



Northern Ireland
Assembly

**COMMITTEE FOR SOCIAL
DEVELOPMENT**

**OFFICIAL REPORT
(Hansard)**

Housing (Amendment) Bill

22 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 Billy Armstrong
Mrs Mary Bradley
Mr Mickey Brady
Mr Thomas Burns
Mr Jonathan Craig
Mr Alex Easton
Mr David Hilditch
Ms Anna Lo
Mr Fra McCann
Ms Carál Ní Chuilín

Witnesses:

Mr Stephen Baird)
Mr Stephen Martin) Department for Social Development
Mr Michael Sands)

The Chairperson of the Committee for Social Development (Mr Hamilton):

The next item on the agenda is clause-by-clause scrutiny of the Housing (Amendment) Bill. Relevant papers, including the Committee's scrutiny table containing proposed amendments, are included in members' packs.

The Committee Stage of the Housing (Amendment) Bill commenced in June 2009. The

Committee has received over 40 written responses on the Bill, around half of which were substantive. The Committee has considered oral evidence from 10 key stakeholder organisations as well as the Department. Given the Committee's extensive consideration of evidence and responses from the Department, it is proposed that formal clause-by-clause scrutiny of the Bill commences today. If members are content, we shall proceed.

Previously, members set out their interim positions on possible amendments to the Bill. During the clause-by-clause scrutiny, members will be asked to set out their final positions in respect of possible amendments to the clauses of the Bill. When the majority of members support an amendment, the Clerk of Bills will take away the proposal and draft appropriate wording for consideration at a subsequent Committee meeting. If members do not feel that they are able to agree to or amend a clause, that must be clearly stated during the clause-by-clause scrutiny. Issues that are raised can be tackled at a subsequent meeting.

If members wish to introduce a new Committee amendment or addition, they must do so clearly during the clause-by-clause scrutiny session. The Department has suggested amendments to the Bill. In those cases, although the Committee may accept the Department's proposal, that is conditional on the actual wording of the departmental amendment. It is intended that the Committee will finally accept departmental amendments only when they are presented for approval at a subsequent meeting.

It is hoped that the entire Bill can be reviewed during today's clause-by-clause scrutiny session. If that proves impossible, the Committee will return to clause-by-clause scrutiny on 5 November 2009. All being well, the final version of all amendments will be submitted for Committee approval at its meeting on 12 November 2009. The final version of the Committee's report on the Bill will be submitted for Committee approval on 19 November 2009, in good time for the reporting date of 1 December 2009.

To speed up the process of clause-by-clause scrutiny and to answer any queries, the Department has been invited to attend the Committee's scrutiny sessions, and I welcome back Michael Sands, Stephen Martin and Stephen Baird from the Department. The Department has also submitted a further written response, which members have received.

I would appreciate member's patience during the clause-by-clause scrutiny of the Bill. We

will endeavour to get through it as quickly as possible, but it will be quite time-consuming. I also ask members to forgive any mistakes that may be made, as there is quite a lot of information to get through.

Clause 1 (Homelessness strategy)

The Chairperson:

Clause 1 deals with the Housing Executive's duty to produce a homelessness strategy every five years and for certain bodies to take account of that strategy in the exercise of their functions. The Committee previously agreed to propose an amendment to clause 1 to emphasise that the requirement for the Housing Executive to produce the homelessness strategy is a duty, not a power. Specifically, the Committee proposed changing the word "may" on page 1, line 8 of the Bill for "shall". The Department has responded to say that that change would be purely presentational. Michael, do you have anything more to say on that?

Mr Michael Sands (Department for Social Development):

No, Chairman. The Department took advice from the Office of the Legislative Counsel on whether we should change "may" to "shall", and the advice that was given was that that change was not necessary to give effect to the requirements. However, if the Committee feels that it wants to propose an amendment to change that wording the Department will support it.

The Chairperson:

Are members agreed to propose an amendment to replace the word "may" on page 1, line 8 of the Bill with "shall"?

Members indicated assent.

The Chairperson:

The Committee previously considered whether councils should be added to the list of organisations that are required to take the homelessness strategy into account in the exercise of their functions. The Department has indicated that it does not believe that the councils have a significant role to play with respect to homelessness. The Committee Clerk will provide the Committee with a further briefing on the role that councils play in respect of homelessness at our meeting on 12 November.

Michael, can you clarify whether proposed new article 6B(3) will allow the Housing Executive to include specific actions for any statutory body, including councils, in its homelessness strategy?

Mr Sands:

As we discussed last week, it depends on what role councils will play with respect to homelessness; for example, it may form part of their community planning activities. We examined the functions that will be transferred to councils and had difficulty in identifying anything that would require councils to have a homelessness duty. The jury is still out on that issue.

Mr Stephen Martin (Department for Social Development):

If councils were to have functions relating to homelessness, proposed new article 6B(3) would allow those functions to be taken account of in the homelessness strategy. There is no doubt about that.

The Chairperson:

It is unclear what community planning will involve for councils. Although nothing specific may be transferred from the Department to councils, many Committee members have council experience and believe that as community planning develops, councils may adopt a wider housing role, rather than a specific homelessness role.

Mr Martin:

Rather than this being relevant to community planning, given the way that that is being designed, we feel that it could be relevant to the power of well-being. We are happy to look at the matter again in that context, almost to future-proof the Bill. We do not think that there is an issue for councils now, but there may well be if the power of well-being rolls out in a certain way. We will come back to the Committee with a view on that.

The Chairperson:

That is fine. Homelessness is relevant to several areas, including community planning, planning, the power of well-being and building control. As I have said, many of the Committee members have a council background —

Ms Ní Chuilín:

Yes; we deal with the residue of it all.

