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Eleanor Murphy

The Housing (Amendment) Bill

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The Housing (Amendment) Bill was introduced to the Northern Ireland Assembly on the 30 June 2015. The Bill contains provisions to facilitate the sharing of information in relation to empty homes; to facilitate the sharing of information in relation to anti-social behaviour; and, to register a Statutory Charge in respect of grants made by way of loan. This Bill paper will explore the provisions of the Bill; the policy context behind those provisions; and issues highlighted by respondents to the Committee for Social Development's Call for Evidence on the Bill.

Key Points

- The Housing (Amendment) Bill was introduced to the Northern Ireland Assembly on the 30 June 2015. The Bill is a relatively short Bill consisting of five clauses. The purpose of the Bill is to facilitate the sharing of information in relation to empty homes (Clause 1); to facilitate the sharing of information on anti-social behaviour (Clause 2); and to enable the Housing Executive to register a Statutory Charge in respect of grants made by way of loan (Clause 3).

Information Sharing and Empty Homes

- Clause 1 of the Bill contains provisions to require the Department of Finance and Personnel (DfP) to share “relevant information” which it collects for the purposes of rates with the Department for Social Development and/or the Northern Ireland Housing Executive (NIHE) for the purposes of taking action on empty homes (e.g. bringing empty homes back into use where appropriate). The Bill also contains provisions requiring DSD and NIHE to share with DfP information about a property that is listed as empty but appears to be occupied.
- The need for action to tackle the issue of empty homes is highlighted both in the Housing Strategy for Northern Ireland (‘Facing the Future’) and in the Empty Homes Strategy and Action Plan for Northern Ireland. Land and Property Services, which is under the auspices of DfP, hold information on a substantial number of empty homes in the private sector. However, there is currently no appropriate information sharing gateway under the Data Protection Act 1998 that enables it to share information on property owners with DSD and NIHE. It is hoped that the provisions in Clause 1 will assist in rectifying this situation.
- Respondents to the Committee for Social Development’s Call for Evidence on the Bill were very supportive of Clause 1. However, there were suggestions that information sharing should also extend to councils (given that they have a range of statutory functions in relation to housing); registered housing associations and private landlords.
- There were also suggestions that more use should be made of utility company information to identify empty properties although this may have significant implications in terms of data protection.

Information Sharing and Anti-Social Behaviour

- Clause 2 contains provisions to permit a person to disclose relevant information to the Housing Executive or registered Housing Associations if the information is disclosed for a relevant purpose such as applying for injunctions on grounds of anti-social behaviour; applying for possession orders on such grounds; and withholding consent to the mutual exchange of tenancies.

- Respondents were largely supportive of the need for information sharing in respect of anti-social behaviour. However, a number of issues were raised by respondents to the Committee's Call for Evidence.
- Such issues included, for example, the need for appropriate guidance and protocols to be put in place before information is disclosed; that this provision should not only be used for enforcement purposes but also to support perpetrators of anti-social behaviour (e.g. to help them change their behaviour); that the Bill should be amended to facilitate the sharing of information with councils and the PSNI; that information on anti-social behaviour should be provided to private landlords; that appropriate safeguards are put in place for vulnerable tenants; that the disclosure of information should be proportional and relevant; and that those accused of anti-social behaviour be given the opportunity of rebuttal.
- There was some debate around the potential need to define more clearly what the Bill meant by "a person" could disclose information on anti-social behaviour. Some respondents believed that "a person" should be restricted to a person within certain statutory bodies or other named organisation.
- There was much discussion around the Human Rights implications of the Bill and this was a somewhat contentious issue. There was some concern that if appropriate safeguards were not put in place the sharing of information on anti-social behaviour could potentially infringe on Article 8 (i.e. the right to respect for family and private life) of the European Convention on Human Rights.
- The Information Commissioner's Office outlined the importance under the Data Protection Act of keeping information secure and retaining information only as long as it is necessary. It also advised that the processing of such personal data must be "fair" and "lawful".
- An issue was raised by a Member of the Social Development Committee regarding the potential for legal proceedings to be taken against a person for defamation if, for example, a person shared information in respect of anti-social behaviour in good faith but which later turned out to be incorrect.

Registration of a Statutory Charge of certain loans

- The Northern Ireland Housing Executive has in the past provided a range of discretionary grants to homeowners, tenants and landlords to assist with the costs of private sector housing repairs and maintenance. However, significant budgetary constraints has meant that access to these grants is now restricted.
- There has been a significant policy shift in Great Britain from grant-aid towards loans as a means of stretching limited public funding within the context of public expenditure austerity measures. As part of DSD's review of 'Support for Repair and Improvement in the Private Housing Sector' a working group has been set up with the Housing Executive to develop a pilot loan scheme for private sector housing.

- Clause 3 of the Bill proposes to provide the Housing Executive with the power to secure loans by way of a statutory charge. This would provide a means of security against any such lending and would ensure that, in the event that the owner defaults on the loan or sells or transfers the property, the Housing Executive would be made aware of the transaction and would be able to take action to recover the debt.

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1 Introduction

The [Housing \(Amendment\) Bill](#) was introduced to the Assembly by the Minister for Social Development on 30 June 2015¹. At the time of writing the Bill has not yet reached Second Stage although the Committee for Social Development has called for evidence in anticipation of the Consideration Stage.

The purpose of the Bill, as set out in the [Explanatory and Financial Memorandum](#)², is threefold: (i) to facilitate the sharing of information in relation to empty homes; (ii) to facilitate the sharing of information in relation to anti-social behaviour; and, (iii) to register a Statutory Charge in respect of grants made by way of loan. The Bill is a relatively short Bill consisting of five clauses – *Clause 1* (empty properties); *Clause 2* (anti-social behaviour); and, *Clause 3* (the registration of a Statutory Charge). Clauses 4 and 5 cover the commencement and short title of the potential Act respectively. This Bill paper will explore the first three clauses of the Bill in turn, looking at the policy context, the provisions of the Bill and potential issues raised by the Committee for Social Development and consultees.

2 Clause 1: Sharing of Information Relating to Empty Properties

Clause 1 of the Bill proposes to require the Department of Finance and Personnel to share “relevant information” which it collects for the purposes of rates with the Department for Social Development and/or the Housing Executive for the purposes of taking action in relation to empty homes (particularly making contact with the owners of empty properties). It is also proposed to require the Department for Social Development and the Housing Executive to share with the Department of Finance and Personnel information about a property that is listed as empty, but appears to be occupied.

The Bill Financial and Explanatory Memorandum states that a “do nothing” approach would mean that the Department for Social Development would be unable to access the information about empty homes held by the Department of Finance and Personnel and would not be in a position to take action to encourage owners to bring those homes back into use.

¹ The Housing (Amendment) Bill www.niassembly.gov.uk/assembly-business/legislation/primary-legislation-current-bills/housing-amendment-bill/

² Housing (Amendment) Bill, Explanatory and Financial Memorandum - www.niassembly.gov.uk/globalassets/documents/legislation/bills/executive-bills/session-2014-2015/housing-amendment-bill/housing-amendment-efm---as-introduced.pdf

Policy Context

The Housing Strategy for Northern Ireland "[Facing the Future](#)" (2012-2017) acknowledges that there is a need to address the challenge of empty homes³. The [Empty Homes Strategy and Action Plan for Northern Ireland](#) (2013-2018) defines an empty home as "a dwelling or residential property that has been left unoccupied". For rating purposes an empty property is one that is "unoccupied, unfurnished and not used for storage".

It is somewhat difficult to comprehensively quantify the number of empty homes in Northern Ireland. As at 31 August 2015, Land and Property Services recorded 21,775 domestic properties as empty (out of a total of 773,454 domestic properties)⁴. However, LPS figures must be treated with a degree of caution as they may be an under-estimation of the actual number of empty homes in Northern Ireland. Since the introduction of the rating of empty homes legislation on 1 October 2011⁵, the rates liable for vacant domestic properties has been assessed at 100%. Previously owners were incentivised to declare their property vacant as rates were not levied on empty properties.

Currently there is no requirement for ratepayers to inform LPS that their property is vacant, nor is there any financial advantage of doing so. It is also important to note that many properties may be empty but not available to rent out (e.g. they could be temporarily unavailable whilst undergoing renovations or be for sale on the open market).

The Northern Ireland House Conditions Survey 2011 (commissioned by the Housing Executive) estimated that in 2011 there were around 55,000 vacant homes at any one time in Northern Ireland (7.2% of the stock). This compares to a figure of 44,000 (5.9%) in 2009 and 40,000 (5.7%) in 2006⁶. These figures were derived using a sample of properties.

Why does a home become empty?

A report on empty homes published by the Institute for Public Policy Research (IPR) states that there are many reasons why a property may be unoccupied, including those properties that are only unoccupied for a short time:

"They may be empty while waiting to come onto the market, sit empty despite being for sale or rent....they may be property investments where no tenants are sought, it may be that the property has been inherited after the death of a relative and is waiting resale, or the dwelling may only be used

³ Department for Social Development. 'Facing the Future: The Housing Strategy for Northern Ireland 2012-2017. www.dsdni.gov.uk/sites/default/files/publications/dsd/facing-the-future-housing-strategy.pdf

⁴ Figures provided by the Department of Finance and Personnel.

⁵ The Rates (Unoccupied Hereditaments) Regulations (Northern Ireland) 2011 www.legislation.gov.uk/nisr/2011/36/made

⁶ Housing Executive (2013) Northern Ireland Housing Market: Review and Perspectives 2013-16.

for a few weeks of the year. Empty homes may also be present where housing markets are weak and neither buyers nor tenants can be found. It may also be that the resident of the home has moved into care...

Where public policy does have an interest is when properties are left empty over the long term, given that the state is often left to assume the costs of finding housing for people who cannot access it.”⁷

An additional reason why homes can become empty is due to tenancy fraud. The issue of tenancy fraud in Northern Ireland was highlighted recently in a report by the Northern Ireland Audit Office⁸ and by a BBC ‘Spotlight’ programme⁹. An example of tenancy fraud can include an abandonment of a property by a person who could be claiming either Housing Benefit or Local Housing Allowance for that property and has moved into, for example, the home of a partner, thereby leaving the property empty. The Audit Office published their report in 2013 and at the time of writing felt that the Housing Executive and Housing Associations were not sufficiently proactive in tackling housing tenancy fraud. The Audit Office report recommended that DSD should formally recognise the importance of actively tackling tenancy fraud in both the Housing Association Guide and NIHE’s Financial Memorandum and should require NIHE and Housing Associations to produce dedicated tenancy fraud strategies.

The financial and social impact of empty homes

The Northern Ireland Housing Executive has highlighted the impact of empty homes and the benefits of bringing them back into use as thus:

- Empty homes can blight communities, attract vandals and squatters and tie up the resources of local authorities and emergency services.
- Empty homes can quickly fall into disrepair and the longer that they remain empty the more likely it is that they will become derelict and more expensive to bring back into use.
- The Royal Institute of Chartered Surveyors estimate that properties adjoining poorly maintained empty homes can be devalued by 18%.
- Bringing empty homes back into use is a sustainable way to meet housing need and demand and helps alleviate pressure to develop Greenfield sites.
- Refurbishment of old buildings can save more carbon dioxide emissions than building environmentally friendly new properties over the short term¹⁰.

⁷ Davies, B. (2014) Back on the Market: Bringing Empty Homes Back into Use”. Institute for Public Policy Research (IPPR).

⁸ Northern Ireland Audit Office (2013) Tackling Social Housing Tenancy Fraud in Northern Ireland.

www.niauditoffice.gov.uk/index/publications/report_archive_home/2013/housing_tenancy_fraud.pdf

⁹ BBC News Northern Ireland. ‘BBC Spotlight investigation reveals NI housing fraud’. www.bbc.co.uk/news/uk-northern-ireland-26523767

¹⁰ Northern Ireland Housing Executive. ‘Problems with empty homes’.

www.nihe.gov.uk/index/corporate/strategies/empty_homes_strategy/problems.htm

Working in partnership and sharing information

One of the most fundamental means by which partnership working and information sharing can be effective is in quantifying and locating empty properties. This is vital in bringing empty properties back into use (where possible) or dealing with anti-social behaviour that is connected with the property being left empty. One of the objectives of the Northern Ireland Empty Homes Strategy is to collect “more relevant, accurate and up-to-date information on empty homes”. It aims to do this supplementing LPS rates data on empty homes with other sources and this will obviously involve information sharing. It will require information sharing between different agencies and individuals, for example, LPS, the Housing Executive, local councils and elected members. It will also involve the public sharing information with agencies on empty properties. An [Empty Homes NI website](#) has been set up which allows the public to report an empty home.

