



Northern Ireland  
Assembly

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**COMMITTEE FOR SOCIAL  
DEVELOPMENT**

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**OFFICIAL REPORT  
(Hansard)**

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**Housing (Amendment) Bill**

5 November 2009

**NORTHERN IRELAND ASSEMBLY**

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**COMMITTEE FOR  
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:**

Ms Janet Hunter            )       Housing Rights Service  
Ms Nicola McCrudden    )  
  
Mr Stephen Baird         )       Department for Social Development  
Mr Stephen Martin        )

**The Chairperson (Mr Hamilton):**

I wish to advise members that, following the additional written evidence that was received from the Housing Rights Service on clauses 2 and 4 of the Housing (Amendment) Bill, we have asked Ms Janet Hunter and Ms Nicola McCrudden to come back. They are suckers for punishment;

they cannot keep away from this place, but I welcome them here today. I ask them to outline their evidence, after which members will have an opportunity to ask questions.

**Ms Janet Hunter (Housing Rights Service):**

I thank the Committee for the opportunity to come back and provide some further clarification on the issues that were raised in relation to clauses 2 and 4, following our earlier submissions. Those clauses amend the existing homelessness legislation; we have provided members with a paper that, we hope, will explain more fully the point that we are trying to convey.

Clause 2 places a new duty on the Housing Executive to ensure that advice on homelessness and the prevention of homelessness is available to any person who needs it. From their constituency work, members will know that “advice” is a generic term and can be used to describe a broad range of activities, from giving out leaflets to negotiating with landlords or representing people in court. In light of that, Housing Rights Service believes that the Government must provide guidance on the level and nature of the advice that should be available and that any such advice should be appropriate and comprehensive. As things stand, the Bill does not include that provision.

In summary, Housing Rights Service believes that clause 2 should be amended to ensure that it is implemented as the promoting social inclusion (PSI) working group intended, so that the new duty of advice will help to prevent people in Northern Ireland from becoming homeless. In the paper that we have provided to the Committee, the Housing Rights Service suggests a way in which that objective could be achieved. We suggest that an additional paragraph is inserted at the end of clause 2 saying:

“The DSD may issue guidance, to the Housing Executive, as to the form and content of such advice and information.”

That wording is similar to that in comparable legislation in England, Wales and Scotland and would bring Northern Ireland into line with the position in those jurisdictions. Housing Rights Service has spoken to officials from the Department for Social Development (DSD) in the past week or so, and we understand that they may be amenable to considering such an amendment.

I am happy to answer questions.

**Ms Lo:**

We received a response from the Department saying that the issue of general advice on homelessness was not mentioned in the PSI working group. However, officials now seem to be happy that that merits inclusion.

**Ms Hunter:**

Our view is that that was intended by the promoting social inclusion group, but words are subject to interpretation.

**The Chairperson:**

Homelessness prevention advice has previously been mentioned; is it your desire to see that specifically referred to in the Bill, or are you happy with the more generic wording?

**Ms Hunter:**

We are happy with how clause 2 is currently drafted, because it talks about ensuring that advice around homelessness and the prevention of homelessness is available. It mentions both those terms. However, we feel that clause 2 needs an additional provision to further define the nature and level of that advice.

**The Chairperson:**

I apologise; I misspoke. I meant to ask whether homelessness prevention advice should be referred to in the amendment. If you are happy enough with the wording being generic —

**Ms Hunter:**

We are happy with it being generic. It will then be up to the Department to produce the guidance and the appropriate level of detail.

**Mr F McCann:**

I beg your indulgence, as I may be going off on a different track. At some stage this morning, we will be dealing with a shared remit, and I know that the people from the Housing Rights Service had been advising us on the housing allowance. Difficulties have been pointed out by a number of organisations, so we should try to tap into their expertise on how the shared remit will operate.

**The Chairperson:**

You are begging my indulgence. I realise that there may be issues with that statutory rule, and if you would like to raise that point again at that stage, we might seek advice then. I realise that that may seem like the wrong way around, but it would be more appropriate to seek advice on those concerns at that stage.

Thank you, Nicola and Janet, for your presentation and for answering questions. We will raise that issue with the departmental officials at the appropriate stage of our clause-by-clause scrutiny.

We move to the Committee's clause-by-clause scrutiny of the Housing (Amendment) Bill. I remind members that the Committee commenced its formal clause-by-clause scrutiny at its meeting on 22 October 2009. At that meeting, the Committee considered and agreed to 13 of the 19 clauses in the Bill.

