations. Does the Housing Rights Service have a view on that?

Ms McCrudden:

We have pushed for homelessness reviews for a number of years. There has been neither a right to review nor a right to take an appeal on a decision on homelessness to the County Court. We welcome and support the proposed change and look forward to seeing the details in the regulations.

The Chairperson:

That is everything. Thank you. Your evidence has been very useful and helpful.