



Northern Ireland
Assembly

**COMMITTEE FOR SOCIAL
DEVELOPMENT**

**OFFICIAL REPORT
(Hansard)**

Housing (Amendment) Bill

15 October 2009

NORTHERN IRELAND ASSEMBLY

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SOCIAL DEVELOPMENT**

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Members present for all or part of the proceedings:

Mr Simon Hamilton (Chairperson)

Mr David Hilditch

Mr Billy Armstrong

Mrs Mary Bradley

Mr Thomas Burns

Mr Jonathan Craig

Mr Alex Easton

Mr Fra McCann

Ms Carál Ní Chuilín

Witnesses:

Mr Stephen Baird

Mr Stephen Martin) Department for Social Development

Mr Michael Sands

The Chairperson (Mr Hamilton):

The next item on the agenda is the departmental response to the Housing (Amendment) Bill.

Michael Sands, the deputy director of housing governance and accountability at the Department

for Social Development (DSD), and Stephen Martin and Stephen Baird from the Department's

Bill team are with us to give evidence. Members have been provided with a revised cover note, copies of the latest departmental responses, including the delegated powers memorandum and an updated table of suggested amendments. Members have also been provided with the section 75 statutory equality obligations screening form for the Housing (Amendment) Bill for their consideration and related correspondence from the Equality Commission.

Michael, Stephen and Stephen, you are all very welcome. Earlier, the Committee noted that it received the papers late, and I record our disappointment at that. That will impact on our work on and scrutiny of the Bill. I ask you to make your opening remarks, and, after that, we will discuss some of the issues that have been raised. We will not undertake clause-by-clause discussion of the Bill today.

Mr Michael Sands (Department for Social Development):

I welcome the opportunity to discuss the Housing (Amendment) Bill once more with the Committee. The purpose of the Bill is to refresh the legislative framework by updating existing housing legislation. Although no new policies are involved, the measures in the Bill would

ensure greater effectiveness and transparency in the operation of housing-related services. Its main proposals on homelessness are the result of extensive consultation and are an important element of the 'Including the Homeless' strategy.

Members will have seen our recent written response on a number of the points that were raised by stakeholders during the Committee's evidence sessions. I shall focus on some of those issues now, and I will be happy to elaborate on other issues when members ask questions.

Clause 1 refers to a statutory homelessness strategy. Stakeholders have suggested that a strategy should be produced every three years, rather than every five years. They have proposed a range of additional bodies that should take the strategy into account when delivering their functions.

The Bill provides for the Housing Executive to publish the homelessness strategy at least once every five years, with the first strategy to be published within 12 months of the Bill's coming into operation. We discussed the idea of a three-year strategy with the Housing Executive, but it feels

that that is too short a period of time to allow for proper medium- and long-term planning. Instead, it suggested that the five-year strategy be reviewed annually to take account of, for example, the outcome of comprehensive spending reviews.

As for the proposal that additional bodies be listed as being required to take account of the strategy, the Department for Social Development feels that, with the exception of the Department of Health, Social Services and Public Safety (DHSSPS), all relevant bodies are already listed in the Bill. It is unclear why it has been suggested that councils be included, as they appear to have no role in addressing homelessness.

The Chairperson:

Michael, rather than waiting until the end of your presentation, I will stop you at different stages, because members may have points that they wish to raise.

Mr Sands:

Of course, but I shall finish that point; it may clarify some of the points that may be raised. The

Department agrees that it is worth including the Northern Ireland Prison Service in its own right.

At present, prisons are mentioned in the Bill in the context of the Secretary of State. As I said, the Department agrees that DHSSPS should also be mentioned specifically.

Mr F McCann:

You raised the issue of whether a homelessness strategy should be reviewed after three or five years. A number of witnesses who gave evidence to the Committee suggested that it should be reviewed after three years, because of the ever-changing circumstances of homelessness. I think that it may be better to do it on a three-year basis. However, I take on board what you are saying about the possibility of an in-year review.

I have no doubt that there should be an interdepartmental approach to homelessness. A cross-sectoral approach was taken when the 'Including the Homeless' strategy was being drawn up. That is the type of approach that I think should be taken. The Housing Executive might head the review; however, the work should be carried out on a cross-departmental and cross-sectoral basis.

Mr Sands:

I have no difficulty with that at all. The legislation simply caps the period in which a review must be taken or a new strategy issued, by definitively stating what that period is. However, an annual review could be done without any difficulty.

Mr F McCann:

I think that it has been five years since the last review began. If the next review is not for another five years, it will be 10 years before anything has really been done.

Mr Stephen Martin (The Department for Social Development):

The Bill makes it clear that the Housing Executive has to publish a homelessness strategy within 12 months of the legislation coming into operation.

Mr F McCann:

Will the cross-departmental and cross-sectoral group then be brought back together to review where we are with homelessness? I am focusing on the cross-sectoral aspect because it

encompasses a different approach to homelessness than that which the Departments might take. I think that such an approach added to the last strategy.

The Chairperson:

Does anyone else wish to ask a question on that point? Are members happy with the explanation that has been provided?

Members indicated assent.

The Chairperson:

Do any members wish to ask a question about the other agencies to be added?

Mr Hilditch:

Will Mr Sands reiterate what he said about the councils?

Mr Sands:

We do not really understand why councils should be included in the Bill, because they have no statutory requirements as far as homelessness is concerned.

The Chairperson:

Members can correct me if I am wrong; I think that the issue was raised in respect of the transfer of various functions to councils and their role in community planning in particular. Obviously, how that happens is yet to be defined. There are 11 members on this Committee, yet you could probably get 12 different definitions of community planning. There might also be a role, albeit not directly, for councils in the wider area of development, which includes housing. I think that that is why members felt that councils might be involved in some way.

Mr Sands:

As far as the review of the public administration (RPA) is concerned, I do not think that there is any reference in the legislation to councils being responsible for addressing homelessness. I understand that Carál Ní Chuilín has previously suggested that such a responsibility might be

included in their functions. That is something that can be picked up as we approach 2011.