Land and Property Services (LPS), which is under the auspices of the Department of Finance and Personnel, hold information on a substantial number of empty homes in the private sector. However, the Bill’s Financial and Explanatory Memorandum highlights there is no appropriate information sharing gateway under the Data Protection Act 1998 that would enable it to share information on the names and contact details of the owners or even the full address of such properties. As the next section highlights the Bill, if enacted, aims to rectify this situation.

Issues arising from the Committee for Social Development’s Call for Evidence on the Housing (Amendment) Bill

A summary of the written evidence in relation to Clause 1 is provided in Table 1 of this paper. Many of the consultees who provided written evidence to the Committee were very supportive of information sharing as a mechanism to tackle the issue of empty homes. However, a number of consultees believed that Clause 1 should not be restricted to sharing of information solely between the Department for Finance and Personnel, the Department for Social Development and the Housing Executive. There were suggestions that this should be extended to include local government, registered housing associations and private landlords.

NILGA and those councils that responded to the consultation stated that it was imperative that the Bill also include the sharing of information with local government given councils have a range of statutory functions in relation to housing. For example, the sharing of information would enable councils to identify owners of dangerous structures and would assist in planning and land development policies. A number of councils also highlighted that the sharing of information with local government would become increasingly important when Housing Executive functions in respect of the regulation of housing unfit and Houses in Multiple Occupation transfer to councils.

The Northern Ireland Federation of Housing Associations (NIFHA) emphasised that the Northern Ireland Housing Strategy identifies housing associations as a key partner in bringing empty homes back into use. Helm Housing stated that it strongly supported the sharing of information on empty properties but suggested that this should be extended to include housing associations. The Landlords Association for Northern Ireland (LANI) also noted that the Bill did not extend to the sharing of information with the private rented sector and consider that information on vacant properties should be made available to those landlords that provide social housing. LANI also suggested that electricity supply companies should share information in order to determine if a property is vacant.

Please note that Table 1 contains a summary of the written evidence as at 4 November 2015, it does not cover any ongoing oral evidence to the Committee by either stakeholders or the Department for Social Development.

Table 1: Summary of Written Evidence to the Committee for Social Developments Call for Evidence on the Housing (Amendment) Bill (Clause 1).

Organisation	Summary of comments
Belfast City Council ¹¹	<p>Outlined the existing statutory powers that councils have in order to deal with vacant and dilapidated properties.</p> <p>State that since the property crash in 2007 there has been a marked increase in dangerous and dilapidated properties in NI. The council has been addressing this by taking enforcement action wherever possible and by carrying out works of default where owners of properties cannot be identified or don't have the means to repair buildings.</p> <p>Expressed surprise that given the wide range of statutory functions that councils have in relation to vacant properties the proposed Bill does not permit either DSD or DFP to share information with councils for the purposes of those functions.</p> <p>Believe it is imperative that the proposed Bill provides for the sharing of information between DFP, DSD and Councils.</p> <p>Stated that currently DSD will only provide information to council officers for the purposes of enforcement under the Private Tenancies (NI) Order 2006 and that this has created information management and data handling issues for operational staff.</p> <p>Highlighted that the transfer of regulatory functions in relation to HMOs and unfitness from the Housing Executive to councils will require close working relationships between DSD, DFP, the Housing Executive and councils. Stated that this will inevitably require effective statutory provisions around information sharing.</p> <p>It has been the council's experience that the inability to find a legislative route to sharing information has impacted upon the effective delivery of its regulatory functions. Believes that the opportunity now exists to rectify this.</p>
Chartered Institute of Housing Northern Ireland ¹²	<p>Believed that the number of empty homes brought back into use will continue to be small in the context of overall housing need.</p> <p>Supported the policy intention to allow information sharing between DFP, DSD or the Housing Executive relating to empty homes and has no suggested amendments to the Bill.</p>

¹¹ Belfast City Council Written Evidence. www.niassembly.gov.uk/globalassets/documents/social-dev/housing-amendment-bill/written-submissions/belfast-city-council.pdf

¹² Chartered Institute of Housing Northern Ireland. Written Evidence. www.niassembly.gov.uk/globalassets/documents/social-dev/housing-amendment-bill/written-submissions/chartered-institute-of-housing-ni.pdf

Helm Housing ¹³	Supported the sharing of information relating to empty properties but suggested that this is extended to Housing Associations. With regard to proposals to extend responsibilities on DFP, DSD and the Housing Executive to share information on empty homes, Helm stated that it is unclear why existing information sharing protocols don't already permit this sharing of information. Stated that it would be useful if DFP was empowered to share information with housing associations to enable them to take steps to bring vacant properties back into use.
Landlords Association for Northern Ireland (LANI) ¹⁴	Stated that the Housing (Amendment) Bill does not extend to the Private Rented Sector and considers that the sharing of information on empty homes should be made available to those landlords that provide social housing. Believed that the Bill should include information sharing by the Land Registry, stating that while it does not demonstrate that the property is empty, it provides details on the ownership of the property. Suggested that electricity supply companies should be used to determine if a property is empty. Suggested that if there is no electricity usage in a property after a designated period of time the supply company should perhaps be duty bound to report this to either to Land and Property Services or other appropriate authority. Believed that this may also be useful to address the problem of "Bureau drops".
Lisburn and Castlereagh City Council ¹⁵	Noted the progressive steps in sharing information across central government in relation to information held by LPS and DFP. However, it believed that the legislation should be extended to local councils seeking information as to the ownership of empty properties. Stated that the sharing of information with local government could provide assistance and opportunities to councils in a number of ways e.g. identifying owners of dangerous structures and dereliction; in planning and land development; economic development initiatives etc. Recommended that information is provided at nil cost.
Mid and East Antrim Borough Council ¹⁶	Believed that the Bill should be extended to include the sharing of information with councils. Highlighted that the transfer of regulatory functions in relation to HMOs and unfitnes from the Housing Executive to councils will require close working relationships between DSD, DFP, the Housing Executive and councils. Stated that this will inevitably require effective statutory provisions around information sharing.
Newry, Mourne and Down District Council ¹⁷	Noted that despite councils having statutory functions relating to empty properties the Bill in its current form does not permit DFP or DSD to share information with councils for the purposes of these functions. Recommended that the Bill is extended to provide for the sharing of information between DFP, DSD and councils.
Northern Ireland Federation of Housing Associations (NIFHA) ¹⁸	Highlighted that housing associations are identified in the Empty Homes Strategy for Northern Ireland as a key partner in bringing empty homes back into use.

¹³ Helm Housing Written Evidence. www.niassembly.gov.uk/globalassets/documents/social-dev/housing-amendment-bill/written-submissions/helm-housing.pdf

¹⁴ Landlords Association for Northern Ireland. Written Evidence. www.niassembly.gov.uk/globalassets/documents/social-dev/housing-amendment-bill/written-submissions/landlords-association-ni-.pdf

¹⁵ Lisburn and Castlereagh City Council. Written Evidence. www.niassembly.gov.uk/globalassets/documents/social-dev/housing-amendment-bill/written-submissions/lisburn-and-castlereagh-city-council.pdf

¹⁶ Mid and East Antrim Borough Council. Written Evidence. www.niassembly.gov.uk/globalassets/documents/social-dev/housing-amendment-bill/written-submissions/mid-and-east-antrim-borough-council.pdf

¹⁷ Newry, Mourne and Down District Council. Written Evidence. www.niassembly.gov.uk/globalassets/documents/social-dev/housing-amendment-bill/written-submissions/newry-mourne-and-down-district-council.pdf

	<p>Two illustrative examples were provided which demonstrated the role housing associations can play in bringing empty homes into use. Habinteg working in partnership with Habitat for Humanity to refurbish an empty property in North Belfast. Clanmil Housing Association purchased a development that had been built by a private developer but had lay empty for several years due to the economic downturn. Stated that NIFHA strongly supported this clause as it will allow LPS to share information on empty homes with DSD and the Housing Executive. However, it also supports the sharing of information in the other direction which would assist in tackling fraud by highlights incidents, e.g. where a property is vacant by LPS but appears occupied.</p> <p>Stated that NIFHA members are committed to tackling tenancy fraud and support extending information sharing with Housing Associations.</p>
Northern Ireland Local Government Association (NILGA) ¹⁹	<p>Highlighted that an exercise had been carried out by council Building Control officers and LPS in the past and that this resulted in positive outcomes.</p> <p>Highlighted that councils often hold relevant information at local level and that it may be appropriate for DFP and DSD to contact the 11 new local councils with a view to enhancing collaboration.</p>
Northern Ireland Rural Residents' Forum ²⁰	<p>Is supportive of making provision to enhance the sharing of information relating to empty homes.</p>
Royal Town Planning Institute Northern Ireland ²¹	<p>Is supportive of the provision to enhance the sharing of information on empty homes. Pointed out that the impact of empty homes on housing supply in Northern Ireland could be substantial and that Northern Ireland, like other regions of the UK, is facing a complex and serious housing crisis.</p>
Supporting Communities NI ²²	<p>Supported the intention of DSD to identify empty homes and to take steps to bring them back into use.</p> <p>Believed that the sharing of information between government departments and agencies is an important element of the Empty Homes Strategy and Action Plan.</p>

Empty Homes and information sharing in other jurisdictions

[Section 85 of the Local Government Act 2003](#) provides local authorities in England and Wales with the power to use Council Tax information for the purposes of identifying vacant dwellings or taking steps to bring vacant dwellings into use. In Great Britain, both Council Tax and Housing are under the remit of local authorities and Council Tax is one means by which empty homes can be identified. Similar to information sharing restrictions in Northern Ireland, before the 2003 Act there were information sharing restrictions within local authorities in Great Britain as Council Tax officers could not share personal information on council tax payers with their housing colleagues (including empty property officers) due to Data Protection legislation. Conscious that data sharing does not interfere with an individual's right to privacy (protected by Article

¹⁸ Northern Ireland Federation of Housing Associations (NIFHA). Written Evidence.

www.niassembly.gov.uk/globalassets/documents/social-dev/housing-amendment-bill/written-submissions/ni-federation-of-housing-association.pdf

¹⁹ Northern Ireland Local Government Association. Written Evidence. www.niassembly.gov.uk/globalassets/documents/social-dev/housing-amendment-bill/written-submissions/ni-local-government-association.pdf

²⁰ Northern Ireland Rural Residents' Forum. Written Evidence. www.niassembly.gov.uk/globalassets/documents/social-dev/housing-amendment-bill/written-submissions/ni-rural-residents-forum.pdf

²¹ Royal Town Planning Institute Northern Ireland. Written Evidence. www.niassembly.gov.uk/globalassets/documents/social-dev/housing-amendment-bill/written-submissions/royal-town-planning-institute-.pdf

²² Supporting Communities NI. Written Evidence. www.niassembly.gov.uk/globalassets/documents/social-dev/housing-amendment-bill/written-submissions/supporting-communities-ni.pdf

8 of the European Convention on Human Rights) the disclosure of council tax information under Section 85 is limited to an individual's name, address and number (e.g. telephone number)²³.

It is important to note, however, that responsibility for Council Tax and housing largely lies *within* the same body (i.e. the local authority) in England, Wales and Scotland and therefore the exchange of information could be interpreted as internal communication. In Northern Ireland similar functions are the responsibility of different government departments and agencies each with their own databases, IT systems, protocols and governance structures, thereby making the exchange of information perhaps more complex.

Housing departments within local authorities in Scotland faced similar difficulties to their counterparts in England and Wales in that the law was ambiguous in regards to empty homes/housing officer's access to Council Tax information. This was rectified by Section 157 of the Housing (Scotland) Act 2010 (which commenced on the 7 October 2011). This section extends to Scottish local authorities the already existing express permission for English and Welsh local authorities to use council tax data for the purposes of identifying vacant dwellings and attempting to bring them back in to use²⁴.

