



**Northern Ireland
Assembly**

**COMMITTEE FOR
SOCIAL DEVELOPMENT**

**OFFICIAL REPORT
(Hansard)**

Caravans Bill

17 June 2010

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)
Ms Carál Ní Chuilín (Deputy Chairperson)
Mr Billy Armstrong
Mrs Mary Bradley
Mr Mickey Brady
Mr Jonathan Craig
Mr Alex Easton
Mr David Hilditch
Ms Anna Lo

Witnesses:

Mr Stephen Martin)	Department for Social Development
Mr Michael Sands)	
Mr Daniel Holder)	Northern Ireland Human Rights Commission
Mr Peter O'Neill)	

The Chairperson (Mr Hamilton):

I welcome Mr Michael Sands, deputy director of the housing division in the Department for Social Development (DSD), and Mr Stephen Martin, who is also from the housing division. I remind members about mobile phones. The session is being recorded by Hansard. I invite the officials to make a brief statement on the Bill, after which members will have an opportunity to ask questions. Perhaps, if it is convenient or appropriate, I will take questions as we go through your statement rather than bundling them up at the end.

Mr Michael Sands (Department for Social Development):

I was going to suggest that, Chairperson. Thank you for the invitation to brief the Committee on the Caravans Bill. I will make some short introductory remarks on the Bill's origins and the Department's role, after which I will give a brief overview of the Bill's contents. If the Committee so wishes, Mr Martin will give members a more detailed explanation of the Bill's clauses and schedule.

The Department became involved in the Caravans Bill in November 2009 when the then Minister for Social Development, Margaret Ritchie, met John McCallister, the Bill's sponsor, to discuss its first draft. Incidentally, I believe that this is the first private Member's Bill to secure Assembly support. At that meeting, Ms Ritchie expressed support for the principles of the Bill, but raised a number of concerns about some of the detail of that first draft. Margaret Ritchie proposed a pragmatic way forward, based on practice at Westminster, whereby the Department would work with Mr McCallister and others to redraft the Bill in a more amenable format, based heavily on existing park home legislation in Great Britain.

Having secured the support of other Ministers for that approach, the Department has worked since January with Mr McCallister, the Department of Enterprise, Trade and Investment (DETI), the Department of the Environment (DOE) and the Office of the Legislative Counsel to produce the Caravans Bill, which Mr McCallister introduced in the Assembly on 26 April 2010.

Parts 1, 3 and 4 of the Bill echo existing legislation that was in place for England as of December 2009. Part 2, which deals with the holiday caravan sector, is unique to Northern Ireland; there is no similar legislation anywhere else in the UK. DSD's main interest in the Bill relates to Parts 1 and 3, which provide protection for those who live in residential caravans, often referred to as park homes, as their main or only home.

We understand that there are currently four park home sites in Northern Ireland, containing a total of 300 park homes. Although that number is far lower than that for the rest of the UK, where there are an estimated 200,000 park homes, there is some evidence that interest in park homes is growing, particularly among older people looking to downsize as they move towards retirement. The Bill will do much to offer such people security of tenure, prevent sharp practice and boost confidence in a well-managed park homes sector.

Park homes sites are known as protected sites in the Bill. Those are sites for which planning permission or a council site licence has been granted for year-round use and does not limit the site to holiday use only. Sites provided by the Housing Executive for Travellers are also protected sites. Part 3 of the Bill will also protect those living on all Travellers' sites from illegal evictions and harassment. Part 1 of the Bill will cover Travellers who live in semi-settled accommodation on serviced sites, which is similar to park homes, but by virtue of clause 1, it does not cover Travellers who live on the more temporary transit and halting sites.

Part 2 of the Bill relates to the holiday caravans sector, which is the policy responsibility of the Department of Enterprise, Trade and Investment. At present, there is a considerable body of consumer protection law that covers the holiday sector; however, it can be difficult to enforce, as many caravan owners do not have written agreements with site owners. Part 2 addresses that gap by requiring written agreements to be in place between site owners and caravan owners.

Part 4 of the Bill relates to the definition of a caravan, which is the policy responsibility of the Department of the Environment. It addresses an important area of ambiguity by updating the definition of a caravan, thus creating parity with the current statutory definition that is in place in Great Britain.

Part 5 of the Bill will bring it into operation six months after it receives Royal Assent. On the basis of the current timetable, that is likely to be around November 2011. Following Royal Assent, the Department will focus on providing guidance to the park homes sector as it looks to comply with Part 1 in particular. It will also focus on monitoring the effectiveness of Parts 1 and 3.

That concludes my opening remarks. We are happy to take any questions at this point, or Stephen can provide the Committee with a more detailed description of the Bill.

The Chairperson:

A more detailed explanation might be more useful in guiding the Committee through the Bill. It will also allow members to frame their questions. Perhaps Stephen could go through each Part of the Bill, following which members can ask questions and any general issues can be discussed at the end.

Mr Stephen Martin (Department for Social Development):

Initially, I will focus on Parts 1 and 3 and the schedule, as those are the parts of the Bill relevant to DSD. As Michael said, Part 2 primarily applies to DETI and Part 4 applies to DOE.

The purpose of Part 1 and the associated schedule is to provide security of tenure to park home owners, who live on one site year-round. In the Bill, their homes are called residential caravans. Other terms for them include park homes and mobile homes, but they all refer to the same thing. As Michael said, Part 1 is closely based on the Mobile Homes Act 1983 as amended and as it applies in England.

Some key terms are set out in clause 1 and it is important to pause to consider those terms, so that the Committee knows to whom Part 1 applies. As Michael said, one of the key terms is that of a “protected” site. Those sites are not limited, either by planning permission or a council site licence, to holiday use only, and can remain open year-round. From the estimates that the Department has received from DOE, we believe that there are four such sites in Northern Ireland.