Ms Ní Chuilín:

Belfast City Council played a key role in resolving the situation with the Roma community in Belfast recently. Therefore, to say that the councils have no functions in that respect is not true.

The Chairperson:

Perhaps they have no statutory functions.

Mr Sands:

Everyone tried to help as much as possible in that instance; however, there was no statutory requirement on Belfast City Council to do so. It is a difficult issue. It is a question of whether there should be a requirement for councils to address homelessness. I do not want to force councils to take a responsibility that they will then shirk because they do not really want it.

Mr F McCann:

The suggestion that councils should have an input is an important one. Major changes are going on as part of the RPA, and councils are going to change. Having sat on the housing liaison committee in Belfast City Council, I know that people seek to have an input into the issue of housing. I do not think that it would do any harm if the legislation also listed councils, which represent a huge amount of people, as that would allow them to have their say.

Mrs M Bradley:

I sort of agree with what the officials are saying. In Derry City Council, we work closely with the local Housing Executive branches on whatever is going on in the community, but as Mr Sands said, it is not a statutory duty. It is up to the councillors on the different councils to make sure that that relationship works.

The Chairperson:

Before we reach any sort of position on the matter, we will ask the Committee Clerk to look at what responsibility for housing is suggested will be passed on to councils through the RPA. That

will allow the Committee to take a more definitive position.

Mr Hilditch:

The environmental health departments in councils formulate reports to support people who have become homeless due to the unfitness of properties.

The Chairperson:

OK; we can come back to that issue.

Are members happy with the Department saying that all relevant Departments are listed in the Bill? I take note of what the officials said about the Prison Service and DHSSPS, but is there a role for the Office of the First Minister and deputy First Minister (OFMDFM), particularly given its overarching anti-poverty role?

Mr Sands:

OFMDFM would be included as far as the consultation is concerned, but we do not think that

there is any need to list that Department specifically. It has its anti-poverty role and the strategy will fall in neatly with that, but we do not think that there is a need to specifically refer to that Department.

The Chairperson:

If members do not have any further comments on that, we will move on.

I apologise to the witnesses for the stop/start approach. You may not feel it at this moment, but it should prove more effective in the end.

Mr Sands:

It is quite alright; it gives me a chance to gather my thoughts, as opposed to being attacked at the end. Sorry, not attacked; asked questions.

It is clear from the Committee session so far that there has been some confusion over clauses 2 and 4, which relate to advice. Clause 2, which places a duty on the Housing Executive to ensure

that advice about homelessness is available free of charge, is primarily intended to provide the Housing Executive with a mechanism to fund third-party providers of advice.

Some stakeholders have mentioned the need for statutory guidance on the clause 2 duty. Such guidance is produced in other jurisdictions primarily to ensure consistency of approach across a large number of local housing authorities. The case for statutory guidance in Northern Ireland is less obvious, as the Northern Ireland Housing Executive is the sole regional housing authority. However, the Department agrees that it would be useful for a document that sets out the minimum standards to be produced and published. Achieving that would not require any amendment to the Bill.

Clause 4 gives the Department the power to prescribe and regulate the kind 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 rehousing. The regulations will be subject to consultation.

Stakeholders have also asked about the availability of translation and interpretation services and whether the regulations will require the Housing Executive to automatically refer ineligible persons from abroad to social services. Translation and interpretation services are widely available in the Housing Executive and are well-publicised in all main languages that are encountered by Housing Executive staff.

The Housing Executive and social services are currently working together to identify the scope for improving the service for persons from abroad. The outcome of that work is likely to be reflected in the regulations. Those will come to the Committee after the Bill becomes law.

The Chairperson:

We had raised an issue about the translation services last week, but are members happy enough with that response?

Members indicated assent.

The Chairperson:

The Clerk has reminded me that the query last week was about how those translation services are publicised. We want the Department to confirm that translation services will be well publicised, particularly in respect of the homelessness strategy.

Mr Sands:

I assure the Committee that those services are publicised as broadly as is required, especially in areas where there are groupings of ethnic minorities. That is primarily done by the Housing Executive.

The Chairperson:

That is useful.

Mr Sands:

The Human Rights Commission and the Chartered Institute of Housing recommended to the

Committee that priority need and intentionality should be removed from the assessment of homelessness. That would represent a fundamental shift in policy, and it is important that the Committee is aware of the implications of such a move. Existing housing policy in Northern Ireland is underpinned by the principle that scarce resources are prioritised to meet housing need. Removing priority need and intentionality would fundamentally erode that principle, and the Department is concerned about the implications of that for a large number of people in housing need.

There are currently two routes into social housing in Northern Ireland: the homelessness legislation and the common selection scheme. Both routes feed into a single social housing waiting list that contains two groups: those who have higher levels of need and are in housing stress and those who are not. The suggested changes could give homeless applicants precedence over those people on the waiting list who apply for housing through the common selection scheme and who may be in greater or equal need. At present, although over half of people in housing stress applied through the common selection scheme, only around one third of allocations are made to people in that group.

Stakeholders referred to steps that are being taken in Scotland to remove priority need and intentionality. Although that move is practicable in Scotland, it is not in Northern Ireland, for two key reasons. First, the proportion of social housing in Scotland is considerably greater than in Northern Ireland. Secondly, Scotland makes much greater use of the private-rented sector to house homeless people.

The Chairperson:

That is helpful and clarifies the situation.

Ms Ní Chuilín:

You mentioned priority need; are you talking about ring-fencing? What are you talking about specifically?

Mr Sands:

I meant that people who are in housing stress are considered to have a priority need.

Mr Martin:

The Housing (Northern Ireland) Order 1988 contains definitions of homelessness and priority need. The definition of priority need centres on vulnerability and refers, for example, to people with dependants, pregnant women and people with disabilities. People who apply for housing on the basis of homelessness are tested against two considerations: whether they are intentionally homeless, as defined in the legislation, or whether they are in priority need, as defined in the legislation. That decision is not necessarily connected to some of the other issues that have been mentioned.

