



THE HOUSING (AMENDMENT) BILL

The Housing (Amendment) Bill was introduced to the Northern Ireland Assembly on 9 June 2009. The purpose of the Bill is to enhance the existing legislative framework in a number of areas, such as homelessness. This paper explores the background to the Bill and provides an overview of the provisions of the Bill which include placing a statutory duty on the Housing Executive to publish a Homelessness Strategy every five years; increasing the powers of the Department for Social Development in undertaking its monitoring and regulation role in respect of registered housing associations; placing a statutory duty on the Housing Executive to publish its policies and procedures on anti-social behaviour; and amending the definition of a 'House in Multiple Occupation' (HMO).

Housing (Amendment) Bill

Summary

The Housing (Amendment) Bill was introduced in the Northern Ireland Assembly on 9 June 2009 and the Second Stage of the Bill took place on 23 June 2009. The purpose of the Bill is to enhance the existing legislative framework in a number of different areas. The Bill consists of 19 clauses, in summary these clauses include provisions which:

- place a statutory duty on the Housing Executive to publish a **Homelessness Strategy** every five years;
- ensure other public bodies, e.g. the Regional Agency for Public Health, **assist in the formulation** of the strategy;
- require the Housing Executive to ensure that **advice about homelessness**, and the prevention of homelessness, is available free of charge;
- ensure that a person who is found **ineligible for homelessness assistance** is informed of the decision and the reason(s) for the decision;
- provide applicants for homelessness assistance with the **right to request a review** of the decisions taken by the Housing Executive and a subsequent right of appeal to the courts on a point of law;
- increase the powers of the Department for Social Development in respect of its role in **monitoring and regulating registered housing associations**;
- increases the number of **Northern Ireland Housing Council** nominees on the Board of the Housing Executive from three to four;
- allow the Housing Executive and housing associations to take **possession of abandoned accommodation** held under an introductory tenancy;
- place a statutory duty on the Housing Executive to publish its **policies and procedures on anti-social behaviour**; and
- amends the current definition of a **'House in Multiple Occupation' (HMO)**.

The Bill also contains a number of minor technical amendments and amendments to correct errors in the drafting of previous legislation. Many of the provisions of the Bill are relatively non-contentious in nature and should result in improvements in the clarity and operational effectiveness of housing legislation. The provisions of the Bill relating to homelessness are likely to be widely welcomed as they place into legislation many of the recommendations of the Promoting Social Inclusion Working Group on Homelessness. The amendment of the definition of an HMO may, however, prove to be one of the most widely debated issues during the course of the Bill's Committee Consideration Stage.

CONTENTS

Background and Purpose of the Bill.....	1
Contents of the Bill.....	2
Clause 1: Homelessness Strategy	3
Clause 2: Duty of the Housing Executive to Provide Homelessness Advice.....	4
Clause 3: Eligibility for Housing Assistance	5
Clause 4: Power of the Department to Prescribe Form of Advice	5
Clause 5: Reviews of Decisions in Relation to Homelessness	6
Clause 6: Power to Obtain Information from Housing Associations	6
Clause 7: Inquiry into Affairs of Registered Housing Associations.....	7
Clause 8: DSD's Powers in Cases of Misconduct or Mismanagement.....	7
Clause 9: Abandonment of Properties Let under Introductory Tenancies.....	7
Clause 10: Polices and Procedures Relating to Anti-Social Behaviour.....	8
Clause 11: Grounds for Possession: nuisance to neighbours, etc.....	9
Clause 12: Housing Council Representation.....	10
Clause 13: Amendment of the Housing (NI) Order 1992	10
Clause 14: Definition of 'House in Multiple Occupation'	11
Clause 15: Amendment of Article 35(5), Private Tenancies (NI) Order 2006..	12
Clause 16: Amendment Article 36(5)(a), Private Tenancies (NI) Order 2006.	12
Conclusions.....	12