Members have previously set out their interim positions on the remaining six clauses and the Committee deferred consideration on additional amendments. During today's clause-by-clause scrutiny, members will be asked to set out their final position regarding possible amendments to the remaining clauses of the Bill, subject to review of their final wording. The Department will provide the wording of all amendments that it is to take forward for the Committee meeting on 12 November 2009. Where the majority of Committee members support a further amendment, the Committee Clerk and the Clerk of Bills will take the proposal and draft the appropriate wording for consideration at a subsequent meeting. All being well, the final version of the Bill report will be submitted to the Committee for approval on 19 November, in good time for the reporting date of 1 December.

Members' packs contain quite a lot of information, including an updated summary of evidence and amendment table; a departmental response on conflicts of interest for housing associations; a departmental response to various queries dated 2 November; and a departmental response dated 27 October on other queries from the Committee. There is also an Assembly Research and Library Services paper on the remit of local government in tackling homelessness, and additional information from the Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO), responding to Committee queries and providing information on interdepartmental protocols pertaining to the housing of ex-offenders.

The Department has been invited to this clause-by-clause scrutiny session; I am sure that the officials love to see those invitations coming through. I welcome the two Stephens; Stephen Martin and Stephen Baird from the Housing (Amendment) Bill team. You are both very welcome.

I will go through each of the outstanding matters as they occur and ask members to comment on those. I ask members to be gentle with me because it will, at times, be quite tricky jumping between clauses.

***Clause 1 (Homelessness strategy)***

**The Chairperson:**

Clause 1 concerns the Housing Executive's duty to produce a homelessness strategy and for certain bodies to take account of the strategy in the exercise of their functions. The Committee had agreed that the word "may" on page 1, line 8 of the Bill should be replaced with the word "shall", to demonstrate that the requirement to produce a strategy is a duty and not a power. The Department now advises that that amendment is more problematic than was first believed and would undermine the intention of the clause. I invite Stephen Martin to explain the problems for us.

**Mr Stephen Martin (Department for Social Development):**

It is a fairly technical point but I will try my best to explain it. We have been speaking to our legislative draftsman, and he told us that changing "may" to "shall" would disrupt the clause. It would not be possible to make just that one amendment. We have to either completely rewrite the clause or leave it as it is. The draftsman is clear that, as the clause stands, it places a duty on the Housing Executive. However, changing "may" to "shall" would have a negative impact and the whole clause would need to be completely restructured. His legal advice is that clause 1 should remain as it is.

If the Committee takes the view that clause 1 is to be changed, we would need to get the Minister's view on whether she would be prepared to make that change. However, if the change were to be made, the whole of proposed new article 6A would have to be changed.

**The Chairperson:**

In what respect would it have to be changed?

**Mr Martin:**

I will try my best to answer that. Essentially, proposed new article 6A(1) is drafted to provide a power for the Housing Executive to draft a homelessness strategy. However, in paragraphs (3) and (4) a duty is imposed on the use of that power. Therefore, that power has to be used in certain ways. For example, paragraph (3) states that the power has to be used in such a way that a homelessness strategy is drawn up within 12 months, and paragraph (4) ensures that a strategy is produced at least once every five years.

Therefore, although the power is provided for in paragraph (1), that power is confined and duties are imposed on its use. Essentially, that makes it a duty rather than a power. Changing “may” to “shall” in paragraph (1) has no effect without making subsequent changes. It is quite a complex legal argument, and one that I am trying my best to put across.

**The Chairperson:**

So, in paragraphs (2), (3), (4) and (5) of proposed new article 6A, it is always “shall”. Therefore, even though it is a power in paragraph (1), it is duties that are outlined in the other paragraphs. Therefore, that gives greater force to the word “may” than would ordinarily be the case.

**Mr Martin:**

Yes, that is right.

**The Clerk of Bills:**

I see this as a drafting condition. The Department has been given an assurance that its objective is being achieved through the legislation as drafted. It is a complex and technical argument; however, I think that you have been given an assurance that you are getting what you asked for. The Committee can be comfortable with that.

**The Chairperson:**

Are you comfortable with that, Fra?

**Mr F McCann:**

As Stephen said, there are technical difficulties in the drafting of the clause, and I am not au fait with the drafting of Bills. However, I thought that in developing a Housing (Amendment) Bill, putting the word “shall” into clause 1 would override the other clauses that it may come up against.

I know that we are being guaranteed that what is outlined in the Bill will be done; however, the problem is that if something comes up three or four years down the line, the Housing Executive can put off doing those things for another year or two. The word “shall” gives a wee bit of a guarantee.

**The Clerk of Bills:**

Another possible compromise is that the Committee may choose to speak to the clause stand part, so it may raise this issue at Consideration Stage, when the Minister will have to give a full explanation. The Committee could thereby air the issue, and if it is dissatisfied with the explanation given, it will have a second chance to have that addressed at Further Consideration Stage. This is very much a technical issue. The Committee has been given an assurance by the legal team.