The Chairperson:

The suggested amendment was to remove the various categories of vulnerability and assess everybody on the basis of homelessness. Correct me if I am wrong, but if priority need were removed, the most vulnerable people will not benefit.

Mr F McCann:

I will make a short comment because I assume that we will return to this matter. I have

difficulties with how the word “intentionality” is applied to some applicants. It has been used too strictly. Quite a number of people have been refused housing and have been left without any real recourse. I have dealt with several such people, and I know that the definition that was used to assess them was too narrow. I do not know how the definition can be expanded to deal with families from England, for example. The assessment has been too strict and has led to the conclusion being reached that some people are intentionally homeless, so we have no responsibility for them and they should go back to where they came from.

Mr Sands:

I agree, Mr McCann. If a person becomes homeless intentionally, there is a real and absolute risk that the reasons that they cite will result in them being awarded more points than someone on the waiting list who is in equal or greater need and so, because of how the points system works, they would jump ahead of that person in the queue. It is a question of applying the provisions for the waiting list fairly. It would be unfair on some people to remove those provisions. Removing priority status could penalise some people who are on the waiting list and allow other people to jump ahead of them.

Mr Burns:

Mr Martin raised the issue of pregnant women. It is my understanding that pregnant women do not get any points added until the child is born. That is a big problem. A lady could be expecting and could be in tremendous housing stress but, until the child is born, she does not get any points added.

Mr Sands:

I take your point, although I would like to point out that I have nothing to do with pregnant women. *[Laughter.]*

The Chairperson:

I do not think that the member was suggesting that. Thomas's point is noted.

Are members content not to suggest an amendment relating to priority need and intentionality?

We can come back to that if necessary.

Mr F McCann:

We are dealing with a common selection procedure; there may be a couple of amendments that I would like to make at some stage.

The Chairperson:

I will give you an opportunity at the end to raise those issues.

Mr Sands:

Clause 10 places a duty on the Housing Executive to publish its policies and procedures on antisocial behaviour. Some stakeholders have asked for a similar duty to be placed on registered housing associations. The Department agrees that housing associations should publish their policies and procedures on antisocial behaviour. However, it is not customary to specify the duties of housing associations in legislation. As the statutory regulator of housing associations, the Department has the power, under article 11 of the Housing (Northern Ireland) Order 1992, to issue guidance to registered housing associations. The Department intends to issue guidance on

the publication of policies and procedures on antisocial behaviour.

Mr Hilditch:

This issue emphasises the importance of the council connection. In every case that I have dealt with recently, the local council has been involved. Even in getting an anti-social behaviour order served, evidence has been taken from councils in relation to Housing Executive tenants.

Ms Ní Chuilín:

Even though it may not be customary or standard practice for the Housing Executive to insist that housing associations implement guidance —

Mr Sands:

It is the Department that would do that.

Ms Ní Chuilín:

It is public money that is being spent. Tenants need to have the same rights and responsibilities, regardless of who their landlord is. There is no standardisation of tenants' rights across housing associations. I would not want there to be any room for anyone to be vague or unsure about what the rules are or what their responsibilities are, particularly in relation to antisocial behaviour. The legislation needs to specify the duties of the housing associations.

Mr Craig:

Does the Department's guide have legal standing with the housing associations? If so, when was it last reviewed, and is there any way of involving the Committee in a review of it? That way, standards can be set for housing associations that would be equivalent to the standards that will potentially be put in place for the Housing Executive.

Mr Sands:

The guide is the means by which our regulation inspection teams can go out and inspect housing

associations and make sure that they are looked at according to four specific categories. A review has almost been completed and is going out for consultation this week. That was more of a tidying-up exercise rather than a radical review of the guide. However, it does give us the opportunity to revise the guide and put into it the principles that relate to the Housing Executive. Certainly, we can ensure that the provisions that refer to the Housing Executive apply also to housing associations.

Mr Craig:

I think that we have highlighted a bit of an anomaly. Perhaps this is something that we need to take up with the Department, outside the legislation. I understand what Michael is saying; however, if the review that has been undertaken was only minor, it will probably not reflect the changes that we are asking the Housing Executive to make. It is something that needs to be looked at very closely.

Mr F McCann:

I thought that we were told a couple of weeks ago that some of the problems are caused by the fact that housing associations are individual legal entities, although the Department has some managerial control over them. Antisocial behaviour is an issue that hits home with everyone. If you go into an area and talk to people, the first thing that they talk about is antisocial activity.

Regardless of whether the housing associations are separate entities, they should be on the same footing as the Housing Executive and should publish their procedures for dealing with antisocial behaviour. I do not think that they are legally bound to do that, so there needs to be a mechanism to ensure that they are.

One of the reasons I say that is because recently I asked a question to the Minister in the Assembly about trying to strengthen tenants' hands. I was told that there are sufficient regulations in the Housing Executive's material on antisocial behaviour to allow it to deal with all eventualities. I spoke to the police yesterday, who were surprised and amazed that that was the case. I spoke to representatives of housing associations, who said that they have particular difficulties in trying to deal with certain aspects of antisocial behaviour. There should be one regulation for the Housing Executive and housing associations. We should also consider proposing some amendments to deal with other aspects of antisocial activity because one thing that really concerns people is duty of care. Many people ask where is the duty of care for tenants who live in an area in which a person who has a history of antisocial behaviour may be imposed on them. There is a lot of stuff that we need to tease out.

The Chairperson:

The Committee's difficulty comes from the omission of housing associations. We do not want to see differences developing between the antisocial behaviour policies of the Housing Executive and the plethora of housing associations that do their own thing. Some people already believe that antisocial behaviour is dealt with differently among housing associations and between housing associations and the Executive. We are not suggesting that we should prescribe the format of such a policy, but we feel that having policies published by housing associations has contributed to the development of that belief. To compel the housing associations to do that would help to break down that problem. That is where we are coming from.

I take on board what you said about your not tending to legislate for the duties of housing associations but, arguably, elsewhere in the legislation there are duties imposed on housing associations, as regards obtaining information. Is there scope for amending the Bill to allow for the addition of regulations relating to antisocial behaviour, so that that guidance that you are talking about comes back to this Committee?

