Northern Ireland
Assembly

COMMITTEE FOR SOCIAL DEVELOPMENT

OFFICIAL REPORT
(Hansard)

Housing (Amendment) (No.2) Bill: Informal Clause-by-Clause Scrutiny

2 December 2010

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:
Mr Simon Hamilton (Chairperson)
Mr Sydney Anderson
Mrs Mary Bradley
Mr Jonathan Craig
Mr Alex Easton
Mr Tommy Gallagher
Ms Anna Lo
Mr John McCallister
Mr Fra McCann

Witnesses:
Mr Stephen Baird)
Mr Alistair Campbell) Department for Social Development
Ms Angela Clarke)

The Chairperson (Mr Hamilton):

We move to our informal review of the clauses of the Housing (Amendment) (No.2) Bill. Given the time, we will spend around an hour on this and do as much as we can. The Committee agreed to informally scrutinise the clauses and proposed amendments. To facilitate the process, Eleanor Murphy from Research Services briefed the Committee on recent developments in landlord

registration schemes in other jurisdictions.

Officials will brief us on recent departmental responses on the clauses and proposed amendments. Joining us are Alistair Campbell, Stephen Baird and Angela Clarke from housing division. You are very welcome.

Members have a copy of a clause-by-clause scrutiny table for the Bill, Eleanor's paper on landlord registration, recent correspondence from the Department, including its tenancy compliance flow chart; and a copy of the Housing Executive's report entitled 'Living in the Private Rented Sector: The Experiences of Tenants'. Members should also refer to their Bill folder, which includes other submissions received during Committee Stage.

In this session, the Committee will go through each clause in the table. Members will be asked to discuss the clauses and proposed amendments. The brief has appropriate and key questions, and it is important that the Committee agrees all amendments it wishes to table before formal clause-by-clause scrutiny of the Bill can begin.

Mr F McCann:
Will you clarify that what we are doing today does not prevent us from tabling amendments as a party?

The Chairperson:
For the Bill that we dealt with in September, we gathered ideas, took a lot of evidence and heard a lot of things. We perhaps have not gone through each clause methodically. This is nearly a refresher course to stake out any definite positions that there are.

The Committee Clerk:
Before we start formal clause-by-clause scrutiny, we want to have all of the Committee's amendments in front of us, and, preferably, drafted. For example, we will ask whether members are happy with a clause, and we will know all of the amendments that we want to make to that clause before we agree to it.

The Chairperson:

For example, Fra might want to table an amendment on which the Committee is massively supportive. If he were to do that, we would vote on it.

The Committee Clerk:

Of course, if the Committee do not to agree to an amendment, the member will be free to table it himself.

The Chairperson:

Clause 1 deals with the abolition of statement of tenancy terms. It abolishes the requirement for landlords to provide tenants with a statement of tenancy terms. Stakeholders who commented on the clause generally welcomed it but wanted assurances on the level of information that would be supplied to tenants in their rent books. The only amendment proposed would add additional Assembly scrutiny to the regulations relating to the provision of rent books. Does the Department wish to comment on proposed amendment A?

Mr Alistair Campbell (Department for Social Development):

Before I start, I point out that we have a different line-up today. We are joined by Angela Clarke, who heads up the private rented section.

Ms Angela Clarke (Department for Social Development):

The amendment is proposed in this way because most of the provisions in the Private Tenancies Order (Northern Ireland) 2006 are passed on negative resolution. This follows that same process, because it is not seen as a new provision but an amalgamation of two existing things. It does not propose any dilution or reduction in the information; it is just to simplify and amalgamate the existing information. From experience with landlords and tenants, we have seen that requiring numerous different documents complicates everyone's understanding of what they should have and what landlords should be doing.

Mr F McCann:

From the research briefing this morning, Scotland seems to have a tenant's pack containing all the documentation. Was any consideration given to doing that?

Ms A Clarke:

This will be very similar to a tenant's pack. The kind of things that Scotland is proposing should be in a tenant's pack will be covered. In fact, they are covered in the statement of tenancy and the information required in the rent book. What should be provided is just not generally known or recognised by tenants or landlords. We are trying to make it clearer.

The Chairperson:

So, you are going to issue definitive guidance about what should be there and what is optional.

Ms A Clarke:

Yes, it will be very clearly specified in regulations and in the guidance that is going to go out to landlords. This is partly what we doing now through our informal landlord awareness sessions.

The Chairperson:

You say that the process will be through negative resolution. Does that mean that the Committee will see the regulations before they are tabled?

Ms A Clarke:

Yes.

The Chairperson:

That is OK. Is there anything else, folks? Are we content? We are not stating a definitive position, but we are probably not going to supporting amendment A; is that correct?

Members indicated assent.

The Chairperson:

Clause 2 refers to tenancy deposit schemes. It allows the Department to make regulations to establish a tenancy deposit scheme to safeguard the deposits of tenants in the private rented sector. As members will recall, the private landlords' group opposed the provisions, indicating that they felt that such measures were unnecessary and might prove expensive and bureaucratic.

Other stakeholders welcomed the clause but suggested amendments.

Proposed amendment B would change the wording of the clause to make the requirement to establish a tenancy deposit scheme a duty, not just a power — "may" will become "shall". I did not know that Fra had made a submission. Proposed amendment C would include a time frame for the establishment of the scheme of 12 months. Proposed amendment D would set the time period for the provision of information to tenants at 14 days, as in Great Britain.