Mr Craig:

It is important that something is put in legislation that puts an onus on councils to take note of the public housing regime. As a councillor, I know that there being no legal imperative of any description on local authorities with regard to housing — and I mean none whatsoever — has had unfortunate consequences.

The Minister tried very hard to get local authorities, along with all other Government bodies, to free up and identify land for transfer, or even sale. There was no legal imperative on councils to do that, and that needs to be addressed so that there is an onus on councils to at least consider doing that. Councils are major landowners in Northern Ireland, so we would be missing out badly if that were not dealt with.

The Chairperson:

That has posed a problem in the past in areas where an attempt has been made to transfer land.

Mr F McCann:

Jonathan is correct. Taking the matter a step further; the Committee looks at, discusses and debates the strategies as they affect homelessness. However, in a lot of ways, many councillors work at the coalface of homelessness and deal with its impact on people, so they can bring a different approach and attitude to the issue. Therefore, I cannot understand why they would not be included in the process.

I know that the Housing Council will have an opinion on this. Many councillors would argue that more attention needs to be paid to the opinion of local government on certain matters, with that being fed through councils or through the Housing Council. Homelessness is one such matter.

The Chairperson:

The Department has said that it will reconsider the issue and come back to the Committee. Is the Committee content to defer consideration of the matter?

Members indicated assent.

The Chairperson:

The Committee agreed that the Prison Service should be added to the list of organisations that are required to take the homelessness strategy into account in the exercise of their functions. The Department said that it will introduce an amendment in line with the Committee's proposal. The Committee agreed to accept the Department's amendment, subject to a review of the wording of that. Are members content with that?

Members indicated assent.

The Chairperson:

The Committee was minded to support an amendment requiring those organisations listed in proposed new article 6A(5) to include homelessness actions and outcomes in their annual plans and reports. The Department has said that annual plans and reports are not always statutory documents and could not be the subject of legislation.

Mr Sands:

The Department's line remains exactly the same: because those are not statutory documents, it is not possible to legislate for them.

Mr Martin:

An alternative is to utilise accountability mechanisms. There is a scrutiny Committee for each Department and, if it were appropriate, this Committee could use the accountability mechanisms that exist to achieve the same end, but without legislation.

Mr Sands:

The situation does occur whereby Ministers and Departments look at and approve the business plans of non-departmental public bodies and, as Stephen said, those can be forwarded to the relevant scrutiny Committees. In fact, I am sure that there is an inclusion in them.

The Chairperson:

Do any members have any views on that? Is the Housing Executive's report a statutory document?

Mr Sands:

The business plan is not statutory. It is required as part of the Housing Executive's management statement and financial memorandum, which is the main administrative tool between the Department and the Housing Executive.

The Chairperson:

What about its annual report?

Mr Sands:

Its annual report is statutory. The Housing Executive is required to publish that.

The Chairperson:

Is it possible to make an amendment stating that the actions and so forth in respect of the homelessness strategy should be included in the Housing Executive's annual report?

Mr Sands:

Again, the requirement is to produce an annual report. We can place a requirement in the management statement's financial memorandum for the Housing Executive to report on homelessness or whatever issue we are addressing. That would be cleaner and would keep all the provisions in one place.

The Chairperson:

You could put it into the Bill then?

Mr Sands:

Yes. We can take that forward.

Mr Martin:

Just to clarify that, it would not be in the Bill but in the management statement. We, as the Housing Executive's regulator, could place that requirement on the Housing Executive without needing to put it in legislation.

The Chairperson:

Are members content with that as a way forward, rather than amending the Bill?

Members indicated assent.

The Chairperson:

The Committee did not express a clear view on the funding of emergency accommodation for ineligible homeless people or on the automatic referral of ineligible people who are in danger of destitution. The Department has responded in writing to indicate that such an amendment may leave the Department in breach of immigration law. Do members agree that the Committee accepts the Department's response and wishes to abandon any amendment?

Members indicated assent.

The Chairperson:

Although the Committee indicated that it was not minded to support the amendment to the effect that the homelessness strategy should include a commitment to provide accommodation and support for families who are victims of intimidation where a conviction of a family member is not tenancy related, members indicated that they wish to bring forward amendments related to antisocial behaviour. I suggest that we deal with that when we come to clause 10, which relates to antisocial behaviour. Do members agree?

Members indicated assent.

The Chairperson:

If members do not have any further amendments to propose for clause 1, does the Committee agree that, notwithstanding any deferred amendments, clause 1 is agreed?

Members indicated assent.

Clause 1 referred for further consideration

Clause 2 (Duty of Executive to provide advice)

The Chairperson:

Clause 2 refers to the Housing Executive's duty to provide homelessness advice. Clarity is required from members on the proposed amendment that relates to consultation on the homelessness strategy. The Department's response points out that proposed new article 6B(8), which is found in clause 1 of the Bill, on page 3, lines 10 to 12, requires the Housing Executive to consult on the homelessness strategy. Does the Committee accept the Department's response and are members, therefore, content to abandon the amendment?

Members indicated assent.

The Chairperson:

The next proposed amendment emphasises that it is a duty and not a power of the Department to support advice providers. Specifically, it suggests that the word "may" on page 3, line 38 of the Bill should be replaced with the word "shall". Michael, have you any comment?

Mr Sands:

In proposed new article 6D, paragraph (1) makes it clear that it is a duty and it uses the word "shall". In the same article, paragraphs (2) and (3) outline how the Housing Executive can discharge that duty and, because the word "shall" is used in paragraph (1), it is clear that that is a mandatory requirement, and that covers the rest of it.

The Chairperson:

So, are you saying that we should not amend that clause?

Mr Sands:

There is no need for it. It is already made mandatory in proposed new article 6D(1), so that requirement has to be complied with.

