



Northern Ireland
Assembly

**COMMITTEE FOR
ENTERPRISE, TRADE AND
INVESTMENT**

**OFFICIAL REPORT
(Hansard)**

Caravans Bill

24 June 2010

NORTHERN IRELAND ASSEMBLY

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INVESTMENT**

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Members present for all or part of the proceedings:

Mr Alban Maginness (Chairperson)
Mr Paul Butler (Deputy Chairperson)
Mr Gregory Campbell
Mr Leslie Cree
Ms Jennifer McCann
Dr Alasdair McDonnell
Mr Gerry McHugh

Witnesses:

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| Mr Stephen Martin |) | Department for Social Development |
| Mr John Hinds |) | Department of Enterprise, Trade and Investment |
| Mr David Livingstone |) | |

The Chairperson (Mr A Maginness):

Briefing the Committee today are John Hinds and David Livingstone from the Department of Enterprise, Trade and Investment (DETI) and Mr Stephen Martin from the Department for Social Development (DSD). Gentlemen, you are very welcome.

We got ahead of ourselves, but we are very pleased to see you and look forward to hearing what you have to say about the Caravans Bill. We are dealing with clauses 7 and 8 of the Bill,

with the rest being dealt with by the Committee for Social Development.

Mr Stephen Martin (Department for Social Development):

Thank you for the invitation to brief the Committee on the Bill. I will make some short introductory remarks on the origins of the Bill and the role of DSD, DETI and the Department of the Environment (DOE). I will then give a brief overview of the Bill's contents and John Hinds will go into more detail on Part 2 of the Bill. I am just going to do a little scene-setting to give you some context.

The Departments became involved in the Caravans Bill in November 2009 when Margaret Ritchie, the then Minister for Social Development met John McCallister, the Bill's sponsor, to discuss the first draft of the Bill. At that meeting, the then Minister expressed support for the principles of the Bill, but raised a number of concerns about some of the detail of that 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 — particularly Arlene Foster and Edwin Poots — DSD has worked since January with Mr McCallister, DETI, DOE and the Office of the Legislative Counsel to produce the Bill, which Mr McCallister introduced in the Assembly on 26 April.

Parts 1, 3 and 4 of the Bill echo existing legislation, which has been in place for England since December 2009. Part 2, which deals with the holiday caravan sector, is unique to Northern Ireland and there is no similar legislation anywhere else in the United Kingdom. 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 four park home sites in Northern Ireland containing a total of 300 park homes.

Park home sites are known as "protected sites" in the Bill. These are sites where planning permission or a council site license 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. As noted previously, it is our understanding that there are a very small number of such sites in Northern Ireland.

Part 2 of the Bill, which is the main interest of this Committee, relates to the holiday caravan sector, which is the policy responsibility of DETI. There is a considerable body of consumer protection law which 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 there to be written agreements in place between site owners and caravan owners.

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

Part 5 brings the Bill into operation six months after it receives Royal Assent. On the basis of the current timetable, that is likely to be October or November 2011.

DSD and DETI are working closely together on plans to support the introduction of the Bill. Those plans cover areas such as raising awareness among park and caravan owners, providing appropriate guidance and monitoring the effectiveness of the legislation.

The Chairperson:

Did you say that Royal Assent is expected some time in the autumn of 2011?

Mr Martin:

Under the current timetable, the Bill is likely to receive Royal Assent in February or March of next year. Part 5 of the Bill brings it into operation six months after it receives Royal Assent.

The Chairperson:

Yes, I get your point. So the legislation will be well and truly through before the end of the current Assembly session?

Mr Martin:

Yes.

The Chairperson:

OK. I was slightly worried about that.

Mr John Hinds (Department of Enterprise, Trade and Investment):

The original draft of Mr McCallister's Bill looked significantly different to the one that is now before the Committee and generated a great deal of concern in the holiday caravan industry. The Committee may be aware that Mr McCallister met the Minister of Enterprise, Trade and Investment in November 2009 to discuss the original Bill. The Minister expressed a view that the original Bill would impose an unnecessary burden on the industry. As the Minister responsible for the development of the Northern Ireland economy, she is keen to see the Northern Ireland tourism industry develop as much as possible. The Minister recognises the valuable contribution made by the many, most family-run, businesses that operate in the holiday caravan park sector in Northern Ireland. She advised Mr McCallister that she would support a simple provision requiring the terms and conditions of any agreement to occupy a static holiday caravan pitch to be in writing.