Mr Sands:

I suggest that we approach the Office of the Legislative Counsel to see whether housing associations could be included in that requirement on the Northern Ireland Housing Executive.

That would make it totally square.

The Chairperson:

We are content to let you do that.

Mr Sands:

Generally, we give regard to the guide because we need much more control of the Housing Executive because of the way in which it is funded. Its funding means that everything needs to be stipulated exactly, whereas the housing associations are given a grant for their development.

We look at them with regard to their maintenance, governance, development and finance; those are the four areas of the guide that we concentrate on. However, we will approach the Office of the Legislative Council to see whether we can include a reference in the Bill to make sure that housing associations publish procedures on antisocial behaviour.

The Chairperson:

That would be useful and very helpful. Are members content?

Members indicated assent.

Mr Sands:

Clause 14 deals with the proposed change to the definition of “house in multiple occupation” (HMO). During the Bill’s Second Stage, the Deputy Chairperson raised concerns about clause 14 on behalf of the Committee. That issue has also been raised during some of the Committee’s evidence sessions. The rationale for regulating HMOs is the recognition of the particular vulnerability of individuals without any family connections who share a house. In those multi-family groups there is usually no recognised head of household, and that has been seen as bringing with it a number of additional risks, particularly in relation to health and safety.

The current definition of a house in multiple occupation was an attempt to focus regulation on those at particular risk. However, in a judicial review in 2005 the judge commented that the current definition fails to recognise that an extended family living under one roof comprises a single household and that under the current definition, a couple taking in an elderly aunt could be wrongly considered as living in a house in multiple occupation and would be subject to the full rigours of the law. That was an unintended consequence of the definition, hence the definition must be corrected.

The Department has set about correcting the definition in two ways in the Bill. It has widened the definition of family for the purposes of HMO regulation to include aunts, uncles, nephews and nieces, and it has broadened the definition to the one that has been used in Scotland for several years. Together those changes are designed to address the judge's concerns and to ensure that regulation of HMOs only falls on those for whom the law was intended. However, the Minister made it clear during the Bill's Second Stage that she remained willing to reconsider the position based on evidence.

During the Committee's evidence sessions, stakeholders identified the need for a new HMO definition and generally supported the proposed extension to the definition of family to include aunts, uncles, nephews and nieces. The Department welcomes that support. The change to the definition of family is essential to addressing most of the judge's concerns, respecting the right to family life and ensuring that an extended family who live under the same roof are not treated as a HMO under the law, as that was never the intention.

However, there has been a difference of view on the second change proposed, which is to broaden the overall definition. Concern about that change seems to centre on a perception that it could have unintended consequences for the level of protection afforded to migrant workers living in HMOs. The Department does not share that analysis, but we have heard enough during the Committee's evidence sessions to convince us of the need to examine the issue in more detail. Although the Department is keen to continue with the change to the definition of family, we now believe that there is merit in removing the broader change to the HMO definition from the Bill and undertaking a more wide-ranging consultation on a new HMO definition.

The Minister has indicated her intention to seek a Government amendment to remove the first part of clause 14 of the Housing (Amendment) Bill during its Consideration Stage. However, members should be aware that a decision to table a Government amendment is not entirely in the Minister's gift. As the Housing (Amendment) Bill is a Government Bill, any Government amendment must be approved by the entire Executive.

The Chairperson:

Thank you, Michael. I think that that probably deals with the Committee's concerns on HMOs.

Mr Sands:

I now turn to conflicts of interest. The Committee has heard from the Northern Ireland Federation of Housing Associations about the difficulties that registered housing associations face in dealing with the current law on conflicts of interest. The federation suggested repealing the existing law and replacing it with a code of practice.

In its evidence, the federation gave the example of an association that was not able to use a

particular builder because of that person's family relationship with a cleaner in the association. In light of that, the Department is concerned that some associations are incorrectly interpreting the current legal position. The Department is clear that the existing law is needed to ensure probity and proper use of public funds; it does not unfairly constrain the conduct of proper business. The Department will, therefore, write to the federation to clarify the current position.

Ms Ní Chuilín:

It would be helpful if the Department could clarify that. Are you talking about the codes of conduct?

Mr Sands:

Yes; what we are talking about are the decision-makers in the housing associations.

Ms Ní Chuilín:

That is a way forward that will prevent conflicts of interest arising. However, it must be enforceable; it should not be something that is stuck on a wall that no one pays attention to.

The Chairperson:

Clarity would be extremely useful, and I request that the Committee be copied into the clarity that the Department gives to the housing associations. That will allow the Committee to be satisfied that there is no need for such an amendment to the Bill.

Mr Sands:

Yes, we will do that.

I now move to the Private Tenancies (Northern Ireland) Order 2006. The Department recently made the Registered Rents (Increase) Order (Northern Ireland) 2009 to increase statutory and protected rents for fit properties only.

The Examiner of Statutory Rules has highlighted that the power in the Private Tenancies (Northern Ireland) Order 2006 that was used by the Department to make the Registered Rents

(Increase) Order (Northern Ireland) 2009 does not have a form of Assembly control attached.

The Department intends to discuss that matter with its legal advisers and correct that technical oversight, possibly thought an amendment to the Bill. The form of Assembly control sought is likely to be negative resolution.

Those are all the points that I have to raise.

The Chairperson:

The Committee will want to raise other issues, including some that will have come up during your evidence. We would like clarity and assurance on some points.

Will the Department comment on its policy in relation to providing accommodation for homeless families suffering intimidation, where a family member has a non-tenancy related conviction?

Mr Stephen Baird (Department for Social Development):

The housing selection scheme allows the Housing Executive to award points in instances of people being intimidated. The selection scheme sets out various circumstances of intimidation, such as racial harassment or sectarian intimidation. One of the categories of intimidation is “neighbourhood nuisance”. That was specifically incorporated to deal with this kind of issue, where there is not necessarily a sectarian or paramilitary connection, but people in the area are threatening the family. In that kind of scenario, the Housing Executive would award intimidation points.