The logistics of sharing information on empty homes in Great Britain

Research by the Empty Homes Strategy Task and Finish Group in Shropshire Council (July 2015) explored what arrangement other local authorities in Great Britain had put in place for sharing and accessing Council Tax data for the purpose of bringing empty homes back into use. It found that all of the 25 local authorities that had responded to its request for information had provided empty homes officers with direct access to Council Tax systems. This access ranged from read only access (so that only on addresses could be searched for) to full access including a mechanism by which empty homes officers were able to update the Council Tax system with information gained through the course of their investigations. Some, but not all, required a data protection agreement to be signed to allow access²⁵.

Accessing information on empty properties

As previously stated, legislation prevents local authorities in Great Britain from disclosing or publishing the details of empty properties owned by private individuals. This has been somewhat of a contentious issue. A number of Freedom of Information requests from members of the public seeking such information have been referred to Information Tribunals which have subsequently ruled that this type of information should not be disclosed.

²³ Local Government Act 2003. Explanatory Notes. www.legislation.gov.uk/ukpga/2003/26/notes/division/4/6/12

²⁴ Shelter Scotland (2012) Scottish Empty Homes Partnership. Guide to data collection – 2012 update.

²⁵ Shropshire Council. Report of the Empty Homes Strategy Task and Finish Group. 29 July 2015.

Two illustrative examples are provided below and overleaf:

Mr P England v London Borough of Bexley and the Information Commissioner

In this particular case Mr England had requested that the London Borough of Bexley provide statistics of empty residential properties including the addresses of the properties, details of ownership and information as to why the property was empty. Following a refusal by the London Borough of Bexley the case had been placed before the Information Commissioner and subsequently before the Information Tribunal for determination. The tribunal ruled that details of properties owned by individuals should not be disclosed because it was personal data and exempt under section 40 of the Freedom of Information Act 2000. It stated that disclosure of this information would be unfair to the individuals because their properties could be targeted by criminals and squatters²⁶. However, it also ruled that *those properties owned by anyone other than individuals (for example private companies, charities) should be disclosed together with details of ownership*. However, many local authorities are using Section 31 of the Freedom of Information Act as rationale for not disclosing information on empty properties that are owned by non-individuals²⁷.

Mr Y Voyias vs Information Commissioner and London Borough of Camden

Local authorities use Section 31 of the Freedom of Information Act 2000 as justification for refusing Freedom of Information Requests for a list of empty properties within its area (identified from Council Tax information). Information is exempt from disclosure under Section 31 if it could, or would, be likely to prejudice the prevention or detection of crime. Local authorities are concerned that releasing such information on empty properties could lead to criminal activity and damage such as squatting, stripping the properties of furniture and fittings, and vandalism.

Councils are largely supported in their decision not to disclose lists of empty properties by a case involving Camden Council [*Voyias vs Information Commissioner and London Borough of Camden*]. In this case a Mr Voyias (a member of the Advisory Services for Squatters) requested via FOI that Camden Council provide a list of every void (empty) property in their area which was owned by a 'non-individual' or in which such an individual had a material interest. The council refused Mr Voyias' request relying on the exemption from disclosure contained in Section 31. The Information Commissioner upheld Camden Council's decision. Mr Voyias appealed to the Information Tribunal. The Tribunal allowed Mr Voyias' appeal and required Camden council to disclose the information²⁸. However, ultimately the decision was referred to another Tribunal which supported the Council's decision not to release the information.

²⁶ The Law Society Gazette. Extending the Act, emails and empty properties. 1 March 2012.

www.lawgazette.co.uk/law/extending-the-act-emails-and-empty-properties/64471.fullarticle

²⁷ Vale of White Horse District Council. Empty Property Refusal www.whitehorsedc.gov.uk/about-us/contact-us/requesting-information/freedom-information/empty-property-refusal

²⁸ Housing and Property Law Daily. 'Councils face squatting surge after empty property disclosure order'. 5 September 2011.

In a recent FOI decision (March 2015) an individual requested that the Royal Borough of Kensington and Chelsea release a list of void properties in the Borough. The UK Information Commissioner acknowledged that whilst each case should be judged on its own merits, the case was very similar to the Voyias decision and therefore concluded that the public interest in maintaining the exemption (in Section 31) outweighed the public interest in disclosure²⁹.

Sharing information with non-statutory organisations

Many local authorities, to a degree, circumvent the difficulties with the sharing of personal information with other statutory bodies, community groups, housing associations and (occasionally private landlords) by *formally asking the owners of empty properties for their consent* to share their personal information (e.g. name, address, telephone number). Hull City Council, for example, outlines its process for sharing personal information from its Council Tax data with its partner organisations (which are community and voluntary sector organisations) as follows:

“Our process for sharing empty homes information from our local council tax data is as follows:

- We take the raw council tax data identifying empty properties across the city and we remove all owner/landlord/letting agent/tenant information and contact details.*
- We share the list of properties with our community sector partners.*
- The partners then identify the properties which they would be interested in purchasing or leasing.*
- We then write to the owners of the empty properties with a standard letter or leaflet asking them to contact us.*

Once we have established contact, if the owner is interested in selling or leasing:

- We send them a consent form which then enables them to share their details with the community partners.*
- Once they sign the consent form, we share information with the partners in the form of an Excel spreadsheet which we send through ‘Send Secure’ email which encrypts it...In order for the information to be shared in this way each community partner has signed a data sharing protocol with the Council which sets out how the data will be stored securely and roles and responsibilities.*
- The partners then establish contact with the owners and negotiate a sale or lease.”*

²⁹ Information Commissioner’s Office. Freedom of Information Decision Notice. 26 March 2015. https://ico.org.uk/media/action-veve%20taken/decisionnotices/2015/1043628/fs_50559176.pdf

Hull City Council's 'Community Partners', with whom they share data on empty homes (with the consent of the owners) include a housing charity which renovates empty and derelict properties; a community-managed non-profit regeneration company; an organisation that provides housing support services including accommodation for people who are homeless; a woman's centre that provides housing accommodation for women and children including those that have experienced domestic abuse; a non-profit community economic development organisation; and an organisation that provides housing at below market rents.

Sharing information with private landlords

Some local authorities are prepared to share the personal details of owners of empty properties with a range of other organisations and individuals, *providing permission is sought and granted from the property owner*. For example, Calderdale Council's Empty Homes Strategy 2014-2020 states that the council is willing to share such information with property developers, interested buyers, estate agents and private landlords³⁰. The purpose of sharing this information is primarily about bringing the property back into use (e.g. landlords or developers offering to buy the property) rather than dealing with issues such as anti-social behaviour.

Some local authorities, e.g. Woking Borough Council, hold lists of people interested in buying properties. If an individual is interested in selling their property the council will put them in touch with a prospective buyer³¹.

The advantages and disadvantages of seeking the consent of the owner of an empty property before releasing their personal information

Advantages:

- Owners of empty properties retain control of their personal details and are only contacted by a third party if they gave their consent.
- Many homeowners inherit properties and do not know what to do with them or are overwhelmed by the amount and nature of repair work the property requires. Consent to contact by a third party (e.g. a leasing agent or property developer) may provide the owner with the means and support they require to sell or lease the property.
- It may facilitate the uptake schemes such "lease and repair". These schemes are offered by many housing associations in GB. Home owners (including those with empty properties) lease their home to a housing association (e.g. for up to six years) and during that time the housing association will repair or renovate the property to a habitable standard. There are also "purchase and repair schemes" in GB in which housing associations and local authorities will buy privately owned empty properties

³⁰ Calderdale Council. Empty Homes Strategy: 2014-2020.

³¹ www.woking.gov.uk/housing/landlords/emptyhomes

(which have to be empty for at least six months). The asking price must reflect the amount of repair and renovation the property requires.

Disadvantages:

- Owners of empty properties may not consent to their details being released or there may be difficulties tracing a property owner particularly if the property has been derelict for some time.
- Once the owner of the empty property consents to their details being released the statutory body releasing the information to a third party may have difficulty controlling what the person or organisation receiving the information will do with it. Whilst bodies such as housing associations have in place protocols and policies on confidentiality and information handling other organisations and individuals may not.
- Processes may need to be put in place to ensure, as far as possible, that the information is not used for criminal purposes e.g. facilitating the identification of empty properties for squatting, stripping the property of furnishings and fittings, vandalism etc.
- Asking for the consent of empty property owners to release their information to a third party may not be an effective approach if the information is required for purposes other than bringing empty properties into use e.g. if it is requested in order to deal with anti-social behaviour or health and safety issues in or around the property. It is only likely to be effective if it is directly beneficial for the owner e.g. a third party is offering to buy or lease the property or the owner is being offered a grant or low interest loan to bring the property back into use.
- It is relatively easier to identify empty properties in England, Wales and Scotland because there are Council Tax discounts for empty homes which incentivises owners of empty properties to register them as empty (although Council Tax can increase by up to 150% if the property is left empty long term). In Northern Ireland, the rates discount for empty homes was removed and there is no longer an incentive for owners to notify Land and Property Services (LPS) that the property is vacant. Even if a third party identifies an empty property that they are interested in and are seeking permission to contact the owner, LPS may not necessarily hold the information because the owner has not provided notification that it is empty.

The use of utility company information in identifying empty homes

Properties that use no utility services (e.g. gas and electricity) are likely to be empty. Utility companies have records of their service's usage and of properties that have been disconnected. They may not be an accurate record of empty homes but are a good indicator. The Scottish Empty Homes Partnership's 'Guide to Data Collection' highlights that whilst utility companies may be interested in sharing data, two issues arise that may make this difficult³²:

³² Shelter Scotland/Scottish Empty Homes Partnership. Scottish Empty Homes Partnership: Guide to Data Collection.

- There are many utility service providers (although there are fewer in Northern Ireland); and
- The sharing of some types of data may breach data protection legislation.

A recent Assembly Question to the Minister for Social Development has inquired as to how the Housing Executive are working with electricity providers to identify empty homes that are vacant but on which housing benefit is being claimed. In response the Minister has stated that³³:

“The Housing Executive has advised that arrangements are in place between themselves and electricity suppliers when a suspicion of non-occupation arises. The providers will respond to queries from the Housing Executive regarding customer details and electricity usage for the relevant properties. The Housing Executive provides a reciprocal service to the providers. This level of data sharing is compliant with the data protection legislation”.

The Landlords Association for Northern Ireland suggested that utility companies should be duty bound to release information to certain statutory bodies (e.g. LPS) if there is no electricity usage in a property after a designated period of time. This may be a legally complex area given that such wholesale release of personal data may have significant data protection implications. The case by case release of information by utility companies to the Northern Ireland Housing Executive in order to tackle housing tenancy fraud is a different scenario in terms of data protection.

Clause 1: Summary Points

- Given the existing statutory functions that local councils have in relation to, for example, tackling dilapidated and dangerous buildings, should the Bill be amended to include provisions for information sharing with councils?
- Given that housing associations may play a significant role in bringing empty homes back into use, should the Bill be amended to include provision for information sharing with registered housing associations?
- Should there be information sharing with private landlords and other non-statutory organisations? Would there be significant data protection implications? Could this be overcome by LPS or NIHE contacting the owner of the property seeking their formal permission to release their details to a private landlord or other interested party?
- Will there be restrictions as to the level of personal information that can be released between NIHE, LPS, DSD and DfP, i.e. will it be restricted only to the name, address and contact details of the owner of the property/someone acting on their behalf?

³³ Assembly Question for Written Answer. Mr Phil Flanagan, MLA to the Minister for Social Development. AQW 48450/11-16. Tabled 4 September 2015.

- Will there be protocols and guidance issued on information sharing in respect of empty homes?
- What are the data protection implications of using utility company information to identify empty properties?

3 Clause 2: Disclosure of Information Relating to Anti-Social Behaviour

Clause 2 of the Housing (Amendment) Bill states that a “person” may disclose “relevant information” to the Housing Executive or to a registered housing association, if the information is disclosed for a “relevant purpose”. In summary, this Clause provides that a person may disclose information about anti-social behaviour to the Housing Executive or a registered housing association where that information is required for housing management purposes. These purposes include³⁴:

- applying for injunctions on grounds of anti-social behaviour.
- applying for possession orders on such grounds.
- withholding consent to the mutual exchange of secure tenancies.
- Determining that a person is not eligible for accommodation on the basis of their unacceptable behaviour.