BACKGROUND AND PURPOSE OF THE BILL

1. The [Housing \(Amendment\) Bill](#) was [introduced](#) in the Northern Ireland Assembly on 9 June 2009 and the [Second Stage](#) of the Bill took place on 23 June 2009. The purpose of the Bill is to enhance the existing legislative framework in a number of different areas. The Bill consists of 19 clauses and in summary it contains provisions that:
 - place a statutory duty on the Housing Executive to publish a **Homelessness Strategy** every five years;
 - ensure other public bodies, e.g. the Regional Agency for Public Health, **assist in the formulation** of the strategy;
 - require the Housing Executive to ensure that **advice about homelessness**, and the prevention of homelessness, is available free of charge;
 - ensure that a person who is found **ineligible for homelessness assistance** is informed of the decision and the reason(s) for the decision;
 - provide applicants for homelessness assistance with the **right to request a review** of the decisions taken by the Housing Executive and a subsequent right of appeal to the courts on a point of law;
 - increases the powers of the Department for Social Development in respect of its role in **monitoring and regulating registered housing associations**;
 - increase the number of **Northern Ireland Housing Council** nominees on the Board of the Housing Executive from three to four;
 - permit the Housing Executive and housing associations to take **possession of abandoned accommodation** held under an introductory tenancy;
 - place a statutory duty on the Housing Executive to publish its **policies and procedures on anti-social behaviour**; and
 - Amends the current definition of a **'House in Multiple Occupation'** (HMO).
2. The Bill also contains a number of minor technical amendments and amendments to correct errors in the drafting of previous legislation. All main clauses are examined in further detail throughout this paper.
3. In many respects many of the provisions of the Bill are relatively non-contentious in nature and should result in improvements in the clarity and operational effectiveness of housing legislation. The provisions of the Bill relating to homelessness are likely to be widely welcomed as they place into legislation many of the recommendations of the Promoting Social Inclusion Working Group on Homelessness. The amendment of the definition of an HMO, however, may prove to be one of the most debated issues during the course of the Bill's Committee Consideration Stage.

CONSULTATIONS

4. The Bill's Explanatory Memorandum states that the provisions of the Bill fall into one of the following four categories:
 - Recommendations emerging from earlier consultations (e.g. the PSI Homelessness Working Group consultation);
 - Amendments aimed at clarifying existing legislation (e.g. provisions relating to the regulation and monitoring of registered housing associations);
 - Amendment required as a consequence of a judicial review (e.g. amendment to definition of an HMO); and
 - Technical amendments (e.g. correcting drafting errors in previous legislation).
5. The provisions of the Bill relating to homelessness are derived from the PSI Working Group on Homelessness consultation process and a draft report published in November 2004. The Bill's Explanatory Memorandum states that the minor amendments proposed to the law dealing with anti-social behaviour are as a result of discussions with the Housing Executive about operational difficulties in implementing the law. The aim of the changes relating to anti-social behaviour are to clarify the intent of the law and do not constitute a change of policy. The provisions relating to the monitoring and regulation of registered housing associations are a result of discussions between the Department and the Northern Ireland Federation of Housing Associations.

THE CONTENTS OF THE BILL

6. This section of the paper provides a broad overview of the clauses of the Bill and for ease of reference these are arranged under the following headings:
 - Provisions relating to homelessness (clauses 1-5);
 - The monitoring of registered housing associations (clauses 6-8);
 - Abandonment of properties held under introductory tenancies (clause 9);
 - Provisions relating to anti-social behaviour (clauses 10-11);
 - Nominating rights of the Northern Ireland Housing Council (clause 12);
 - Amendment to the Housing (NI) Order 1992 (clause 13);
 - Amendment to the definition of a HMO (clause 14); and
 - Amendments to the Private Tenancies (NI) Order 2006.

PROVISIONS RELATING TO HOMELESSNESS

7. The Department for Social Development has responsibility for developing policies and legislation to address the accommodation needs of people who are homeless. Within the context of the Promoting Social Inclusion (PSI) initiative, the Department established a Working Group in 2004 which was comprised of officials from a number of Departments (e.g. DSD, DHSSPS, OFMDFM) and other relevant agencies (e.g. the Probation Board for Northern Ireland, Simon Community, Council for the Homeless NI). The Working Group was tasked with

developing a draft policy and a co-ordinated strategy document on homelessness for public consultation.

8. The consultation paper, entitled '[Promoting the Social Inclusion of Homeless People](#)' was published in November 2004. The paper made a number of recommendations for changes to legislation relating to homelessness including:
 - A statutory requirement for the Northern Ireland Housing Executive to produce a homelessness strategy every five years;
 - A statutory requirement for the Northern Ireland Housing Executive to secure advice and information about homelessness and the prevention of homelessness and that this should be available free of charge; and
 - A statutory right to a review of decisions made by the Northern Ireland Housing Executive regarding entitlement to assistance under the homelessness legislation with a subsequent right to appeal to the county court¹.
9. According to the Bill's explanatory memorandum there were around fifty responses to the consultation and the homelessness provisions of the Housing (Amendment) Bill reflect the consensus views of consultees². Clauses 1 to 5 of the Housing (Amendment) Bill place into legislation the recommendations of the PSI Working Group outlined above.