Proposed amendment E would require that tenant deposits be held in secure accounts. Proposed amendments F and K relate to the addition of dispute resolution mechanisms to the scheme. Proposed amendments G and H would identify councils or another authority as being responsible for the scheme. Proposed amendments I and J would withdraw the scheme or at least limit the fees associated with disputes. Proposed amendment L would include a bond scheme to protect the interests of vulnerable people and those on low incomes.

Quite a few amendments have been proposed. What is the Department's view on their benefits and practicality?

Ms A Clarke:

Would you like me to respond to each of the amendments?

The Chairperson:

Yes, it would be helpful for us to get that feedback. It might be slow or laborious, but even a general response would be useful.

Ms A Clarke:

The mechanism for the resolution of disputes is already included in clause 2. There is a requirement that the scheme includes a mechanism for dispute resolution. That will be part and parcel of any scheme approved by the Department. It has to be there, and it is there already.

District councils will have a role in enforcement; they will be responsible for enforcing the legal provision. As regards regulation, we imagine that it will be private companies that will

deliver this scheme, either insurance companies or a scheme to hold the money, and provide independent arbitration. The Department will have role in approving them. It will set out what they must deliver, and to what standard. The companies will have to demonstrate that they can do that before we can give approval. Councils will be responsible for the enforcement of the whole thing.

Mrs M Bradley:

Is that the reason why district councils have two departments — public health and environmental health? The building control section will also have a role to play.

Ms A Clarke:

Yes. The environmental health department will lead on enforcement, as it does for most provisions in the Private Tenancies (Northern Ireland) Order 2006.

As to the word "may" and whether our intention is to make this a power as opposed to a duty; our intention is clearly to bring this in. We have already begun work on the scheme and we have held stakeholder meetings, involving people in issues such as what the scheme should look like and what the needs of Northern Ireland are. As soon as the Bill gets Royal Assent, we can start formally developing the regulations and laying them. If the Committee's view is that this should be a duty as opposed to a power, I cannot see that it would be a major problem. We need to take the mind of the Minister on the issues but, in principle, it does not seem to be a big issue.

As to the time frame, there is a difference. Our proposals for Northern Ireland are that the initial requirement is that the landlord must protect the deposit within 14 days, and that is exactly the same as in England and Wales. However, what we have said is that the information that the landlord must give to the tenant must be provided within 28 days. The reason for that is that all the other information that a landlord has to provide for the tenant has to be done within the 28-day period. In an effort to make it clear to both landlord and tenant, as opposed to setting many different timescales, we have said that the landlord must give the tenant his rent book, a statement of tenancy terms, and so on, all within 28 days. This is exactly the same. The landlord must give the tenant the information about the scheme in which the deposit is protected in that same timescale. That is our thinking. We know Scotland thinks the same, though they talk about

allowing 30 days for the provision of that kind of information.

The Chairperson:

Would the landlord still have to protect the deposit within 14 days?

Ms A Clarke:

Absolutely.

The Chairperson:

What other information, besides rent book and tenancy statement, would landlords pass to tenants about the tenancy deposit?

Ms A Clarke:

It would be just to tell them the scheme in which the tenancy deposit is protected.

The Chairperson:

OK.

Mr F McCann:

I want to ask about the deposits. You met some private companies. Has consideration been given to non-profit-making companies, the likes of credit unions or other institutions, which will not only protect the money but pour whatever interest there is back into them?

Ms A Clarke:

We have not got to that stage yet. It will be for the detail of the scheme. We are thinking about potential providers and talking to other parts of Government about the rules we have to observe and the processes we have to go through to find potential providers. It would not be a procurement process, because no money changes hands and no public money goes is involved.

We intend to be very clear about what the providers must furnish, what standards and timescales they must meet and what they must have in place. We will tender and see which providers express interest. As long as companies satisfy our requirements, there is no reason why

we cannot approve them. We do not rule anyone in or out. There may be infrastructure costs that providers will have to meet, so it might be expensive for some. However, we do not know that as yet.

Mr F McCann:

When we were discussing this, it was said that a private company would be involved in order to get as much profit as possible from the scheme. My difficulty with that is that we will be building into the deposit scheme money that may be used for training purposes, or dealing with eventualities that may arise. Most companies that look at this will submit a tender that is as low as possible in the hope that they will make it up in profit down the line. It would be better to look to financial institutions such as credit unions that will safely protect the money.

Ms A Clarke:

The Department has an approval role and will have to approve all things associated with the scheme. Fees may be charged. Some schemes do not have fees, and some custodians will not charge. The Department will still control all those things. It would not be a free-for-all for people to make money.

Mr F McCann:

In the area of maintenance, or any other, companies tender low and get their money in other ways. The issue is just how we protect the money.

Ms A Clarke:

The Department will not be paying anybody to do this; there will be no money coming from the Government on this one. Ultimately, it is a business opportunity. Companies will need departmental approval to operate the service. In England, under the custodial-based service, the landlord taking the deposit does not pay any fee; he hands the money over to the custodial scheme, which then invests it. That is how the company covers its running costs and the tenancy deposit is protected. On the other hand, some schemes in England are insurance-based, in which the landlord pays an insurance premium to protect the deposit. However, the Government does not put any money into this. Companies do not make any money out of the Government.