When the Executive agreed to lend support to the redrafting of the Bill, DETI agreed to assist in the drafting of proposals for the holiday sector. As that process has gone forward, there has been a high level of co-operation and co-ordination between the Department and Mr McCallister, with DSD and DOE officials leading on the Bill. Regular contact and meetings with those involved in the caravan industry and caravan owners have also been facilitated by the Department's Trading Standards Service.

The Department's aim in drafting the current proposals was to strike a balance, with provisions that would, when backed up by existing consumer protection legislation, go some way to address the concerns highlighted by Mr McCallister, while not imposing any unnecessary burdens on the industry. The Department considers that the much revised provisions for the holiday sector reconcile those objectives.

The Bill requires that park owners provide a written statement that sets out the express terms of the agreement, before the contract to occupy a pitch is concluded. That represents existing best practice in the industry. That provision will address a significant gap in the consumer protection of holiday caravan owners in Northern Ireland.

It has been the Department's experience that people who complain to the Trading Standards Service about the operation of their agreement with caravan site owners have not been given a

copy of that agreement. Indeed, it is typically some years after they have purchased their caravan that the term of their agreement that leads to the dispute with the site owner comes to light. The Bill as drafted now imposes a simple requirement that caravan site owners should provide a copy of the express terms of the agreement to station a caravan on the site.

The Department considers that if caravan owners were given a document by site owners outlining the express terms of their agreement to station a caravan on a site, that will reduce the number of complaints that it receives about a small number of site owners. By implication, it will also reduce the number of disputes between site owners and their customers. As Mr Martin has already said, there is already a considerable body of consumer protection law in place that can impact on the holiday sector. If implemented, this Bill will allow those laws to kick in much more effectively through the Trading Standards Service.

Through its Trading Standards Service, the Department is committed to working proactively with the businesses operating in the sector to ensure that the new measure, if implemented, is publicised and adhered to across Northern Ireland's holiday caravan sites. Should it find terms that it considers to be in breach of the regulations, it will seek to have those amended by agreement, and will take matters to court only as a position of last resort.

A considerable body of published guidance is already available for the holiday caravan industry on what constitutes an unfair contract term in holiday caravan agreements. That includes comprehensive guidance from the Office of Fair Trading and the advice and model contracts issued by the industry's trade bodies. We are also keen to engage with individual site owners, on a face-to-face basis, to help them to comply with the new provisions.

It is the Department's view that the Bill's provisions are proportionate and necessary, should not impose any significant burdens on park owners and will enjoy the support of all legitimate stakeholders associated with the holiday caravan sector. Indeed, the contact that we have had with the industry so far suggests that there is a broad level of support for the measure and that many in the industry recognise its potential to increase consumer confidence in this area.

The Chairperson:

Are the provisions retrospective?

Mr Hinds:

No.

The Chairperson:

The provisions will apply only from whatever date in 2011 that the Act comes into play. Therefore, the bulk of current caravan owners, either permanent residents or seasonal users, will be outside the remit of the Act.

Mr David Livingstone (Department of Enterprise, Trade and Investment):

I take your point that the provisions are not retrospective. The provisions will cover existing holiday caravan owners and impact on those who have yet to come into the sector, who will now get a written agreement when they decide to purchase a holiday caravan. However, there are about 13,500 people out there right now, many of whom currently have no written contract. They will have to have a statement of the terms and conditions that apply to their agreements within a very short time of the Bill coming into effect.

The Chairperson:

So it is not, strictly speaking, retrospective, but it will be a term of —

Mr Livingstone:

It will catch the people whom you referred to: the existing holiday caravanners.

The Chairperson:

So those people will enjoy its protection too.

The other thing about it is that the written statement contains terms and conditions. Is the Bill specific on those terms and conditions?

Mr Livingstone:

No.

The Chairperson:

Therefore, if I were a site owner, I could impose whatever terms and conditions I wanted to.

Mr Livingstone:

No — although I suppose you could try.

The Chairperson:

I could try, and the holidaymaker could disagree with the terms and conditions and refuse to sign up.