Clause 1: Homelessness Strategy

10. The Northern Ireland Housing Executive already develops and publishes a homelessness strategy on a voluntary basis, the first of which was published in 2002. However, there is current no statutory requirement for it to do so. The PSI Working Group report highlighted that legislation existed in Scotland, England and Wales which placed a statutory requirement upon local authorities to produce a homelessness strategy every five years. In line with the recommendations made by the PSI Working Group on Homelessness, Clause 1 of the Housing (Amendment) Bill places a statutory duty on the Northern Ireland Housing Executive to formulate and publish a homelessness strategy every five years.
11. A homelessness strategy is defined in the Bill as a strategy for:
 - Preventing homelessness in Northern Ireland;
 - Securing that sufficient accommodation is and will be available for people in Northern Ireland who are or may become homeless; and
 - Securing the satisfactory provision of advice and assistance for people in Northern Ireland who are or may become homeless, or who have been homeless and need advice and assistance to prevent them becoming homeless again.
12. In addition to this, the PSI Working Group further proposed that in line with the legislative requirements in other jurisdictions there should be a statutory requirement placed on other bodies (e.g. health and social services) to *participate*

¹ PSI Working Group on Homelessness (2004). Promoting the Social Inclusion of Homeless People: Addressing the Cause and Effects of Homelessness in Northern Ireland.

www.wellnet-ni.com/publications/promoting_social_inclusion_homelessness.pdf

² Housing (Amendment) Bill. Explanatory and Financial Memorandum.

in the development of the strategy. The Working Group also maintained that certain other bodies should *take the homelessness strategy into account* in the exercise of their functions (e.g. Registered Housing Associations, the Probation Board for Northern Ireland).

13. In the context of this recommendation, Clause 1 of the Bill requires the Regional Agency for Public Health and Social Wellbeing and the Regional Health and Social Care Board to *assist with the formulation* of the strategy. It also requires the following bodies to *take account* of the strategy in the exercise of their functions:

- Registered Housing Associations;
- The Secretary of State (in relation to any function exercisable in connection with prisons in Northern Ireland);
- The Probation Board for Northern Ireland;
- The Department for Education;
- The Department for Employment and Learning; and
- The Department for Social Development.

14. The Department for Social Development has indicated that the Northern Ireland Housing Executive is in the progress of reviewing the current Homelessness Strategy as a basis for producing a new strategy once the Bill becomes law. This process will involve engaging with relevant community and voluntary sector organisations as well as relevant Government Departments and agencies³. A statutory basis for a homelessness strategy is undoubtedly a welcome development that will bring Northern Ireland into line with legislation in other jurisdictions and sets out a joined-up cross Departmental and cross-sectoral approach to addressing homelessness. However, a number of concerns have been expressed with regard to how Departmental buy-in to the strategy will be secured in practice⁴.

Clause 2: Duty of the Housing Executive to Provide Homelessness Advice

15. This clause places a requirement on the Housing Executive to ensure that advice about homelessness, and the prevention of homelessness, is available free of charge. It also enables the Housing Executive to pay grants or to make loans or other assistance available to persons providing such advice.

16. Currently Article 6(4) of the [Housing \(Northern Ireland\) Order 1981](#) requires that the Housing Executive shall establish such housing information and advice “*as it considers desirable*”. However, in Scotland local authorities have an explicit duty under Section 2 of the [Housing \(Scotland\) Act 2001](#) to ensure that advice and information about the prevention of homelessness, and any services which may assist in the prevention of homelessness, is available free of charge to any person in the authority’s area.

17. The provision relating to free advice and information on homelessness has been welcomed by the Housing Rights Service. However, they suggest that the form and content of the advice should be prescribed in detailed Guidance. In

³ Northern Ireland Assembly Official Report. Committee for Social Development Evidence Session on the Housing (Amendment) Bill. 2 April 2009.

www.niassembly.gov.uk/social/2007mandate/moe/2008/090402.htm

⁴ Northern Ireland Assembly Official Report. Committee for Social Development Evidence Session on the Proposed Housing Bill. 18 September 2008.

www.niassembly.gov.uk/social/2007mandate/moe/2008/080918.htm

Scotland, for example, a '[Code of Guidance on Homelessness](#)' was devised under the former Scottish Executive. The Code of Guidance provides practical advice on a range of issues, for example, helping owner occupiers avoid homelessness, helping people leaving institutions and care, and the handling of homelessness applications⁵. The Housing Rights Service also suggest that steps should be taken to address the quality and not just the quantity of advice provision, by introducing a set of national standards for the provision of housing advice similar to those that have been established in Scotland⁶.