Ms Ní Chuilín:

Will allegedly antisocial families then go to the top of the list? That is how I interpret that policy.

The Chairperson:

That is a worry that many have expressed.

Mr Baird:

I take the point. Treating the family as antisocial is a different ball game. The scenario that I am referring to is where a member of a family has been convicted of an offence and that has consequently annoyed people in the area who have become upset and want the family out, so they intimidate the family. According to the rules of the selection scheme, intimidation points are available for that family. However, other aspects could kick in at that point.

The legislation provides that if a tenant or a member of a tenant's family commits an indictable offence, that gives grounds for possession. That requires a judgement call by the Housing Executive. If a family is unsuitable to remain in an area because of the nature of the offence that a family member has committed, the Housing Executive can seek an order for possession and have the family removed. It will come down to particular circumstances and the Housing Executive will have to use its judgement, but there are safeguards in place for that kind of thing.

Another aspect is the talk of antisocial families going to the top of the list. Where an applicant

is homeless on the basis of intimidation, some people can be intimidated as a consequence of their own antisocial behaviour. People like that would not, necessarily, make suitable tenants for the Housing Executive. Legislation allows the Housing Executive to treat an applicant as ineligible for homelessness assistance if he has been guilty of unacceptable behaviour that makes him unsuitable to be a tenant. That is another safeguard that can kick in if someone presents as homeless.

Ms Ní Chuilín:

How often would that be used?

Mr Baird:

The Housing Executive uses those ineligibility provisions quite stringently. I cannot give you numbers —

Ms Ní Chuilín:

I can give you numbers for my constituency.

Mr Baird:

I have seen figures in the past, and I think that it is fairly impressive.

Mr F McCann:

I will comment on the same issue, because I think that it probably goes to the heart of how we deal with antisocial activity. In many areas, antisocial activity often results in inter-family conflict. At a time when community representatives are pushing for one family to be moved — usually the family that is being intimidated by the antisocial family — the Housing Executive tends to take the course of mediation, rather than acting as you say that it does. There are some classic cases of good families who wanted to leave an area being forced into a mediation process, in a number of cases even after being attacked by an antisocial family. That makes a nonsense of what is supposed to be regulated for.

The situation needs to be reviewed. It is fine for us to say that the Housing Executive possesses the powers to deal with all those cases, but it is a different situation when real cases are

being dealt with. We need to look at how we can make it easier to deal with such cases. One case that I know of resulted in serious street disorder between two families, when the easiest way out, which everyone was calling for, would have been for one of the families to have been moved from the area at their request. The Housing Executive refused to do that.

Mr Baird:

We accept that it is the Housing Executive's normal policy to attempt to use mediation before resorting to repossession.

Mr Sands:

Yes; rehousing people could simply mean moving the problem to another area.

Mr F McCann:

I know of an instance in which the family that was the innocent party in attacks that took place were forced to mediate with the family that led the attack on them. There is no chance of any mediation in those circumstances. That case went on and on and led to a number of attacks by

both families. I am not talking about the famous case in the upper Springfield area, but about another case further down the road.

Mr Sands:

That is the one that I was thinking about.

The Chairperson:

How do members feel? That outline shows that there is legislation and policy in place. There may be a discussion for another stage, but are members content that we do not need an amendment on the issue?

Mr F McCann:

I understand that the Committee is going to go through the Bill clause by clause next week, and there may be a number of amendments in relation to antisocial behaviour that I would like to discuss at that stage.

The Chairperson:

We will have the opportunity to do that at that stage.

Mr Sands:

As you know, we will be available for the next four weeks to go through the Bill clause by clause.

The Chairperson:

I am thinking of putting your names on the seats.

Mr Sands:

I will not be here for two of those weeks.

The Chairperson:

I do not think that I have that option. We will move on, but those issues will come up at a later

stage.

We have had some discussion about the provision of accommodation for homeless Travellers. It would be helpful if you could again give an outline of the policy in respect of that. I know that it was outlined last week, but it would be useful in respect of the discussions that we have had.

Mr Martin:

A Traveller can be homeless for two reasons: either they have a caravan but do not have a legal site on which to park it, or they do not have a caravan. The Housing Executive has a statutory responsibility to provide sites under the Housing (Northern Ireland) Order 2003. There have been some difficulties in particular localities with getting planning permission and local support for those, but the Housing Executive has a responsibility and is, by and large, trying to meet that responsibility.

If a Traveller presents to the Housing Executive without a caravan, there is no specific, culturally sensitive temporary accommodation available, largely due to cost. A Traveller in that

situation who presents as homeless to the Housing Executive will be placed in temporary accommodation similar to that which anyone else could expect. However, the options for permanent accommodation could be made more culturally sensitive. One of the options is group housing, which some members referred to last week. That involves a particular design standard for Travellers that takes account of their lifestyle; they can park their caravans and family groupings can live in a way that is different from the way that other families live. It is true to say that there is no culturally sensitive temporary accommodation available, and that is largely as a result of cost.

Mr Sands:

Travellers would not be treated any differently than any other person in the same position.

Mr Easton:

I am more reassured by what I have heard, but you have worded it in such a way that it is open to interpretation whether caravans will be provided. Can you assure me that that is not going to happen?

Mr Baird:

The Housing Executive will not be providing caravans; it will provide temporary accommodation as it would do for any other person.

Mr F McCann:

I have seen some of the group housing in west Belfast, and it is excellent. Most individuals end up in family groups, and some of the accommodation that has been provided is excellent.

Mr Sands:

The difficulty in trying to move someone into group housing is the non-acceptance by the families.

The Chairperson:

That has been helpful. Alex travelled in to ask that question. *[Laughter.]*

Are members content that there is no need for a specific reference to Travellers?

Members indicated assent.

The Chairperson:

The Department set out its policy in respect of the provision of free accommodation for homeless families in which one parent is working. That issue had been raised.