**Mr F McCann:**

It is so technical that many of the voluntary groups concerned believe that it is important that “may” be replaced with “shall”, to ensure that it is a duty.

It is OK for me to stand up and address the House on this issue; however, rather than speaking as an individual Member, I would prefer that we speak as a Committee. There is a big difference between the two.

**The Clerk of Bills:**

You could do either. The Chairperson and individual Committee members can remark that this matter was an issue for the Committee and could then seek clarification and assurances from the Minister. Anyone can speak at Consideration Stage.

**Mr Easton:**

I am not an expert on this, but it strikes me as strange that inserting this one wee word, “shall”,



will make such a big difference. If we keep “may”, the Minister will have wiggle room. I neither understand nor accept the argument that replacing “may” with “shall” will mean that the whole clause will have to be changed; I find that incredible and bizarre.

**Mr Armstrong:**

Leaving the wording as it is will give someone the opportunity for wiggle room.

**Ms Lo:**

I learnt English as a second language, and I know that it has strict grammar rules, because those were beaten into us. To me, “may” and “shall” are very different: “may” means that one may or may not do something, whereas “shall” means that one will or must do something.

**Ms Ní Chuilín:**

It is the same in Irish.

**Ms Lo:**

The strength of those two words is very different.

**The Clerk of Bills:**

That is absolutely true when the words are taken in simple terms; for example, if there is a paragraph or sentence on its own, without qualification. However, the draughtsman is saying that, in this instance, it is necessary to do more reading to get the full meaning. Therefore, the context is important. I am not apologising for the draughtsman; rather, I am saying that that seems to be where he is coming from.

The Committee’s options are that it can table an amendment for discussion at Consideration Stage, or it can speak to clause stand part and raise it as an issue at Consideration Stage and get a full explanation from the Minister in lay terms. The Minister will have to make it intelligible for the House to accept it. If the Committee is not satisfied at that stage, it can table an amendment at Further Consideration Stage.

**The Chairperson:**

I understand, or at least I think I do; I will not say that I definitely understand. I take Alex’s point that we, as ordinary members, find it strange that one word change will have such ramifications.

I understand the Clerk of Bills and Stephen's explanation that "may" cannot be taken in isolation because it is only one element of the Bill. However, there is some degree of concern among members and, as Fra mentioned, other stakeholders are equally concerned. Are members of a mind to table an amendment or to raise it as a matter of concern and seek assurance in the House?

**Mr Brady:**

As someone whose first language is, allegedly, English —

**The Chairperson:**

Do you still struggle?

**Mr Brady:**

I sometimes do. "May" and "shall" are two completely separate words. Anna Lo made that point.

Another consideration is the question of whom the assurances come from. Do they come from those who will implement the Bill, or merely from officials who have talked to people who have drafted it? Ultimately, as has been stated, organisations go by the letter of the law and interpret the legislation as it is written, not according to assurances given three or four years previously. We need to get it right now, so that no one will point out at a later stage that the legislation says "may" rather than "shall". That is important.

**Ms Ní Chuilín:**

We will be able to suggest an amendment to the Bill even after Consideration Stage.

**The Chairperson:**

Yes; if we are not happy with the assurances given, we can do that.

**Ms Ní Chuilín:**

Feelings on the issue run strong. If one of my youngsters asked me whether he could go out, I might say "I don't know", but if he kept asking me and I eventually said "aye, I shall let you out", that would be more definitive. That is plain English.

**The Chairperson:**

I did not know that you were so polite at home. *[Laughter]*.

**Ms Ní Chuilín:**

That is the difference for a lot of people. To give this a fair wind, we could hear what the Minister has to say at Consideration Stage and if we are still of the view that it is not clear, we can return to it and put our minds to it.

**The Chairperson:**

That is probably the wisest course. We will take up the suggestion of the Clerk of Bills and seek assurance at Consideration Stage. If we are unhappy, we still have the option of proposing an amendment at Further Consideration Stage. It seems a bit fussy over one word, but members and other stakeholders are concerned about it.

**Mr Burns:**

That is all part of Committee work. If people are unhappy with a word in the Bill or with a clause, this is the proper place to say so. If an issue is brought to our attention and someone suggests an amendment, this is where the decision is taken on whether to propose that amendment. Like others, I find it fascinating that one word, which seems very simple to us, carries such weight and that changing “may” to “shall” would necessitate the rewriting of that whole clause. How do we get that simple message across? From a layman’s point of view, there has been a tremendous amount of talk about very little.