Mr Livingstone:

Existing holidaymakers would be in a difficult position if they were to be confronted with a fait accompli of terms and conditions that the site owners now want caravan owners to sign up to after what could be many years, or perhaps even generations, of not being aware of the terms of their contract or of having no contract at all. Potentially, that could, I suspect, lead to some negotiation between park owners and holiday caravan owners. However, there is a further check on abuse in that we enforce the Unfair Terms in Consumer Contracts Regulations 1999, which comes from the implementation of a European directive against one-sided contracts. The objective of the regulations is to ensure that no terms appear in consumer contracts that are unfair, or, in other words, which would distort the bargaining position of the two parties or offer an unfair advantage to one party to the detriment of the consumer. The Trading Standards Service has enforcement responsibility for those regulations. We would intervene, hopefully by dialogue and co-operation.

The Chairperson:

Is the aim of the Bill to provide a vehicle by which the Department can intervene? Is that really what this is all about?

Mr Livingstone:

That is not the purpose of the Bill, but, as Mr Hinds said, it is a very important consequence of it. The Bill enables other pieces of consumer protection legislation in a more effective way than ever before. You are quite right that the Bill allows other legislation to kick into effect.

The Chairperson:

I do not want to labour the point, but a written agreement allows intervention and enables people to use consumer law to get a better agreement or to get the implementation of the existing

agreement in a better and fairer way.

Mr Livingstone:

That is exactly right.

Mr Butler:

Could there be a holiday home on a protected site?

Mr Livingstone:

Yes, there could.

Mr Butler:

Could someone on a seasonal site say that it has become their permanent home? What about those different sorts of scenarios?

Mr Martin:

On a seasonal site, it will be illegal to reside all the year round. The Bill is very clear that a seasonal site is a site where planning permission or a council site licence restricts the opening times.

Mr Butler:

Could sites open for 12-month periods?

Mr Martin:

Not if they are seasonal sites, which are restricted to holiday use only or can only open for certain times of the year.

On protected sites, the site licence does not limit use to holiday use only and does not make the site close for particular periods of the year. Our understanding is that there are four protected sites, plus a number of sites provided by the Housing Executive for Travellers.

Mr Butler:

Are some sites not open all the year round? You can go up to your caravan all year round. That is a bit of a grey area.

Mr Martin:

Once the Bill becomes law, there will be no grey area legally. A seasonal site is a site where the site licence or planning permission states that it is for holiday use only or that it has to close for a period of the year. If a site owner does not comply, he or she is in contravention of either the planning permission or the site licence. That is a matter for either the Planning Service or the council to properly enforce.

If the site licence or the planning permission does not place conditions on the use of the site, the site is a protected one. From the information that the Department of the Environment has provided, there are only four such sites, plus the sites for Travellers. However, conversations that we have had with some of the trade bodies have indicated that some of the older site licences may be ambiguous and that some sites that are operated as seasonal sites may be, technically and legally, protected sites. Therefore, there may be an issue for seasonal users on those sites who may not be protected by the Bill. That is something that we are looking at.

The Chairperson:

A protected site can include caravans for both holiday and residential use.

Mr Martin:

Yes, but a seasonal site cannot include residential caravans.

Mr Butler:

There is more work to be done in that area.

Mr Livingstone:

It relates to the difficulty that has been flagged up to us. The Department's ambition is to ensure that every holiday caravan owner in Northern Ireland gets a written contract. That is fine where the caravans are on seasonal sites. However, it has been flagged up to us that the licences or the planning permissions for a lot of those sites are very old and may not specifically say "restricted to holiday use only", because at that time there was no such thing as a residential site, so they did not have to say that.

Those sites are deemed to be protected sites, because they are not restricted to holiday use.

Therefore, holidaymakers who have pitches on those general sites will not be entitled to a written agreement. That is potentially a problem, but we do not know the extent of it. It may apply to some, many or nearly all of the sites, but it is something that would significantly undermine the impact of Part 2 of the Bill. We are keen to look at it and see if that potential loophole can be closed.

The Chairperson:

Do you need to amend that, then?

Mr Livingstone:

Potentially, yes.

The Chairperson:

We need to look at that as a Committee to see whether it is appropriate.

