



Northern Ireland
Assembly

**COMMITTEE FOR SOCIAL
DEVELOPMENT**

**OFFICIAL REPORT
(Hansard)**

Housing (Amendment) Bill

12 November 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)

Mrs Mary Bradley

Mr Alex Easton

Mr Mickey Brady

Mr Jonathan Craig

Mr David Hilditch

Ms Anna Lo

Mr Fra McCann

Witnesses:

Stephen Baird) Department for Social Development

Stephen Martin)

The Chairperson (Mr Hamilton):

The Committee will now resume its clause-by-clause scrutiny of the Housing (Amendment) Bill. I remind members that the Committee deferred consideration of a small number of amendments until today's meeting. It is essential that the Committee reaches agreement on all amendments at this meeting in order to comply with reporting requirements.

The Department has submitted the final wording for all the amendments that it currently intends to support, and those are shown in the Committee's revised scrutiny table. It is intended that all amendments will be included in the Bill report, which will be available for Committee

approval at our meeting of 19 November.

Delegated powers relating to the Housing (Amendment) Bill have been reviewed by the Examiner of Statutory Rules. The key issues arising from his report are set out in the Committee Clerk's cover note under the heading of delegated powers. Members' information packs include: the revised scrutiny table, which shows the departmental wording of amendments and Consideration Stage actions; the report by the Examiner of Statutory Rules on delegated powers; and the Minister's response on the Housing Executive board.

Departmental officials Stephen Martin and Stephen Baird, who are gluttons for punishment, are here once again to assist the Committee in its clause-by-clause scrutiny. I remind everyone, including the officials, to ensure that all mobile phones are switched off so that they do not interfere with the recording of this session.

To ensure a smooth clause-by-clause scrutiny, members should refer to their revised scrutiny table and a copy of the Bill. If they keep those close at hand, they will not go wrong. After I have drawn attention to each of the areas that are unresolved, I will ask the departmental officials and members for their comments.

Clause 1 (Homelessness Strategy)

Question proposed:

That the Committee recommend to the Assembly that the clause be amended as follows: In page 2, line 4, at end insert "() district councils;". — [*The Minister for Social Development (Ms Ritchie).*]

The Chairperson:

As Members know, clause 1 is about 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. At last week's meeting, the Department indicated that it will agree to a Government amendment to include district councils in the list of organisations that are required to take the homelessness strategy into account in the exercise of their functions. Does the Clerk of Bills wish to add anything?

The Clerk of Bills:

The only point that I wish to make is that those amendments would be selectable anyway,

because they are Government amendments. They are not major amendments and pose no difficulty from an Executive point of view.

The Chairperson:

If no members wish to comment on the amendment in respect of councils, I will put the Question.

Question put and agreed to.

Question proposed:

That the Committee recommend to the Assembly that the clause be amended as follows: In page 2, line 9, at end insert “() the Department of Health Social Services and Public Safety.”. — [The Minister for Social Development (Ms Ritchie).]

The Chairperson:

The Department advised that the proposed amendment to add the Prison Service to the list of organisations at proposed new article 6A(5) was problematic. It instead proposed to introduce an amendment to add the Department of Health, Social Services and Public Safety to the list of organisations that must take the homelessness strategy into account at proposed new article 6A(5). We understand that that Department has responsibility for the health of prisoners. Does the Clerk of Bills wish to add anything?

The Clerk of Bills:

No; my initial comment applies to all the amendments.

The Chairperson:

If members do not wish to comment on the amendment, I will put the Question.

Question put and agreed to.

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

Clause 1 agreed to.

Clause 2 (Duty of Executive to provide advice)

Question proposed:

That the Committee recommend to the Assembly that the clause be amended as follows: in page 4, line 4, at end insert “(4) In relation to the form and content of advice under paragraph (1) the Executive shall have regard to any guidance issued by the Department.” — [The Minister for Social Development (Ms Ritchie).]

The Chairperson:

Clause 2 refers to the Housing Executive's duty to provide homelessness advice. Last week, the Committee heard further evidence from the Housing Rights Service regarding a proposed amendment to be inserted at the end of clause 2. The Committee agreed to accept that amendment. The Department has also agreed to support the proposed amendment and has submitted suggested wording for consideration by the Committee. The Department has indicated that the amendment that it has submitted will allow it to prescribe the homelessness advice provided by the Housing Executive. Do Members wish to comment on the amendment?

Mr F McCann:

Last week, we had an argument about the different meanings of "shall", "will", "must" and "should". Where do we stand on that in respect of the amendment?

The Chairperson:

We like "shall"; that our the rule of thumb.

The amendment will put a duty on the Housing Executive to have regard for any guidance issued by the Department.

If members do not have any further comments, I will put the Question.

Question put and agreed to.

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

Clause 2 agreed to.