**The Chairperson:**

We may need pictures or diagrams.

**Ms Ní Chuilín:**

Bring my youngsters in as witnesses and they can tell the difference between “you may go out” and “you shall not go out”.

**The Chairperson:**

Are members agreed that, to use the correct terminology, we will speak to the clause stand part and decide whether we accept the assurances given?

**Mr Brady:**

This reinforces the idea that one is not supposed to understand legislation.

**The Chairperson:**

Do members agree that we should take that approach?

*Members indicated assent.*

**The Chairperson:**

The Committee considered whether local 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, which is found in proposed new article 6A(5), on pages 1-2 of the Bill. The Department indicated that it did not believe that councils had a significant role in respect of homelessness.

The Committee Clerk had undertaken to provide further briefing material on the role of councils in respect of homelessness. In members' packs there is a paper by the Assembly Research and Library Services that outlines the duties of local authorities in other jurisdictions with regard to homelessness and provides information on the current role of councils in Northern Ireland with regard to homelessness. The paper indicates that no explicit homelessness functions are to transfer to councils; however, the councils will have related responsibilities in respect of Houses in Multiple Occupation (HMOs) and housing unfitness. David has raised that point with the Committee previously.

**Mr Martin:**

We have discussed this with the Minister, who is content to table a departmental amendment to include councils, primarily because we cannot anticipate where the power of well-being in community planning will lead. Therefore, it seems wholly appropriate to include councils.

**The Chairperson:**

Are members happy with that, subject to confirmation of the final wording later this month?

*Members indicated assent.*

**The Chairperson:**

We move to the proposed amendment whereby the Committee agreed that the Prison Service should be added to the list of organisations at article 6A(5). The bodies that are cited in that paragraph are required to take the homelessness strategy into account in the exercise of their functions. The Department made a response indicating that it would introduce an amendment in line with the Committee's proposal. The Department now advises that that amendment is more problematic than was first believed because — wait for it — the Prison Service is not a legal entity. *[Laughter.]* That is an admission of irony.

**Mr Martin:**

It is somewhat ironic. However, as is the case with the Social Security Agency, the Prison Service does not have any standing in law. It is not named in statute; it is an agency within the Northern Ireland Office and, therefore, it cannot be referred to in law. The Bill seems to deal with it in a roundabout way. Essentially, however, it places a duty on the Prison Service to take the strategy into account. Article 6A(5)(f) states that the Secretary of State has a duty:

“in relation to any function exercisable in connection with prisons”.

That is a roundabout way of placing the duty on the Prison Service. Unfortunately, because the Prison Service is not named in statute, there is no alternative, and that is the best that we can deliver.

**Ms Ní Chuilín:**

I was going to say something ironic, but I will resist the temptation. The Minister of Health, Social Services and Public Safety is responsible for the healthcare of prisoners, and that duty was transferred about a year and a half or two years ago. It would be worth cross-checking that. The Department of Health, Social Services and Public Safety has responsibility for the health and social well-being of prisoners. If there is no statutory obligation —

**Mr Martin:**

Perhaps I could mention the other amendment that we propose to bring to the Committee next week. We believe that the Department of Health, Social Services and Public Safety should be mentioned as a further body that needs to take the homelessness strategy into account.

**Ms Ní Chuilín:**

That might cover it.

**The Chairperson:**

If an incident happened in prison and an individual wanted to sue, the case would be listed as that individual v the Secretary of State. That is an extension of what we are saying.

**Mr Martin:**

Yes.

**The Chairperson:**

Those individuals can sue the Secretary of State.

**Mr Martin:**

Yes.

**The Chairperson:**

Are members content with that explanation? It seems reasonable in the circumstances.

*Members indicated assent.*

**The Chairperson:**

We have agreed to abandon the amendment in respect of the Prison Service, but we will await the final wording regarding the Department of Health, Social Services and Public Safety.

**Ms Ní Chuilín:**

We will wait for the final wording before abandoning it.

**The Chairperson:**

OK. Do members agree to await the final wording on the amendment with regard to the Department of Health, Social Services and Public Safety?

*Members indicated assent.*

*Clause 1 referred for further consideration.*

***Clause 2 (Duty of Executive to provide advice)***

**The Chairperson:**

Members considered the evidence from the Housing Rights Service, which suggested that clause 2 be amended so that there would be an explicit duty to provide preventative homelessness advice. The Housing Rights Service used slightly different wording; it was not so explicit with regard to preventative advice. Does the Committee accept the evidence presented by the Housing Rights Service, and does it wish to include such an amendment?

*Members indicated assent.*

**The Chairperson:**

I ask the Department to respond on that.