Mr Martin:

Most of the homelessness legislation comes from the Housing (Northern Ireland) Order 1988, and that imposes a duty on the Housing Executive to charge for temporary accommodation; the Housing Executive has no alternative. There is a means test for housing benefit. It is fairly unlikely that families in which one person is working will get housing benefit. In those circumstances, the Housing Executive will try, as quickly as possible, to move the family into

temporary accommodation in the private-rented sector, which will be cheaper than hostel accommodation.

Mr Sands:

In the past, we have had approaches from hostels on behalf of individuals who find themselves in that circumstance. They ask whether there is scope for us to waive the charges, but, as Mr Martin said, the Housing Executive is required to make a charge. It is probably no different from the situation faced by people who are on the cusp as far as housing benefit is concerned. A line has to be drawn somewhere.

Mr F McCann:

I might have said this last week or the week before, but there are many occasions when families, particularly those with a single parent who is working in a low-paid job, are put into temporary accommodation, and the cost for the hostel accommodation is terrible. Those people are forced to carefully consider whether they want to move into that accommodation at all, because of the price that is being charged. I do not know whether there is a guide as to what can be charged or

whether the Department or the Housing Executive asks for the first price that they can think of. It hits families hard.

Mr Sands:

That is fully realised, and that is why it is the Housing Executive's intention to move such families into proper accommodation. I use the term "proper accommodation", but I mean accommodation on which the rent would be less than the price for the services of the hostel.

The Chairperson:

Are members content that we do not require an amendment in that respect?

Members indicated assent.

The Chairperson:

Some issues were raised about the training of Housing Executive staff. When an individual

presents as homeless, that has a knock-on effect. For example, it is not only their homelessness that is an issue; there is a social security aspect to that individual's situation. Can you assure us that the level of training that is in place for staff will enable them to do their jobs as effectively as possible?

Mr Sands:

As far as the Housing Executive is concerned, that is an operational matter. It provides the administration for housing benefit, and housing benefit is an add-on for people who have certain other qualifying benefits. They will be in receipt of some of those benefits when they come to the Housing Executive. The Housing Executive staff go through certain training. I am not sure to what level, but they should have sufficient information to ensure that people are informed of what benefits they qualify for and which are available to them, according to their housing need.

Mr Martin:

A lot of it is about having proper relationships and signposting. There are good relationships between the Social Security Agency and the Housing Executive, both centrally and locally, to ensure that there is proper signposting where required. The Housing Executive assured us that it

is continually updating and improving its training and information, so any gaps are being addressed; indeed, I was talking to the head of its homelessness policy unit just this morning.

The Chairperson:

Are members content that we have assurance in respect of advice and that it is an operational matter for the Housing Executive?

Members indicated assent.

The Chairperson:

In relation to clause 5, there was an issue around appeals against homelessness decisions. Although we did not think for a second that kangaroo courts would be in place, it was not entirely clear what rights of representation there would be. There was particular concern that officers who were involved in the original decision should be excluded from the appeal. Can you give us some information on that?

Mr Martin:

There are two processes: there is the review, which is the internal Housing Executive process; and there is the appeal, which is the County Court process. If members refer to proposed new article 11B that will be inserted into the Housing (Northern Ireland) Order 1988, paragraph 2 of that would give the Department power to make provision in regulations to stipulate how a review should be conducted and an individual's right to representation. Those regulations would deal with that issue.

Mr Sands:

It provides that the person involved in the original assessment is not involved in the appeal.

The Chairperson:

I assume that that would be in line with human rights standards and so forth.

Mr Martin:

Yes, absolutely.

The Chairperson:

Are members content that there is no need to consider an amendment?

Members indicated assent.

The Chairperson:

Will the Department advise on the provision of temporary accommodation to appellants of homelessness decisions? Again, concerns have been raised about that.

Mr Martin:

It is proposed that the Housing Executive would have the discretion to offer accommodation during a review, which is their internal process, and during a County Court appeal. Some

stakeholders have suggested that that should be a duty. Our view is that that could potentially conflict with the immigration-related aspects. To make that a duty could, if the appellant were a non-eligible person from abroad, put the Housing Executive in a position where it has to decide which piece of legislation it flouts. That would not necessarily be a very wise thing to do.

The Housing Executive has assured us that it will be more transparent in notifying people that it can, at its discretion, offer accommodation during a review. There was an issue in that some people did not know that that facility was available. The Housing Executive assured us that it would make it more transparent, but we feel that it would be impossible to make it a duty, rather than a discretionary power.

The Chairperson:

Are you saying that if the Bill were to be amended in such a way that it provides ineligible appellants with accommodation, it would be in breach of immigration law?

Mr Martin:

Yes. At present the Housing Executive interprets the law as freely as it can. If someone is ineligible but, setting that ineligibility aside, they are in priority need, the Housing Executive would try to offer them temporary accommodation pending the review and the appeal. However, if the Committee wanted to propose an amendment that would make that provision a duty, that would essentially end that practice and make the situation more difficult. It could prove counter-productive.

The Chairperson:

Yes, because the problem is actually being dealt with in a flexible way.

Mr F McCann:

I am not aware of any guidance or procedures for dealing with people when they arrive here or what level of discretion rests with the people who deal with them. I understand what Stephen Martin was saying about transparency. It is OK being transparent, but if there is no legislation to deal with the matter, transparency is no good. I presume that most people who arrive here feel

isolated and confused; they may not be able to speak the language, and if no one can explain things to them they will not know where to turn, and I do not know where they would end up if a decision is made not to help them.

Mr Martin:

There are two issues; the first is access to rights, because of the language barrier. The Housing Executive has good interpretation services; it spent approximately £15,000 on them last year. Those are available, and people are made aware of them. Letters that notify a person that he or she is ineligible for support contain a translation slip in most of the target languages that gives details of where translations can be provided for recipients who do not understand the contents of the letter and how to arrange face-to-face consultations. The Housing Executive does everything that it can to ensure that people from abroad have access to information and, therefore, to their rights. The Housing Executive tries to be as flexible as it can, within the law, to provide people with temporary accommodation where it can, during a review or an appeal process.

Mr F McCann:

What happens from the point of arrival? When people appeal a decision to refuse them admission

on the grounds that they are ineligible for accommodation, where do they go? What happens to them?