Mr Martin:

If I may clarify that; in paragraph D of proposed new article 6, paragraphs (2) and (3) state how the Housing Executive should discharge that duty. A certain level of discretion as to how that duty should be discharged is given, and that is standard practice in legislation because circumstances change and to fetter the Housing Executive's flexibility too much would be counterproductive. The Housing Executive has a duty to ensure that homelessness advice is

available free of charge, and the Bill goes on to say how that duty should be delivered, but it does not unduly fetter discretion. If circumstances change, the Housing Executive could meet that duty in a different or more cost-effective way.

The Chairperson:

I understand the point that you are making; the word “may” can sometimes make a requirement more robust. In proposed new article 6D(2) it says: “The Executive may give”. It would be helpful if you could outline in what circumstances the Executive may not give advice.

Mr Martin:

The clause, as currently drafted, states that the Housing Executive has a duty to provide information free of charge. Proposed new article 6D(2) allows the Housing Executive to pay other bodies, such as the Housing Rights Service or Citizens Advice, to provide that advice on its behalf. Proposed new article 6D(3) allows the Housing Executive to provide other services and support to allow such bodies to provide advice. It could be that the situation changes and it becomes more cost effective to meet that duty in a different way. It would be unfair to fetter discretion too much, but the intention is that the duty would be met through funding for a third party.

The Chairperson:

Would an amendment that read “the Executive shall” compel the Housing Executive to delegate that function to other bodies?

Mr Martin:

Yes; the Housing Executive could then not perform that function under any circumstances. There will be circumstances in which it is more appropriate for the Housing Executive to deliver that advice directly. The proposed new article allows flexibility for a mixed approach, depending on the circumstances.

The Chairperson:

The Housing Executive could do it in certain circumstances, or the organisations that you mentioned could do it in other circumstances; it is about what is most appropriate.

Are members happy with that explanation and content that we do not need to proceed with an

amendment?

Members indicated assent.

The Chairperson:

We do not like the word “may”; we think that someone is going to get one over on us. Thank you; that was helpful.

I refer members to correspondence that the Committee has received from the Housing Rights Service. It argues that the Bill currently only requires the Department to prescribe homelessness advice to people who present as homeless. The Housing Rights Service suggests that the Bill should extend that requirement to prescribe advice in relation to homelessness to everyone, regardless of whether or not they present as homeless.

Mr Sands:

As you can imagine, Chairman, the Housing Executive and the other housing advisory services can give all sorts of advice to lots of people. A requirement to include a provision about prescribing homelessness advice to people who would never have recourse to such a course of action seems over the top. We should certainly be able to address the concerns of people who present as homeless, but to widen that requirement would be too much.

The Chairperson:

I understand the argument that you could not allow all and sundry to walk in.

Mr Sands:

It would mean that the Housing Executive would have to tick a box to say that it informed people on homelessness provisions even if homelessness advice were not relevant to their circumstances.

The Chairperson:

What about people who might need advice to prevent them from becoming homeless?

Mr Martin:

There is a similar provision in the legislation in Scotland and England. The reason for having that provision is that there is a large number of local authorities in those jurisdictions for which

consistency of homelessness advice is an issue, under clause 2-type duties. That consistency issue does not apply here, but we recognise that it would be useful to consult publicly on the types of advice that would be offered on a non-statutory basis. However, we do not currently see any value in doing that on a statutory basis. In other regions there is an impetus to have consistency, but this is a much smaller place with one regional housing authority. There is value in giving guidance to the Housing Executive on a non-statutory basis, which is then consulted on.

Mr F McCann:

Having talked to the Housing Rights Service, it was my impression that the issue is about preventing homelessness and not just dealing with people who walk through the door and present as homeless. The people from the Housing Rights Service said that the cross-departmental, cross-sectoral group agreed that that provision should be included.

Mr Martin:

We chaired that group and provided support to it. We have checked back through all our records, which show that what was asked for was a duty to produce regulations under clause 4, not under clause 2. That claim does not tally with our recollection or any of our records on the issue.

Mr F McCann:

There seems to be a conflict between what the Department believes was said and what the Housing Rights Service people believe was said.

The Chairperson:

We can try to clarify that.

Mr Brady:

That probably does need clarification. The Housing Rights Service, with its experience, is perhaps coming from a different perspective. However, it seems to me that it would not have suggested that unless it felt that it was necessary.

You mention England and Scotland. There is such diversity in local authorities there; it depends which political party runs which council and what funding is available. There are all sorts of different agendas. We have one central regional housing authority, and that is an opportunity to be innovative and to provide what, for various reasons, England and Scotland do

not. The Housing Rights Service is an organisation with which I have had dealings for 20-odd years, and I do not think that it would suggest something such as this unless it felt that it was on fairly solid ground.

The Chairperson:

We will take on board the points that the Department has made and seek face-to-face clarity from the Housing Rights Service at the first opportunity after the Halloween recess. The departmental officials will be at our meeting in the first week after recess.

If members do not have any further amendments to propose for clause 2, does the Committee agree that, notwithstanding any deferred amendments, clause 2 is agreed?

Members indicated assent.

Clause 2 referred for further consideration.

Clause 3 (Eligibility for housing assistance)

The Chairperson:

Clause 3 refers to a specific change to eligibility for housing assistance. Clarity is required from members on the proposed amendment that relates to the adoption of plain English standards, alternative formats and non-UK languages. Previously, the Department provided assurance that a minimum standards document relating to the form of homelessness advice would be subject to Committee approval when the Bill is passed. Does the Department have anything to add to that?

Mr Sands:

No; it is an operational matter.

The Chairperson:

Does the Committee accept the Department's response and agree to abandon the amendment?

Members indicated assent.