Mr F McCann:

But, they are making money out of the people who pay their deposits.

Ms A Clarke:

For the insurance-based schemes, yes; there is an insurance premium.

Mr F McCann:

But, the people who run the schemes make a profit. I know that we are not making any decision on this, but I think that if you cast the net wide enough, you could get a non-profit organisation that would be able to do it.

Ms A Clarke:

We certainly want to be very clear about our specification, and then offer it to people who feel that they want that opportunity.

The Chairperson:

A couple of weeks ago, we heard that this idea is still being developed. Am I right in saying that, when that work is concluded, it will come back to the Committee through regulations?

Ms A Clarke:

Absolutely.

Ms Lo:

I was just going to ask whether we should be thinking more about non-profit-making organisations like the Ulster Community Investment Trust (UCIT). That would be giving out grants to voluntary and community organisations. Can we be more in favour of such companies, without impinging on business law, EU law, or whatever?

The Chairperson:

Again, that is something that we can work through.

Ms Lo:

You said that, apart from putting in the deposit, the landlord still has to put in money to pay for insurance.

Ms A Clarke:

No. If a landlord wants to use an insurance-based scheme to protect the deposit, he pays an insurance premium. If anything happens to that money, the insurance company covers it.

Ms Lo:

OK.

Ms A Clarke:

There are two types of schemes. Our intention, having discussed it with stakeholders, is to try to give landlords the choice, as they have in England, between insurance-based and custodial-based schemes. It will be up to them to choose the scheme in which they want to participate.

Ms Lo:

OK, but that is going to be quite different. There is a slight change in nature. It becomes like an insurance scheme.

Ms A Clarke:

The landlord can choose whether he wants an insurance-based approach. The basic difference in how landlords might see this is that, with an insurance-based scheme, he will hold on to his deposit as he does now. If I am a landlord and take a deposit, I can keep it. It is the tenant's money, but I can keep it until the tenancy ends. With the custodial-based scheme, the landlord has to hand over the deposit straight away. That is the difference: the landlord would not have the benefit of that money.

The Chairperson:

An amendment was suggested about having a time frame for the establishment of a scheme. What is the Department's view on that? My instinct is that that would be quite restrictive. If you go from a power to a duty and say that it must be done, we may end up with a scheme that has not

been entirely worked through properly or tested, be it six months, 12 months or whatever.

Ms A Clarke:

To be fair, that was our first reaction as well. We want to make sure that we have a soundly based effective scheme, rather than rushing in. We have taken some preliminary legal advice on this, and if we were required to go with a duty rather than a power, the legal advice is that we could not have an unqualified duty. We would have to link it to some kind of time frame. I am sure that one could develop a reasonable time frame in which one could be assured of delivery.

The Chairperson:

The Committee might be interested in a duty, rather than a power. You are saying that that might require a timescale, so we might have to work up amendments on that.

I want to go through the other amendments. Members can express views if they have any. Proposed amendment D provided for the time period for the provision of information to tenants to be 14 days, as in Great Britain. We have the explanation as to why it should be 28 or 30 days. Do members support an amendment along those lines and are they content with the explanation that has been given?

Members indicated assent.

The Chairperson:

Proposed amendment E concerns the holding of tenant deposits in secure accounts.

Ms A Clarke:

If one joins a custodial-based arrangement, the money is put into a secure account. The same goes for insurance — one buys the insurance cover for that. In essence, the scheme covers that.

The Chairperson:

Proposed amendments F and K concern dispute resolution mechanisms. Proposed amendments G and H concern the identification of a council or another authority as responsible for the tenant deposit scheme. You said that the councils would have a role, but would not be responsible. The

responsibility lies with whatever company is set up to deal with that.

Mr Easton:

What is meant by regulating the system through the councils for every landlord? That could be a huge task.

Ms A Clarke:

It would be an independent provider; there is not regulation from a council point of view. Councils will adopt an enforcement role and ensure that landlords comply with the law. When they are found not to be complying, councils will take appropriate action by fixed penalties or by taking a person to court.

Mr A Campbell:

It would happen on the basis of tenants going to the council and saying that their landlord has not put their deposit in the account. The tenant would have to bring the case to the council.

Mr Easton:

Why a council, and not the Housing Executive?

Ms A Clarke:

It is because the council is the regulator and enforcer of the provisions for private tenants. They are the policemen within the private tenancies regime.

The Chairperson:

It is an additional duty on top of those already being exercised by building control or enforcement officers.

Ms A Clarke:

They have that legal responsibility at the moment.

Mrs M Bradley:

Not in respect of keeping the money. Surely, when councils are called in to inspect houses at the

beginning, they have the power to tell people not to put a deposit on a dwelling because it is not fit to live in.

The Chairperson:

That is a very narrow aspect of the matter. This is more about people not getting information within 28 days.

Ms A Clarke:

Yes. The council would take the appropriate action with the landlord. It would not hold any money, nor would it be involved in resolving any type of dispute about how a deposit is returned.

Mr F McCann:

On private tenancy, we have heard from NILGA that councils have no teeth to impose anything on landlords. All that happens is that a landlord goes to court, gets a £100 fine, takes it on the chin, and walks away. There needs to be something that forces action. Perhaps the Housing Executive is the body to do that.