Dr McDonnell:

Does the Bill focus purely on the holiday side and not take much interest in “protected sites”?

Mr Martin:

No. The focus of the Bill is on the residential sector. Parts 1 and 3 deal with that sector in a very detailed way, because those are places where people live. Through the Bill, Mr McCallister is trying to provide security of tenure for those estimated 300 people. Part 2 of the Bill deals specifically and solely with the holiday sector.

Dr McDonnell:

So you can strengthen the residential part of the Bill at this stage?

Mr Martin:

Yes.

Dr McDonnell:

OK. As a result of the Bill, will the 300 people who live permanently on residential sites have an address? Will the Bill entitle them to treat their residence as an address, for example — “Caravan 4, Seaview Site, Ballycastle” — or will they still be in limbo? Having a permanent address is

significant. There is mention in clause 26(1) of residents having to provide an alternative address for the receipt of legal proceedings. I think that there is also a need for those residents to have an actual address, and for some regulation to ensure that local councils provide that address.

Mr Martin:

That issue has not been raised with either Mr McCallister or the Department, but it is something that I can take back to the Department.

Dr McDonnell:

Perhaps I am being pernickety, but there is a need for that provision. It takes me to my next point: will those who live on permanent sites be entitled to be registered there for voting purposes?

Mr Butler:

I did not think there were any of those sites in South Belfast.

Dr McDonnell:

It is a real issue. Currently, there are 300 people living on those sites. As a result of the Bill and various pressures, it will not be long before those numbers increase to 900 or 1,000. If we regulate these sites and get some sort of a structure to them, people may opt.

We might as well at least have that, or consider those points. I know of at least one case where there were arguments about whether someone was entitled to stand for a council seat, because they lived on one of those sites. People must be recognised as “normal” and not as some sort of Traveller just because they live on a permanent caravan site.

Mr Hinds:

Those provisions fall outside of the responsibility of DETI. In that sense, the Department does not have a view on them. It is really an issue for DSD.

Dr McDonnell:

I can accept that.

The Chairperson:

Mr Martin, can DSD look at that issue?

Mr Martin:

The Department will look at it and make appropriate enquiries. It is not an issue that I have been made aware of, but we will speak to Mr McCallister and various others and come back to the Committee with an answer.

Dr McDonnell:

I make those points genuinely. We live normal lives in houses that are made of concrete and brick; if we recognise these sites as permanent homes, they need to have the normal recognition that a home has, and the first recognition of a home is that it has an address. It is not appropriate that a site owner should be the recipient of mail that he can distribute two days later or whatever; there should be some arrangement for the receipt of mail. On the point of voter registration, if people do not have an address it is impossible for them to vote, because the Electoral Office will not recognise them.

The Chairperson:

That is a matter that either Department could deal with.

Mr Cree:

The main purpose of the Bill is to provide statutory cover for those who live in residential sites. You said that quite a few people do not have an agreement of any kind on those sites. Is that right?

Mr Livingstone:

We are looking at the provisions that offer new protections for those who live on holiday sites or who are holiday caravanners. My understanding is that a significant proportion, possibly 65%, of those who have holiday caravans in Northern Ireland do not have written agreements.

Mr Cree:

I am talking about residential caravans, now.

Mr Martin:

Although the law does not specifically require written agreements, unlike the law in Great Britain, our understanding of the residential sector is that some of the small number of park operators operate to industry standards and offer written agreements. However, John McCallister has identified a clear need for greater clarity in the law and for parity in treatment between Northern Ireland and Great Britain on the issue, and that is why he has introduced the Bill.

Mr Cree:

The Chairperson referred to the fact that there are consumer protection laws. If there has been no agreement and people have been there for a long time, surely there is a question of adverse possession.

Mr Martin:

I am not familiar with that term.

Mr Cree:

It used to be known as squatter's rights.

Mr Martin:

I cannot comment on that. I am not a lawyer and it is not an issue with which I am familiar. However, with regard to the Chairman's earlier point, clause 1 ensures that, although it is not technically retrospective, all the requirements of Part 1 on the residential sector will apply whether or not an agreement is already in place, and will supersede any agreement already in place. I am not sure whether that answers your question.

The Chairperson:

Adverse possession is very unlikely, in so far as the landowner would be exercising his or her rights. Adverse possession would only come into effect if the landowner did not exercise his or her rights.