**Mr Martin:**

The Department is prepared to draft an amendment that would give the Department power to produce guidance in respect of that duty to which the Housing Executive shall have regard, and we will bring that to the Committee for consideration next week.

**The Chairperson:**

Will that amendment be to clause 2 or clause 4?

**Mr Martin:**

It will be an amendment to clause 2.

**The Chairperson:**

Are members happy to await the final wording of that amendment next week?

*Members indicated assent.*

*Clause 2 referred for further consideration.*

***Clause 5 (Reviews of decisions in relation to homelessness)***

**The Chairperson:**

The detail on clause 5 is contained in the Committee's scrutiny table. Members were previously minded to propose an amendment to extend the period during which a review of decisions could be requested from 21 days to 28 days. The Department has advised that the wording of the proposed amendment will be available to the Committee on 12 November 2009. Are Members agreed to consider the wording of that amendment at that stage?

*Members indicated assent.*

*Clause 5 referred for further consideration.*

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

**The Chairperson:**

The detail on clause 10 is contained in the Committee's scrutiny table. Members did not support any amendments to clause 10. However, it requested further information on issues that had been raised. The Department's response of 2 November 2009, which is included in members' briefing packs, refers to that issue. Do the witnesses wish to add anything to that response?

**Mr Stephen Baird (Department for Social Development):**

The Department has spoken to the Housing Executive about the issue of antisocial behaviour, and it has been told that its policy is not to transfer tenants if an investigation into antisocial behaviour is ongoing.

The Housing Executive recognises that it is not good housing management practice to transfer problems from one area to another, and the Department shares that view. However, to reinforce that, the Department wants to issue explicit guidance to the Housing Executive to the effect that those with a history of antisocial behaviour are not to be moved. Therefore, the Department wants to make an amendment to the housing selection scheme to give the Housing Executive the power to refuse to transfer someone on the basis of antisocial behaviour. It is a matter of guidance in the first instance, followed by an amendment to the selection scheme.

**The Chairperson:**

Will that require an amendment to the Housing (Amendment) Bill?



**Mr Baird:**

No.

**The Chairperson:**

OK. That sounds quite positive. Obviously, the Committee will have sight of that detail at a later stage. Are members content with that?

*Members indicated assent.*

*Clause 10 referred for further consideration.*

***Clause 12 (Increase in Housing Council representation on Executive)***

**The Chairperson:**

The detail on clause 12 is contained in the Committee's scrutiny table. The Committee has previously considered the issue of enhanced democratisation of the Housing Executive. It also considered proposing an amendment to clause 12 to increase the Housing Council's representation on the board of the Housing Executive, or to allow a tenancy advocate to be appointed. The Committee received evidence from the Housing Council that an increase to four or more members was a matter for the Minister's discretion. I wrote to the Minister about those issues and the response is included in members' packs.

Do the witnesses wish to add anything to the Minister's response?

**Mr Martin:**

No. I have nothing to add, but I am happy to answer any questions that Committee members may have.

**The Chairperson:**

Does anyone have any questions on that issue? The Committee was previously minded to consider proposing an amendment to clause 12.

Perhaps I should give members a few moments to read the Minister's response. However, to

summarise, the Minister essentially declined the opportunity to allow an increase in the membership.

**Mr F McCann:**

Is the Minister declining to increase the representation from the Housing Council?

**The Chairperson:**

Yes.

**Mr F McCann:**

Other suggestions were made by the Committee.

**The Chairperson:**

Yes. With respect to tenants becoming members, the Minister's response was that tenants can apply for membership of the board of the Housing Executive, but that there is no desire to set a specific place aside for them.

**Mr F McCann:**

What is the mechanism for that?

**The Chairperson:**

I do not wish to speak for the Minister. However, I believe that she is saying that tenants can apply to become members of the board, and, if successful, they would be appointed on the basis of merit through the application process. Is that correct, Stephen?

**Mr Martin:**

Yes; that is correct. The Department also provides substantial funding to Supporting Communities Northern Ireland, which works with tenants. It is wholly appropriate for that organisation to work with tenants to build their capacity so that they are in a position to apply for membership of the board of the Housing Executive. There is absolutely nothing wrong with that.

**Mr Craig:**

Has the Minister given any reasons for not wanting to increase the democratic representation of the board of the Housing Executive?

**Mr Martin:**

I have spoken to the Minister about that issue. When she took office, one of the recommendations of the review of public administration was to abolish the Housing Council. She reversed that decision, strengthened the council's remit and brought in Professor Colin Knox to support it. In addition, every two months, she appears before the council. We, as departmental officials, along with the Housing Executive, appear before it every month. Therefore, she is doing a lot to strengthen links and accountability in respect of local government.