Policy Context

The definition of anti-social behaviour contained within the Housing (Northern Ireland) Order 2003 is engaging in, or threatening to engage in conduct causing, or likely to cause, a nuisance or annoyance to a person residing in, visiting or otherwise engaging in lawful activity in the locality of a dwelling house. Additionally, an individual may be deemed to have acted in an anti-social manner if he/she has been convicted of using the dwelling house, or allowing it to be used, for illegal or immoral purposes; been convicted of an indictable offence committed in, or in the locality of, the dwelling house directly or indirectly³⁵. However, it is worth noting that there is no one universally agreed definition of anti-social behaviour across different agencies.

The Housing Executive and Registered Housing Associations have a duty of care to protect their tenants from anti-social behaviour as well as a duty to protect other people from anti-social behaviour caused by tenants of social housing³⁶. According to the Housing Executive’s [Statement of Policy and Procedures on Anti-Social Behaviour](#),

³⁴ Housing (Amendment) Bill. Financial and Explanatory Memorandum.

³⁵ Northern Ireland Housing Executive (2011) Statement of Policy and Procedures on Anti-Social Behaviour. www.nihe.gov.uk/statement_of_policy_antisocial_behaviour.pdf

³⁶ Department for Social Development (2009) The Housing Bill (Northern Ireland): A Consultation Document.

illustrative examples of typical types of anti-social behaviour which *may* trigger consideration for action by the Housing Executive can include³⁷:

- Violence or the threat of violence;
- Hate behaviour targeted at members of identified groups because of their perceived differences (e.g. race, regional, political affiliation, disabilities or sexual orientation);
- Noise nuisance (e.g. rowdy parties, loud music/TVs; dogs barking etc.);
- Arguing and door slamming;
- Environmental issues (e.g. litter, dog fouling, graffiti, fly tipping, nuisance vehicles);
- Offensive drunkenness;
- Using accommodation for selling drugs or drug abuse or other unlawful purposes; and
- Intimidation and harassment.

In its Statement of Policy and Procedures, the Housing Executive states that:

“...the Housing Executive acknowledges that every individual is entitled to live in peace within their neighbourhood and that to provide a quality service, anti-social behaviour must be addressed effectively....We are committed to tackle anti-social behaviour wherever it occurs on our estates and in whatever form it presents itself. We will seek to respond to instances of anti-social behaviour whether the complainant is a Housing Executive tenant, private tenant, owner occupier or any other person visiting or engaging in lawful activity within the locality of our property.”

The Statement sets in detail the actions the Executive will take to deal with anti-social behaviour, from the use of statutory powers such as possession and injunctions, to non-statutory interventions such as warning letters, Acceptable Behaviour Contracts (ABCs), mediation and the provision of advice and information. Registered Housing Associations also have their own anti-social behaviour policies and procedures in place. The Housing Executive estimate that around 70% of their reported anti-social behaviour cases cease following initial interview and the issue of a warning letter³⁸. Eviction for anti-social behaviour is used as a last resort when all other avenues have been exhausted³⁹. The Housing Executive has a Community Safety Team to support local district offices in dealing with anti-social behaviour and wider community safety issues. It is guided by ‘[Safety Together: Northern Ireland Housing Executive Community Safety Strategy 2015-17](#)’ which provides an emphasis on partnership

³⁷ Northern Ireland Housing Executive (2011) Statement of Policy and Procedures on Anti-Social Behaviour www.nihe.gov.uk/statement_of_policy_antisocial_behaviour.pdf

³⁸ Assembly Question (AQO7640/11-15) Mr Paul Frew to the Minister for Social Development. Tabled 12 February 2015.

³⁹ Community Safety Team supports local district Housing Executive offices deal with anti-social behaviour and wider community safety issues www.nihe.gov.uk/index/community/community_safety/our_services/community_safety_team.htm

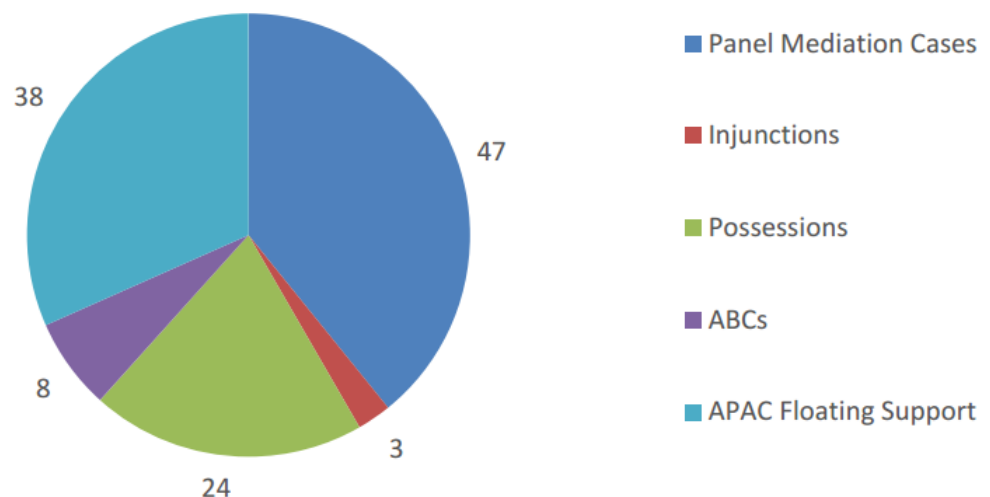
working with, for example, local community groups, local councils, Government Departments and justice agencies⁴⁰.

Incidences of Anti-Social Behaviour reported to the Housing Executive

During 2013-14, the Housing Executive received and processed around 3,206 reports of anti-social behaviour. Just over 600 of these involved multiple incidents of anti-social behaviour, often taking place over a period of many months. The most common type of anti-social behaviour complaint concerns noise. The chart below, extracted from the Housing Executive Community Safety Strategy, and demonstrates the different interventions used for the period 2013/14.

It should be noted that housing associations also deal with incidents of anti-social behaviour. The Northern Ireland Federation of Housing Associations (NIFHA) state that housing associations demonstrate their commitment to tackling anti-social behaviour through Customer Charters, anti-social behaviour booklets, Good Neighbourhood Agreements, Anti-Social Behaviour policies. Housing Associations communicate their approach to dealing with anti-social behaviour to tenants and other stakeholders via their websites and publications and have internal policies and procedures that housing officers follow when they receive a complaint of anti-social behaviour⁴¹.

Breakdown of Interventions 2013-2014



⁴⁰ Northern Ireland Housing Executive (2015) Safer Together: Northern Ireland Housing Executive Community Safety Strategy www.nihe.gov.uk/community_safety_strategy_2015_to_2017.pdf

⁴¹ Northern Ireland Federation of Housing Associations response to the Department for Social Development's consultation on a proposed Housing (Anti-Social Behaviour) Bill for Northern Ireland.

The impact of anti-social behaviour

Anti-social behaviour can have a significant impact on the quality of life of neighbourhoods, households and individuals particularly the most vulnerable groups in society (e.g. older people, those with physical disabilities, mental health problems or learning disabilities). It can have a psychological impact with victims of persistent anti-social behaviour often forced to change their lifestyle to cope with it e.g. either staying home more or even moving home to escape the problem. Victims of anti-social behaviour can often feel afraid; and have difficulty sleeping and worry about their own and/or their family's safety⁴². Often individuals are reluctant to be witnesses or to provide evidence in anti-social behaviour cases for fear of reprisal or intimidation, which can result in considerable stress and anxiety⁴³.

There are also financial consequences resulting from persistent anti-social behaviour. A person may have to pay for damage to their property or there may be a fall in house prices in areas perceived to have a particular problem with anti-social behaviour. This has obvious financial consequences for home owners or landlords who may find it difficult to sell or rent out their property.

Anti-social behaviour can have a significant negative impact on whole communities. Research suggests that often the majority of serious and persistent instances of anti-social behaviour are carried out by a small number of individuals or problematic households⁴⁴. It is argued that such anti-social behaviour can undermine community cohesion in that people who perceive that there are high levels of anti-social behaviour in their areas are more likely to feel that their neighbours do not look out for one another⁴⁵.

There can also be substantial resource implications for social landlords and other statutory bodies who tackle anti-social behaviour. Dealing with anti-social behaviour can be resource intensive and involve specialist skills. Cost considerations for landlords can include staffing and staff training, mediation services, preventative services (e.g. community safety wardens) and court costs⁴⁶.

Partnerships and information sharing

Anti-social behaviour is not purely a housing issue but requires a partnership response between landlords and key agencies. This point was emphasised by the Minister for Social Development who stated that, "*...it should be recognised that Anti-Social*

⁴² Information extracted from the Victim's Support website - www.victimsupport.org.uk/help-victims/ive-been-affected/antisocial-behaviour

⁴³ CIH Scotland (2014) Tackling anti-social behaviour in Scotland: challenges and responses.

⁴⁴ Flint, J. et al (2007) The Impact of Local Antisocial Behaviour Strategies at the Neighbourhood Level. Research commissioned by the Scottish Government.

⁴⁵ Living Streets. Creating Healthy Environments: Practical Tools: Tackling Anti-Social Behaviour www.livingstreets.org.uk/sites/default/files/content/library/toolkits/creatinghealthyenvironments/3.10tacklinganti-socialbehaviour.pdf

⁴⁶ CIH Scotland (2014) Tackling anti-social behaviour in Scotland: challenges and responses.

*Behaviour is not an issue which can be dealt with by one statutory agency working in isolation. It requires the intervention of all the relevant government bodies working closely with the community to deliver real results*⁴⁷. The sharing of information is essential to the success of such partnerships in effectively preventing and dealing with anti-social behaviour.

Clause 2 of the House (Amendment) Bill, which is explored in further detail in the next section of this paper, makes enhanced provision for information sharing between social landlords (i.e. the Housing Executive and registered housing associations) and bodies such as the PSNI. The disclosure and sharing of information has been an obstacle, not only in Northern Ireland, but in other regions of the UK due to fear of breaching the data protection legislation. A guide to the disclosure and sharing of information in Scotland highlighted that,

*“One of the major obstacles to dealing with anti-social behaviour has been difficulties around disclosure and sharing of information. There has been a lot of confusion about what practitioners can and cannot do when it comes to sharing information. In part, this is because legally it is a fairly complex area...Effective management of anti-social behaviour requires effective sharing of information among authorities”*⁴⁸

The guide states that over the years there have been several misconceptions in relation to data protection and anti-social behaviour that have been stated as facts, e.g. “Data protection prohibits the sharing of information”, “a cautious approach is the safest approach”, “sharing information infringes individual’s rights”, “with protocols we can now share all our personal information”, and “you can go to prison if you get it wrong”.

The Welsh Government has recently commissioned research on review the practices of social landlords in relation to anti-social behaviour. The report looked at the problems, challenges and obstacles social landlords faced in tackling anti-social behaviour including around the sharing of information. It highlighted that,

*“Used effectively, information sharing can support the mapping of anti-social behaviour hotspots, the analysis of trends to help target resources, and the provision of evidence to support legal action. However, concerns over data protection legislation can led to an overly cautious approach to information sharing between partners and create unnecessary barriers”*⁴⁹

The Welsh Social Landlords Crime and Nuisance Group stated that difficulties around information sharing were one of the main barriers for social landlords in addressing anti-social behaviour. They stated that whilst most social landlords in Wales had a good relationship with the police at a local level which enabled the informal exchange

⁴⁷ Assembly Question (AQO 7640/11-15). Paul Frew, MLA to the Minister for Social Development. Tabled 12 February 2015.

⁴⁸ Scottish Executive (2004) Guidance on disclosure and Sharing of Information. Antisocial Behaviour (Scotland) Act 2004.

⁴⁹ Delaney, A. (2014) et al. Welsh Anti-social behaviour: Policy and Practice. Commissioned by the Welsh Government. <http://gov.wales/docs/desh/publications/140212-how-social-landlords-tackle-anti-social-behaviour-en.pdf>

of information, many social landlords experienced significant delays in receiving written information from the police to support court action. Social landlords also reported difficulties in engaging with other agencies such as social services, probation and youth offending teams⁵⁰.