Clause 3: Eligibility for Housing Assistance

18. Under Article 22 of the [Housing \(Northern Ireland\) Order 1981](#) the Housing Executive has a duty to submit to the Department a scheme for the allocation of housing. Under Article 22A (6) the Housing Executive may decide that an **applicant** is ineligible for assistance under this scheme if it is satisfied that:

- He, or a member of his household, has been guilty of unacceptable behaviour serious enough to make him unsuitable to be a tenant of the Executive; and
- In the circumstances at the time his application is considered, he is unsuitable to be a tenant of the Executive by reason of that behaviour.

Clause 3 of the Housing (Amendment) Bill will substitute the word “**an applicant**” for “**a person**”. The Department maintains that this change is necessary because once the individual has been accepted for the house allocation scheme, they are no longer an applicant and therefore the law is not enforceable. The Department maintain that the law as it currently stands does not allow the Housing Executive to take into account any anti-social behaviour that comes to light after an individual has been accepted for the scheme⁷. It is believed that this amendment will permit the Housing Executive consider evidence of ineligibility on the grounds of anti-social behaviour at any stage of the housing allocation scheme process.

Clause 4: Power of the Department to Prescribe Form of Advice and Assistance

19. According to the Bill's Explanatory Memorandum, this clause enables the Department for Social Development to prescribe the form of advice and assistance that the Housing Executive is required to provide to applicants who are homeless or threatened with homelessness but who do not meet the full statutory criteria for re-housing. The Housing Executive is required, under Articles 10 and 11 of the [Housing \(Northern Ireland\) Order 1988](#) to provide advice and assistance in such cases, however, the legislation does not specify what form the advice or assistance should take.

⁵ Scottish Executive (2005) Code of Guidance on Homelessness: Guidance on legislation, policies and practices to prevent and resolve homelessness.

www.scotland.gov.uk/Publications/2005/05/31133334/33366

⁶ Northern Ireland Assembly Official Report. Committee for Social Development Minutes of Evidence on the Proposed Housing Bill. 18 September 2008.

www.niassembly.gov.uk/social/2007mandate/moe/2008/080918.htm

⁷ Northern Ireland Assembly Official Report. Committee for Social Development Evidence Session on the Housing (Amendment) Bill. 2 April 2009.

www.niassembly.gov.uk/social/2007mandate/moe/2008/090402.htm

Clause 5: Reviews of Decisions in Relation to Homelessness

20. There is currently no provision in legislation for applicants for homelessness assistance to appeal against decisions made by the Housing Executive. However, the Housing Executive does operate a voluntary review system if applicants wish to challenge their decisions.
21. However, Clause 5 will provide applicants for homelessness assistance with a *statutory entitlement* to request a review of the decisions taken by the Housing Executive on their application and will provide a subsequent right to appeal to the country court on a point of law. This clause also confers power on the Department to make regulations dealing with the procedure for carrying out such a review.

THE MONITORING OF REGISTERED HOUSING ASSOCIATIONS

22. The Department for Social Development has power under Section 21 of the [Housing \(Northern Ireland\) Order 1992](#) to monitor registered housing associations (see below):

Section 21 of the Housing (Northern Ireland) Order 1992

Power of Department to monitor housing associations

- 21.—(1) If at any time required to do so by the Department,—
- (a) a registered housing association shall produce to a person authorised in that behalf by the Department such books, accounts and other documents relating to the association's business as may be specified by the Department; and
- (b) any officer, employee or member of the committee of the registered housing association shall provide an explanation of any such books, accounts and other documents.
- (2) Where, by virtue of paragraph (1), any books, accounts or other documents are produced to a person authorised in that behalf by the Department, he may take copies of or make extracts from them.

23. The purpose of clauses 6-8 of the Housing (Amendment) Bill 2009 is to *replace, strengthen and elaborate upon* the existing monitoring powers of the Department by amending Article 21 of the 1992 Order. According to the Bill's explanatory memorandum, Departmental officials have met with the Chief Executive of the Northern Ireland Federation of Housing Associations to discuss the proposals. It further maintains that the proposals have been put to the Federation's members who have accepted that the Department requires additional powers to carry out its monitoring and regulation role in an effective matter.