The Chairperson:

This is a power to establish something on which we do not have detail. The detail would surely include enforcement and penalties.

Ms A Clarke:

That is specified in the Bill.

The Chairperson:

Is that in the schedule?

Ms A Clarke:

No. The penalties in relation to tenancy deposits are set out in clause 5. On Fra's point, there has been an issue with enforcement in the past, which is why we are taking a different approach this time and are introducing fixed penalties for the first time in the private rented sector. Landlords should be hit immediately. They do not necessarily have to be taken to court; they can be

penalised by councils immediately.

Mr Easton:

My concern is how councils are going to cope with hundreds of landlords. Where are the resources to cope with that? I am not against what you have outlined; I am just concerned that councils will not be able to cope.

The Chairperson:

The Department can correct me if I am wrong, but the hundreds of landlords you speak of already exist. They are being monitored on matters such as whether there is a staircase, or fire exit, in houses of multiple occupation, or whether there is proper signage, etc. Councils already monitor them and are responsible for ensuring compliance on all sorts of issues. This is just an additional power.

Ms A Clarke:

Yes. The difference with this one, I suppose, is that for the first time, where councils find that a landlord is not complying, they can issue fixed penalties — and they can keep that money, which will help to offset the cost of enforcement. They have never been able to do that before.

The Chairperson:

They can keep that money? Oh, very good. They should be welcoming it, then.

Ms A Clarke:

It is a big incentive to defray their costs.

Mr Craig:

I like that.

The Chairperson:

It will help the rates.

Mr S Anderson:

It will encourage fixed penalties.

The Chairperson:

It is worth drilling down into this. That is what it is about: drilling down so that we are comfortable or uncomfortable with the provisions. Does anybody need further clarity on this, or are we content with councils' role?

Ms Lo:

Was proposed amendment G suggested by NILGA?

The Chairperson:

Yes.

Ms Lo:

It is very vague. I agree with Alex.

The Chairperson:

They do have a role, which we have heard. It satisfies, in part, their desire as expressed through amendment G.

Mr S Anderson:

As Alex said, councils may be a wee bit worried about the workload.

The Chairperson:

The amendment is coming from NILGA, looking for a role in the regulation, which would be much more than what is really in place. I take your point, Sydney. I am sure that NILGA has probably not consulted all 26 councils as to whether they want a huge power of regulation. What they are getting is only slightly —

Ms A Clarke:

The councils have been part and parcel of our stakeholder forums. Initially, they were reluctant

to have any kind of role in this. We had to say that they had to have an enforcement role, and they were content with that. They were certainly uncomfortable about any kind of regulation.

Mr S Anderson:

Maybe NILGA was happy, but were the councils happy?

The Chairperson:

That is a whole other story.

Mrs M Bradley:

They have not told the councils yet.

The Chairperson:

Council officials are doing this work day in and day out — this type of work, not this work. If we were to say that we did not want councils to do this, we would have to establish an arm of the Housing Executive to do it, which would be a cost and a burden.

Ms A Clarke:

That would add further confusion, because councils enforce all the other aspects of the 2006 Order. It would be very confusing, and probably not very effective. It might be important to point out that, in all our work with them, councils have been very clear that they currently do a lot of informal, ad hoc arbitration between landlords and tenants. Quite often, tenants pay a deposit, there is a problem, and landlords refuse to return the deposit. Councils are actively involved in a lot of those cases now, informally; so they are spending a lot of time doing work on this but not getting any recognition for it, and they cannot really do anything very much besides persuade people's better judgement. This will give councils a very clear way of securing some money to cover their costs.

Ms Lo:

But with the new deposit scheme, they are not going to do that.

Ms A Clarke:

They will just have enforcement.

Mrs M Bradley:

As they have anyway.

Ms A Clarke:

Except that we do not have a scheme at the moment, so they have no enforcement from that point of view. However, they are involved in disputes around deposits.

Mrs M Bradley:

As Alex said, with the number of landlords that they will have to be dealing with, will the councils have the resources? We do not know.

Ms A Clarke:

We will need to do a huge campaign before any of this becomes law, to make sure that landlords are fully aware of what they need to do and tenants know what they should expect from their landlords. A lot of work will have to be done around that.

Mrs M Bradley:

And what to expect for the councils, as well.

Ms A Clarke:

Obviously with councils as well, yes.

Mr F McCann:

I would be interested to see how many people go to councils to ask for mediation. In the area that I represent, they are few and far between.

Mrs M Bradley:

You are very lucky.

Mr F McCann:

They take it on the chin and walk away when they lose their deposits or make complaints. It would be interesting to see that. Also, the Housing Executive has control over the HMO sector, which is probably an extension of the private rented sector anyway.

Ms A Clarke:

The HMO sector is different. The Housing Executive does regulate in that regard. That is where it is complicated.

Mr F McCann:

It is still private rented accommodation.

The Chairperson:

I sense that there is no desire to go back to proposed amendments G and H. We seem content with how far it has gone and do not want to go any further. Proposed amendment I is the abandonment of the tenant deposit scheme, and J is the limitation of the fees associated with disputes. The Landlords Association wanted the scheme to be scrubbed completely. Am I right to assume that there is no support for that?

Members indicated assent.

The Chairperson:

If we opt for the custodial system, there will be no fees at all.