The report concluded that,

“...key public partners would benefit from a more indepth understanding of what specific information should be shared between partners, the stage at which it should be shared with, and the best methods for sharing information”.

A key message emerging from this research is that regardless of the legislation put in place to facilitate information sharing, if effective partnership structures are not put in place, and information is not shared in an appropriate and timely manner, then the legislation may not be as effective as it was intended. The Housing Executive, through its community safety work, states that it has forged a range of partnerships with other agencies and communities to prevent or address anti-social behaviour. For example, it is one of the designated bodies on the Policing and Community Safety Partnerships (PCSPs)⁵¹. The Housing Executive also state that it has developed formal ties with a number of statutory agencies in order to address anti-social behaviour, these include the PSNI, local councils and the Youth Justice Agency and that information sharing protocols are in place⁵².

DSD Consultation on Anti-Social Behaviour

The subject of information sharing as a mechanism to enable social landlords to tackle anti-social behavior came to prominence in a consultation on proposals for a new housing bill published by the Department for Social Development in 2009⁵³. This Bill subsequently became the [Housing \(Amendment\) Act \(Northern Ireland\) 2011](#)⁵⁴.

[Section 13 of the 2011 Act](#) allows a person to disclose information about court orders (e.g. an anti-social behaviour order) and injunctions to either the Housing Executive or a registered housing association where such information is required to enable to landlord to make a decision about whether to withhold consent to an exchange of

⁵⁰ Delaney, A. (2014) et al.

⁵¹ Policing and Community Safety Partnerships (PCSPs) have a range of duties set out in legislation including delivering a reduction in crime and enhancing community safety. The membership of PCSPs is comprised of 7-9 independent members appointed by the Northern Ireland Policing Board; 8-10 political members nominated by the district council; at least four representatives of designated organisations which the PCSP select for their expertise; and representatives from the PSNI, Housing Executive; Probation Board for Northern Ireland; Youth Justice Agency of Northern Ireland, Health and Social Care Trusts, Education Authority and Fire and Rescue Service. www.pcsp.org

⁵² Northern Ireland Housing Executive. Safer Together: Northern Ireland Housing Executive Community Safety Strategy 2014-2017.

⁵³ Department for Social Development (2009) The Housing Bill for Northern Ireland: A consultation document.

⁵⁴ Housing (Amendment) Act (Northern Ireland) 2011 www.legislation.gov.uk/nia/2011/22/notes/division/5/13

tenancies⁵⁵ or the right to buy their home. The Act also makes provision to allow a person to disclose information about court orders, injunctions or anti-social behaviour orders where it is required to enable the landlord to make a decision about eligibility for an allocation of housing accommodation or the provision of homelessness assistance.

Whilst these new provisions were viewed as a positive step in addressing anti-social behaviour, the new powers were restricted to information sharing on mutual exchange, right to buy (in relation to a secure tenancy), eligibility for social housing and homelessness assistance. The Department for Social Development proposed in its [Anti-Social Behaviour Bill consultation](#) (published in 2013) to further strengthen the mechanisms by which social landlords could tackle anti-social behaviour. On 5 June 2014, the Department for Social Development [briefed the Committee for Social Development](#) on the outcome of the consultation and at this time proposals for a draft Housing (Amendment) Bill included provisions to⁵⁶:

- enable social landlords to convert secure tenancies to short tenancies for a fixed period when a court finds that a tenant or a member of the household has been guilty of anti-social behaviour;
- create a new form of injunction against anti-social behaviour;
- extend information sharing provisions for anti-social behaviour;
- clarify existing legislation on eligibility for homelessness assistance; and
- enhance the sharing of information sharing on empty homes.

The Department states that as the development of the Department for Social Development's Housing Strategy progressed it was determined that a further provision should be added to the Bill, i.e.⁵⁷:

- to provide the Housing Executive with the facility to register a statutory charge for housing grants made in the form of a loan.

A number of proposals relating to anti-social behaviour have been *withdrawn* from the current draft Housing (Amendment) Bill i.e. creation of short tenancies; the proposed new injunction against anti-social behaviour; and clarification of the legislation for eligibility for homelessness legislation. The Department for Social Development provided clarification as to why these proposals had been omitted from the Bill in a [briefing to the Committee for Social Development](#) on 25 June 2015⁵⁸:

“Approval to draft the Bill was sought from the Executive, and, in recognition of the limited time available to pass legislation within the current mandate, it was agreed earlier this year that a number of proposals should

⁵⁵ Most Housing Executive and housing association tenants are permitted, with the permission of the landlord, to exchange their home with someone who has another tenancy (e.g. a tenant wishing to move to a new area). See www.nihe.gov.uk/index/advice/advice_for_housing_executive_tenants/transfers_exchanges.htm

⁵⁶ Northern Ireland Assembly Official Report. Departmental Briefing on the Housing (Amendment) Bill – 5 June 2014 www.niassembly.gov.uk/globalassets/documents/official-reports/social-dev/2013-2014/140605_housingamendmentbilldscd.pdf

⁵⁷ Northern Ireland Assembly Official Report. Departmental Briefing on the Housing (Amendment) Bill – 25 June 2015.

⁵⁸ Northern Ireland Assembly Official Report. Departmental briefing on the Housing Amendment Bill – 25 June 2015.

be withdrawn. This was done so that a more concise Bill could be drafted by legislative counsel and receive Assembly passage within the remaining time available”

The proposal to create short tenancies was withdrawn as it caused concern amongst some stakeholders. The principal reasons for removing the proposal for new injunctive powers was,

“...the complexity of drafting because it links to earlier legislation that is in place in England that has now been superseded. Legislative counsel felt that, in a short space of time, it would be complex to try to draft clauses that were based on legislation elsewhere that has subsequently moved on. There was a similar concern about the homelessness legislation.”⁵⁹

Only one of the original proposals relating to anti-social behaviour is contained within the current Housing (Amendment) Bill, i.e. the information sharing provisions. The next section of this paper explores Clause 2 of the Bill (i.e. the disclosure of information relating to anti-social behaviour) and identifies a number of issues raised by stakeholders.

Issues arising from the Committee for Social Development’s Call for Evidence in respect of Clause 2

Table 2 provides a synopsis of some the issues raised in respect of Clause 2 by respondents to the Committee’s Call for Evidence on the Housing (Amendment) Bill. Respondents were **largely supportive of the introduction of a legislative basis** for the sharing of information to enable the Housing Executive and registered housing associations to deal with anti-social behaviour.

The key points raise a number of questions:

- Should relevant **data sharing protocols and templates** be put in place before information is shared in order to ensure that data protection requirements are met and that a consistent approach is taken by those agencies involved?
- In order to avoid misuse of the information should **guidance be produced** that clearly outlines the circumstances in which information can be gathered, stored and shared? Should the **Bill include provisions** to state that a person who provides or receives information for the purposes of the provisions of the Bill should have regard to any relevant guidance provided by the Minister/Department?
- The Bill provides that **“a person” may disclose relevant information** about any other person to the Housing Executive or registered housing association for a relevant purpose. Is the term “a person” too broad? Does it require a definition? Should it state explicitly that “a person” refers to a person within a named authority? Are the terms “relevant information” and “purpose” also too broad?

⁵⁹ Northern Ireland Assembly Official Report. Departmental briefing on the Housing Amendment Bill – 25 June 2015.

- In terms of the policy intention of the Bill, the sharing of information can be used to support enforcement powers but should emphasis also be placed using the new legislation use the sharing of information to **provide supportive interventions** (e.g. to help tenants engaging in anti-social behaviour to change their behaviour)?
- Should Clause 2 of the Bill be extended to provide for the disclosure of information between the Housing Executive, registered housing associations, the **PSNI and Councils**?
- Helm Housing and one of the councils have taken part in **pilot projects involving information sharing** with a range of statutory agencies in order to tackle anti-social behaviour. What key lessons can be learnt from these pilots?
- Should the Bill be extended to include **information sharing with councils**? A number of councils that provided written evidence to the Committee felt that there was a need to share information on anti-social behaviour in the private rented sector. Councils believe that the lack of information sharing continues to be a significant barrier in the effective delivery of the Council's statutory functions and the attempts to reduce anti-social behaviour in this sector.
- Should there be **information sharing with private landlords** given that these landlords may at times find themselves in a situation in which they are housing tenants without the knowledge that these tenants have been engaging in anti-social behaviour in, or evicted from, social housing?
- Will there be **appropriate safeguards put in place for vulnerable individuals/groups** given that, for example, mental health can play a significant role in anti-social behaviour?
- The Bill includes provisions to share information in relation to seeking an order for possession on Grounds 1, 2 or 3 of Schedule 3 the Housing (NI) Order 1983. Is it **necessary to include Ground 1 (possession on the basis of rent arrears) and Ground 3 (deterioration in the condition of the property)** given that Ground 2 (nuisance and annoyance) may already comprehensively cover seeking possession on the grounds of anti-social behaviour?
- Before courts make an order for possession based on anti-social behaviour it is considers the "**reasonableness**" of making such an order (e.g. balancing the interests of the victims of anti-social behaviour with factors, such as the personal circumstances, of those accused of anti-social behaviour). Should the bodies involved in sharing information also exercise "reasonableness" in the gathering and sharing of information process?
- Will individuals/families accused of anti-social behaviour be made aware of disclosures of information concerning them and will they have a **right to respond** to the accuracy or completeness of the information shared about them?
- The Bill states that a person 'may' disclose relevant information. Should "may" be **amended to "shall"** to ensure that a person with relevant information discloses that information?

Please note that Table 2 contains a summary of the written evidence as at *4 November 2015*, it does not cover any ongoing oral evidence to the Committee by either stakeholders or the Department for Social Development.

Table 2: Summary of Written Responses to the Committee for Social Development’s Call for Evidence on the Housing (Amendment) Bill (Clause 2)

Organisation	Summary of comments
Belfast City Council ⁶⁰	<p>Strongly welcomes the introduction of a legislative basis for sharing information more effectively between housing providers particularly housing associations.</p> <p>Recommends that Clause 2 be amended to provide for the disclosure of information between NIHE, registered Housing Associations, the PSNI and councils. It believes that this will facilitate partnership working between those agencies with responsibility for dealing with anti-social behaviour.</p> <p>However, the Council states that it expects all relevant data sharing protocols are in place before information can be disclosed.</p> <p>Notes that the Bill does not make reference to information sharing in respect of dealing with anti-social behaviour derived from private tenancies. It believes that the inability to share information in relation to anti-social behaviour in the private rented sector continues to be a significant barrier in the effective delivery of the Council’s statutory functions and the attempts to reduce anti-social behaviour in this sector.</p>
Chartered Institute of Housing Northern Ireland ⁶¹	<p>Believes that current range of enforcement powers to tackle anti-social behaviour available to social landlords and agencies in NI are comprehensive. However, recognises that there are circumstances in which information sharing between authorities on anti-social behaviour would help support better housing management decisions and outcomes.</p> <p>Advocates a balanced approach that both supports those experiencing anti-social behaviour and supports perpetrators to help them change their behaviours.</p> <p>Suggests that the policy intention for the sharing of information on anti-social behaviour in the Bill is to support enforcement powers. CIHNI believes that information sharing should also be used to provide supportive interventions (e.g. to help to sustain a tenancy and/or change behaviour).</p> <p>Recommends that DSD develop a model information sharing protocol and template that meets data protection requirements and helps to ensure there is a consistent approach which is understood by all stakeholders.</p> <p>Supports the inclusion of Clause 2 (8)(g) and feels that this could be broadly interpreted to permit information sharing for broader actions e.g. supportive interventions. Also feel that it could also be interpreted as a ‘catch all’ for supporting any enforcement action omitted in 8(a) to (f).</p> <p>Clause (2)(1) which states that “a person” may disclose relevant information. CIHNI recommends that “a person” be defined. It believes “a person” should be a named authority i.e. PSNI.</p> <p>Recommends that the “relevant information” should be evidence based.</p>
Helm Housing ⁶²	<p>Supportive of any measures that will assist it in developing and implementing effective strategies for reducing crime, disorder and nuisance in order to protect communities and its tenants.</p>

⁶⁰ Belfast City Council Written Evidence. www.niassembly.gov.uk/globalassets/documents/social-dev/housing-amendment-bill/written-submissions/belfast-city-council.pdf