Committee members will also note that clause 1 uses the term “exceeding 3 months”, which will allow people who own their caravan to station it on a protected site for more than three months. That provision is included to ensure that sites used for temporary accommodation are not brought within the provisions of Part 1, and it primarily relates to Travellers. There are three types of Traveller sites in Northern Ireland: serviced sites, which are analogous to park homes in that they provide semi-settled accommodation on a fairly permanent basis; and transit sites and halting sites, which provide temporary accommodation, are designed to support the desire of many Travellers for a nomadic lifestyle and can be used for up to three months. Those sites are normally granted a licence to occupy for no more than three months.

The intention of that provision is to ensure that the serviced sites, which are akin to park home sites, enjoy the protections of Part 1 of the Bill, while the more temporary sites, which are very different to park home sites and in which security of tenure is not an issue, are excluded. To include the temporary sites would mean frustrating the very purpose of those sites. Offering security of tenure would involve blocking up those sites, meaning that Travellers would not be able to enjoy a nomadic lifestyle.

I know that the Committee will later receive a briefing on the Bill from the Human Rights Commission. The Department believes that the Bill is compliant with the European Convention on Human Rights as it offers comparable treatment. As it stands, the Mobile Homes Act 1983 in England is seen to be in breach of the convention, as it excludes sites provided for Travellers from the protected sites definition. The Caravans Bill, particularly with its provision to offer comparable treatment for Travellers in serviced sites with others in park homes, is within the spirit and the letter of the convention and is, therefore, human rights compliant. However, the Committee may wish to explore that issue further with the Human Rights Commission. As Michael said, Part 3 of the Bill, which deals with illegal eviction and harassment, relates to all Traveller and protected sites. I will talk about Part 3 in a little more detail later.

The Chairperson:

Alex, you indicated that you want to ask a question. Is it relevant to Part 1 of the Bill?

Mr Easton:

I am unsure whether it is relevant.

The Chairperson:

Throw it out anyway.

Mr Easton:

Under the Bill, the landlords, as it were, of people living in park homes will be forced to ensure that there is a contract and that residents are allowed to stay for a certain number of years. Is there any stipulation on the length of contracts?

Mr Martin:

That detail is in the schedule to the Bill. Paragraphs 1 to 7 of Part 1 of the schedule deal with the length of residential contracts. In simple terms, if the site owner has ownership of the land, indefinite planning permission and an indefinite site licence, the de facto position is that the contract lasts ad infinitum unless it is ended in one of two ways: either the caravan owner wants to end it and gives four weeks' notice to that effect; or the site owner can end it by going to court. There are certain grounds on which it can be ended. Those are set out in paragraphs 4, 5 and 6 of Part 1 of the schedule.

Mr Easton:

Pensioners could move into park homes believing that they will be there until the end of their days, and sign a 10-year agreement. Under the Bill, could the caravan site owner give them three or four weeks' written notice to get off the site?

Mr Martin:

No, not at all. If there are planning conditions on the site that mean that it has planning permission for, say, 20 years, the duration of an agreement cannot go beyond that period. However, if planning permission and the site licence are indefinite, the duration of an agreement is indefinite. A site owner can only evict someone from the site by going to court and obtaining a court order, and they can do that only by proving that it is reasonable to do so.

Mr Easton:

Are you saying that if a site is designated for 20 years and someone has an agreement, he or she can stay on the site for 20 years?

Mr Martin:

Yes.

Mr Easton:

A problem that I became aware of at Seahaven in Groomsport involved the landlord telling people that their caravans were not up to the same standard as others and that, therefore, they would have to upgrade their caravans or leave the site. How do you protect vulnerable people in that scenario? There may be elderly people who believe that they are allowed to stay on a site because they have kept their caravans in excellent condition. However, because the landlord decides that he wants them to upgrade their caravans or get off the site, they have to either find the money for a new caravan or they are basically made homeless. How does the Bill protect those people from having to upgrade, especially when their caravans look good, are in good condition and there is no reason why they should be upgraded?

Mr Sands:

Mr Easton will be aware that that issue was raised during the Assembly debate on the Bill. The Bill contains provisions for the sale of a caravan, including matters such as who it is sold to, so that a fair price is agreed.

Mr Martin:

On the specific issue of repair, which, I believe, Mr Easton is talking about, paragraph 6 of Part 1 of the schedule is clear that a site owner can go to court. If a caravan has a detrimental effect on the site, the site owner can claim in court that that is reasonable grounds for terminating the agreement. However, it is also clear from Part 1 of the schedule that that does not mean that the caravan has to be replaced every so often. What is reasonable is a judgement for the court. It is clear that as long as the caravan owner keeps their caravan in good repair and abides by site rules, there is no obligation on them to change a caravan every so often in the residential sector. It would be for a court to deem what is reasonable with regard to the standard of the caravan if the site owner wants to end the agreement on the basis of a caravan being in a state of disrepair.

Mr Easton:

Therefore, if a caravan has been on a site for 15 or 20 years and the site owner wants it to be upgraded, he cannot force the caravan owner to do that if the caravan is in good nick. Do you guarantee that?

Mr Martin:

The Bill is very clear. Paragraph 8 of Part 1 of the schedule sets out provisions that relate to the sale of caravans and what must happen if that request or, in some instances, demand is made by the site owner.

Mr Easton:

Well, that is reasonably good news. Hearing that make me feel happier about this.