Clause 6: Power to Obtain Information from Registered Housing Associations

24. Under this clause, the Department may now **serve a notice** requiring information which would assist it in discharging its functions on a wider class of person than was previously the case. Notice may be served upon a registered housing association; any person who is, or has been, an officer, member, employee or agent of a registered housing association; a subsidiary or associate of a registered housing association; or any other person who the Department has reason to believe is or may be in possession of relevant documentation. Clause 6 also makes provision for procedural matters relating to the serving of a notice.
25. This clause also:

- Makes provisions for the enforcement of **penalties** in the case of failure to comply with the notice;
- Provides a **statutory power for specified persons to disclose** to the Department information received by them in the course of their duties; and
- Makes provision for the **Department to disclose information** which relates to a registered housing association for specified purposes and to specified persons.

Clause 7: Restriction on Inquiry into Affairs of Registered Housing Associations

26. This clause prevents existing and former members or employees of the Northern Ireland Housing Executive from taking part in inquiries into the affairs of registered housing associations. This provision reflects a similar provision in the Housing (Northern Ireland) Order 1992 which prevents officers or former officers from the Department from conducting an inquiry into the affairs of a registered housing association⁸. The aim of this provision is to maintain the independent status of an Inquiry.

Clause 8: Department's Powers in Cases of Misconduct or Mismanagement

27. At anytime after the commencement of an inquiry or audit, this Clause confers powers on the Department to take immediate action to protect the interests of the tenants of the registered housing association or to protect the assets of the association if the Department has '*reasonable grounds to believe*' that there has been misconduct or mismanagement of the association (rather than waiting until the production of an interim report as is the position under current legislation).

ABANDONED PROPERTIES LET UNDER INTRODUCTORY TENANCIES

Clause 9: Abandonment of Properties let under Introductory Tenancies

28. All new Housing Executive and housing association tenancies are initially let as 'introductory' tenancies which become 'secure' tenancies after a period of 12 months providing the tenant's conduct is satisfactory. Where accommodation under a *secure tenancy* appears to have been *abandoned*, Article 41 of the [Housing \(Northern Ireland\) Order 1983](#) permits a landlord to enter and take possession of the property and to deal with the any property left behind. A secure tenant has a subsequent right of appeal to the court if they are aggrieved by the termination of the tenancy.

29. There is no provision in legislation that permits a landlord to repossess an abandoned property let under an introductory tenancy. Under these circumstances the landlord would instead have to apply to the court for an order of possession. Additionally, the landlord would be required to store any property found on the premises in case the tenant wished to reclaim it at a future date.

30. Clause 9 brings the rules regarding the repossession of abandoned introductory tenancy properties into line with those for secure tenancies. It confers power on the Housing Executive to enter (by force if necessary) a house held under an introductory tenancy which it believes has been abandoned. It also makes

⁸ 23(2) - Housing (Northern Ireland) Order 1992.
[www.opsi.gov.uk/si/si1992/Uksi_19921725_en_5.htm#\(Tii\)2ipowerdementmonitorhousingassociation](http://www.opsi.gov.uk/si/si1992/Uksi_19921725_en_5.htm#(Tii)2ipowerdementmonitorhousingassociation)

provision relating to the handling and disposal of any property found on the premises. Additionally, Clause 9 provides the tenant with a subsequent right of appeal to the court (within 6 months after the date of the termination) if they are aggrieved by the termination of the tenancy. Clause 9 also makes provision in connection with the type of alternative accommodation which may be provided where the court rules in favour of the tenant.

PROVISIONS RELATING TO ANTI-SOCIAL BEHAVIOUR

31. The Housing (Amendment) Bill explanatory memorandum highlights that the amendments relating to anti-social behaviour are the result of discussions with the Housing Executive about operational difficulties and that these amendments represent a clarification of the law rather than a change of policy. The two clauses in the Bill relating to anti-social behaviour address the Housing Executive's policies and procedures relating to anti-social behaviour and the grounds of possession for anti-social behaviour.

Clause 10: Housing Executive's Policies and Procedures Relating to Anti-Social Behaviour

32. This clause places a statutory requirement on the Northern Ireland Housing Executive to publish both its policy in relation to anti-social behaviour and its procedures for dealing with occurrences of anti-social behaviour. The statutory definition of anti-social behaviour is set out under Article 26(1) of the [Housing \(Northern Ireland\) Order 2003](#):

Article 26(1) of the Housing (Northern Ireland) Order 2003

- a) engaging in or threatening to engage in conduct causing or likely to cause a nuisance or annoyance to a person residing in, visiting or otherwise engaging in a lawful activity in residential premises to which this Article applies or in the locality of such premises,
- (b) using or threatening to use residential premises to which this Article applies for immoral or illegal purposes, or

33. The Housing Executive already publishes a range of policy and procedural documents on anti-social behaviour, some examples of which are outlined below:

- NIHE '[Statement of Policy and Procedures on Anti-Social Behaviour](#)'⁹ (2007) – outlines the Housing Executive's policy on anti-social behaviour, the prevention of anti-social behaviour, the complaints process including the procedures by which the Executive will deal with anti-social behaviour.
- NIHE '[Community Safety Strategy](#)' (2008)¹⁰ – sets out a three year community safety action plan which includes objectives relating to the prevention and improving processes in dealing with anti-social behaviour.