Mr Brady:

I have one point in relation to that. At a function in the Long Gallery with the Royal National

Institute of Blind People, one issue that came up was the lack of information that is available to partially sighted people and those who are blind; perhaps that is something to factor in.

Mr Sands:

Yes; we will look at that, Mr Brady.

Mr Brady:

Providing an audio format, such as CD, is something else to think about because Braille can be more expensive.

Mr Sands:

Audio assistance can be provided at present. Perhaps it is a matter of making sure that more people are aware that it is available.

Mr Brady:

Yes; it is important to make people aware that it is available.

The Chairperson:

The Department has provided evidence of the guidance issue in relation to the treatment of spent convictions for those who are seeking homelessness support. If the Department does not have anything to add to that, are members happy with the Department's response in respect of that issue and content to abandon the amendment?

Members indicated assent.

The Chairperson:

If members do not have any further amendments to propose on clause 3, I will put the Question.

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

Clause 3 agreed to.

Clause 4 (Power of the Department to prescribe form of advice and assistance)

The Chairperson:

Clause 4 refers to the Housing Executive's power to prescribe homelessness advice. The

Committee was not previously minded to support any amendments relating to clause 4. Do members have any further amendments to propose for clause 4?

Ms Ní Chuilín:

During our discussion on clause 2, Michael suggested that the issue regarding the Housing Rights Service might be more relevant to clause 4.

Mr Sands:

Are you referring to the provision of advice?

The Chairperson:

Yes; it was said that that matter might be more relevant to clause 4.

Ms Ní Chuilín:

If we agree the clause, we should do with the caveat that we may need to come back to it.

The Chairperson:

That is fair enough.

Is the Committee happy to agree clause 4, notwithstanding the issue raised by Housing Rights Service?

Mr Martin:

The confusion relates to clause 2. When Housing Rights Service presented evidence to the Committee, the issue became confused. The clause 4 duty is the old duty for prescribing, which has been in housing legislation since 1988. The concern of Housing Rights Service relates to the clause 2 duty, which is a new duty, rather than the duty in clause 4.

The Chairperson:

We will come back to it and the benefit of your presence will, perhaps, clear that up.

Are members content with clause 4, notwithstanding the matter that was raised?

Members indicated assent.

Clause 4 referred for further consideration.

Clause 5 (Reviews of decisions in relation to homelessness)

The Chairperson:

Clause 5 refers to the review of homelessness decisions. The Committee was minded to support an amendment to extend the period during which a review of decisions could be requested from 21 days to 28 days. The Department advised that it was seeking the views of the Housing Executive and the Court Service on the issue.

Mr Sands:

We sought their advice on the amendment, and they have no difficulty with it.

The Chairperson:

So, you will bring forward an amendment in respect of that?

Mr Sands:

Yes.

The Chairperson:

If members are content to accept that, I will put the Question.

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

Clause 5 agreed to.

The Chairperson:

Clauses 6, 7, 8 and 9 refer to issues relating to housing associations and introductory tenancies. The Committee was not minded to support amendments relating to clauses 6, 7, 8 and 9. If members do not wish to propose any further amendments, the Committee can agree the clauses.

Clauses 6 to 9 agreed to.

Clause 10 (Anti-social behaviour: Executive's policies and procedures)

The Chairperson:

Clause 10 refers to antisocial behaviour. Members were minded to support an amendment to require the Housing Executive to consult on its antisocial behaviour policies. In response to another question, the Department indicated that the Housing Executive, as a statutory body, is generally required to consult on policies. Are members content with that response and content to abandon the amendment?

Members indicated assent.

The Chairperson:

Members were also minded to support an amendment that would require housing associations to publish their antisocial behaviour policies. The Department indicated that it is seeking advice from the Office of the Legislative Counsel on the matter.

Mr Sands:

We have checked with the Office of the Legislative Counsel, and its concern is that we would be placing a statutory duty on housing associations, and that would mean that they would be treated as if they were statutory bodies, which they are not. It would bring them within the scope of a judicial review.

Thinking about the dynamics of issuing particular policy papers; the Housing Executive is a regional housing authority, so it has to issue one policy. However, since there are 33 housing associations, there would have to be 33 different policies, unless, as was suggested last week, the Northern Ireland Federation of Housing Associations (NIFHA) could establish one composite policy, which it could issue on behalf of all housing associations. To put the requirement onto every housing association, some of which are small community housing associations, would be exceptionally onerous.

Ms Ní Chuilín:

I do not understand the legal difficulties, but I do know that when neighbourhoods experience antisocial behaviour, regardless of who the social landlord is, it is the same for them; it is all relative. If one composite policy were brought in for all social landlords, regardless of their size and function, it would be a measure of goodwill. Of the tenancy documents that all social landlords provide, those dealing with good behaviour and antisocial behaviour are the only ones

that are standardised. The rest are far from standardised, which has caused inequalities for some social housing tenants, but in that respect they are by and large the same; we actually had a look at them. Sometimes I think that the legal stuff is used to try to deter us, although I am not saying that it is not a reality.

Mr Martin:

We have said before that the Department can achieve the same ends through its powers of regulation over housing associations. That would allow a bit more flexibility. As Michael said, we could get NIFHA to draft a policy on behalf of all associations, or each association could draft its own policy. If we take the statutory duty route, not only do we have concerns about the judicial review — which I will speak about in a moment — but it will result in less flexibility. Each housing association would have to publish its own policy. The Department can achieve the same thing without an amendment, and that is our preferred route.

The point about judicial review is important, because the more a housing association is treated as a statutory body, the more it can be subject to the regime to which a statutory body is subject, such as a judicial review, which is a very costly process. There is quite a serious financial implication for housing associations if we go down the statutory route.