The Minister also favours the Commissioner for Public Appointments code of practice for ministerial appointments to public bodies, which is about basing selections on merit. Although a small number of public bodies have chosen to go against that principle, more have aligned themselves to it, and that is where she wants to be. Once one takes the chairperson and the vice-chairperson out of the Housing Executive's board, 50% of the remaining eight board members are also members of the Housing Council, which, along with the other measures that she has introduced with respect to the council, she feels is sufficient to ensure democratic accountability.

**The Chairperson:**

The Housing Council amendment that we considered initially was for its representation on the board to increase to four or more members. It did not suggest a definitive increase to five. Rather, it was an attempt to give the Minister some discretion, and we should bear that in mind. Jonathan, do you wish to respond?

**Mr Craig:**

No. I am just interested to hear why she would not do it.

**Ms Ní Chuilín:**

I am not minded to increase the Housing Council's level of representation at all.

**The Chairperson:**

Even to allow flexibility?

**Ms Ní Chuilín:**

No.

**Ms Lo:**

How many people are on the Housing Executive board?

**Mr Martin:**

There are 10 board members: the chairperson, the vice-chairperson, and eight members, four of whom are from the Housing Council.

**The Chairperson:**

In order to move forward, are members happy to accept the Minister's response and not to seek an amendment, or do we want to take a bit more time to consider the matter and come back to it? I am seeking the Committee's guidance.

**Ms Lo:**

I am happy with the Minister's response.

**Ms Ní Chuilín:**

It will not do any harm if we take a bit more time to come back to it. That would give us a chance to speak to our parties.

**The Chairperson:**

We can defer our final consideration of the matter until next week.

*Clause 12 referred for further consideration.*

***Clause 14 (Definition of "house in multiple occupation")***

**The Chairperson:**

Clause 14 refers to houses in multiple occupation. Members are reminded of the Committee's support for the amendment to extend the HMO definition of "family" to include uncles, aunts, nephews and nieces, subject to a review of the final wording. The Department has advised that the wording of that amendment will be available at the 12 November meeting. Do members agree that we consider the final wording at next week's meeting?

*Members indicated assent.*

*Clause 14 referred for further consideration.*

**The Chairperson:**

We turn to additional amendments that do not relate to specific clauses. The Committee considered whether clauses should be added to the Bill that would require the Department to devise a code of conduct for the directors and employees of housing associations in respect of conflicts of interest. The Committee agreed to defer its consideration of that issue until it had received departmental clarification in respect of the current arrangements relating to conflicts of interest. The Department's correspondence to the Northern Ireland Federation of Housing Associations in respect of this matter is included in members' briefing papers.

**Mr Martin:**

The Department made it clear to the federation that the existing power in article 31 of the Housing (Northern Ireland) Order 1992 is flexible and that some associations appear to have erroneously interpreted it. We are strongly of the view that no change is needed to the law in respect of that matter.

**The Chairperson:**

The Department's letter states:

"For clarification purposes it should be realised that a perceived conflict of interest can only arise if it involves someone who has a key role in the decision making process (ie involved in negotiations, approvals, monitoring etc). In effect, someone who would be in a position to actually influence or direct a specific course of action to suit their own or others purposes."

Therefore, is the example that was previously sketched out for us, involving the association between a cleaner and a builder or a developer, incorrect and inaccurate?

**Mr Martin:**

It is absolutely incorrect. Even in the case of a decision-maker, if a conflict of interest were flagged up and that person were to step back from the selection process, that applicant would not be ruled out.

**Mr F McCann:**

I know that when a person takes employment with a council and some other organisations in which a relative is already employed, the person must register that fact. Is it not enough for

people in that situation to declare an interest when they have to deal with it? It seems a bit rough to penalise people whose brother, sister or other relative is already employed by an organisation by barring them from a job for which they wish to apply because that relative is seen to have an interest.

**The Chairperson:**

It is not a difficulty as long as the potential conflict is identified and signalled and the relevant individual is no longer part of the process. The difficulty comes if the person does not do that and —

**Mr F McCann:**

— takes part in the process.

**The Chairperson:**

That could potentially prejudice the whole process.

**Ms Ní Chuilín:**

The code of conduct would become enforceable if someone did not declare a conflict of interest.

**Mr Martin:**

That is where we, as the regulator, would step in through our inspection process. We would take fairly robust action in such a situation. As the Chairperson said, providing that the conflict of interest were acknowledged and the relevant person were to step back from and have no involvement in the decision-making process, there would be no problem and no conflict with the existing law.

**Ms Ní Chuilín:**

If a person were not to do that, you could bring in an enforcement process.

**Mr Martin:**

Yes.