I have one final point. One of the ways that landlords were able to force people to upgrade was to say that if they did not upgrade, they had to get off the site. One person could not take their caravan off a site because the landlord refused to let anyone on the site to take the caravan away and transport it to somewhere where it would be allowed to stay. Is there anything in the Bill that allows a person in such a situation to take his caravan off the site? What sort of protection is available?

Mr Martin:

There is no provision for that. The Bill is heavily based on the Mobile Homes Act 1983 as it

applies in England, as I indicated earlier. There is no provision in that Act for that scenario and we have made none in the Bill.

Mr Easton:

Could we make provision for someone to take a caravan off a site if he wants to?

Mr Martin:

It is difficult for me to give an immediate reaction to that. It is John McCallister's Bill, so we would have to talk to him about that. We can look at that issue.

Mr Easton:

I am happy enough to leave it at that.

The Chairperson:

We can investigate different points as we go through the Bill.

Mrs M Bradley:

The issue that Alex has raised is one that I raised in the Chamber. The person on that site had to pay £150 to the owner of the site, who took the caravan only as far as the gate and the owner then had to pay extra money for another trailer to come along and take it further.

Another thing that has happened on a caravan site in Northern Ireland is that the site owner sold on and the person who took over the site changed the rules totally. What about the sale of sites? Will the seller be obliged to state that existing terms and conditions will still apply after the sale?

Mr Martin:

There are two issues there. Part 1 of the Bill and the schedule relate to the residential caravan sector, not to the holiday sector. Some of the problems that were flagged up in the debate relate more to the holiday sector. The second issue is that the agreement cannot be changed. There is a written statement in clause 2 that needs to be provided in a certain form to the caravan owner when he buys a caravan or, when the Bill comes into operation, if an agreement already exists. The schedule sets out very clearly implied terms and, together, that is the agreement. That agreement cannot be changed except by mutual consent. The schedule will always apply. If a

site is sold and a new owner takes over, the new owner will have to abide by the agreement that is already in place.

Mr Craig:

That leads to another scenario. If there is an agreement between an occupier and a site owner and the occupier decides to sell his caravan, what protection has the person purchasing it? Does the purchaser have to enter into a new agreement with the site owner, or will the contract pass on?

Mr Martin:

The agreement is basically assigned. The process allows the site owner an approval role. A caravan owner cannot just sell to anyone: he has to ask the site owner for approval of the person to whom he is selling. However, that cannot be unreasonably withheld. There is certain redress through court and so on. Once the caravan is sold, the agreement is assigned, so the person who buys the caravan takes on the agreement that the previous owner had with the site owner. Essentially, the agreement remains; the site owner cannot, for example, change terms.

Mr Craig:

You said that a caravan owner needs the approval of the site owner. Are there enough protections in the Bill to stop people profiteering from that? Could a site owner impose charges, levy a fee or demand a percentage for that approval? Let us face it: these things happen.

Mr Martin:

The only fee that can be levied is a standard 10% commission, which the site owner is entitled to on a sale, but there is nothing above and beyond that. As to the approvals process for an individual, a site owner cannot place conditions on it. The site owner must consider the person put forward and cannot unreasonably withhold consent. If the caravan owner does not like the site owner's decision, they can take them to court, and the court can make an adjudication. We feel that there are reasonable protections to avoid exploitation. That system has worked well in England for a considerable period.

Mr Sands:

That protection is set out in paragraph 8(1) of Part 1 of the schedule. It states:

“The occupier shall be entitled to sell the caravan, and to assign the agreement”.

The reference to 10% is in paragraph 8(9) of the schedule, which provides that the owner should

be entitled to receive commission on a sale if it goes ahead. However, the overarching protection for the sale of caravans is included in 8(1), and that is the important bit.

The Chairperson:

Before we go on, I remind everybody to switch off their mobile phones. I have been handed a yellow card by Hansard to say that phones have been interfering with the recording.

There are a lot of provisions in the Bill to protect unprotected sites. Who will do that protecting? I am thinking more about park home sites, because I imagine — correct me if I am wrong — that the Housing Executive will protect Traveller sites. However, who do you envisage will ensure that the protections for park homes are met?

Mr Martin:

There are two levels. Primarily, it will happen through the courts. If a site owner acts unreasonably under the terms of the Bill — or the Act as it will become — the caravan owner can take them to court to enforce particular provisions. It is primarily a judicial matter.

The Department will have an oversight role to monitor the effectiveness and implementation of the Bill and, for that reason, we have created a power in clause 4 to amend the implied terms. The schedule sets out the terms that are to be implied in a residential agreement. Those are the inescapables, and they will automatically form part of an agreement. We have taken a power to amend that and will do so on the strength of case law from the courts. As people challenge decisions, we will be able to update the terms to reflect the court's judgment. However, it will be primarily a matter for litigation for the individual caravan owner.

The Chairperson:

I understand that. Contracts are legal documents; therefore, that is the natural course of action. However, I feel that legal action should be the last resort. In some cases, it might be the only option, but I encourage people to avoid that because it is time-consuming, costly and can be stressful. Did you ever consider giving the Housing Executive or the local councils a role? I can envisage an issue with councils and council-owned sites. I know that that is not the situation with park homes at this stage, but who knows what could happen in the future? Did you ever consider giving a role to local government?

Mr Martin:

As I said, we have broadly replicated existing legislation that has worked in England. We have changed some aspects for clarity but have not changed policy. One issue that has been brought to our attention is in relation to Part 3, which is about illegal eviction and harassment. That is quite similar to legislation for the private rented sector, namely the Rent (Northern Ireland) Order 1978. Under that Order, councils can take prosecutions on behalf of individuals who have been illegally evicted. There may be merit in giving district councils a role under Part 3, because that would be similar to their existing roles in the private sector. However, Part 1 is primarily to do with contracts and contract law and is, therefore, better dealt with in the courts. There may possibly be some merit in including that in Part 3.