Mr Stephen Baird (Department for Social Development):

We want to standardise the procedures. If we tackle that through imposing duties on individual associations to publish their procedures, those procedures may not be adequate or consistent with what other associations are doing. That may not be the best way to do it. Stephen Martin spoke about the need for a consistent approach, which could be achieved through NIFHA, which is the co-ordinating body. I think that that is more important.

Mr Brady:

The mechanisms are already there, so it seems the most logical route to take.

The Chairperson:

You can appreciate that, at a constituency level, we see increasing numbers of tenants in housing association properties, as is inevitably the case. We do not draw a distinction, and certainly the people living in those properties do not draw a distinction. However, I understand the legal position that you mentioned. Sometimes I think that housing associations are treated as statutory

bodies when it suits and not treated that way when it does not suit. However, members seem to be content with the assurance that we can achieve the same aim through existing powers without putting very onerous duties on small housing associations.

Mr Sands:

We will place the requirement on NIFHA to produce a composite policy.

The Chairperson:

Are members happy to abandon the possible amendment?

Members indicated assent.

The Chairperson:

Before we move away from clause 10, I invite members to set out any further proposed amendments in relation to that clause or to antisocial behaviour issues. Fra, I know that you wanted to give us your ideas.

Mr F McCann:

I have explained at a number of meetings, and you mentioned earlier, that all of us, including the Department, the Housing Executive, and housing associations, come under tremendous pressure in relation to antisocial activity. It seems that that will be with us forever and a day. We may get on top of the issue at different stages, but it always raises its head again. One of the issues that we constantly come up against is the duty of care. Housing associations and the Housing Executive say that they have a duty of care to applicants, but no duty of care to tenants when someone is moving into a neighbourhood. That has been a sore point.

Another matter is the position of residents associations, which, if they are formed and funded properly, can, among other things, be an effective tool to combat antisocial activity. Therefore, I would like to suggest a couple of amendments.

First, the Housing Executive and housing associations should be required to provide resources and training for residents associations to help them to combat antisocial behaviour.

Mr Sands:

Primary legislation is not the place to include that sort of requirement. Mr McCann's suggestion would be much easier to deal with by amending the housing association guide and the Housing Executive's management statement. The Office of the Legislative Counsel would not be happy about putting such detail into primary legislation, which is designed to enable things to happen. Therefore, getting into that sort of detail would not be appropriate. Nevertheless, Mr McCann, we will certainly look at amending the guide to include requirements on housing associations and the Housing Executive to share that information.

Mr F McCann:

I appreciate what you said about amending the guide; however, over the years, it has been difficult to get housing associations and the Housing Executive to work with residents associations and to provide them with whatever meagre resources there might have been. That amendment would oblige housing associations and the Housing Executive to actively consider funding residents associations.

Mr Sands:

We can look at and address that point, but I cannot comment on it now. There are even more difficult funding situations.

Mr F McCann:

I appreciate that but, given the nature of the work that residents associations do, they are excluded from almost all funding opportunities.

The Chairperson:

Before we move on, Fra, are you happy with that response?

Mr F McCann:

I take that it we will be coming back to this point during this period. I would like to go ahead with it, but Mr Sands said that he wants to come back to it.

Mr Sands:

We can come back to the Committee about amending the guide to introduce that suggestion.

Mr Martin:

I wish to clarify two points about that. First, the Housing Executive works with a number of organisations in the voluntary and community sector and although that work may not be deemed sufficient, it is ongoing. Antisocial behaviour is not just a housing issue; it is a big community safety issue, and each council has a community safety partnership, which also funds residents associations. It is important that the Committee bears that in mind when considering any amendment in respect of this issue.

Mr F McCann:

I understand what Stephen said, but I sit on some of the bodies and groups that he was talking about, so I know how they work and the impact that they have on areas. Nevertheless, in many areas, residents associations are fairly weak because they have not had any direct input, funding or training from the Housing Executive. I am talking about putting that funding requirement on a statutory basis. If possible, I would like to move ahead with that amendment.

The Chairperson:

The Department is saying that it is not minded to amend on that point. Is the Committee happy with the Department's assurance that it will look into amending the relevant guidance, and can we defer this matter and come back to it later? Fra indicated that he would like to proceed, but it might be fairer to give members time to consider the matter and come back to it.

Mr F McCann:

Come back to it when, Chairperson; next week or the week after?

The Chairperson:

We have until the week after next, so we could look at it on 5 November.

Mr F McCann:

My second proposed amendment is that, prior to transferring tenants from one area to another as a result of antisocial behaviour, the Housing Executive and housing associations should be required to carry out an area impact assessment.

Mr Sands:

Again, that brings us to questions about how much detail should be included in primary

legislation. Nevertheless, if I might clarify the position: the Housing Executive does not simply transfer housing association tenants who have been found guilty of antisocial behaviour in an effort to transfer that problem elsewhere.

Mr F McCann:

Most people around this table would tell you a different story. It happens quite regularly, and, at the end of the day, tenants have no recourse to argue against it. On some occasions, depending on the individual Housing Executive managers and workers involved, they may sit down and talk to tenants but, as a general rule, the Housing Executive does move such people.

Mr Sands:

The Housing Executive cannot force a tenant to move; a tenant has to request a transfer before the Housing Executive will consider moving him. The Housing Executive cannot tell a tenant that it is moving him to a different area. I take your word that you may have evidence of that happening. However, under the rules, the Housing Executive cannot do that.

Mr F McCann:

I think that you are picking me up wrong. There are families that have destroyed the areas that they live in. When those families put in for a transfer, they end up being given priority and being moved to other areas. The Housing Executive or housing associations move those families into another area because they are at the top of the list, without any discussion with the host community. That is what I am talking about. The Housing Executive and the housing associations need to carry out an assessment on the impact that such a family will have in an area.