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

The Chairperson:

Given the amendment to clause 2 based on the proposal from the Housing Rights Service, are members now content with clause 4 as drafted?

Members indicated assent.

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

Clause 4 agreed to.

Clause 5 (Reviews of decisions in relation to homelessness)

Question proposed:

That the Committee recommend to the Assembly that the clause be amended as follows: in page 5, line 14, leave out “21” and insert “28”. — [*The Minister for Social Development (Ms Ritchie).*]

Question proposed:

That the Committee recommend to the Assembly that the clause be amended as follows: in page 6, line 19, leave out “21” and insert “28”. — [*The Minister for Social Development (Ms Ritchie).*]

The Chairperson:

Members are minded to support an amendment that would extend the period during which a review of homelessness decisions could be requested from 21 to 28 days. The Department undertook to support that amendment and submitted proposed wording for the Committee’s consideration.

Have members any comments on the wording of the amendment? It is straightforward. Are members content to agree that amendment?

Members indicated assent.

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

Clause 5 agreed to.

Clause 12 (Increase in Housing Council representation on Executive)

The Chairperson:

This clause refers to representation on the Housing Council on the board of the Northern Ireland Housing Executive. Members considered the issue of enhanced democratisation of the Housing Executive board and were minded to explore an amendment that might increase Housing Council representation or add a tenancy advocate to the Housing Executive board. I wrote to the Minister on those issues and at last week’s meeting the Committee agreed to reconsider the Minister’s response of 31 October, to determine whether it meets the Committee’s concerns in relation to the need to improve the democratic accountability of the Housing Executive.

The Minister advised that she was not minded to increase Housing Council representation or

add a tenancy advocate to the board. She suggested that the usual public appointment procedures would be sufficient to ensure appropriate representation on the board. The Department has also submitted to the Committee a copy of an information pack for prospective board members.

Do members want to state any views about pursuing an amendment? Last week several members indicated that they did not want to pursue an amendment at this stage and wanted to hold back for a while. Is there any change to that position? Have those who said previously that they did not want to pursue an amendment changed their position?

Mr F McCann:

We were not concerned about the political representation but about other representation. The argument we were given was that that was already in place.

The Chairperson:

My view and that of my party is that it is desirable to increase democratic representation on all public bodies. However, given the position outlined by others, we find ourselves in a minority. Shall I take it that the Committee is content not to pursue amendments in respect of increasing Housing Council representation or the appointment to the board of a tenancy advocate or representative?

Mr F McCann:

There are a number of people on the board of the Housing Executive. I thought that last week we were given information to the effect that at least one of those people represents the tenant's point of view; is that the case?

Mr Stephen Martin (Department for Social Development):

Not quite; there is no tenant on the board. Given the Committee's view on tenant representation, the Department will look into what it can do further to encourage tenants to apply and support them in making an application for appointment to the board. We will look at our processes to see whether we can do that. Given the existence of the public appointments process, that is as far as we can go.

The Chairperson:

The Committee is supportive of the idea of tenant representation but it is appreciative of the

problems relating to that, such as the need to increase the capabilities of people in that sector to apply for membership of the board. The Department has given an assurance that applications from that sector will be encouraged in a practical way.

Mr Martin:

Yes, absolutely.

Mr F McCann:

I take that, when the Housing Executive advertises for board members, people from that sector are eligible to apply?

Mr Martin:

Absolutely, and within the bounds of the Commissioner's guidance, we can target particular individuals or types of people to encourage them to apply. As with any job, that can be done legitimately. We will use that latitude to do all that we can to encourage more applications from tenants and others.

Mr F McCann:

I am conscious that pushing for more tenants to apply will lead to the expansion of the size of the Housing Executive board. If it does expand, the Department will have to remove members.

The Chairperson:

Given that the Committee is not minded to support an increase in the Housing Council's representation, I will put the Question.

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

Clause 12 agreed to.

Clause 14 (Definition of 'house in multiple occupation')

Question proposed :

That the Committee recommend to the Assembly that the Clause be amended as follows: In page 14, line 27, leave out from beginning to 'Article' in line 29 and insert

"at the end add 'and for that purpose'".— [The Minister for Social Development (Ms Ritchie).]

The Chairperson:

Clause 14 refers to houses in multiple occupation (HMOs). If members consider the relevant page in their papers, they will see that they were minded to support an amendment that limits the extension of the definition of family to include no more than uncles, aunts, nephews and nieces. The Department's proposed amendment is included in the same section of our papers.

Ms Lo:

How does that leave clause 14?

The Chairperson:

I will let the experts explain.

Mr Martin:

If the amendment were to be accepted, clause 14 would read:

"In Article 75(1) of the Order of 1992, (meaning of "multiple occupation") for the purposes of this article, family includes uncle and nephew and niece."