⁶¹ Chartered Institute of Housing Northern Ireland. Written Evidence. www.niassembly.gov.uk/globalassets/documents/social-dev/housing-amendment-bill/written-submissions/chartered-institute-of-housing-ni.pdf

⁶² Helm Housing Written Evidence. www.niassembly.gov.uk/globalassets/documents/social-dev/housing-amendment-bill/written-submissions/helm-housing.pdf

	<p>Feels that the proposal to allow a “person” to disclose information “stops short” of enabling other statutory agencies, such as the PSNI, councils, Youth Justice Agency and NIHE to share information with registered housing associations to allow Helm to work more effectively with victims of anti-social behaviour.</p> <p>Helm points out that over the past year it has worked effectively in a pilot project with all the above agencies in south Belfast to develop Information Sharing Protocols. As part of the pilot, Helm along with other housing providers, have signed up to an information sharing protocol with as secure network to ensure shared information is kept secure and confidential.</p> <p>Emphasises that all signatories to the protocol must safeguard the security of the information; ensure that the Data Protection principles are upheld; professional ethical standards are maintained; information flow is strictly controlled; and records of decisions to share/withhold information are kept.</p>
<p>Housing Rights⁶³</p>	<p>Welcomes DSD’s decision not to proceed with proposals to introduce a new type of social housing tenancy.</p> <p>Recognises that there is merit in allowing statutory agencies to share relevant information in working together to tackle anti-social behaviour.</p> <p>Suggests amending 8 (a) iv: to narrow the “purpose” to an order of possession on Ground 2 in Schedule 3 of the 1983 Order only and that those references to repossession on the basis of Ground 1 and Ground 3 should be omitted.</p> <p>Suggests amending 8 (a) v: to restrict the purpose to seeking an order for possession let under an introductory tenancy to Ground 2 only.</p> <p>Seeks assurance that the information gathered under this Bill will not be used in a way that would undermine the established principle of ‘reasonableness’. In cases of possession action against a secure tenant the courts must assess the ‘reasonableness’ of such action.</p> <p>Recommend that agencies involved in the information gathering and sharing process should also exercise ‘reasonableness’.</p> <p>In order to avoid abuse of the information, strict guidelines should be produced setting out clearly when the information can be gathered and shared.</p> <p>Safeguards must be put in place to ensure that the information that is collected in order to verify or establish the occurrence of anti-social behaviour meets a high test of credibility.</p> <p>Maintains that mental health can play a significant role in anti-social behaviour (e.g. in cases where a property has been neglected). It recommends that before repossession action is taken an assessment should be made to ascertain if the behaviour emanated from health issues.</p> <p>Recommends that DSD’s ‘Antisocial Behaviour Guidance for the Northern Ireland Housing Executive’ be revised to ensure that proper safeguards are put in place and extended to all relevant authorities who may be engaged in information sharing on anti-social behaviour.</p> <p>Recommends that in order to safeguard the disclosure and sharing of information the Bill should include provisions to state that any person (by virtue of the Act) who provides or receives information for the purposes of any provision of the Act should have regard to any relevant guidance given by the Minister.</p> <p>Recommends that the Committee for Social Development seeks the views of the NI Human Rights Commission and, the Equality Commission and the Information Commissioner given the implications the Bill has on data protection, disability discrimination legislation, privacy laws and Article 8 of the Human Rights Act.</p>
<p>Information Commissioner’s Office⁶⁴</p>	<p>States that under the Data Protection Act 1998 disclosures required under the law can be made. However, the processing of such personal data must be “fair” and “lawful” and should only be obtained for limited purposes.</p> <p>DSD must also be satisfied that any disclosures are consistent with the individual’s right to</p>

⁶³ Housing Rights Written Evidence. www.niassembly.gov.uk/globalassets/documents/social-dev/housing-amendment-bill/written-submissions/housing-rights.pdf and www.niassembly.gov.uk/globalassets/documents/social-dev/housing-amendment-bill/written-submissions/hrs-additional-evidence.pdf

⁶⁴ Information Commissioner’s Office Written Evidence. www.niassembly.gov.uk/globalassets/documents/social-dev/housing-amendment-bill/written-submissions/information-commissioners-office.pdf

	<p>privacy under Article 8 of the Human Rights Act.</p> <p>If disclosures are required by law, then the Information Commissioner's Office states that as a matter of good practice then individuals should be informed of the possibility of such disclosure. Such issues will need to be addressed before any disclosure of this kind would be commenced.</p> <p>Any personal information released must be relevant, adequate and not excessive. It will be necessary to establish the boundaries of what is deemed to be anti-social behaviour and under what circumstances the information should be disclosed. The relevancy of any disclosure must be taken into account. If a significant period of time has elapsed between alleged episodes of anti-social behaviour this should be taken into consideration when assessing if information is adequate and relevant. The Information Commissioner's Office stresses the importance of proportionality with any disclosures.</p> <p>Personal data should only be kept as long as necessary (under Principle 5 of the Data Protection Act) and a retention period should be agreed between all parties.</p> <p>Personal data must be kept secure (Principle 7 of the DPA). The Information Commissioner's Office recommends that the Housing Executive or a registered Housing Association should ensure that adequate security arrangements are in place.</p> <p>Attention is drawn to the ICO Privacy Impact Assessment (PIA) Code of Practice and the ICO Data Sharing Code of Practice. These should be taken into consideration before information sharing commences.</p> <p>Attention is also drawn to the Freedom of Information Act 2000 and the accountability and transparency required by public bodies.</p>
<p>Landlords Association for Northern Ireland (LANI) ⁶⁵</p>	<p>Are concerned that the Bill does not extend to sharing information with the Private Rented Sector and requests that the sharing of information relating to anti-social behaviour be extended to those private landlords that provide social housing.</p> <p>States that this is a 'big issue' for private landlords as they often find that they are housing tenants who have been involved in anti-social behaviour in, or evicted from, social housing. Believe that the current process for evicting tenants is drawn out, cumbersome and out of synchronisation with other parts of the UK.</p>
<p>Lisburn and Castlereagh City Council⁶⁶</p>	<p>States that it already has a protocol in place with NIHE and the PSNI in relation to anti-social behaviour and in which the council works in partnership to overcome individual problem offenders.</p> <p>Welcomes this extension to the sharing of information with housing associations and would like to have a partnership arrangement with housing associations.</p> <p>States that it would encourage an extension of information sharing with private sector landlords where investigations of the tenant is engaged in, or allowing tenant the property to be used for anti-social behaviour.</p>
<p>Mid and East Antrim Borough Council⁶⁷</p>	<p>Welcomes the introduction of a legislative basis for the sharing of information between housing providers especially housing associations.</p> <p>However, the Council states that there are three relevant authorities referred to in the Anti-Social Behaviour (NI) Order 2004, i.e. councils, NIHE and the PSNI. The Council recommends that Clause 2 be amended and to provide for the disclosure of information between NIHE, registered housing associations, the PSNI and councils. The Council believes that this would facilitate partnership working between those agencies with a statutory responsibility for dealing with anti-social behaviour.</p> <p>Expects that all relevant data sharing protocols are in place before information can be disclosed.</p>

⁶⁵ Landlords Association for Northern Ireland. Written Evidence.

www.niassembly.gov.uk/globalassets/documents/legislation/bills/executive-bills/session-2014-2015/housing-amendment-bill/housing-amendment-bill---as-introduced.pdf

⁶⁶ Lisburn and Castlereagh City Council. www.niassembly.gov.uk/globalassets/documents/social-dev/housing-amendment-bill/written-submissions/lisburn-and-castlereagh-city-council.pdf

⁶⁷ Mid and East Antrim Borough Council. www.niassembly.gov.uk/globalassets/documents/social-dev/housing-amendment-bill/written-submissions/mid-and-east-antrim-borough-council.pdf

	Believes that legislative provision should also be made for sharing information between statutory agencies in order to deal with anti-social behaviour in the private rented sector.
Mid Ulster District Council⁶⁸	<p>Is supportive of introducing a legislative basis to facilitate the sharing of information between housing providers, particularly housing associations.</p> <p>Recommends that the protocols are put into place prior to the transfer of any data.</p> <p>Requests that the Committee for Social Development consider the potential of permitting the transfer of information between statutory agencies with regards to anti-social behaviour in the private rented sector.</p>
Newry, Mourne and Down District Council⁶⁹	<p>Welcomes the introduction of a legislative basis that would permit the sharing of information between relevant statutory agencies in respect of anti-social behaviour.</p> <p>Similar to the other councils, Newry, Mourne and Down District Council highlights that there are three relevant authorities referred to in the Anti-Social Behaviour (NI) Order 2004, i.e. councils, NIHE and the PSNI. The Council recommends that Clause 2 be amended and to provide for the disclosure of information between NIHE, registered housing associations, the PSNI and councils.</p> <p>Expects that appropriate data sharing protocols are put in place before any information can be disclosed between the statutory agencies.</p>
Northern Ireland Federation of Housing Associations (NIFHA)⁷⁰	<p>Welcomes that the proposal to create a new form of short tenancy is not included in the Bill.</p> <p>Strongly welcomes the sharing of information on anti-social behaviour to housing associations and states that they have long sought to clarify and strengthen legislation in this area.</p> <p>Point out that a number of housing associations have been involved in establishing local agreements and working in partnership with other statutory agencies to tackle anti-social behaviour.</p> <p>Would welcome local councils being part of any information sharing arrangement as they can play an important role in housing management issues such as noise abatement.</p> <p>NIFHA has been seeking to establish a wider Information Sharing Agreement with the PSNI and believe that the Bill will make such arrangements significantly easier.</p> <p>States that it is evident that when agencies have been willing to share information, it has helped alleviate anti-social behaviour.</p> <p>Believes that the Clause would be strengthened if the word "may" was replaced by "shall" and suggest that the Clause be amended to reflect this.</p> <p>Particularly welcomes sections 8(f) and (g) of the Bill as it appears to allow housing associations to act on the basis of information they have received in relation to anti-social behaviour.</p>
Northern Ireland Human Rights Commission⁷¹	<p>Suggests that the Committee for Social Development inquires as to whether the Department for Social Development conducted their own exercise in considering the proportionality of the proposed arrangements for disclosure of information related to anti-social behaviour, and if so, what conclusions were reached.</p> <p>Advises the Committee for Social Development to ask the Department to set out the basis for the statement of compatibility.</p> <p>Advises that the definition of "person", "information" and "purpose" within the Bill are too broad. Believes that as a cumulative effect of this, and the lack of legal certainty, it appears to NIHRC that Clause 2 of the Bill may not meet the proportionality test under Article 8 of the ECHR.</p> <p>Suggest that the Committee seek clarification from the Department on this matter.</p> <p>Suggests that the Committee may also wish to inquire as to what procedural safeguards will</p>

⁶⁸ Mid Ulster District Council. Written Evidence. www.niassembly.gov.uk/globalassets/documents/social-dev/housing-amendment-bill/written-submissions/mid-ulster-district-council.pdf

⁶⁹ Newry, Mourne and Down District Council. Written Evidence. www.niassembly.gov.uk/globalassets/documents/social-dev/housing-amendment-bill/written-submissions/newry-mourne-and-down-district-council.pdf

⁷⁰ Northern Ireland Federation of Housing Associations (NIFHA). Written Evidence. www.niassembly.gov.uk/globalassets/documents/social-dev/housing-amendment-bill/written-submissions/ni-federation-of-housing-association.pdf

⁷¹ Northern Ireland Human Rights Commission. Written Evidence. www.niassembly.gov.uk/globalassets/documents/social-dev/housing-amendment-bill/written-submissions/ni-human-rights-commission.pdf