⁹ Northern Ireland Housing Executive (2007) Statement of Policy and Procedures on Anti-Social Behaviour. www.nihe.gov.uk/displayFile?id=6015

¹⁰ Northern Ireland Housing Executive (2008) Building Safer Communities: Northern Ireland Housing Executive Community Safety Strategy 2008/09 to 2010/11. www.nihe.gov.uk/displayFile?id=12040

Under Clause 10, the Housing Executive will be required to keep its policy and procedures on anti-social behaviour under review and must have regard to any guidance issued by the Department for Social Development.

34. In oral evidence to the Committee for Social Development in 2008, the Housing Rights Service expressed support for a provision which would place a statutory requirement on the Housing Executive to publish its policies and procedures in relation to anti-social behaviour. However, it also maintained that this statutory requirement should be extended to all social landlords including housing associations¹¹.
35. Addressing this issue during the Second Stage of the Bill, the Minister for Social Development commented as follows:

*“The Deputy Chairperson of the Committee rightly asked why the Bill will not require registered housing associations to publish their policies and procedures on antisocial behaviour. I agree that registered housing associations should do so, and although it is appropriate that the duties of a statutory body such as the Housing Executive should be set out in legislation, we sometimes forget that housing associations are voluntary organisations. My Department already has powers to regulate the affairs of registered housing associations, and I will ask my officials to ensure that the associations publish their policies and procedures in that area”.*¹²

Clause 11: Grounds for Possession: nuisance to neighbours, etc.

36. This clause makes an amendment to the Grounds for repossession of a dwelling house held under a secure tenancy. The purpose of the amendment is to enable the Housing Executive and registered housing associations to make use of the grounds for possession relating to the use of premises for immoral or illegal purposes.
37. Under current legislation a secure tenancy can be brought to an end due to anti-social behaviour by applying to the court for an order of possession. However, in order to obtain such an order the Housing Executive or housing association must prove that there are grounds for repossession. These grounds are set out in Schedule 3 of the [Housing \(Northern Ireland\) Order 1983](#).
38. Clause 11 will amend Ground 2 in Part 1 of Schedule 3 of the 1983 Order by inserting the words “an offence involving” after “using the dwelling-house or allowing it to be used for immoral or illegal purposes” (see paragraph b(i) below). This amendment seeks to clarify that the power under paragraph b(i) can be exercised where an offence has actually been committed.

¹¹ Northern Ireland Assembly Official Report. Committee for Social Development Minutes of Evidence on the Proposed Housing Bill. 18 September 2008.

www.niassembly.gov.uk/social/2007mandate/moe/2008/080918.htm

¹² Northern Ireland Assembly Official Report. 23 June 2009.

www.niassembly.gov.uk/record/reports2008/090623.htm#1

Ground 2, Part 1 of Schedule 3 of the Housing (Northern Ireland) Order 1983

The tenant or a person residing in or visiting the dwelling-house—

(a) has been guilty of conduct causing or likely to cause a nuisance or annoyance to a person residing, visiting or otherwise engaging in a lawful activity in the locality, or

(b) has been convicted of—

(i) using the dwelling-house or allowing it to be used for immoral or illegal purposes, or

(ii) an arrestable offence committed in, or in the locality of, the dwelling-house.

NORTHERN IRELAND HOUSING COUNCIL

Clause 12: Increase in Housing Council Representation on Housing Executive Board

39. This clause increases the number of Northern Ireland Housing Council nominees on the Board of the Northern Ireland Housing Executive from three to four. The [Northern Ireland Housing Council](#) was established in 1971 and its membership comprises of one representative from each of the 26 District Councils in Northern Ireland. The Council is consulted by the Housing Executive and the Department for Social Development on matters that affect housing policy in Northern Ireland¹³.

40. Under existing legislation, the Northern Ireland Housing Council currently holds statutory nominating rights to three places on the Board of the Northern Ireland Housing Executive. However, since 2006 the Housing Board have nominated four members to sit on the Board of the Housing Executive. This decision was taken following a call for an increase in representation from the Housing Council to David Hanson MP, then Minister with responsibility for Social Development¹⁴.