Ms A Clarke:

The arbitration service is free. It is part and parcel of the scheme, and there is no charge.

The Chairperson:

That is if we go along those lines. However, if we go for —

Ms A Clarke:

Either.

The Chairperson:

Yes. The systems are not mutually exclusive. You could have two systems running, with landlords picking and choosing which they want.

Ms A Clarke:

Absolutely.

The Chairperson:

An insurance-based scheme would clearly involve fees.

Ms A Clarke:

The fees would come in the form of insurance premiums. However, arbitration is part and parcel of the scheme, and there is no charge for it.

The Chairperson:

Is that a fair enough explanation, members? One system involves no fees.

Ms Lo:

That was my point. A change to an insurance-type scheme will be very different to a custodial scheme, into which people put money like a bank.

Ms A Clarke:

We have talked to landlords and other stakeholders. We want to be able to offer landlords in Northern Ireland the choice between a custodial and an insurance-based scheme. Some landlords will be happy with a custodial system, because there is no charge. However, they will have to hand over the deposit, which will be a change for them. Those who opt for the other system will keep the deposit but will have to pay an insurance premium. It will be up to the landlord to choose.

Ms Lo:

The people who apply to operate the scheme will be quite different. A voluntary organisation, for

example, will not have the money to run like an insurance-type company. However, the Ulster Community Investment Trust (UCIT) or other smaller organisations will be able to operate a custodial system.

Ms A Clarke:

Absolutely. There will be huge issues for those organisations, and we have to be very careful about that. If they take money and invest it, they will need to provide all kinds of safeguards in case anything happens to that investment.

The Chairperson:

We are not getting very far. Disability Action put forward proposed amendment L: that the tenant deposit scheme should include a bond scheme to protect the interests of vulnerable people and those on low incomes. That is a reasonable suggestion. Everyone understands the sentiment, but it seems potentially difficult on a practical level.

Ms A Clarke:

Those kinds of schemes already operate in Northern Ireland. The Housing Executive funds a large part of them to help vulnerable families. They are operated, mainly by SmartMove, in different parts of Northern Ireland and provide a rent-guarantee service. No legislation is needed as those schemes operate already. We are trying to develop them and make them more widely available, but there are obviously cost issues associated with that.

The Chairperson:

Do members have any views on that?

Ms Lo:

Are we saying that we do not need to include this?

The Chairperson:

If the Department was to give us information about what is in place and detail on how much is being taken up, we could decide then.

I will give a summary. Proposed amendment B concerns the replacement of the word "may" with "shall", and C is about time frame. If, after considering those, the Department were to come forward with an amendment, that would be useful for us to look at. We said that we did not support proposed amendment D: 14-day time period for the provision of information to tenants. Clarification was given on proposed amendment E, which is the requirement for landlords to hold tenant deposits in a secure account.

Proposed amendments F and K relate to the dispute resolution mechanisms already in the Bill. Proposed amendments G and H concern councils, and we got some clarity on their role. We do not support proposed amendments I and J, which are the total abandonment of the scheme and the limitation of fees respectively. As regards proposed amendment L, we are to get information from the Department about what is in place to protect those on low incomes. Is that a fair summary?

Members indicated assent.

The Chairperson:

Clause 3 provides the power of entry to inspect a dwelling-house.

It:

"confers powers of entry on persons authorised by district councils to carry out fitness inspections."

Stakeholders welcomed this clause but suggested the following amendments. Proposed amendment M suggests an extension of powers of entry to include Part IV of the Private Tenancies (Northern Ireland) Order 2006, which refers to certificates of fitness and rent control. Amendment N suggests a change of fitness standard to replicate the GB standard, which is based on a health and safety rating. Amendment O is that the decent homes standard should be a legally enforceable standard for all public and private housing. Amendment P is that district councils should be able to require a specialist report on a health and safety hazard in a privately rented home.

Those four amendments are extensive and differing. What are the views of the Department on them?

Ms A Clarke:

With respect to the first, this clause already provides for an extension of the power. It is extending the power, so the amendment is covered completely.

The Chairperson:

So Part IV of the Private Tenancies (Northern Ireland) Order 2006 is about certificates of fitness?

Ms A Clarke:

This clause will amend the 2006 Order to allow powers of entry to council officers going in to inspect for fitness.

Mr F McCann:

My understanding of the Private Tenancies Order 2006 is as follows. When councils go out to inspect, certainly in my area, and they find a property unfit, they will slap an order on the property but, at the end of the day, it is up to the landlord to decide whether he wants to fix it.

Ms A Clarke:

This particular clause is about determining whether a dwelling-house is fit for human habitation. If the council issues a certificate of fitness, that is fine, and the landlord can charge a market rent. If it is unfit, rent control is applied. Rent is controlled until the property is made fit, and the landlord cannot charge a market rent for it.

Mr F McCann:

You say that that provision is there already?

Ms A Clarke:

Yes. It is.

Mr F McCann:

I would like to see statistics on its implementation.

Ms A Clarke:

It only applies to certain properties, not to every property in Northern Ireland.

Mr F McCann:

Even in the past few weeks, I have dealt with cases, and council officers will tell you that they have gone into dwelling-houses, seen serious problems and instructed the landlord to comply but have been totally ignored. Court proceedings start, but the landlord will get only a £50 or £100 fine and that is all. That is the landlord off the hook.