Mr Martin:

The Housing Executive's current practice is that people who launch a review or an appeal who are otherwise ineligible for support but are in priority need are given temporary accommodation pending the result of the appeal, and they are also given advice and assistance in finding alternative accommodation. When such persons are not in priority need, the Housing Executive tries to be flexible and gives them a shorter period in temporary accommodation as well as advice and assistance. Ultimately, there is a real difficulty if those people have no recourse to public funds and they are not working. Unfortunately, because of immigration legislation, that is not something that we can tackle.

The Chairperson:

Are members content with that?

Members indicated assent.

The Chairperson:

Are members also content with what the Housing Executive is doing with other languages, translations and other formats? Is there enough clarity on that?

Ms Ní Chuilín:

Is the material in plain English?

The Chairperson:

Yes.

Ms Ní Chuilín:

That sounds wrong, coming from an Irish speaker.

The Chairperson:

I resisted making that point, but you have done it for me.

Clause 12 increases Housing Council representation on the Housing Executive board. It might be useful to explore the roles and representation on the Housing Executive board and, more specifically, the proposal from the Housing Council to allow for a possible extension of the number of its representatives. There was also a proposal to have a tenants' representative on the Housing Executive board. It would be helpful to get a feel for how that representation comes about, and what scope there would be for extending representation, either of elected members or tenants' representatives.

Mr Sands:

Primarily, the membership from the Housing Council was set at three representatives, which was increased to four to allow for the four main parties to be represented. That appears to us to be a good balance, as far as the remaining membership of the Housing Executive board is concerned. We are quite content that having four places on the board provides sufficient council

representation from across the political parties.

Any tenant is free to apply for a position on the board. The difficulty with trying to arrive at a particular tenant representative is finding someone who can represent all sides and all areas. That is why tenants are free to apply for a position on the board whenever a position becomes available. Indeed, we are just going through that process at the moment.

The Chairperson:

Are there any tenants on the board?

Mr Sands:

Not as far as I am aware.

The Chairperson:

Have there ever been tenants on the board?

Mr Sands:

Yes, but not for quite a few years.

Mr Craig:

I am just thinking about the conflict of interest; the tenant representative could end up with a luxury house.

How many members are on the board, and how many of them will be elected representatives?

What is the present composition of the board?

Mr Martin:

There are 10 members, four of whom are councillors from the Housing Council.

Mr Craig:

So, elected representatives comprise a minority of the board's membership.

Mr Martin:

They represent 40% of its membership.

Mr Craig:

One aim of the Programme for Government was to do away with unelected quangos. The number of elected representatives on the board should be increased so that they make up the majority of members.

The Chairperson:

The Housing Council suggested that the Bill be amended to allow for four or more elected representatives, at the Minister's discretion. Therefore, rather than saying that elected representatives should make up 50% or 60% of the board's membership, the Housing Council was saying that there should be scope to allow for an increase in the number of its representatives.

Mr Hilditch:

What is the tenure of a board member?

Mr F McCann:

Four years.

Mr Hilditch:

So, is the board elected every four years?

Mr Sands:

Yes, and there is now scope for members who are elected representatives to serve two terms.

Mr F McCann:

Over the past couple of years, the rules were changed to allow four elected representatives on the

board. However, there are also other sectoral representatives on the board, including one from the disability sector and one from the trade union sector. We should be looking for someone to represent tenants. The voluntary sector has an input in a lot of the documents that come before the Committee. There is quite a lot of expertise in that sector, so we could look at how it is represented on the board. On a daily basis, representatives of the voluntary sector are in contact with Government representatives and tenants.

The Chairperson:

Instead of a tenant, you are suggesting a representative from the voluntary sector.

Mr Craig:

You are suggesting a tenancy advocate.

Mr Sands:

The Department recently conducted a public recruitment process for board members. Interviews have taken place and the decision on appointments is currently with the Minister. She has not

made her decision, so the Committee may still have an opportunity to contact her if they have some specific ideas about representation.

The Chairperson:

That is not a bad idea. The Committee has seen moves to democratise boards and bodies in the Health and Education Departments so that at least 50% of their members are elected representatives. The increase in the number of elected representatives on the board from three to four does not match that. We are looking at the board's membership with a democratic focus.

Mr Craig:

The majority of members of education and library boards are elected representatives. Our discussions with the Minister of Education on the establishment of the board for the education and skills authority have centred on the majority of its members being elected representatives.

Mr Martin:

There are two issues. The guidance from the Office of the Commissioner for Public

Appointments makes it clear that appointments should be made on merit. There is nothing to stop other elected members applying, but the number is currently set at four. We are operating within that guidance. There is also a slight difference between housing bodies and bodies in other Departments. The Housing Council was established in 1971 at the same time as the establishment of the Housing Executive. Up until then, housing had been a local government function, so the two bodies were established to ensure a proper channel of communication.

When the Housing Council meets each month, the director of housing or one of the deputy directors from the Department and the chief executive of the Housing Executive appear before it. Therefore, there is democratic accountability in that respect. The Housing Council is fully representative of all 26 councils. In addition to that, as members will know, the Housing Executive management team appears in front of councils each year to present its district housing plan. Therefore, there are additional mechanisms for ensuring democratic accountability that some of the other bodies that have been mentioned may not have. In our view, there was a balance to be struck.

Mr Craig:

That highlights the difficulty that has existed for the past 30 years. Representatives come to a meeting and give a presentation; they may or may not take on board the views expressed. We are not talking about consultation but about having an actual input.

The Chairperson:

I am not sure that I take your point, Stephen. There may well be channels of communication between the Housing Executive and the Housing Council. I would be interested to know whether, were our friends from the Housing Council sitting where you are sitting, they would say that that is sufficient. I am mindful, as are some other members of the Committee, of the merit principle, and nobody is saying that that should be taken away. The strategic health authority, the education and skills authority and the library authority — to name just three — will have democratic representation, and the board of the Housing Council will potentially sit out like a sore thumb. That is where our concerns are coming from.