That is our reading of the complete clause as it would be amended. We are saying that the Department is not minded to widen the definition of the number of families, but, for the purposes of HMOs, family will include aunt, uncle, nephew and niece. That is all that the amendment does.

Mr F McCann:

Does that comply with housing rights?

The Chairperson:

Most of the evidence to the Committee welcomed the extension of the definition of a family but not an increase in numbers, and that view was shared by the Committee.

Question put and agreed to.

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

Clause 14 agreed to.

New Clause

Question proposed:

That the Committee recommend to the Assembly the following new clause: After clause 16 insert

“Amendment of Article 55 of the Order of 2006

16A. In Article 55 of the Order of 2006 (review of registered rents) at the end add —

‘(8) An order under paragraph (5) shall be subject to negative resolution.’” – [The Minister for Social Development (Ms Ritchie).]

The Chairperson:

The Committee was minded to support an amendment to the Assembly procedure on the review of registered rents, subject to a review of the final wording. The wording of the proposed new clause is in members’ papers. The Department has said that the amendment would add that the Assembly should deal with registered rents via the negative resolution procedure. The Examiner of Statutory Rules has confirmed that the Department’s amendment is competent. Do members have any comment? Are members content with the wording of the amendment and for the new clause to be added?

Question put and agreed to.

The Chairperson:

We now turn to the mandatory registration of private landlords, which is an additional issue. The Committee agreed that the Clerk should submit for consideration a draft amendment on the mandatory registration of private landlords.

A review of the issue suggested that the drafting of such an amendment would be a significant task. The issues involved include the timescale for implementation of registration; designation of landlords to be registered, for example, all private landlords, HMO landlords or landlords in receipt of housing benefit only; the applicability and costs of implementation; the sanctions, if any, to be applied in a case of non-compliance; the enforcement responsibility; and, primarily, the absence of local consultation on the options for registration.

What are members’ views? We do not have a draft in front of us, but the Committee has a range of options. First, we could devise and adopt an amendment. Secondly, we could await the second housing Bill that we discussed last week, on which the Department will brief us in January. Thirdly, if members feel strongly about mandatory registration, the Committee has the option to introduce its own Bill. Do members have strong thoughts one way or the other?

Mr F McCann:

I know that Carál Ní Chuilín raised that issue on several occasions. Unfortunately, she cannot be here this morning. I have spoken to the Committee Clerk, and I have looked through the equivalent legislation in other jurisdictions. The task would be time-consuming for the Committee Clerk or anyone who deal with such matters. We feel strongly about the issue. The Scottish legislation, which was specifically brought in to deal with antisocial activity, was expanded. With a couple of exceptions, we could probably lift that legislation to suit our purposes. Given the consultation that has taken place and the fact that the vast majority of people have indicated that they want the mandatory registration of landlords, I am not convinced that the Minister and the Department will act on that in the Bill. If possible, the Committee should discuss drawing up legislation that would allow us to include mandatory registration.

The Chairperson:

Let us narrow our options. We are happy not to pursue an amendment at this stage. Without jumping forward, we have an idea of the Minister's opinion. Without prejudging that, perhaps it is best to wait for a briefing in January on what would be included in a second Bill. We could make our minds up at that stage. There is always the option of amending the second Bill rather than pursuing an entirely separate piece of legislation.

Mr F McCann:

In the meantime, the Committee Clerk or the Assembly researchers could examine what such a Bill that would draw on legislation in other jurisdictions would look like.

The Clerk of Bills:

Fra is absolutely right. The Scots have done a fair amount of work; their legislation is a major piece of work. The quickest way to take this matter forward is to wait for the second Bill. To attempt to amend the Housing (Amendment) Bill will require the injection of a whole new policy.

Mr F McCann:

I will take that on board.

Ms Lo:

I understand the rationale, but we need to be more proactive in pursuing the matter. We need to put down a marker that we want mandatory registration.

The Chairperson:

We can raise the issue in our report, even though we are not making a recommendation. Members might raise the issue in the Chamber as well. Perhaps we can ask the Committee Clerk to write a paper in advance of the January briefing that will provide us with better information to think about, and which could draw on the legislation in other jurisdictions.

Ms Lo:

Did the Department say that the second Bill would be introduced in 2011?

Mr Martin:

The Bill is currently with the Executive, awaiting their approval for it to go out to consultation. The Bill will be introduced sometime before summer recess and will come to the Committee either before summer recess or in September, with a view to it becoming law before the end of this Assembly's mandate, which we understand to be March 2011. That is our current working timetable.

Ms Lo:

That is for the second Bill?

Mr Martin:

Yes.

Ms Lo:

We do not have a lot of time, then, to have consultation on mandatory registration. It is a tight timetable, even if it is scheduled to become law in 2011.

Mr Martin:

It is tight, but, at this point in time, it is still achievable, and that is what we aim to do.