Mr Craig:

I want a wee bit of clarification. You mentioned paragraph 8(9) of the schedule, which states that the owner will receive 10% of the sale. Will you outline the reason behind that?

I am puzzled as to why the site owner should receive money if the owner of the property wants to sell it to someone else.

Mr Martin:

There are two ways in which a park owner can cover his costs and make reasonable profit: pitch fees, which are essentially the annual rent for the piece of land; and the sale of caravans. That issue has been looked at twice by the Government in England, and there have been two reviews on the issue of commission and park economics. Following those reviews, the figure has remained at 10%. That is deemed to be a reasonable return that is needed to maintain the parks in an appropriate way and justify the investment for the individual. We have gone with that figure on that basis; there seems to be a fairly clear justification for it.

The Chairperson:

When we were talking about protected sites earlier, we talked about park homes as if they were exclusively park homes. However, that is not necessarily always the case. Touring caravans can be kept on the same site. Are they protected by the Bill?

Mr Martin:

Not in our view. If someone has a licence to occupy the protected site for longer than three months, and it is their only or main home, they will be covered. However, a touring caravan

would not be classed as an only or main home.

The Chairperson:

That is fine. Does anyone have any other questions before we move on?

Mr Sands:

We are straying into parts that we are not supposed to cover.

The Chairperson:

We are — like a caravan.

Mr Martin:

If members are happy, we will move to clause 2. There has already been some discussion about agreements. One of the main purposes of the Bill is to ensure that there are fair, written agreements between site owners and residential caravan owners. Clause 2 sets out a requirement for a written statement to cover key issues, along with a power for the Department to add to the requirements for inclusion in that statement.

Essentially, the written statement required under clause 2 and part 1 of the schedule to the Bill, which is the implied terms, together form the residential contract. It is probably easier to think of it that way. There is a mechanism in clause 2 for the caravan owner to seek redress through the courts if a site owner does not provide a written statement setting out the relevant points within the appropriate time.

Mr Craig:

How robust is the protection for the caravan owner if a site owner refuses to produce a written agreement? I would say that that is an issue on quite a number of sites.

Mr Martin:

Clause 2 allows the caravan owner to take the site owner to court to enforce the requirement for a written agreement. The remedy to that problem is appropriate court action.

Mr Sands:

That has been one of the main difficulties for caravan and site owners. To date, quite a few of

those agreements have taken the form of a handshake, or even just a nod. They have been totally unenforceable and subject to the whims of the owner. The whole idea of the legislation is to tie that down so that there will be a written agreement between both parties.

Mr Craig:

I agree that there are probably thousands of those arrangements out there, and that will be a major issue once the Bill passes into legislation. I hope that it is robust enough to be enforceable.

Mr Sands:

It is one of the main tenets of this piece of legislation; it is the backbone of it. It has to be robust.

Mr Martin:

It is worth reminding ourselves that we are still talking about the residential sector, the park homes. We are talking about approximately 300 people at this stage. It is important to remember that we are not talking about the holiday sector.

Clause 3 sets out the implied terms, which are in part 1 of the schedule. Those are, basically, given in any contract between the site owner and the caravan owner. It also sets out clearly the role of the courts. Part 2 of the schedule sets out the kinds of matters that the courts can take into account, in addition to those implied terms, if a matter is brought before them.

I have already mentioned clause 4, which allows the Department to ensure that the implied terms are kept up to date and reflect case law as courts hear various matters. It provides the Department with the power to make subordinate legislation to amend Part 1 of the schedule, subject to draft affirmative procedure in the Assembly, which means that it has to be debated in the Assembly. It will allow us to keep the Bill up to date.

Clause 5 ensures continued security of tenure for family members who are living with the caravan owner when the owner dies. It also deals with situations where no family member is present. The aim is to ensure that, if there is a family, they can continue to live on the site on the same basis as the owner of the caravan.

Clause 6 is fairly technical. It gives the County Court the jurisdiction to hear matters in relation to protected sites within its area.

Ms Lo:

You said that Travellers on serviced sites will be under the same protection as in Part 1. The Housing Executive will be the landlord. How does that reflect on Travellers? Will they be allowed to stay on? They only rent the serviced site from the Housing Executive and cannot pass it down from family to family.

Mr Martin:

It will be exactly the same. They rent the land from the Housing Executive, as a park home owner rents the land from a site owner on a park home site. They will get security of tenure on the same basis as a park home owner on the serviced sites. Therefore, there will have to be a written agreement, the terms implied will be the same, and they will be able to pass that on.

Ms Lo:

OK. They can pass it on to their sons and daughters in the same way.

Mr Martin:

Yes, on the serviced sites.

Mr Sands:

The caravans are really the homes of the Travellers, and they are treated no differently than park home owners on their protected sites, which is why it has been extended to include Travellers.

Mr Martin:

As we finish Part 1, Mr Chairperson, maybe we should look at the schedule that sets out the details in relation to Part 1?

The Chairperson:

Yes, that is OK.

Mr Martin:

The schedule deals with seven main issues, some of which we have touched on already. Paragraphs 1 to 7 deal with the circumstances for ending residential agreements. As we said earlier, a site owner can only end a residential agreement by court order, which means going to

court on certain grounds.

The second issue dealt with in paragraphs 8 and 9 and Part 3 of the schedule is the sale or gift of a caravan. We have talked about the permission.