Mr Sands:

I am not aware of that happening, Mr McCann. As far as the regulations are concerned, that is our line on them. We will have to talk to the Housing Executive about that and find out what exactly it is doing. That should not be happening.

Mr Brady:

It happened in my area.

Mr Sands:

We will have to check with the Housing Executive and see what its position is and try to ensure

that it is complying with the regulations as set out and the provisions of the inspection scheme. We will come back to you on that issue.

Mr Craig:

If I am picking it up right, what we are talking about is that a person's tenancy history is not being taken into account when that person is moved to another area. There is a huge issue around that. Some individuals have created mayhem and caused huge problems for housing associations and the Housing Executive. However, that history is totally ignored when such individuals are rehoused. There should be a mechanism that takes that history into account when people are being rehoused.

Mr Sands:

Perhaps what you are looking for is an assurance from the Housing Executive that it will take that into account.

Ms Ní Chuilín:

As you can see, Michael, we are not very assured.

Mr Sands:

I cannot answer the question, but I will find out about it.

Mr F McCann:

There is some overlap in my suggested amendments, another of which refers to the duty of care. I have suggested that the Housing Executive and housing associations should be required to have a duty of care to existing residents. However, if the previous amendment is taken forward, that might take care of that.

My other suggestion is that the Housing Executive and housing associations be required to share information on applicants who are moving due to antisocial behaviour. That goes to the heart of the issue that Jonathan just raised. The lack of information being shared among the Housing Executive and the housing associations is a serious problem. The Housing Executive will tell you that, on a number of occasions, even it does not know whether somebody has been moved from a housing association house.

Mr Martin:

We are aware of that issue, and it is part of the package of proposals that we are developing for the second housing Bill. We could not consider that in the Housing (Amendment) Bill because, as it opens a data gateway under the Data Protection Act 1998, the issue will need consultation and approval from the Secretary of State. It is something that we are aware of and are trying to address. However, as far as we are concerned, it is not possible to address that in the time frame that is available for this Bill.

Mr F McCann:

When will the next Bill be coming to the Committee?

Mr Martin:

The current timetable is that the next Bill will be introduced before the summer recess next year. Therefore, it would be with the Committee around June.

The Chairperson:

Same time, same place, next year.

We heard before that a lot of the second Bill is going to focus on antisocial behaviour, and you say that it might be better to consider Fra's suggested amendment in relation to the second Bill. What about the other issues that he raised? I understand the point that you are making about not having too much nitty-gritty in primary legislation and how that is better left to secondary legislation or guidance. Is it possible that any of his other suggested amendments could be dealt with in the second housing Bill?

Mr Martin:

Although it may be doing it, the Housing Executive cannot simply decide to transfer people from one area to another. However, we are aware that there is a policy loophole around swaps. If two households agree to swap houses, antisocial behaviour cannot be taken into account. That is a loophole that we are looking to close in the second housing Bill.

Mr F McCann:

The only thing that the Housing Executive and housing associations consider is whether both properties meet the needs of the people involved in the swap. Antisocial behaviour is a separate

issue. I was surprised that you said that the Housing Executive should be looking at the behaviour of tenants before they move to another area; that does not happen. As you have heard this morning, unless there is something in legislation that dictates a procedure by which the Housing Executive and housing associations must abide, the problem will persist.

I recently spoke to representatives from the Housing Executive, who complained about housing associations not passing on information about the past behaviour of tenants. One family can destroy a street, and two families can destroy an area.

The Chairperson:

If the Committee were to submit such amendments, they would perhaps fall foul of consultation requirements, for example. Therefore, a second Bill may be the best method of addressing those issues. I think that everyone will agree that there are major issues linked to antisocial behaviour; if it were not recognised as a problem, clause 10 would not exist and there would not be the possibility of a second Bill to address issues connected to it.

The Committee can make it clear that it expects to see such issues addressed in the second Bill. We can say that in our report and on the Floor of the House during the Housing (Amendment) Bill's Consideration Stage. Instead of bringing forward those issues as part of this Bill, we can say that we expect the Department to bring them forward in the next Bill.

Mr F McCann:

You are right. The officials have said that they will look at those issues, and I accept that.

During our scrutiny of the Housing (Amendment) Bill, we have raised a number of issues, not least the funding and training of residents associations and the other elements connected to antisocial activity. Can we have some feedback on those issues in the mean time?

Mr Sands:

We will check with the Housing Executive on those points. The Department welcomes any suggestions or guidance from the Committee on provisions that its members feel should be included in the second housing Bill. It is early in the process, so provision can still be included.

Mr Brady:

The private landlords association raised the issue of people who were guilty of antisocial behaviour moving out of Housing Executive or housing association accommodation into private-rented accommodation. In such instances, private landlords are given no history. Therefore, someone could move out of a Housing Executive or housing association house and into a private-rented house two doors down. The problem covers a range of sectors.

Mr Sands:

Someone who is evicted is homeless but cannot be considered under homelessness legislation, because of the reasons for that eviction. Unfortunately, they have to go somewhere.

Mr Brady:

With respect, it is a self-inflicted wound. Such people are remaining in the same communities but are being housed by a different sector. Private landlords are saying that they have no idea that those people are serial antisocial offenders.

Mr F McCann:

Some of the legislation in England and in other jurisdictions goes much further, especially in respect of the powers for local councils. There are behavioural charters by which families and individuals have to abide, and there are parenting and behaviour classes. That is the road that we need to go down. We need to take the best of what is happening in other jurisdictions. We all know that one of the biggest issues on people's doorsteps is antisocial activity. On the point that Mickey made, known drug dealers have left areas and gone straight to the top of the waiting list because they were deemed to have been intimidated out of an area. Such people have also walked into the private-rented sector. Something must be done so that local residents and communities have recourse to prevent those people ending up in their areas.