Ms Lo:

The Committee must be proactive in saying that we want mandatory registration.

Mr F McCann:

We were going to pursue the inclusion of mandatory registration in the Housing (Amendment) Bill, but given the advice of the Clerk of Bills and others, we acknowledge that it is a big piece of work that would delay the Bill. However, the Committee can examine the option of introducing its own Bill if we are not happy with developments.

The Chairperson:

The Committee has agreed to wait until the briefing on the second Bill. Between now and then, we can better form our thoughts on the matter.

Mr Brady:

Regardless of the methodology used, the mandatory registration of landlords is important. It is particularly important with regard to the private-rented sector, which receives in the region of £80 million of public funding and provides approximately 70% of “social housing”. That must be addressed. Although the methodology means that it is not practical to table amendments, we should not be distracted from our aim of introducing mandatory registration.

The Chairperson:

Everyone agrees that that is an important issue and that the Committee should look at it. Between now and our briefing on the second Bill, we can better inform ourselves so that we are in a much better position to address the issue. Are Members happy to take that approach?

Members indicated assent.

The Chairperson:

I refer members to the report on delegated powers by the Examiner of Statutory Rules, in which he raises an issue with article 148 of the Housing (Northern Ireland) Order 2003 and its impact on the making of regulations. It mentions the provision enabling the Department to:

“make regulations prescribing the form of landlord’s notice where introductory tenancy appears to have been abandoned.”

Will one of the witnesses from the Department comment on that?

Mr Martin:

We realise that there is a mistake in our delegated powers memorandum with regard to prescribing the form of a notice. Clause 9 very clearly sets out the policy context. Within the very narrow confines that would be set by the Assembly when it makes the legislation, the

Department would have the power to prescribe what is essentially a legal notice and to tell the Housing Executive and the housing associations what should be in it.

There are a number of similar powers throughout all types of legislation that are often not subject to any Assembly control, because the Assembly has clearly set the policy and there is little room for latitude. That was our intention in this case, and in the delegated powers memorandum we erroneously indicated that we would seek negative resolution.

As clause 9 is going into the Housing Order (Northern Ireland) 2003, article 148 of the Order pertains. Therefore, regulations that prescribe only the content of a particular form are not subject to any form of Assembly control. That was our original intention. We have made a mistake in the delegated powers memorandum — the intention was that article 148 should apply in this case.

The Chairperson:

The Examiner of Statutory Rules has advised that the making of regulations that prescribe the form of landlords' notices for introductory tenancies should be subject to negative resolution procedure and that the Department should consider the repeal of article 148(3)(b). Have you given any consideration to that?

Mr Martin:

Yes, we have. There are two issues. First, as there is minimal latitude and no policy content in the regulations, we would prefer the regulations to not be subject to Assembly control. Secondly, we are not sure that there would be much added value in the Committee having to see a range of new regulations. However, if the Committee felt strongly about that, we could exempt this provision from the application of article 148. We could exempt clause 9 from that provision and make it subject to negative resolution procedure. That form would go to the Committee and, if the Committee wanted to see all other such forms, we would make a commitment to repeal article 148 in the next housing Bill and make all forms made under the 2003 Order subject to negative resolution.

I am suggesting a halfway house. You can test the waters in this instance, and if you feel strongly that you would like to see all other regulations of a similar nature, we could give a commitment to repeal article 148 for the whole of the 2003 Order in the next Bill.

The Chairperson:

That suggestion seems reasonable, though we may need to check any commitments for any future Bills with the Examiner of Statutory Rules.

Mr Brady:

Is Mr Martin saying that the level of Assembly scrutiny is diminished unless all those regulations are subject to negative resolution procedure?

Mr Martin:

As it stands, the power for the Department to prescribe the form of a notice to an introductory tenant telling him or her that the tenancy has been abandoned and what is likely to happen is not subject to Assembly scrutiny. There are three options. First, it can be left like that; secondly, we could exempt this particular regulation from that rider and make it subject to negative resolution, as I am suggesting; or, thirdly, we could repeal the overriding part of article 148 of the 2003 Order and make all forms subject to some form of Assembly control. I suggest that the Department seek an amendment to exempt this particular regulation. The regulation would be brought to the Committee, and if the Committee felt strongly that there was a need to see all regulations of a similar nature, the Department would make a commitment to repeal that provision in the next Bill.

Mr Brady

It would have a knock-on effect.

Mr Martin:

That is correct.

The Chairperson:

We will be able to see whether it would be the sort of thing that should be subject to negative resolution procedure, and, if we want to expand it further, we can do that. Are members happy to take that approach?

Members indicated assent.

The Chairperson:

Are members content that the clause-by-clause scrutiny is formally concluded?

Members indicated assent.

The Chairperson:

I thank both Stephens from the Department for their faithful attendance and help throughout the Committee meetings.