	<p>be put in place should a tenant wish to contest the accuracy or completeness of the information provided.</p> <p>The Commission notes that the empty homes and statutory charges provisions within the Bill do not appear to give rise to human rights considerations.</p>
Northern Ireland Local Government Association (NILGA)⁷²	<p>Is supportive of Clause 2 as it provides 'legal comfort' where data protection may be an issue and believes it will enhance activities already taking place locally to share information across agencies to deal with anti-social behaviour.</p> <p>Provides an example of information sharing on a local level in the Newry, Mourne and Down District Council area. The then Newry City Council worked with other local organisations to target anti-social behaviour in specific areas through a "data hub". This approach, originating from their Community Safety Partnership, was developed to create an evidence base for their new community planning responsibilities.</p> <p>States that councils are willing partners in collaborative efforts to improve public services, within resource constraints, provided liabilities are not conferred.</p>
Northern Ireland Rural Residents' Forum⁷³	<p>States that Rural Residents' Forum (RRF) members acknowledge the misery caused to tenants and residents by anti-social behaviour. However, RRF are concerned that the Bill does not make reference to the need for potential tenants to be made aware of the allegations against them and the information about them that housing providers have used in making decisions.</p> <p>Believes that the Bill should state that housing providers must have due regard to verifying allegations of anti-social behaviour.</p> <p>Suggests that a consistent definition of anti-social behaviour is needed across agencies. Believes the variations in definition leads to confusion. Maintains that the definition of anti-social behaviour becomes important when disputes arise between those living in different tenures i.e. social housing tenants, private rented sector tenants and owner occupiers.</p>
Supporting Communities NI⁷⁴	<p>States that information sharing between landlords and housing providers is an important housing management tool. However, feels that there needs to be guarantees that information is accurate, current and appropriate.</p> <p>In the interest of fairness, SCNI feels that applicants should be made aware of any such disclosures and that a right of reply is added as a safeguard. There should be a transparent process and information is shared and handled in a responsible manner.</p> <p>Believes that an individual or family accused of anti-social behaviour should have a right to respond to the allegations made against them.</p> <p>Information shared should be sufficient and not excessive and should be 'truly relevant'. Any action taken to address anti-social behaviour should be proportionate and appropriate.</p> <p>In regard to subsection 7(b) SCNI are concerned with information being used about an individual's housing situation before a court order or injunction has actually been granted.</p> <p>In regard to subsection 3(b) and 6(a), SCNI question the reference to someone being 'guilty' of conduct even though that individual may not have been convicted of any offence.</p> <p>Highlights that there are already a range of statutory and non-statutory measures available to social landlords to tackle anti-social behaviour and states that there does not appear to have been any review of the effectiveness of these measures.</p> <p>Draws to the attention of the Committee the Home Office Respect – ASB Charter for Housing initiative. This model recognises the need to provide support to vulnerable tenants and to work in partnership with other agencies. SCNI suggests that this model has the potential to enhance understanding, and improve the effectiveness of measures, to tackle the underlying cause of anti-social behaviour.</p>

⁷² Northern Ireland Local Government Association (NILGA). Written Evidence.

www.niassembly.gov.uk/globalassets/documents/social-dev/housing-amendment-bill/written-submissions/ni-local-government-association.pdf

⁷³ Northern Ireland Rural Residents' Forum. Written Evidence. www.niassembly.gov.uk/globalassets/documents/social-dev/housing-amendment-bill/written-submissions/ni-rural-residents-forum.pdf

⁷⁴ Supporting Communities NI. Written Evidence. www.niassembly.gov.uk/globalassets/documents/social-dev/housing-amendment-bill/written-submissions/supporting-communities-ni.pdf

Defamation and Legal Indemnity

A Member of the Social Development Committee questioned the Department for Social Development's assessment and reasoning that there was no need or requirement to provide legal indemnity to a person who provides information on anti-social behaviour. This related to concerns about the potential for legal proceedings to be taken against that person for defamation if, for example, a person shares information in respect of anti-social behaviour in good faith but which later turns out to be incorrect⁷⁵.

In response the Department for Social Development stated that:

*"Given the Bill does not create any specific offences in relation to the disclosure of information, the Department is satisfied that no indemnity is required. It is my understanding that while certain reports etc. may be protected by qualified privilege under Section 15 of the Defamation Act 1996 any risk in such cases would be to persons disclosing evidence to social landlords rather than to the landlords themselves and that any person making disclosure should exercise due care to ensure that the information disclosed is fair and accurate. Defamation proceedings are essentially actions for libel or slander and defamation law is entirely separate from data protection legislation."*⁷⁶

Concerns of the previous Committee for Social Development in relation to information sharing in respect of anti-social behaviour

The previous Committee for Social Development in its scrutiny of the anti-social behaviour information sharing provisions in the Housing (Amendment) (No.2) Bill highlighted a number of issues that are similar to those arising from current Bill. The Housing (Amendment)(No.2) Bill now the Housing (Amendment)Act (Northern Ireland) 2011 provides that "any person may disclose to the landlord of a secure tenancy information about certain orders or applications for orders relating to anti-social behaviour" to enable the landlord to decide. For example, whether to treat an applicant for an allocation of housing accommodation as ineligible by virtue of unacceptable behaviour.

At that time the Committee for Social Development⁷⁷:

- Noted suggestions from stakeholders that the disclosure of anti-social behaviour information should be subject to **protocols** and should be the **preserve of prescribed officers of statutory organisations**. The Committee recognised the

⁷⁵ Letter from the Clerk of the Committee for Social Development to the Department for Social Development. 25 September 2015. www.niassembly.gov.uk/globalassets/documents/social-dev/housing-amendment-bill/correspondence-and-departmental-papers/150925---follow-up-letter-to-departmental-briefing.pdf

⁷⁶ Letter from the Department for Social Development to the Committee for Social Development. 8 July 2015. www.niassembly.gov.uk/globalassets/documents/social-dev/housing-amendment-bill/correspondence-and-departmental-papers/150925---follow-up-letter-to-departmental-briefing.pdf

⁷⁷ Committee for Social Development. Report on the Housing (Amendment) (No.2) Bill (NIA 32/09). 27 January 2011.

concerns of stakeholders and the **importance of accuracy** of such information in addition to the need to **provide a right of rebuttal**.

- Accepted Departmental assurances that the anti-social behaviour information would be in the **form of public domain information** such as injunctions and convictions and that such information would conform to existing protocols. The Committee therefore agreed not to pursue amendments that would impose new disclosure protocols.
- Accepted Departmental assurances that **guidance would be issued** to social landlords in respect of the appropriate treatment of such information which may refer to individuals with mental health issues.
- Noted Departmental assurances that **tenants would be advised of disclosures** and would be given the opportunity to **rebut disclosures and correct inaccurate information**.
- Considered the proposal from the Landlords Association for Northern Ireland that **anti-social behaviour information should be shared with private sector landlords**. The Department advised that owing to data protection implications, the Bill could not be amended to include this provision. The Committee accepted a Departmental undertaking that consideration would be given to the inclusion of such provisions in future legislation.

Issues relating to Human Rights and Data Protection

There has been much discussion around the Human Rights and Data Protection implications of Clause 2 of the current Housing (Amendment) Bill (information sharing and anti-social behaviour). There is some concern that if appropriate safeguards are not put in place then the sharing of information on anti-social behavior could potentially infringe upon Article 8 of the European Convention on Human Rights (i.e. the right to respect for private and family life).

The Bill's Financial and Explanatory Memorandum states that the "provisions of the Bill are compatible with the European Convention on Human Rights". However, the Northern Ireland Human Rights Commission, in its written evidence to the Committee for Social Development, advised the Committee to ask the Department for Social Development to set out the basis for its statement of compatibility with the European Convention on Human Rights.

The Northern Ireland Human Rights Commission also suggested that the Committee may wish to inquire as to whether the Department for Social Development carried out an exercise to consider the proportionality of the proposed arrangements for the disclosure of information on anti-social behaviour, and if so, what conclusions were reached. The proportionality test, as applied the European Court of Human Rights provides that:

- the legislative objective must be sufficiently important to justify limiting a fundamental right; and,
- the measures designed to meet the legislative objective must be rationally connected to that objective – they must not be arbitrary, unfair or based on irrational considerations.

The Commission further advised that the definition of “person”, “information” and “purpose” within the Bill are broad and that:

*“as a result of the cumulative effect of this, and the lack of legal certainty, it appears that Clause 2 of the Bill may not meet the proportionality test under ECHR, Article 8. The Committee may wish to seek further clarity from the Department on this matter”.*⁷⁸

In terms of data protection, the Information Commissioner’s Office, in its written evidence to the Committee for Social Development, stated that under the Data Protection Act 1998 disclosure of information required under the law can be made. However, it emphasises that the processing of such personal data must be “fair” and “lawful” and should only be obtained for limited purposes. Any personal information released should be relevant, adequate and not excessive and that as a matter of good practice individuals should be informed of the possibility of such disclosure. The period of time that has elapsed between alleged episodes of anti-social behaviour should be taken into account.

The Information Commissioner’s Office further stressed the importance of defining what is deemed to be anti-social behaviour and under what circumstances such information should be disclosed. It further outlined the importance under the Data Protection Act of keeping information secure and retaining information only as long as it is necessary. It also stated that the ICO Privacy Impact Assessment (PIA) Code of Practice and the ICO Data Sharing Code of Practice should be taken into consideration before information sharing commences.

4 Clause 3: Registration as a Statutory Charge of Certain Loans

Clause 3 of the Housing (Amendment) Bill proposes to provide the Housing Executive with the power to secure loans by way of a statutory charge. This would provide a means of security against any such lending and would ensure that, in the event that the owner defaults on the loan or sells or transfers the property, the Housing Executive will be made aware of the transaction and would be able to take any necessary action to recover the debt. The Department for Social Development states that the absence of a power to register charges in respect of such loans means that the Housing Executive

⁷⁸ Northern Ireland Human Rights Commission. Written Evidence to the Committee for Social Development. www.niassembly.gov.uk/globalassets/documents/social-dev/housing-amendment-bill/written-submissions/ni-human-rights-commission.pdf

would either have to make unsecured lending or secure the lending by means of a legal mortgage/charge⁷⁹.

Policy Context

In order to prevent housing and environmental decline many public housing authorities in the UK provide financial support to homeowners, private landlords and private tenants to assist them with the costs of maintaining and repairing their homes. In the past this has primarily been in the form of grant aid. However, there has been a significant policy shift in recent years, particularly in Great Britain, from grant-aid towards loan packages as a means of encouraging private sector housing renewal. Partially this has been in response to public expenditure austerity measures. With significantly less public funding available for grants many housing authorities are seeking to stretch limited resources further by recouping money via loan repayments.

As the following sections illustrate recent budgetary constraints have significantly reduced the level of Housing Executive expenditure on discretionary housing grants. As part of the Department for Social Development's review of 'Support for Repair and Improvement in the Private Housing Sector'⁸⁰, a working group was set up within the Housing Executive to develop a pilot loan scheme for private sector housing. Details of the pilot have not yet been released; a discussion paper on the potential wider reform of the private sector grant system was to be published in 2015⁸¹.

Northern Ireland Housing Executive Grants

The Northern Ireland Housing Executive has in the past provided a range of grants to homeowners, tenants and landlords to assist with the costs of private sector housing repairs and improvements. However, significant budgetary constraints over recent years have led the Housing Executive's grants expenditure to be primarily focused on the mandatory Disabled Facilities Grant and the Home Repair Grant. The discretionary Renovation, Replacement and Home Repair Assistance Grants are currently only available in "exceptional circumstances". The Housing Executive defines "exceptional circumstances" as cases in which there is "an imminent and significant risk to the occupier"⁸². The Housing Executive is currently not accepting new applications for other grants such as Houses in Multiple Occupation (HMO Grant), the Living Over the

⁷⁹ Letter from the Department for Social Development to the Committee for Social Development. 23 June 2015. www.niassembly.gov.uk/globalassets/documents/social-dev/housing-amendment-bill/correspondence-and-departmental-papers/dsd-briefing-re-housing-amendment-bill-23-june-2015.pdf

⁸⁰ Department for Social Development (2012) Reviewing Support for Repair and Improvement in the Private Housing Sector: Consultation.

⁸¹ Department for Social Development (2015) Facing the Future: The Housing Strategy for Northern Ireland Action Plan Update. September 2015. www.dsdni.gov.uk/sites/default/files/publications/dsd/facing-the-future-housing-strategy-action-plan-update.pdf

⁸² Information extracted from the Housing Executive website, updated 27 September 2015 www.nihe.gov.uk/index/benefits/home_improvement_grants/grants_available.htm

Shop (LOTS) Grant or the Group Repairs Scheme⁸³. A list and brief description of the different types of grants is provided in Table 3⁸⁴.