The Chairperson:

The Department can see that, because of its nature, that subject arouses much emotion in members. We deal with the matter regularly. Are members content to abandon Fra's amendments at this stage?

Mr F McCann:

I feel suitably abandoned.

The Chairperson:

We will do so with the proviso that we will contact the Department about the points that Fra raised. Clarity is needed on some of the specific points, and we will make it clear in our report at Consideration Stage that we want those issues to be addressed in the second Bill.

Ms Ní Chuilín:

I have no doubt that Fra will mention that.

The Chairperson:

I have absolutely no doubt that he will do so at every opportunity.

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

Clause 10 agreed to.

Clause 11 agreed to.

Clause 12 (Increase in Housing Council representation on Executive)

The Chairperson:

This clause refers to representation of the Housing Council on the Housing Executive board. Members considered the issue of enhanced democratisation of the Housing Executive and were minded to explore an amendment that would increase Housing Council representation, with the addition of a tenancy advocate. I wrote to the Minister on those issues, and the Department gave a response in its letter, of which members have a copy. Are Members happy to defer any further consideration on that clause until we get a more substantive response to our letter?

Members indicated assent.

Clause 12 referred for further consideration.

Clause 13 agreed to.

Clause 14 (Definition of “house in multiple occupation”)

The Chairperson:

Members were minded to support the amendment to the definition of a “housing in multiple occupation”, which would be limited to an extension of the definition of “family” to include uncles, aunts, nieces and nephews. The Department advised that it would introduce an amendment to that effect.

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

Clause 14 agreed to.

Clauses 15 to 19 agreed to.

The Chairperson:

Part of the Committee’s scrutiny table contained other amendments that were not specific to particular clauses. Section AJ deals with the issue of registered rents. The Committee was minded to support an amendment to add Assembly procedure to the review of registered rents. The Department advised that it is to seek legal advice on how best Assembly procedure in that regard could be added.

Mr Sands:

We are taking legal advice on that, and we would certainly be prepared to seek an amendment if legal advice were to confirm that there is a requirement for the review to be subject to Assembly procedure. We think that it will, and we have no difficulty with that.

The Chairperson:

Are members happy with that?

Ms Ní Chuilín:

You said that the Department would be happy to seek an amendment; one of the issues was about high rent in some areas, even for association housing. Is this about capping it?

Mr Sands:

No; it is about the form of Assembly control over the Private Tenancies (Northern Ireland) Order 2006. It will require the Committee or the Assembly to give negative resolution.

The Chairperson:

It gives us a say over whether to accept or amend the review.

Mr Sands:

It is about procedures in the Assembly and in the Committee.

Ms Ní Chuilín:

So, it will involve another statutory rule appearing before the Committee?

The Chairperson:

Yes. Are members happy, subject to a review of the final wording, to agree to the amendment?

Members indicated assent.

The Chairperson:

Section AK deals with the common housing selection scheme. I am aware that Fra wants to propose amendments at this stage.

Mr F McCann:

I am open to advice on the first two of my proposed amendments. I have met three different Ministers to discuss the serious discrepancies in the common selection scheme, which discriminates against some people, particularly those in hostels or those who live in areas of high demand. One suggestion is that the selection scheme be amended to award 20 points to applicants for every six months that they stay in hostel accommodation. I am suggesting that because, for the past five years, I have been promised that a review will be set up to consider such matters. To date, nothing has been done.

My other amendment relates to people with mental or physical illnesses. I know that a needs assessment takes place. However, on many occasions, the system does not allocate additional points, which would allow those people to flow through the system. Somebody told me that legislation may not be required to deal with that matter because the system can be tweaked or changed.

Mr Sands:

That is true. I will pass over to my colleague in a minute. The Bill contains no real housing management processes; therefore, we could not include such a provision. However, as Fra rightly suggests, it is an operational matter, and the scheme could be tweaked. Such details are not covered by primary legislation.

Mr Martin:

The Minister asked my team to consider how to modernise the common selection scheme. I understand that one point deals with temporary accommodation, and we are considering the exact issue that Mr McCann has raised.

The issue of mental and physical illness is more problematic. The priority need provision in the legislation means that if somebody has a particular condition, it is taken into account. Therefore, it would be difficult to award additional points, and medical judgements introduce many complexities.

Mr F McCann:

By and large, medical certificates confirming an illness go into files and do not add much to a person's case, even though their doctor may have recommended a certain course of action. Under the old priorities system, one priority specifically recognised the level of people's sickness. I know that, under certain circumstances, people will go for a needs assessment. However, the results do not always favour the applicant and may run counter to their doctor's suggestion. That happens to a number of people, and I ask you to take it on board. I understand that it may involve difficulties, but people face that problem on a regular basis.

Mr Martin:

I am happy to take specific examples into account as part of the process and respond at a later date.

Ms Ní Chuilín:

One example is the placement of people with suicidal tendencies in the seven towers of high-rise flats in the New Lodge. One would imagine that a common-sense approach would be employed, but often it is not.

Mr Martin:

A common-sense approach should be taken, because accommodation must be reasonable.

Ms Ní Chuilín:

Some people even had a letter even from their GP or consultant that stated that they should be placed in suitable accommodation.

Mr Sands:

I agree entirely.

Mr F McCann:

Weight must be given to what a doctor or consultant says about the impact of where people are housed. People in areas of high demand get trapped, and the points system does not allow them to progress. There was supposed to be a conveyor belt system whereby people would graduate according to their level of points. Earlier this year, someone could have got a two-bedroom flat for 120 or 130 points. Today, people cannot get a two-bedroom flat in certain areas for 180,190 or even 200 points. It is almost impossible for people to reach such points levels, so they get stuck where they are.