The third issue relates to the site owner and the caravan owner's rights with regard to the pitch, which is at paragraphs 10 to 15. The norm is that the caravan owner should have quiet enjoyment of their property, with certain limited exceptions. Those limited exceptions are basically to allow the site owner to deliver services, such as post and read utility meters; to re-site the caravan temporarily if emergency repairs are needed; or to permanently re-site the caravan if there is good justification and the court orders that it is reasonable. Otherwise, the principle is quiet enjoyment.

The fourth issue, in paragraphs 16 to 20, deals with pitch fees. Pitch fees can be reviewed only once a year and can be decreased or increased only in accordance with the rate of inflation as per the retail price index (RPI), except in certain limited circumstances. For example, if the Assembly was to pass a new piece of legislation placing statutory obligations on park owners to make improvements to a site, such as facilitating disabled access, it would be reasonable for park owners to recover a portion of those costs from caravan owners. Also, if site owners make improvements to a site which have been agreed with the residents, again, it is reasonable for them to recover the cost. Otherwise, however, it is limited to an increase in the RPI and will be reviewed annually.

The fifth issue, in paragraph 21, is caravan owners' obligations, which include an obligation to keep caravans in a state of reasonable repair.

The sixth issue, set out in paragraphs 22 to 27, is site owners' obligations. Those obligations relate to pitch fees, repairs, consultation with residents on various issues, and providing a name and address in Northern Ireland at which court proceedings can be served.

The seventh and final issue, in paragraph 28, relates to qualifying residents' associations. If a situation allows for a residents' association to be set up, site owners have to recognise that association and consult with it, if it represents more than 50% of owners on a site.

Those are the terms are to be implied in any residential agreement.

The Chairperson:

Bills tend not to be retrospective, but I am thinking of a scenario where site owners could raise fees quite exorbitantly in advance of this coming in and being fairly restrictive — fees will only be able to go up by RPI, which, at the minute, is quite small — knowing that, from then on, they are going to be tethered to the rate of inflation.

Mr Martin:

I suppose, theoretically, it is possible, unless there is already an agreement there to cover that. As Michael said, it is one of the big issues that many park home owners do not seem to have agreements with site owners, and, therefore, are at the mercy of their goodwill.

The Chairperson:

Is there no way of making the legislation retrospective? We are starting to discuss this now. Somebody could see that and, say, put fees up by 25% this year as a nice wee earner — a profit in the short term, rather than the longer term.

Mr Martin:

That is something that we could look at. However, it would be very difficult to make that retrospective.

The Chairperson:

I did think that it would be verging on the impossible.

Mr Martin:

It is a danger.

The Chairperson:

We will go to Part 3.

Mr Martin:

That would be great.

Part 3 of the Bill also falls to DSD, and concerns illegal eviction and harassment. It applies to anybody who resides on a protected site, whether they rent or own their caravan, and will apply to all Traveller sites, which, in my understanding, are all protected sites. As I said, it is similar to the legislation for the private rented sector under the Rent (Northern Ireland) Order 1978. However, it goes slightly beyond that in terms of evictions. Evictions from protected sites can be undertaken only by court order, which is more broadly akin to the position for social housing. There is considerable provision in Part 3 to prevent harassment that may stop short of eviction, but essentially forces somebody off a site. There is considerable protection there.

Clause 11 gives the courts the power to suspend an eviction order for 12 months in certain circumstances. The provision allows for a bit of breathing space in a dispute that has led to eviction. Suspending an order allows the court a bit of flexibility and allows for the two parties to reach a reasonable agreement on the way forward.

The Chairperson:

Obviously there are a lot more rights and obligations bestowed upon owners. Has any thought been given to a handbook or guidance? In most cases, most people just trundle on as normal, blissfully unaware of what is going on with this Bill, but it does bestow certain rights and obligations on owners, and is quite fundamental in some respects. Has any thought been given to producing a brief handbook to help them out on that?

Mr Martin:

Absolutely. We are working very closely with the trading standards service in the Department of Enterprise, Trade and Investment (DETI), which will have responsibility for the holiday caravan sector. We are discussing how we can jointly make both the park home sector and the holiday sector ready for the Bill. It is something that we are mindful of and are starting work on now.

The Chairperson:

Very good. Do you want to do the bits that are not our bits — other people's bits?

Mr Martin:

Part 2 relates to the holiday sector. As you said earlier, DETI has the policy lead. Members may remember that there were some concerns, when the Bill was first drafted around a year ago, that touring caravans, motorhomes and so on would be brought within the auspices of that element of

the Bill. That is now not the case; we have drafted it differently and there is essentially a 28-day rule. If a person has permission to occupy a site for more than 28 days they come within the protections of Part 2. Essentially, that is to avoid touring caravans and motorhomes being brought in under those protections.

The key focus is on trying to make sure that there are written agreements in place. The trading standards service already has considerable enforcement powers through existing consumer protection law. What is often difficult when it gets to court is that there is no written agreement in place between site owner and holiday caravan owner. Therefore, consumer protection law is often unenforceable or difficult to enforce. Having a clearly articulated written agreement will mitigate that and ensure that existing consumer protection law is much more effective.

I understand that the Committee will be taking evidence from officials from trading standards next week, and this is perhaps something that you may want to probe in more detail. That is the general principle; that a written agreement will bring greater clarity and allow consumer protection law to be properly enforced.

Mr Craig:

You said earlier that this only applies to 300 caravans.

Mr Martin:

Part 1 of the Bill applies to residential caravans on protected sites.

The Chairperson;

This is the rest of it.

Mr Craig:

Will the rest of it apply to a greater degree?

Mr Martin:

Part 2 applies to the holiday sector, which includes the vast majority of the approximately 14,000 caravans.