41. Clause 12 simply places in statute the right of the Housing Council to nominate four Members to the Board of the Housing Executive. The Department for Social Development maintain that the increase in nominating rights will help to ensure that the Board of the Housing Executive achieves a broader balance of political representation. The Northern Ireland Housing Council was originally earmarked for abolition under RPA proposals. However, the Minister for Social Development expressed a desire to retain the Council, along with its statutory nominating rights, and to set it a more challenging remit¹⁵.

TECHNICAL AMENDMENT TO THE HOUSING (NI) ORDER 1992

Clause 13: Amendment of the Housing (NI) Order 1992

42. This is a technical amendment to Article 13(6) of the [Housing \(Northern Ireland\) Order 1992](#). Under current legislation, housing associations must seek the Department's approval to dispose of land. However, under Article 13(6) this does not apply if the land has been let under a secure tenancy but does not extend to "qualifying shorthold tenancies". Qualifying shorthold tenancies are a type of tenancy which can be granted by a registered housing association for a period of

¹³ For further information on the Northern Ireland Housing Council see www.nihe.gov.uk/index/about-us-home/housing_council.htm

¹⁴ Northern Ireland Housing Executive. Annual Report 2005-2006, p134. www.nihe.gov.uk/ar2006main2.pdf

¹⁵ Department of the Environment (2007). Review of Local Government: Emerging Findings Report, p10. www.doeni.gov.uk/index/local_government/emerging_findings.htm

one to five years". The purpose of Clause 13 is to ensure that housing associations are not required to seek the Department's approval where they wish to offer tenancies on a qualifying shorthold basis.

AMENDMENT TO THE DEFINITION OF A 'HOUSE IN MULTIPLE OCCUPATION'

Clause 14: Definition of 'House in Multiple Occupation'

43. The amendment of the definition of a 'House in Multiple Occupation' (HMO) represents perhaps one of the most potentially contentious issues arising from the Bill. Accordingly to the Bill's Explanatory Memorandum, Clause 14 will amend the definition of a HMO to recognise that members of an extended family living under the same roof will normally comprise a single household which should not be subject in law to the full regulatory regime for HMOs.

44. Currently a HMO is defined by Article 143 of the [Housing \(Northern Ireland\) Order 2003](#) as:

"a house occupied by more than two qualifying persons, being persons who are not all members of the same family"

45. Therefore, a property is defined as an HMO if it is occupied by three different people from two different families. Under the 2003 Order, a person is considered to be a member of another's family if he/she is that person's spouse (or living together as husband and wife), parent, grandparent, child, grandchild, brother or sister. The definition does not include, for example, aunts, uncles, nieces or nephews.

46. The Department maintain that an amendment to the definition of a HMO is necessary because of criticism of the definition by a judge during a [judicial review](#) in March 2005. In his ruling, Girvan J, maintains that the current definition may unintentionally bring many houses comprising of one household under the definition of a HMO:

"When a man A co-habits with a woman B who has a child by a previous relationship the child is not a child of A or a step child of A and the result would be that the house would then become a HMO. Many other situations would give rise to the apparently unintended consequence of bringing within the ambit of the legislation many houses comprising one household. The definition of a house in multiple occupation has been the subject of difficulty in relation to the drafting of a satisfactory definition and in England the definition has been recently radically changed by the Housing Act 2004. The living accommodation must be occupied persons "who do not form a single household"¹⁶.

47. Girvan J indicated a preference for the definition of a HMO applied in England. In England, Section 254 of the [Housing Act 2004](#) defines an HMO as living accommodation occupied by persons "who do not form a single household". Households are defined by Section 258 as a:

- Couple married to each other or living together as husband and wife (or an equivalent relationship in the case of persons of the same sex);

¹⁶ Landlords Association for Northern Ireland, Re An Application for Judicial Review [2005] NIQB 22 (14 March 2005) www.bailii.org/nie/cases/NIHC/QB/2005/22.html

- Relatives living together including parents, grandparents, children, Step children, grandchildren, brothers, sisters, uncles, aunts nephews, nieces, or cousins.
48. Clause 14 of the Housing (Amendment) Bill will amend the current NI definition of an HMO to “**a house occupied by three or more qualifying persons, being persons who are not all members of the same family or of one or other of two families**” The definition of a “family” will be extended to include uncles, aunts, nephews and nieces. The Bill’s explanatory memorandum states that this definition is based upon the Scottish definition of an HMO as it was felt that the English definition was designed for legislation which is more complex than Northern Ireland’s HMO legislation.
49. In oral evidence to the Committee in September 2008, the Housing Rights Service stated that it did not dispute the need to review the definition of a HMO as a result of the judicial review. However, it felt that the proposed Bill was perhaps not the appropriate piece of legislation with which to make the amendment nor did it feel that that the amendment was the most appropriate one to make. The Housing Rights Service maintained that such a substantial change needs to be consulted upon widely with key stakeholders including local councils (who will become responsible for HMOs under the Review of Public Administration)¹⁷. There are concerns about the potential implications of this change on vulnerable sections of the community living in HMOs, particularly minority ethnic groups and migrant workers.