Mr Sands:

The Housing Council has just gone through a review about enhancing its role in influencing housing and the Housing Executive. It engaged a consultant to advise on how that should be done. We are looking to see how those enhanced roles can influence, through the four Housing Council members, the role of the board and the direction of housing.

The Chairperson:

We will take that up with the Minister directly in the way that was suggested, before coming to a definitive position on it, but our concerns are well registered.

Are members agreed that we should contact the Minister about the issue of Housing Council representation in relation to elected representatives and tenant representatives?

Members indicated assent.

The Chairperson:

I have one final question about the Department providing assurance or setting out its plans in respect of a future review of the regulation of registered housing associations and the alignment of the policies and procedures of those organisations with the Housing Executive. Can you give us some assurance on that?

Mr Sands:

The Department is considering a total and absolute review of the housing association guide. We recognise that we have probably created a millstone around our necks. It is a 700-page document; it is far too big and unwieldy. It needs to be rationalised so that it deals with specific issues without going into the minutiae, as that can result in the Audit Office coming along at a later stage and saying that only four out of five boxes have been ticked and that is wrong. We want to make the guide more reader friendly, in plain English, to ensure that everyone understands it. It is an opportunity for a total and absolutely radical review of the whole thing. That then gives the Department the opportunity to look at the position as regards the comparison with the Housing Executive and how, as the housing associations become an increasingly dominant force in social housing and their stock numbers increase, it becomes more important

that their policies are the same as those of the Housing Executive. We will be undertaking that review.

The Chairperson:

At 700 pages, you could build a house with a few copies.

Mr Sands:

It would make a good foundation anyway.

Mr F McCann:

I think that you should send it to the Chairperson to read over the weekend.

The Chairperson:

We will take half each. *[Laughter.]*

Mr Martin:

To follow up on the point about the review of regulation; I was here for and listened to the Committee's evidence session with the Northern Ireland Federation of Housing Associations. We share the ultimate aim of moving to a lighter-touch regime. However, at present, the statistics do not back that up. During the first round of inspections, 14 associations were deemed to have failed the overall inspection. Therefore, moving to a lighter-touch regime is not the Department's position at this stage. During the second round of inspections, those housing associations that passed will get a lighter-touch inspection. The existing provision allows —

The Chairperson:

Associations can go up or down.

Mr Martin:

Absolutely, and it is risk based. We do not think that there is sufficient justification at this stage to undertake a more fundamental review.

The Chairperson:

Are members content with that assurance and that we do not need an amendment?

Members indicated assent.

The Chairperson:

A number of other issues have been raised; Fra mentioned the common selection scheme, and Carál mentioned the regulation of the private-rented sector. Would those members like to raise those points now or leave them until the clause-by-clause scrutiny?

Mr F McCann:

I have raised concerns with the current Minister for Social Development and her two predecessors about the common selection scheme and how it operates in areas of high demand, especially when people find themselves in hostels. It would probably be better to bring that up during the clause-by-clause scrutiny.

Ms Ní Chuilín:

The Department conducted a partial equality impact assessment on the Housing (Amendment) Bill, but when the representatives of the Equality Commission gave evidence to the Committee they said that the Bill does not meet the standards. I would like to hear some comments about that.

Mr Martin:

We have been discussing that with the Equality Commission. The screening, which was completed in May 2008, showed that there were no differential impacts.

Ms Ní Chuilín:

The Equality Commission did not see that screening.

Mr Martin:

No, but it does not necessarily see all screenings. At that stage, that was all that was required under the Department's section 75 duty. In order to assist the scrutiny stage we then — in error, as it now appears — completed a pro forma for an equality impact assessment. That should not have been done, given that the screening found that there was no differential impact. After discussions with the Equality Commission we revisited the screening in light of all the evidence that has become apparent through the Committee sessions and during the last year, just to be sure that we were doubly content that there were no differential impacts. That screening was then sent to the Committee yesterday; I am sorry that it was late. It came to the same conclusion. The partial equality impact assessment was done in error and should not have been done. We recognise that that was a mistake, but it was done in good faith. We just have to hold our hands up and admit that it was done in error.

Ms Ní Chuilín:

OK. Finally, I have been concerned about the ring-fencing. When Brian Doherty spoke to the Committee he confirmed that the ring-fencing has been removed in relation to the strategic guidelines on housing. My fear is that, in areas that face the most severe housing stress, as you

call it, in north and west Belfast and in the north-west, that will have a big impact on the homelessness figures, because the ring-fencing was a tool to ensure that those who experience higher levels of deprivation than others are catered for. I think that it is a big mistake for the Department to remove that ring-fencing, particularly in the mouth of the Housing (Amendment) Bill going through the Assembly. In fact, I think it is quite crafty for the Department to do that; I would like that placed on the record.

I accept your explanation about the equality impact assessment; that is fair enough.

Mr F McCann:

When the decision was taken to remove the ring-fencing, was any impact assessment done to work out whether it would have a detrimental impact on areas of high social need or housing stress?

Mr Sands:

I cannot answer that question. When Brian Doherty was providing that information there was an

opportunity to ask him. It is his area; I honestly do not know.

Mr F McCann:

Can we get that information?

The Chairperson:

I think that the Committee did receive it; it can be recirculated. Does anyone have any other issues that they wish to raise? We will be scrutinising the Bill clause by clause next week; it is like déjà vu all over again.

Thank you very much for your time and patience. We will see you at the same time, and in the same place, next week.

The revised cover note contains an item on delegated powers. Annex 2 of the Department's letter of 14 October sets out the delegated powers memorandum. Do members agree to forward

the delegated powers memorandum to the Examiner of Statutory Rules for his consideration?

Members indicated assent.

The Chairperson:

Finally, we had intended to commence formal clause-by-clause scrutiny of the Bill immediately after the Department's briefing today. Owing to the delayed responses from the Department, I suggest that we begin formal clause-by-clause scrutiny on October 22.

Mr F McCann:

I just want to add that the guidance notes that the Committee staff have prepared are excellent.

The Chairperson:

Yes; they are tremendous.