The Chairperson:

Where does the onus lie? I know that there are site owners at present who will offer contracts, but caravan owners do not avail themselves of them. Will the Bill place the onus on the site owner or the caravan owner? I can envisage a set of circumstances where a site owner says that they are obliged to offer a contract, and the caravan owner says that they will get around to it, but never does. Then, if something happens down the line, the site owner has done his best, but the caravan owner says that they did not get a contract. The site owner would be wronged in those circumstances. What does the site owner have to do to satisfy a court that they have done everything they need to do?

Mr Martin:

That is a very fair point. Clause 8(4), as you say, places the onus on the site owner to provide the holiday caravan owner with the written statement. It is in his interests to do so, because any term that is not in that written statement is unenforceable. It would be for a court to decide. It would appear to be unreasonable for a caravan owner to refuse to agree to a reasonable written statement; however, there is no particular provision in the Bill.

If a matter came to court, it would be for the site owner to demonstrate that he or she had acted reasonably, and for the court to adjudicate on that. There is no provision for a caravan owner refusing a written agreement, or anything of that nature.

Mr Sands:

It should be in the site owners' interests to facilitate the likes of the caravan owners so as to ensure that both parties are aware of the situation and the terms and conditions which will be set out to agree that. That lack of agreement has led to people being treated shoddily in the past, and this should prevent that. It is in the interests of both parties to ensure that that is there. I am not saying that every caravan owner has problems with site owners — in fact, they have coexisted quite well for a considerable time, but there have been difficulties. The whole idea of this is to protect everyone and to ensure that there is a level playing field, where the terms will be agreed across each individual caravan owner and site owner.

The Chairperson:

I am not fond of letting courts decide, if it can be avoided. What is envisaged as constituting an agreement? Does it have to be signed by the caravan owner? If the site owner gives agreement,

does it have to be signed by the caravan owner? Can it be done verbally? Must it be in writing? Must it be signed?

Mr Martin:

In the holiday sector, the agreement can go broader than the written statement, but the written statement is the key obligation on the owner. The owner has to provide a written statement covering certain issues and deliver that to the caravan owner in person or by post. The agreement can go beyond that, but providing that that is done, the site owner has met his obligations under clause 8.

Mr Sands:

The owners' obligations are listed in paragraph 22 of the schedule, which states that documentary evidence, etc, must be provided. For the park home-type ones, they have to have that particular condition set out in relation to fees and charges.

The Chairperson:

I do not know how other members feel, but I am fairly satisfied about the park homes. That small sector seems to be tightened up considerably. I am more concerned about the holiday sector. There are plenty of examples of unscrupulous behaviour by site owners, and we heard a lot of yarns during the Second Stage, but there are a lot of responsible site owners as well. They would not be in business for as long as they have been if they were not responsible. Are we coming to the point where a piece of overburdensome legislation is coming in? It could lead to a set of circumstances where they could be caught out through no fault of their own. They have got by in the past by being good, responsible site owners. The administration will be burdensome and costly for them, and, even by doing the right thing, they might get caught.

I support the principles of the Bill. It would be more agreeable all round if written contracts were in place. I know of site owners who offer them, and in the bulk of cases they do not get anything back from the caravan owners. I am concerned that they are going to have to spend a lot of time and, possibly, money, trying to make sure that those things are signed.

Mr Martin:

That is a good point. The Bill is clear on the obligations of the site owners. Providing that the site owner provides a written statement which sets out the specifics, as per clause 8, and gives

that to the caravan owner in the approved way, they will have met their obligations.

The Chairperson:

That is reasonable behaviour.

Mr Martin:

You may wish to raise that question with the trading standards service.

The Chairperson:

That is a good point; yes. I will take it through that channel.

Ms Lo:

I know very little about caravans. I have stayed in a caravan abroad, but never in Northern Ireland. We are talking about park homes in which people stay all year round. Clause 7(1)(b) says that this is for people occupying the caravan:

“for a period exceeding 28 days.”

That is one year round counting, is that right? At what stage are those people considered to be living there? A lot of people use their caravans a lot of the time. I know of families with young children who spend a whole summer holiday in their caravans, and when they are not occupying the caravans, they rent them out to others. What is the upper limit for, what you call, seasonal caravan residents and those who use caravans for leisure?

Mr Martin:

Essentially, it means the same thing. We are trying to differentiate between those who legitimately live in park homes year-round on protected sites and those who live on sites that are not intended for that purpose and cannot legitimately be used year-round. With the 28 day provision, we are trying to exclude touring caravans, which people hitch on to their cars and move around, and motorhomes. Anybody else on a seasonal site, bar those people staying for short periods of less than 28 days, will be covered under Part 2, regardless of whether they spend two months, three months or six months of the year there.

Ms Lo:

Some people stay on the same site for years and years and do not move about. They are still covered?

Mr Martin:

Yes. Essentially, we are trying to focus on the static holiday caravans that you may have seen on many sites across Northern Ireland.

The Chairperson:

OK. Do you want to go on to Part 4?

Mr Martin:

Part 4 is primarily a matter for the Department of the Environment. It updates the definition of “caravan”. Various terms are used — mobile home, park home, caravan. This covers all of those types of property and brings clarity. There has been at least one judicial review in which the existing definition has been challenged, because it is a bit unclear; it is nearly 50 years old. This brings clarity and brings it into line with the rest of the UK. It applies that new definition of “caravan” to the existing legislation, which is the Caravans Act (Northern Ireland) 1963.

The Chairperson:

Are park homes considered to be caravans?

Mr Martin:

Yes.

The Chairperson:

No matter how they are marketed?