Dr McDonnell:

My understanding is that on a lot of holiday sites the owner of the site owns the caravans. He sells —

Mr Cree:

That is not always the case.

Dr McDonnell:

In a lot of cases, the owner sells the caravan for a certain amount of money. No matter what agreement is in place, he has the freedom at any time to give notice to quit and to give the holidaymaker whatever he feels is appropriate for the caravan. Quite often, it is a derisory sum.

Mr Cree:

The issue that I raise is clearly for residential use and not holidays. They are, to all intents and purposes, houses.

The Chairperson:

Yes. However, getting back to the point about adverse possession, it would be very unlikely, unless the landowner died or something and could not exercise his or her rights over the land. I doubt whether adverse possession could apply in any situation.

Mr Cree:

Take the matter up later, Chairman, in your other capacity.

The Chairperson:

Surely.

Mr McHugh:

I am not sure whether the Bill covers single-caravan sites in the countryside where, as Mr Cree said, people are living in what is their permanent home. Does the other Department have anything to do with the question of planning? The fact that the caravan is a home may be left out in PPS 21. Has that been looked at? It is certainly an issue that has been raised by a number of people when they have tried to replace their caravan with a permanent house. They own the land that the caravan sits on, and so forth. Is that covered in the Bill?

Mr Martin:

That sounds like a planning issue, which is a matter for DOE. To clarify where the Bill applies: with regard to Parts 1 and 3, it applies to protected site, which is where planning permission or a

council site licence gives permission for that site to be used all year round and does not restrict it to holiday use for caravans. We are talking about a very small number of caravans. Part 4 clearly defines a “caravan”. It is not a house — the dimensions are set out, and it has to be something that is capable of being moved by road in no more than two pieces, and so on. I, therefore, doubt that that scenario pertains to this Bill. However, I cannot say that with any certainty because I have no particular expertise in planning. That is a matter for the Department of the Environment.

Mr McHugh:

In the United States, people move houses entirely by road.

The Chairperson:

I want to go back to the issue about extending the protection in clause 7 to seasonal caravan owner-occupiers on protected sites. That is something that you are going to look at, so there is potential there for an amendment to the Bill.

There is another issue that we have not mentioned. In the consultation, the National Caravan Council noted that in the rest of the UK the agreement for occupiers of seasonal sites is referred to as a licence agreement for a caravan holiday home. That agreement grants the holiday-home owner a licence to station the caravan on a park for a set period of time, rather than in perpetuity, as for those on protected sites where the home is their only and main residence.

The council refers to the term “written statement” and asks whether it would be helpful to make a distinction in the Bill between a written statement that is provided under the agreement for residential occupiers on protected sites and the document that is provided under the agreement for occupiers of seasonal sites. What they are really suggesting is that the agreement for seasonal sites be termed a “licence agreement”. You should perhaps take that into consideration.

Mr Martin:

I have seen the submission from the National Caravan Council, and I think that there is a bit of a misunderstanding. There are two components to an agreement. We refer in clause 8(5) to a “seasonal agreement”. The seasonal agreement is the equivalent of the licence agreement, and the written statement is one component of the seasonal agreement. Under clause 8, a written statement will be a requirement, but a park owner can add to that. For example, the park rules

will normally be included as part of the agreement. Therefore, the two terms mean very different things, and it would not be appropriate to replace the words “written agreement” with “licence agreement”.

The Chairperson:

Is the term “licence agreement” too restrictive?

Mr Martin:

The term “licence agreement” is broader than the term “written statement”, so it would not be appropriate to replace “written statement” with “licence agreement”. From my understanding, “licence agreement” is the equivalent of “seasonal agreement”, which is the term used in clause 8(5). The written statement may be one component of that. It would, therefore, be confusing to replace one term with the other.

The Chairperson:

Therefore, is it better to use the term “written agreement”?

Mr Martin:

We do not see a problem with that. The two Departments have been discussing that in some detail and will be producing joint guidance on the matter. Any ambiguity that might arise in the industry can be resolved fairly readily through that guidance.

The Chairperson:

So you are going to look at that, but your mind, at this moment in time, is contrary to the consultee’s views? That is helpful. I think we can finish there. Thank you very much, gentlemen.