Table 3: Northern Ireland Housing Executive Grants⁸⁵

Northern Ireland Housing Executive Grants

Renovation Grant: This is a discretionary grant for the improvement of homes that have been inspected and either found to be unfit to live in, or a home that is presently fit to live in but will become unfit if repairs are not carried out. Work covered under this grant may include, for example, damp proofing or roof replacement. The amount of grant payable is dependent upon the approved cost of the work and the financial circumstances of the applicant. Those on low incomes may get grant aid up to £25,000. The grant is open to home owners, tenants and landlords. *Currently the Renovation Grant is only available in exceptional circumstances.*

Replacement Grant: This is a discretionary grant for the replacement of homes in rural areas that have been deemed as unfit. This normally involves the demolition of an old property which is replaced by a new property. The grant is available to owner-occupiers and landlords in selected areas. The amount of grant payable depends on the approved cost of the work and the applicant's financial circumstances. For those on low incomes a maximum grant of £31,500 is available. The grant is open to owner-occupiers, tenants and landlords. *Currently the Replacement Grant is only available in exceptional circumstances.*

Home Repair Assistance Grants: This is a discretionary grant open to owner-occupiers and private sector tenants in receipt of certain benefits, e.g. income-based Jobseeker's Allowance, Income Support, and Disability Living Allowance. The grant may be available for outside work such as roof repairs and rewiring. Assistance is up to a maximum of £5,000 over a three year period. *Currently the Home Repair and Assistance Grant is only available in exceptional circumstances.*

Houses in Multiple-Occupation Grant: This is a discretionary grant open to landlords to bring an HMO up to the required standard and to make it fit for human habitation. The grant was restricted to properties within certain specified regeneration areas. *Currently all regeneration areas are closed to new applications and therefore HMO grant is currently unavailable.*

Repair Grant: This mandatory grant is targeted at private sector landlords and tenants and provides financial support to meet the costs of repairing houses that have been issued with a statutory notice (i.e. a Public Health Notice or Notice of Disrepair). Repair grants are not means-tested and the maximum grant payable is £7,500 over a three year period.

Disabled Facilities Grant: This is a mandatory grant aimed at providing financial assistance to improve the home of a person with a disability and may be based on the recommendation of an Occupational Therapist. Eligible works include, for example, additional bathroom facilities and adapted heating and lighting controls. The grant is available to owner occupiers and private sector landlords and tenants. The amount of grant payable is based upon the approved cost of the works and the applicant's financial circumstances. Those on low incomes may be eligible for a grant up to a maximum of £25,000.

Table 4 extracted from the Housing Executive's publication 'Northern Ireland Housing Market: Review and Perspectives 2015-2018' provides data on the levels and patterns of grant activity and associated expenditure over the past five years. In 2007/08 approved grants expenditure was £41.5 million. By 2014/15 this had been significantly reduced to £12.1 million. In 2007/08 the total number of grant approvals was 7,154. By 2014/15 this had reduced to 2,314. For the current financial year (2015/16) a total of £10 million has been allocated to the Housing Executive's Grant Budget. It is

⁸³ Further information on the HMO, LOTs and Group Repairs Scheme grants are available from the Housing Executive website. www.nihe.gov.uk/index/benefits/home_improvement_grants/grants_available.htm

⁸⁴ Information on grants extracted from the Housing Executive website - www.nihe.gov.uk/index/benefits/home_improvement_grants/grants_available.htm

⁸⁵ Information extracted from the Housing Executive website [accessed 5 October 2015].

anticipated that this will finance 50 Renovation Grants, 100 home Repairs Assistance Grants and 900 Disabled Facilities Grants⁸⁶.

Table 4: Home Improvement Grants: 2007/08 – 2014/15, Approvals and Expenditure

Year	Renovation	Replacement	Disabled Facilities	Repairs	Home Repairs Assistance	Houses in Multiple Occupation	Total Grants	Approved Expenditure (£)
2007/08	1,145	116	1,666	925	3,219	83	7,154	£41.5m
2008/09	931	117	1,755	765	2,433	86	6,087	£38.8m
2009/10	161	27	1,750	851	172	72	3,033	£23.1m
2010/11	404	83	1,143	889	567	13	3,099	£21.3m
2011/12	96	14	1,337	859	54	3	2,363	£15.1m
2012/13	55	9	1,209	923	42	1	2,239	£13.6m
2013/14	62	2	1,177	956	55	1	2,253	£13.4m
2014/15	99	2	1,205	907	101	0	2,314	£12.1m

Registering statutory charges in respect of loans

Clause 3 of the Housing (Amendment) Bill would provide the Housing Executive with the power to register a statutory charge in respect of *loans* made under Article 9 of the Housing (Northern Ireland) Order 1981. *What is a statutory charge?* A Northern Ireland Statutory Charge Register was set up in 1951 to provide a “one stop shop” where conveyancers and others could check whether or not a property is affected by a range of statutory restrictions including statutory charges. The Register is maintained by Land Registry (which is now part of Land and Property Services). Primarily it is statutory bodies, such as the Housing Executive, who apply to register a charge against a property. The application for the registration of a statutory charge must include, for example, details of the property and the date, nature and duration of the charge (if appropriate)⁸⁷.

The Housing Executive already has legal power to register a statutory charge in respect of most forms of *grant* assistance under the [Housing \(Northern Ireland\) Order 1992](#) and the [Housing \(Northern Ireland\) Order 2003](#). Under Article 9 of the Housing (Northern Ireland) Order 1981, the Housing Executive may, subject to conditions that may be specified by the Department for Social Development, provide loans for:

- Acquiring or constructing a house;
- Converting a building into a house or acquiring buildings for that purpose; and
- Altering, enlarging, repairing or improving a house.

⁸⁶ Northern Ireland Housing Executive (2015) Northern Ireland Housing Executive: Review and Perspectives 2015-2018, p72.

⁸⁷ Moir, A. A Concise Guide to Statutory Charges. www.moirlegal.com/images/Statutory-Charges-Folio-Article.pdf

However, unlike grants, the Housing Executive does not have legislative power to register statutory charges in respect of loans made under Article 9 of the 1981 Order. Under Clause 3 of the Housing (Amendment) Bill there will be a statutory charge on the property for any outstanding loan or interest on such loan. The Department believes that this is the most economical way to secure the loan.

The Department for Social Development's consultation on support for repair and improvement in the private housing sector (2012) highlights that the costs associated with administering the current grants arrangement is already quite resource intensive:

"In 2011/12 the cost of administering grant of £19.6m was £4.95m or over 25% of the amount of grand paid. Between 2008 and 2012 grant expenditure reduced by 52%; although there was a reduction in administration costs, at 30%, this was not commensurate. The number of grants, the prescriptive nature of work that can be carried out under each one and the complex resources test that applies to many of the grants means that there administration is very resource intensive".⁸⁸

In addition to the current grant system being administratively complex and expensive, the Department's consultation noted a number of other criticisms of the current system:

- The rigid criteria for grant eligibility hampers responsiveness to individual circumstances and needs and has led to a plethora of grants;
- They do not encourage personal responsibility;
- A sole reliance on grants means no flexibility to adapt to changing financial situations;
- The focus on physical improvement is one dimensional with little scope for integration with wider government objectives; and
- Duplication – different grants can be used for the same purpose.

Written responses to the Committee for Social Development's call for evidence on the Housing (Amendment) Bill

Five of the written responses to the Committee's call for evidence provided substantive comments on Clause 3 of the Bill. Table 5 provides synopsis of these responses.

Please note that Table 3 contains a summary of the written evidence as at 4 November 2015, it does not cover any ongoing oral evidence to the Committee by either stakeholders or the Department for Social Development.

⁸⁸ Department for Social Development (2012) Reviewing Support and Improvement in the Private Housing Sector: Consultation.

Table 5: Summary of Written Responses to the Committee for Social Development's Call for Evidence on the Housing (Amendment) Bill (Clause 3)

Organisation	Summary of comments
Chartered Institute of Housing Northern Ireland	Stated that it did not disagree with the principal of registering a statutory charge. However, felt that it could not comment with authority as it was not aware of the detail regarding a scheme for loan assistance for private sector housing repair and maintenance ⁸⁹ .
Helm Housing	Thought that the new amendment did not improve the directions to the Housing Executive on the treatment of loans that remain outstanding and how these will be enforced. Recognised the benefit of enabling housing grants made in the form of loans to be registered as a statutory charge and could be extended to other grants including mortgage interest relief and house sales discounts. ⁹⁰
Landlords Association for Northern Ireland (LANI)	Thought that the registering a statutory charges on loans was only applicable to social housing. Stated that if this was extended to the private rented sector then LANI would not foresee issues with statutory charges ⁹¹ .
Northern Ireland Local Government Association (NILGA)	Was supportive of the intention of DSD/Housing Executive to operate a pilot scheme of loan assistance for private sector housing repairs and improvements. It was supportive of the proposal to enable the Housing Executive to register a statutory charge. Was satisfied that this proposal was the most economic way to protect public finances where such loans have been made ⁹² .
Supporting Communities NI	Thought that given there would be a statutory charge registered against the property it could be repossessed if the borrower defaulted on any loan. Recommended that anyone applying for a home improvement loan from the Housing Executive is referred to independent financial advice as part of the application process ⁹³ .

These comments reflect that perhaps a degree of clarity around the registration of statutory charges is required. Once details of a substantive loans scheme have been considered it may be helpful if DSD/Housing Executive provide information on (i) how the current process of registering a statutory charge for grants operates; (ii) how the new proposed system for registering a statutory charge would operate; (iii) and at least an outline of the proposed pilot loans scheme for illustrative purposes. Some key questions, for example, may include:

⁸⁹ Chartered Institute of Housing Written Evidence. www.niassembly.gov.uk/globalassets/documents/social-dev/housing-amendment-bill/written-submissions/chartered-institute-of-housing-ni.pdf

⁹⁰ Helm Housing Written Evidence. www.niassembly.gov.uk/globalassets/documents/social-dev/housing-amendment-bill/written-submissions/helm-housing.pdf

⁹¹ Landlords Association for Northern Ireland Written Evidence. www.niassembly.gov.uk/globalassets/documents/social-dev/housing-amendment-bill/written-submissions/landlords-association-ni-.pdf

⁹² NILGA Written Evidence. www.niassembly.gov.uk/globalassets/documents/social-dev/housing-amendment-bill/written-submissions/ni-local-government-association.pdf

⁹³ Supporting Communities NI Written Evidence. www.niassembly.gov.uk/globalassets/documents/social-dev/housing-amendment-bill/written-submissions/supporting-communities-ni.pdf

- What would be eligibility criteria for a loans scheme?
- Would the loans be targeted at specific groups (e.g. older people, those on low incomes)?
- What would be the repayment arrangements (is there capacity for a successful applicant to repay the loan in instalments or full repayment)?
- What would happen if the property was repossessed?
- Would the loans be interest free?
- Would there be an administration charge?
- Given that the current system of grants are complex and costly to administer what would be the comparative costs for a loans based system?

5 Financial Effects of the Bill

The Bill's Financial and Explanatory Memorandum states that there are:

- No costs associated with the proposals for information sharing in respect of anti-social behaviour and empty homes.
- There are “no significant costs” with the proposal to enable the Housing Executive to register a statutory charge in respect of grants by way of loan.

With respect to statutory charges it may be useful in the light of the current public spending austerity measures to elaborate upon what costs could potentially be incurred even though they are deemed not be significant. The Department of Finance and Personnel's Land and Property Services have raised some queries about how this proposal would impact on its resources and housing officials are currently liaising with Land and Property Services on this issue⁹⁴.

In relation to the no costs associated with the proposals for information sharing. Could there be resource implications arising from the logistics involved in sharing information? For example, different bodies may have different IT systems in which information is stored and resources may need to be dedicated to ensure that any information is shared and held securely (e.g. via email encryption between organisations). There may be resource implications in terms of additional staff training on data protection. Resources may also need to be dedicated to developing information sharing protocols and guidance if it is deemed that this is necessary.

⁹⁴ Letter from the Department for Social Development to the Committee for Social Development.
www.niassembly.gov.uk/globalassets/documents/social-dev/housing-amendment-bill/correspondence-and-departmental-papers/dsd-briefing-re-housing-amendment-bill-23-june-2015.pdf