Are you telling me that this clause tightens the law to ensure compliance by landlords to a standard of fitness?

Ms A Clarke:

This is not tightening the law. It is just making sure that council officials have a power of entry to make an inspection. This is a power similar to that which exists already in Part III of the Private Tenancies (Northern Ireland) Order 2006, and this clause puts it into Part IV.

I understand the member's issue about fitness, but it is one about fitness generally, and it is a separate issue. I entirely agree that it has been troubling the Department for some time. It is a part of the strategy but, in the 'Building Sound Foundations' consultation, we gave a commitment to look at and enhance the statutory fitness standard that will apply to private rented properties. That is what we are doing.

Mr F McCann:

Why not do it in this Bill?

Ms A Clarke:

It has not been possible to do it in this Bill. There is a lot of work attached to that, but we are doing it, and the idea is that we will bring forward separate legislation in the new Assembly mandate. A stakeholders' group is working on it as we speak. It is recognised that the standard is not fit for purpose any more in the private rented sector. It has been around for a long time.

The Chairperson:

The second of these amendments, proposed amendment N, suggests a change of fitness standard to replicate the GB standard, which is based on a health and safety rating.

Ms A Clarke:

That is the separate issue about fitness standard. We want to enhance the statutory fitness standard. At the moment we have a very low fitness standard, and we can carry out fitness inspections and issue certificates of fitness for certain properties. We want to move to a situation where any landlord who is renting any kind of private-rented sector property must clearly demonstrate that he meets the new enhanced standard. We are trying to work to a new enhanced standard.

Mr A Campbell:

With regard to the comment on fitness, I have just checked, and it might be worth pointing out that there is actually a repeat offence provision. If a landlord fails to carry out a repair, he or she repeatedly commits an offence until the work is carried out. Therefore, if the work is not done by a certain date, he or she has committed an offence. If it is not done within the same period again, he or she has committed another offence. Therefore, it keeps building up. It is an ongoing offence.

The Chairperson:

We are talking about different standards. For example, proposed amendment O deals with the decent homes standard and applying it to public and private housing. At present, does it apply to all newbuild public housing?

Ms A Clarke:

The decent homes standard is an administrative standard, not a statutory one. The only statutory standard that is in place across all tenures is the fitness standard.

The Chairperson:

Right. Is that standard developed by the Department or the Housing Executive?

Ms A Clarke:

Yes. It is really developed by the Department. As I said, it applies across all tenures. I am not sure how long it has been in place — perhaps, 20 years. My responsibility is the private-rented sector. Because of the issues that exist in that sector, we want to increase that standard. We said that we would do that in our strategy. However, we need legislation to enable us to do it. Work needs to be done on what the standard should be.

The Chairperson:

There has been discussion. I must say that I am not convinced by the argument to extend the decent homes standard to private housing. That would require legislation, then?

Ms A Clarke:

At present, the decent homes standard is not a statutory standard. Therefore, if you want to extend it, legislation would be required.

The Chairperson:

Yes, because if we desired to do that, it could not be enforceable any other way. I understand that, recently, the Housing Council produced a paper. Although it might look nice on paper, there is a huge debate to be had on how applicable that standard is.

Ms A Clarke:

I think that that is why our focus is really on the private-rented sector.

The Chairperson:

Yes. You say that work is ongoing on the fitness standard. A conclusion will be reached. It will come back, and, if required, legislation will be brought forward.

Ms A Clarke:

It will require primary legislation.

The Chairperson:

OK. Therefore, if work is ongoing, a conclusion will be reached and there will be future

legislation. That seems to be a reasonable approach to take. Notwithstanding concerns that members have expressed, which, it seems, are being addressed, at least, is the Committee happy? It seems reasonable not to support proposed amendments M to O at this stage in anticipation of what might come forward, at least with regard to fitness.

Ms Lo:

Does that clause give councils additional power? I understand that they already have power of entry.

Ms A Clarke:

They already have power of entry for certain purposes. Carrying out an inspection to see whether a house is fit for habitation would normally be done in response to an application. Therefore, if a property was built before 1945, and the landlord wants to rent it out, he or she needs to obtain a fitness certificate for that property from the council. That means inviting the council to examine the property and determine whether it is fit. However, that was not explicit. The view was taken that if a landlord applies for a fitness certificate, he or she will, obviously, let someone in to carry out the inspection. Since the operation of the Private Tenancies Order 2006, a few situations have arisen where we felt that that was not sound. We want to be clear that, in fact, a council officer has power of entry and cannot be stopped from going in. Therefore, if a landlord, or, equally, a tenant, decides that he or she does not want to let an officer in, the provision will give the officer the power legally to go in and carry out an inspection. The inspector cannot be stopped.

Previously, we relied on the Local Government Act (Northern Ireland) 1972. Local councils have told us that they were not entirely happy that it gave them a sound basis. The provision, basically, ensures that councils have a legal basis on which to go into houses. That is simply all it does.

Mr F McCann:

I disagree with that. Do you not believe that there are opportunities now to deal with unfitness and that it can probably be done? Proposed amendment O states that the decent homes standard should be a legally enforceable standard for all public and private housing. Does the Department oppose that?

Ms A Clarke:

No. Certainly, with regard to the private-rented sector —

Mr F McCann:

It would be put on a statutory footing.