**Ms Lo:**

That is standard procedure in any organisation, whether it is a written or unwritten policy. That is

a normal code of practice.

**The Chairperson:**

Are members content not to seek an amendment on that matter?

*Members indicated assent.*

**The Chairperson:**

A possible amendment on registered rents was suggested. The Committee was minded to support an amendment on the procedure for the review of registered rents. Some final wording is to come back from the Department, which was content with that amendment.

**Mr Martin:**

We have spoken to the draftsman. That amendment will be drafted, and we will bring it to next week's Committee meeting.

**The Chairperson:**

Are members content to consider that amendment at next week's meeting?

*Members indicated assent.*

**The Chairperson:**

The table refers to the reform of the common housing selection scheme. The Committee agreed to defer consideration of that matter until it had received an update from the Department. Members have a copy of the Department's response to that possible amendment. Can the witnesses elaborate on that?

**Mr Martin:**

There were two issues. First, some members said that the scheme should be amended, and we said that that would not be done as part of this Bill, but the Minister has asked departmental officials to work with the Housing Executive on modernisation. Some of the issues that were raised last week will form part of that process.

The second issue related to a review period. Our understanding was that some members felt

that there should be a specific period in law in which the common housing selection scheme would be reviewed. It is a living document that has been updated seven times since it was introduced in 2000. As my colleague Stephen Baird said, we will ask for a further update to provide for sanctions on antisocial behaviour. We ask frequently for updates, so we do not necessarily see any merit in such an amendment. It is a living document that is amended frequently.

**Mr F McCann:**

I am tough on that issue because the scheme may have been reviewed seven times, but I have been to at least seven meetings with former Ministers, departmental officials and officials from the Housing Executive at which I have raised specific issues. I said that, if the selection scheme were tweaked in certain places, it would allow for a system that people could flow out of, rather than being stuck in hostels for four or five years. That would take other people into consideration in areas of high demand.

During the years when I raised that issue, many people agreed that there was a difficulty and problem with the system and that it needed to be dealt with, but nothing has ever been done. I find it difficult to accept that anything will be done in the next review. There are serious problems in many constituencies of people being in hostels and remaining there for lengthy periods. Adjusting the system would allow them to flow out.

**The Chairperson:**

The issue may be whether legislation is the right way in which to amend the arrangements. Your concerns are valid and the need to address them will be made clear to the Department. Paragraph 9 of the letter states:

“The Department is currently looking at whether the Scheme requires further modernisation. This work is at an early stage and will include consideration of a range of issues, including the account taken of waiting time and the allocation of sharing points.”

The Committee can ensure that the points raised by Fra McCann are included in that review.

**Mr F McCann:**

I have no difficulty in accepting that approach; however, I must emphasise that the Department’s response was that the issue had been reviewed seven times, yet the issue has still not been addressed. I would like some guarantees. I accept that that may not be done through legislation, but if we have guarantees from the Department that the matter will be dealt with, the Committee



can return to it.

**The Chairperson:**

I expect that the Committee will be asked for its views. In fact, it could insist on having some input. All members have seen in their own areas that the common selection scheme sometimes does not work for individuals in certain circumstances. It must be reviewed, and if the Committee seeks an assurance today that it will be involved in that process and that the issues raised by Fra McCann are addressed, are members content with the rest of the suggestion?

**Mr Martin:**

The Department indicated to Mr McCann last week that it was happy to take on board those points and to update the Committee when that work is further down the track.

**The Chairperson:**

Are members content with the following suggestion?

“That clauses be added relating to the reform of the Common Housing Selection Scheme specifically:

- That the Common Housing Selection Scheme be amended to award 20 points to an applicant for every 6 months they stay in hostel accommodation;
- That the Common Housing Selection Scheme be amended to allocate an additional 10 points to applicants with a mental or physical illness;
- That NIHE undertake a review of the Common Housing Selection Scheme every 3 years to ensure equality of opportunity for all applicants”.

*Members indicated assent.*

**The Chairperson:**

I remind members to ensure that their mobile phones are switched off, because we are experiencing interference with the sound recording system. I must check my own; I think that I may have been somewhat guilty in this instance.

We move to the suggestion in the table that states:

“That clauses be added relating to the mandatory registration of private landlords”.

The Committee had agreed to defer consideration of this proposed amendment. The Department’s response of 27 October in members’ papers refers to the legislative timetable relating to the private rented sector. Does Mr Martin wish to add anything on behalf of the Department?

**Mr Martin:**

No.

**Ms Ní Chuilín:**

The Committee must start discussing details of what the timetable might look like if that measure is to be included in the Bill.

**The Chairperson:**

In what way would the member be seeking to amend the Bill in that respect?