My last amendment is that the Housing Executive should undertake a review of the common selection scheme every three years to ensure equality of opportunity for all applicants. That goes to the heart of the matter, and it seems like a fairly simple requirement that could be included in the Bill.

Mr Sands:

Yes; that does seem like a simple requirement that could be put in. However, in areas such as west Belfast, some people may be on the waiting list for more than three years because they want to be housed almost on a specific street. The difficulty of undertaking a review is that it may change those people's position and shunt their application back even further. Three years is a narrow window in which to expect a review of such important criteria.

The Chairperson:

How often is the system reviewed?

Mr Sands:

There is no set date or time for reviews. A review is carried out when it becomes apparent to the Department that one is needed. We have instigated a review now because of, for example, comments that have been made to the Committee as well as other things that come into play as we move forward with different provisions.

Mr Brady:

When was the last review?

Mr Baird:

The system is updated and reviewed on an ongoing basis, as and when required; amendments are made from time to time.

Mr Brady:

With respect, that seems like an ad hoc approach.

Ms Ní Chuilín:

Was the last review carried out in 2005?

Mr Sands:

It may have been; I am honestly not sure.

Mr Brady:

Surely the fact that people have been on the waiting list for more than three years indicates the need for reviews to happen at regularly intervals.

Mr Sands:

That would not necessarily help people who only want to move within a narrow area.

Mr Brady:

I take your point; some people only want to live beside their mummies.

Mr Sands:

That is part of the problem.

Mr Brady:

Other people just want a house.

Mr F McCann:

I agree with Mickey that that seems like an ad hoc approach. I have raised the point for five or six years that people are getting trapped in a system that is unable to deal with the problem. By and large, it is people in areas of high demand who cannot graduate through that system. One of the specific problems is people being trapped in hostels for perhaps three or four years. Those people may have had children just before moving into a hostel and those children are now going to primary school.

A system of single lets has recently been introduced, and that may help some of the people who have been waiting longest. However, a lot of people end up living their lives in hostel accommodation that was not built for that purpose. I am not saying that more regular reviews would deal with individual cases, but they would address the problem of people being trapped in hostel accommodation or at a particular point in the system for a long period.

The Chairperson:

Perhaps, before the Committee takes a definitive view on whether it supports such an amendment, you could come back to us on 5 November with an outline of what specifically triggers a review of the common selection scheme; what you look at in particular, and what you specifically consider in respect of equality of opportunity, which is something that Fra referred to. That would be helpful in allowing us to determine whether an amendment is necessary.

Mr Martin:

I may be incorrect; however, my understanding of Assembly procedure is that an amendment can only be proposed on a particular issue if it can be closely linked to a part of the Bill. My understanding is that there is nothing in the Bill that would allow that such an amendment to be added. The common selection scheme is provided for in the Housing (Northern Ireland) Order 1981, which deals with housing management. I understand that there is nothing in the Bill on which to hook that amendment. I could be incorrect; perhaps other could guide me on that.

The Chairperson:

I am not sure that that is correct. Given that it is an amendment Bill, I believe that its scope is fairly wide. That is why we are considering all those matters.

The Clerk of Bills:

I agree; that is not always the case. It depends on the scope of the Bill. The Housing (Amendment) Bill is particularly wide-ranging. Therefore, it may be possible to make amendments that go beyond what is stated on the cover of the Bill. We can look at that. It is a wide-ranging Bill and when you have that situation, it is possible to maintain that width by adding to clauses.

Mr Sands:

We will take that on board.

The Chairperson:

I am worried that Fra will now see other opportunities. *[Laughter.]*

Mr F McCann:

Roll on next week.

The Chairperson:

We are just trying to get over the finishing line. *[Laughter.]*

We can come back to that issue. Fra, I take it that you are happy with the responses to the previous two points. We will wait for the Department's response in respect of a review.

Section AL of the Committee's scrutiny table deals with the regulation of private landlords. Do members want to set out any proposed amendments on that?

Ms Ní Chuilín:

I do not wish to do so at present. However, rather than simply having regulation of private landlords, I would go further and say that it should be mandatory.

The Chairperson:

We await further information on that. I am, therefore, happy that we do not propose any amendments in relation to that.

Do the departmental officials want to make any final comments?

Mr Sands:

None; except to thank the Committee for its consideration of the Bill. *[Laughter.]* I mean that.

Ms Ní Chuilín:

Do you miss us already? *[Laughter.]*

The Chairperson:

Have we convinced you of the merits of any of the amendments that we have suggested? Are there any, apart from those that you have already indicated, that you would like to adopt?

Mr Sands:

Absolutely, Chairman. One always depends upon the Committee's credibility in suggesting amendments that will contribute to the Bill.

Ms Ní Chuilín:

I think that our Committee is incredible, rather than just credible.

The Chairperson:

I seek agreement that, apart from any deferred matters that were identified today and pending outstanding evidence and clarity and consideration of the final wording of amendments, the clause-by-clause scrutiny is concluded. Effectively, therefore, nothing new can be introduced; we can consider only those deferred matters.

Ms Ní Chuilín:

Is the regulation of landlords among those deferred items?

The Chairperson:

Yes, we will consider that to be a deferred item. We decided that we would not propose an

amendment on it at this stage.

Are members content that that is the end of our clause-by-clause scrutiny of the Bill?

Members indicated assent.

The Chairperson:

Thank you very much, everyone. I am impressed by how quickly we were able to get through that. Deferred matters and outstanding evidence will be considered by the Committee at its next meeting on 5 November. I thank the departmental officials for their help.