Ms A Clarke:

Yes, but we need to be satisfied as to whether the decent homes standard is appropriate for the private-rented sector. There are issues, some of which emerged recently, around fire safety and carbon monoxide poisoning and so on. We want to have a standard that is fit for purpose for the modern age. That is the work that we are doing now. The standard is likely to be very much akin to the decent homes standard, or it might go further than that.

Mr F McCann:

What is wrong with the decent homes standard?

The Chairperson:

Surely there is a practical issue in applying the decent homes standard to private housing. For one thing, there is a cost.

Ms A Clarke:

Absolutely.

The Chairperson:

It is a very difficult time for that market anyway. For example, if I were to buy an apartment and I wished to live in it, a different standard applies. No one builds a private-rented home, they build a home. It can become the owner-occupier's permanent residence, or he or she could rent it out to many different people over a 10-year period.

Mr F McCann:

There are 40,000 people on the housing waiting list. If there are 20,000 a year, 10,000 or 11,000

are forced into the private-rented sector because they are not accepted as being homeless. There is nowhere else for them to go. We are trying to create legislation that ensures that, when those people turn to that sector, they will be going into homes that are of a standard in which they can live. All members have been in homes where we cannot understand how they have been passed by the Housing Executive. The Private Tenancies Order 2006 has no teeth to allow councils to deal with the matter effectively. To say that we will introduce some other legislation or deal with it in a different mandate sends out the message to people, "Do not worry, we will come to it somewhere down the line."

The Chairperson:

Let us be sure about what the suggested amendment says. A differently drafted amendment might tackle the issue differently. Amendment O talks about "all" private housing. If I were to buy a site and build a house, which I wish to occupy and, when I depart this place, pass on to a family member, it would have to be built to the decent homes standard. I might not want to do that; I might not have the money to do that. If I were to buy a site and build a bungalow, I probably would be able to. However, we would be enforcing standards on individuals who are never going to be in the position that you are talking about.

I accept that there is a difference when the public purse is paying money into the pockets of private landlords — even though they do not like that terminology — and that housing has to be to a certain standard. However, the debate is surely about whether it must be the decent homes standard or another standard.

I accept that the current standard is perhaps not high enough or appropriate for the present day, but I think that the Department is saying that it is looking at that standard. My difficulty in proposing an amendment is that I do not know what that standard should be, so I do not know what to put in the amendment.

Mr F McCann:

That is fine. However, along with that, we are talking about widening the remit of the private-rented sector. We take great pride in the fact that our social housing is above the decent homes standard. Therefore, we are saying that people should be housed by the private-rented sector, but

we will not afford them the same rights as those who are housed in social housing.

You used an analogy, Chairperson, of someone leaving a house to their children. However, at the end of the day, those children are not renting the house privately; they are living in it as the owners. We are talking about people who are putting houses up for rent that are not up to the appropriate standard.

The Chairperson:

You are now making the point that I made. The amendment says "all" housing. That is not appropriate.

Mr F McCann:

I am talking about the —

The Chairperson:

What you are talking about, and what I think we should be homing in on, is the standard of private-rented sector accommodation. If somebody is going to rent a house, particularly if he or she is being paid housing benefit to do so, the house should be of a high standard. I think that everybody agrees with that. However, the suggested amendment is about all private housing.

Mr F McCann:

Well, could we put in the words "private-rented housing"?

The Chairperson:

What is private-rented housing? There is no such thing as a private-rented house. A house can be owner-occupied today, rented out tomorrow and back in private ownership next week.

Mr F McCann:

But we expect certain standards to be met.

The Chairperson:

This is the blind talking to the blind. Maybe the Department could outline briefly the standard that is currently in place and what it is looking at to try to enhance that standard to something equivalent to the decent homes standard.

Ms A Clarke:

At the moment, the statutory standard that applies across all housing across Northern Ireland is the statutory fitness standard. It has been around for some time, and it is very low. For example, to meet the standard on heating, the house simply needs to have one electrical socket. There is nothing in the standard about energy efficiency. Fuel poverty is a big issue in the private-rented sector, and, when devising the standard for the private-rented sector, we want to minimise the impacts of fuel poverty and safety, because there are issues with gas safety and fire safety. The HMO sector is different, because there are clear standards that those properties must meet, and they only apply to HMOs —

Mr F McCann:

Most of them do not abide by those standards anyway.

Ms A Clarke:

All of those who register abide by those standards. However, not everyone has registered and your point is a fair one. It is about determining an appropriate standard for the private-rented sector. That will need to be consulted on before it can become legislation, and that work is ongoing.

The other thing is that there is a very low fitness level, and most properties meet the fitness standard. You made the point that you were surprised that some properties were deemed to be fit, but that is due to very low standards. Unfitness is not the issue that it used to be, because it is measured against such a low standard, and we want to raise that standard. We will develop the legislation through consultation with stakeholders and provide a lead time, because there will obviously be a cost involved.

The Chairperson:

Yes; there will be a cost.

Mr F McCann:

We are obviously not going to agree on this.

The Chairperson:

I think that you and I agree, it just sounds as though we do not agree. *[Laughter.]*

Ms Lo:

You are so diplomatic.

Mr F McCann:

I will have to work that one out.