**Ms Ní Chuilín:**

The Committee's suggestion is:

“That clauses be added relating to the mandatory registration of private landlords”.

Therefore, we must bring forward a clause that might be added to the Bill.

**The Chairperson:**

Is the suggestion that the Clerk of Bills draft an amendment along those lines, which can be brought back to members for consideration?

**Ms Ní Chuilín:**

Yes, please.

**Mr F McCann:**

We will be talking to the Clerk of Bills after the meeting to get the wording right.

**Ms Ní Chuilín:**

Is that fair enough? In that event, all members will be able to consider the amendment.

**The Chairperson:**

The Committee can see it and consider it at that stage. I am happy with that.

**Mr Martin:**

It took four years in Scotland to develop a sensible registration scheme. The Department believes

that trying to legislate on registration in haste will necessitate a lot of unpicking and redoing later. We believe that a more appropriate vehicle for dealing with registration will be the next Bill, which will come before the Committee in 2010, and the Department is currently developing proposals on the regulation of the private rented sector. Those proposals will come to the Committee for scrutiny during the passage of the next Bill. It would be very difficult to draft something now that is workable.

**The Chairperson:**

Will the second Bill deal with a broad range of issues on the private rented sector, including registration?

**Mr Martin:**

Yes. I do not think that the Minister has taken a final view on the exact form of regulation, but if that does not go far enough in the Committee's opinion, the Committee may wish to table amendments at that point.

**The Chairperson:**

If an amendment to require registration is tabled, that would impact on a broader range of issues. The witnesses are saying that it would be better to do that at a time when you are looking at a broader range of measures.

**Mr Martin:**

Yes — when members can see the broader range of proposals from the Department on future regulation of the private rented sector.

**Mr F McCann:**

I appreciate that, but the Minister has made it quite clear that she is not in favour of the mandatory registration of landlords, both on the Floor of the Assembly and before the Committee. We have gone through a fairly lengthy process of consultation, and my understanding is that the vast majority of the voluntary housing sector has called for the mandatory registration of landlords. The Department will advise the Minister on the way forward; will it recommend the mandatory registration of landlords to the Minister? That will colour the Committee's decision.

**Mr Martin:**

That is no longer my area of direct policy responsibility. My understanding is that, on the basis of the feedback from the consultation process, the Minister has agreed to re-examine the issue of registration. I am not sure whether she has made a decision on the proposals, but there are interlinked aspects in respect of the registration of the private rented sector. To look at one in isolation, without looking at the total package, would be a little bit —

**Mr F McCann:**

The Department and the Housing Executive, through the Minister, are examining how they can widen the remit of the private rented sector to take up the slack for the lack of newbuild public housing. Roughly £88 million of taxpayers' money is being paid to the private rented sector through housing benefit, and that will seriously increase over the coming months. I think that it is terrible that we are not actively discussing how to operate a proper registration system for a non-registered sector that gets so much government money. If community structures or organisations were getting that money, the Department would be all over them, demanding accountability. There is no accountability, and that is why the Committee is being fairly hard on this issue.

**Mr Martin:**

The consultation on the private rented sector strategy ended only on 7 August: three months ago. When such issues were considered in England, Wales and Scotland, it took a number of years before sensible proposals could be developed for legislation. We are talking about doing this within a much tighter time frame. Our view is that to try to do something earlier than that is likely to lead to an unworkable system. I caution members about attempting to legislate for that in this Bill.

**Mr F McCann:**

I first proposed the registration of landlords in October 2007, and I was supported by the Assembly. At that stage, we were told that a Bill was being introduced and that a package would emerge. The date for that was supposed to have been last March. It has taken years to get even to this stage. We need to learn from the mistakes of other jurisdictions, and we can find a mechanism whereby we can implement a registration process.

**The Chairperson:**

If Fra and Carál want to consult with the Committee Clerk and the Clerk of Bills about a possible

amendment that could be brought before the Committee, it could be considered at next week's meeting. Equally, if it were possible for the Department to come back with a more clear position from the Minister, that might be helpful too. Are members content with that approach?

*Members indicated assent.*

**The Chairperson:**

Members had previously agreed not to take forward amendments related to homelessness and prisoners. I presume that members are happy to note the additional correspondence on that issue from NIACRO.

I thank Mr Martin and Mr Baird for their attendance and their responses. We will invite you back next week for another instalment — same time, same place. We must be nearly there by now. There is some light at the end of the tunnel.

I thank members for their patience during the formal clause-by-clause scrutiny of the Bill. The final wording of amendments and the report of the Examiner of Statutory Rules will be considered next week. All being well, a report will be available for our consideration the following week.