Mr Martin:

No matter how they are marketed — park homes, mobile homes — they are all caravans for the purposes of the Bill.

Mr Armstrong:

Caravans are not constructed on site; they are brought on to sites in their entirety.

Mr Martin:

Not necessarily. Under the definition — without refreshing my memory — a “caravan” can be

transported in two pieces and assembled on site; it does not need to be moved as one unit.

Mr Armstrong:

[Inaudible.]

Mr Martin:

It can be constructed on site provided that it is within the limits. Park homes, given their size, cannot be brought in on a trailer as one unit. They can be two parts; they are still constructed on site.

Mr Armstrong:

Yes, but it comes as a unit that looks like a caravan. It does not look like building material.

Mr Martin:

It does not matter what it looks like. It does not matter whether it looks pre-constructed and prefabricated provided that it is within the limits set out in clause 13(3). A caravan, whether it is brought in as one piece or two, is a caravan so long as it is within that definition.

The Chairperson:

I do not think that there is anything else. Is there anything else that you want to take us through?

Mr Martin:

The only other thing is that I know that there have been some issues about when the Bill commences. Part 5 sets out that the Bill will commence six months after Royal Assent, which, we feel, is reasonable.

The Chairperson:

Does the Department intend to draw up a pro forma residential agreement for park homes?

Mr Martin:

We are looking at that. The proposed legislation is so close to that in England, Scotland and Wales that we will probably base our agreement on models used in those countries.

Ms Lo:

Would that be compulsory or would it serve as guidance?

Mr Martin

There would be a model agreement. By law, the written statement would have to be provided in a certain format and all of Part 1 of the schedule will have to be included. Provided that those conditions are abided by, a site owner would not have to use our form of agreement; however, they could use it as an aid if they wish.

The Chairperson:

If members have no other questions, I thank Michael Sands and Stephen Martin for their time and very useful evidence.

The Committee now moves to today's second briefing on the Caravans Bill, from the Northern Ireland Human Rights Commission. We are joined by the commission's chief executive, Peter O'Neill, and Daniel Holder, policy officer. You are both welcome. I remind you that mobile phones must be switched off, particularly because proceedings are being recorded by Hansard. Members' papers include the Committee Clerk's briefing note on the key issues from the Human Rights Commission's submission on the Bill and a copy of that submission. I invite Peter O'Neill to introduce that submission before taking members' questions.

Mr Peter O'Neill (Northern Ireland Human Rights Commission):

Thanks. The Northern Ireland Human Rights Commission welcomes the invitation to provide written evidence to the Committee on the Caravans Bill and to take part in this oral evidence session.

Members may be aware that the commission is a statutory body created by the Northern Ireland Act 1998. Its functions include reviewing the accuracy and effectiveness of Northern Ireland law and practice relating to the protection of human rights; providing legal advice and representation in human rights proceedings; and, in the present context, advising on whether a Bill is compatible with human rights. In all its work, the commission bases its positions on the full range of internationally recognised human rights standards, including the European Convention on Human Rights. Given our statutory functions, our role in advising the Committee on the Bill is limited to providing an assessment of the proposed legislation's human rights

compatibility.

In general, the commission views the Bill as a positive initiative with the potential to fulfil a number of positive human rights obligations, such as affording tenancy rights to people who reside in caravans. We understand that the Bill's purpose is to improve security of tenure for persons residing in caravans on caravan sites. The commission welcomes that intention, which can contribute positively to caravan dwellers' housing rights and progress their security of tenure.

The commission's particular interest in the Bill is its relationship to the accommodation needs of members of the Irish Traveller community, which we have identified as a priority issue in relation to human rights compliance. The Committee may be aware that the accommodation situation for Travellers in Northern Ireland has been highlighted by United Nations and Council of Europe experts in their monitoring of compliance by the UK with its international treaty obligations.

The commission notes that there is, at present, a marked differential between the tenancy rights of those residing in houses and those residing in caravans. We regard such a differential as unsatisfactory and believe that it involves issues of human rights compliance. As it impacts disproportionately on members of the Traveller community living in caravans, it may constitute indirect racial discrimination in the right to housing.

In addition, there could be a similar disproportionate impact on particular, non-Traveller, groups of persons who are strongly represented in the caravan resident population: older people, for example. As there appears to be some evidence of that differential, it is, therefore, likely that the present situation also engages protections against indirect age discrimination.

For the Committee's information, the commission opposed the introduction of the Unauthorised Encampments (Northern Ireland) Order 2005, which came into effect in 2006. The commission regards that legislation as actively adding to the disadvantages faced by the Traveller community. It runs counter to obligations under equality and human rights legislation. That Order falls under the competency of the Department for Social Development; not, as we indicated in our submission, the Department of Justice. As the purpose of the Bill includes due process protections against eviction, the commission urges the Committee to consider the repeal of the Unauthorised Encampments Order through the proposed legislation.

I will now hand over to my colleague, Daniel Holder, who will take members through the more technical aspects of the Bill.

Mr Daniel Holder (Northern Ireland Human Rights Commission):

I will be very brief, Chairperson, as I appreciate that the Committee has our written submission and members will have questions. To reiterate the starting point, we have an unacceptable and unsatisfactory situation, as everyone knows, in which there is not security of tenure for caravan tenants. There is an inequality between the security of tenure that is afforded to people in houses and that afforded to caravan dwellers. There are issues around compatibility with the convention. In that sense, the Bill is a very welcome development in respect of its being able to redress that. It should be enacted with no undue delay.