MINOR AMENDMENTS TO THE PRIVATE TENANCIES (NORTHERN IRELAND) ORDER 2006

The Housing (Amendment) Bill makes two minor amendments to the [Private Tenancies \(Northern Ireland\) Order 2006](#):

Clause 15: Amendment of Article 35(5)

50. Clause 15 corrects a minor drafting error and substitutes the word “Article” for “Order” in Article 35(5).

Clause 16: Amendment Article 36(5)(a)

51. Article 36 of the Private Tenancies Order sets out the procedures for district councils relating to the inspection of dwellings for a ‘certificate of fitness’ or a ‘notice of refusal’. Clause 16 corrects a drafting error by amending Article 36(5)(a) to make it clear that the purpose of a ‘notice of refusal’ is to inform a landlord of a district council’s refusal to issue a certificate of fitness and the reasons for refusal.

CONCLUSIONS

52. The Second Stage of the Housing (Amendment) Bill was moved on 23 June 2009. In her speech to the Assembly, the Minister for Social Development indicated that she was minded to seek two Government amendments to the Bill. One amendment relates to rent increases under the Private Tenancies (NI) Order 2006. Under the 2006 Order, registered private tenancies are subject to rent control if they are either a protected or statutory tenancy, or a tenancy which

¹⁷ Northern Ireland Assembly Official Report. Committee for Social Development Evidence Session on the Proposed Housing Bill. 18 September 2008.
www.niassembly.gov.uk/social/2007mandate/moe/2008/080918.htm

commenced after 1 April 2007 but which is found on inspection by the district council to be unfit and has a notice of refusal issued^{18,19}. Commenting on the potential amendment, the Minister stated;

*“The Committee for Social Development has also raised with me its desire to see a change in the law, which would give my Department powers in relation to rent increases for the 1,000 statutory tenancies in the private-rented sector. Most of those are older homes where rent control applies. The proposed change would enable the Department to raise rents for fit properties without having to do likewise for the small number of properties that do not meet the fitness standard. I support that change and am minded to seek a Government amendment to the Bill on the issue”.*²⁰

53. The second potential amendment relates to Clause 3 which relates to ineligibility for housing assistance. Under Clause 3 a person ineligible for assistance will be notified of that decision by the Housing Executive in writing which will include the reasons for that decision. The Human Rights Commission has suggested that written notification to unsuccessful housing assistance applicants should include information on their right to appeal and should also provide information on other sources of housing support and advice. The Minister has indicated that she supports this change and is minded to seek an amendment²¹.
54. The Housing (Amendment) Bill is now at Committee Consideration Stage and the Committee for Social Development will consider submissions from stakeholders after the Summer recess period.
55. Whilst the Committee will consider the contents of the Bill in detail, in other words *what is in* the Bill, they are just as likely to be interested in *what is not* contained within the Bill. By way of example, the Housing Rights Service has highlighted that there are no provisions in the Bill to require lenders and landlords to notify the Housing Executive of their intention to repossess a property. This requirement was introduced in Scotland under Section 11 of the [Homelessness etc \(Scotland\) Act 2003](#) whereby landlords and creditors raising possession proceedings must give notice to the local authority. This is intended, amongst other things, to give local authorities prior warning of potential homelessness situations. Given the increase in possession actions in Northern Ireland, the Housing Rights Service recommends that urgent legislative consideration should be given to this issue²².

¹⁸ Information extracted from the Rent Officer from Northern Ireland website, www.rentofficer-ni.gov.uk/rent_officerni_faq.htm

¹⁹ For further information on protected or statutory tenancies see DSD (2007) Protected and statutory tenancies: A guide for private landlords and tenants in Northern Ireland. www.dsdni.gov.uk/protected-statutory.pdf

²⁰ Northern Ireland Assembly Official Report. 23 June 2009. www.niassembly.gov.uk/record/reports2008/090623.htm#1

²¹ Ibid.

²² Northern Ireland Assembly Official Report. Committee for Social Development Evidence Session on the Proposed Housing Bill. 18 September 2008. www.niassembly.gov.uk/social/2007mandate/moe/2008/080918.htm