The Chairperson:

You and I and the rest of the Committee want to head in the same direction; it is the means of travel that is in dispute. I think that the decent home standard is a costly and blunt instrument to achieve the ends that you want to achieve. The Department's actions may seem frustratingly slow to you and others, but at least it is travelling in the right direction.

Ms A Clarke:

It is also worth pointing out that not all social homes meet the decent homes standard.

The Chairperson:

All newbuilds would be up to, if not beyond, that standard.

Ms Lo:

Do the majority of social homes meet the decent home standard?

Mr F McCann:

That is what we are being told anyway.

The Chairperson:

Fra has a position, whereas other Committee members are more cautious and are prepared to allow the Department to trundle along with what it is doing. Does the Department want to take that away and come back to the Committee?

Mr F McCann:

The Department will return to the Committee for further discussion or with amendments. We will hold back until then, but we reserve the right to —

The Chairperson:

That is fine. Therefore, is it the Committee's position that we should not propose an amendment at this stage? Are members agreed?

Members indicated assent.

Mr Craig:

We need to be cautious. I have a great deal of sympathy with you both in your attempts to increase the standards in the private-rented sector. However, we may create a difficulty in the market if we set a standard that costs many owners in the private-rented sector more than half the price of the property to comply with. They will just — *[Inaudible due to mobile phone interference.]* Where will that leave the Housing Executive with the shortfall in housing that that will create? We must bear that in mind that if the private-rented sector was to disappear that would create a monumental difficulty for government. We can bring those properties up to the correct standard eventually, but it will be longer drawn-out process.

The Chairperson:

At this time, it is about who will invest the money that is required, and many will choose not to invest.

Mr Craig:

Where will they find a bank that will give them the money?

Mr F McCann:

I have said all along that sizeable sections of the private-rented sector provide high quality accommodation. However, the sector has almost doubled in size during the past few years, and there are quite a lot of substandard properties. That is what we need to capture.

We have come through this before. We waited five years for the Department even to indicate that it was going to move on the housing selection scheme, despite all the promises that it made. All we are told is that a review is ongoing and that changes will be made soon. As Angela said, the standards are so low at the moment that many substandard houses slip through.

The Chairperson:

Amendment P was suggested by NILGA. If adopted, district councils would be able to require a specialist report on a health and safety hazard in a privately rented home.

Ms A Clarke:

We are looking at that with our council colleagues, and we do not see the need for legislation on that. We do not see any reason why that could not be required now in order for a council to fulfil its functions, and some councils do that already and require specialist reports. There are probably two ways to deal with the issue. First, we could consider the fees. There is a view that the fee for fitness certificates is too low and does not cover the costs. We are working with council colleagues and looking at whether we need to increase the fees to cover the cost of procuring those certificates. The other issue is raising the standard and building that in. I appreciate that that is a longer-term process.

The Chairperson:

Notwithstanding the comments that have been made, we will not pursue proposed amendments M, N and O at this stage. We do not think that there is any need to back proposed amendment P. Are members happy with that?

Members indicated assent.

The Chairperson:

We move on to clause 4, which deals with powers to modify articles 42 to 45 of the 2006 Order. Clause 4 allows the Department to modify provisions that relate to the determination of private sector rents. There was very little comment on the clause. The Landlords Association of Northern Ireland (LANI) expressed opposition to the principle of rent controls by government. The Department advised that the rent controls apply to very few private properties in Northern Ireland. LANI suggested proposed amendment Q, which states that all rent controls that refer to the private sector should be removed. Are there any views on that? I suspect that it is not supported.

Ms A Clarke:

We have found that rent control, where appropriate, is quite effective, and, because of rent control, a lot of unfit properties have been made fit. The proposed amendment will not extend the scope of rent control.

The Chairperson:

Yes. That point had been made. I will backtrack a little bit. Fra raised the point about registered rents, and we had some figures on that some time ago. An update on how many properties that affects and where they are would be useful.

Ms A Clarke:

I think that there are about 1,100 properties on the rent register at the moment. We can certainly write to the Committee with an update on that.

Mr F McCann:

Most Committee members have, in the past, raised the need for some type of rent control in the private-rented sector. It is all right for Angela to say that there are enough regulations to deal with that. However, £90 million a year comes in from housing benefit, and many people who are charged £400, £500 or £600 have to come up with the extra money from their benefits. The landlord expects them, under the threat of not getting the house, to pay an extra £100 or £150 on top of their housing benefit. There is no control whatsoever. If people do not pay, they will not get the house. There is nothing to tell landlords when they are overstepping the mark.

Ms A Clarke:

It is very difficult for government to intervene in the private sector and say —

Mr F McCann:

It is also very difficult for people to come up with the money, Angela.

Ms A Clarke:

I appreciate that. It is a very difficult area, and we share members' concerns.

The Chairperson:

It seems that there is no support for that amendment.

Members indicated assent.

The Chairperson:

Clause 5 is about the registration of landlords. If we start to discuss this now, we will probably be here until teatime. I propose that we stop at this stage and come back. We might need to slot in an extra session next week. We made slow but useful progress today and teased out pretty definitive positions on most of the amendments. Are members happy to suspend the meeting?

Members indicated assent.

The Chairperson:

I had hoped to make a bit more progress, but at least we have sorted out a lot of the problems. Today's questions should not be repeated. Thank you very much for your time, Alistair, Stephen and Angela, and I apologise for not getting through it all.