Members will have picked up that the key point of our submission is that the protections in the Bill must cover sites that are used by Travellers as well as sites that are used by non-Travellers. If the Bill introduced an inequality whereby Travellers were not protected, it is highly likely that the Bill would be incompatible with the convention and, hence, outside the legislative competence of the Assembly. Our assessment is that that is not the case. It appears that the Bill will cover Traveller sites quite clearly. All Traveller sites will be protected sites under the Bill's definition. There do not currently appear to be any Traveller sites that would be under reasonable conditions, so they will, therefore, be afforded the protections for tenancies over three months, as outlined in Part 1 of the Bill. They will also be afforded the protections in Part 3. We have sought explicit clarification of how the legislation applies to Traveller community sites in relation to serviced sites, the permanent sites, etc.

This legislation will amend the Caravans Act (Northern Ireland) 1963. We want an extension on the exemption for the need of a site licence to the sites that are provided by the Northern Ireland Housing Executive. As members will know, Traveller sites were provided by local councils until 2003. That then changed. When they were provided by local councils, local councils were exempt from requiring site licences from local councils; effectively, from themselves. It seems logical that a consequential amendment would have been made at that point to ensure that the Housing Executive, in assuming that function, would not have to seek a licence. That consequential amendment does not appear to have been made, but it could be made through this Bill as the licence requirement does not seem to be necessary or serve any useful purpose in

relation to Housing Executive supplied sites where the executive is already under duties in relation to standards that may differ to the licensing requirements for private sites.

The Chairperson:

Thank you very much.

You touched on the Unauthorised Encampments (Northern Ireland) Order 2005. I know that that is not directly related to the Bill, but it was raised in your submission and you raised it again today. What was the thinking behind raising that?

Mr Holder:

The unauthorised encampments legislation is not directly related to the issue of protected sites in the Bill, but it is related to the issue of security of tenure, because it effectively provides for summary eviction on unauthorised sites. We opposed that legislation, and we have outlined some of the reasons for that in our submission. The legislation has also been criticised by United Nations treaty bodies for being discriminatory, because its purpose or effect was targeted at the Irish Traveller community in particular.

As the Order relates to security of tenure and we have a long-standing position on it, it seemed reasonable to bring it to the attention of the Committee in the context of discussions on the Bill.

Ms Lo:

I am a bit confused. Are you saying that the Housing Executive requires a licence for caravans on serviced sites? Serviced sites are provided and maintained by the Housing Executive. Where does the executive get the licence from, and what is the procedure involved?

Mr Holder:

That is the point that we are making. The Housing Executive gets the licence from a district council. Previously, when district councils provided the sites, they were exempt from having to have licences. Paragraph 11 of schedule 1 to the Caravans Act (Northern Ireland) 1963 states that a site licence will not be required for land occupied by district councils. Originally, the phrase used was “local authorities”, but that was amended in 1972 when the structure of local government changed. However, the Housing (Northern Ireland) Order 2003 does not appear to have been similarly amended to include the Northern Ireland Housing Executive in the list of

exempted organisations. So, paradoxically, the Housing Executive, as a public authority, has to apply for a site licence for its own sites, which seems unnecessary. We cannot see how that serves any useful purpose.

Ms Lo:

Does that add to bureaucracy in the Department? Could it delay the opening of sites?

Mr Holder:

It could be an additional obstacle.

Ms Ní Chuilín:

If the Bill were amended as you have suggested, would local councils that were minded not to award planning approval for sites lose their authority? Would amending the Bill just be a follow-on from the Housing Executive's statutory duty to provide housing?

Mr Holder:

The statutory duty on the Housing Executive is to provide Traveller sites. Those sites would still require planning permission from the Planning Service. The issue of a site licence is different. The site licence power in the 1963 Act grants power to the local council to apply conditions on the use of the site. That would not appear to be necessary in the circumstances that we are talking about, because the Housing Executive, rather than a housing provider, is providing the site.

Ms Ní Chuilín:

Is it building control that awards a licence or is it the planning committee of a local council?

Mr Holder:

I do not know.

Ms Ní Chuilín:

Is a licence just granted without approval from the council because it is customary to do so?

Mr P O'Neill:

We will come back to the Committee on that point, because it will require some clarification.

Mr Holder:

Concerns have been raised. At the recent round table discussion organised by the Equality Commission, we were told that the site licence requirement was unnecessary and could prove to be an unnecessary obstacle to sites being provided. Remember, there was no site licence requirement before 2003. If it was not necessary before then, why is it necessary now?

Ms Ní Chuilín:

I remember the rows in Belfast City Council over that.

Mrs M Bradley:

I thought that the land was automatically transferred and that was the end of the story.

Mr Holder:

The power was transferred to the Housing Executive.

Mrs M Bradley:

Did the land then come under the ownership of the Northern Ireland Housing Executive?

Mr Holder:

Yes.

Mrs M Bradley:

So it was applying for permission to use its own land.

Mr Holder:

As we said in our submission, it seems to defeat the purpose of transferring power in the first place, because a site licence is still required.

Ms Lo:

Will license applications have to be submitted yearly, or, having been issued with a licence, will the Housing Executive be able to continue building on and maintaining its sites?

Mr Holder:

To the best of my knowledge, it is a one-off licence application, but there is also power in the

1963 Act to vary the terms of a licence. Therefore, over time, it could be modified or its conditions could be changed.

Ms Lo:

How many serviced sites are there for Travellers in Northern Ireland?

Mr Holder:

I do not have exact figures, but there are not very many. Moreover, according to the Housing Executive's own assessment of the need for sites, there is insufficient provision.

The Chairperson:

At this stage there are no further questions. I know that you will come back to us on one point, and we will forward the points that you raised to the Department and the Bill sponsor for their consideration. We appreciate both your submission and your coming along today. Thank you.