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10 November 2015

Your Ref: CSD/008/2015/SK

Dear Kevin,

### **HOUSING (AMENDMENT) BILL – DEPARTMENTAL BRIEFING**

Thank you for your letter about the briefing on the Housing (Amendment) Bill provided to the Committee at its meeting on 5 November.

You will recall that I advised the Committee that the Department had considered the possibility of issuing a legal direction that would have required the Housing Executive to disclose certain information about anti-social behaviour to private landlords but had received legal advice to the effect that, while the Department has power to direct the Housing Executive as to the manner in which it is to discharge its functions, the disclosure of information to private landlords is not a function of the Executive. This means that the Department has no power to issue the proposed direction. The legal advice also contained the caveat that a legal obligation to disclose information about anti-social behaviour would raise significant issues around the Data Protection Act and Article 8 of the European Convention on Human Rights. I also mentioned that the Department had received legal advice that individuals who make disclosures

pursuant to clause 2 of the Bill may rely on the general defences to defamation actions, and that the absence of indemnity protocols in clause 2 does not preclude a person from relying on such defences.

In relation to the paper that was tabled by the Housing Rights Service (HRS) during its evidence session on 8 October, I informed the Committee that I had met representatives of HRS on 15 October. While the Department was pleased to note HRS's support for the proposal in clause 2 of the Bill to enable disclosure of relevant information for relevant purposes to the Housing Executive and registered housing associations, HRS had suggested that the definitions of "relevant information" and "relevant purpose" in clause 2 go beyond what is necessary. In particular, HRS recommended that:

- subsection 4 of clause 2 should be deleted on the basis that it refers to a ground for possession which relates primarily to the condition of the dwelling rather than "anti-social behaviour" by the tenant, and
- subsection 8 of clause 2 should be amended to remove the references to any grounds for possession other than Ground 2, which relates to causing nuisance or annoyance and convictions for certain offences.

I explained that the statutory grounds on which the Housing Executive or a registered housing association can apply to the court for an order for possession of a secure tenancy are set out in Schedule 3 to the Housing (Northern Ireland) Order 1983. HRS had made the case that, where a landlord is seeking an order for possession on the basis that neighbours are objecting to the condition of the dwelling, it is likely that possession would be sought on Ground 2 (which relates specifically to causing nuisance or annoyance- in other words, what would normally be regarded as "anti-social behaviour") rather than Ground 3 (which relates to acts of waste or neglect). HRS therefore takes the view that the provision which permits the sharing of information where an order for possession is being sought on Ground 3 is unnecessary and should be removed. Similarly, HRS feels that the provision which permits the sharing of information where an order for possession is being sought on Ground 1 (which relates to breach of tenancy obligations) is also unnecessary and should be removed.

While the Department accepts that it may indeed be the case that Grounds 1 or 3 would rarely be cited in possession cases which involve anti-social behaviour, there is also a possibility that either or both of these grounds could be cited in such cases and that a facility which allows the relevant parties to share information about acts of waste or neglect, or breach of a tenancy obligation, could therefore be of value to the landlord. I emphasised that there is nothing in clause 2 that would oblige a court to make an order for possession and that clause 2 is simply a data-sharing provision intended to ensure that the courts have all the evidence they need to make informed decisions. While I conceded that the references in clause 2 to Grounds 1 or 3 might not be greatly missed if they were removed from the Bill, I emphasised the Department's view that retaining the references to Grounds 1 or 3 in clause 2 would not result in disadvantage or injustice to any person, and that there would be no justification for delaying the Bill by tabling the amendment requested by HRS.

In relation to the suggestion by HRS that the Bill should be amended to require any person providing or receiving information under clause 2 to have regard to guidance issued by the Department, I advised the Committee that the Department already issues guidance on dealing with anti-social behaviour to the Housing Executive and registered housing associations, and confirmed that this guidance would be updated to reflect any change to the relevant legislation. In the Department's view it would not be appropriate to issue guidance that would be legally binding on any individual or organisation other than the Housing Executive or a registered housing association.

In the interests of accuracy, I provided the following comments on the paper headed "Extract from Schedule 3 of Housing (NI) Order 2003" which was tabled by the Housing Rights Service during its evidence session on 8 October:

- The statutory grounds for possession of a secure tenancy are set out in Schedule 3 to the Housing (Northern Ireland) Order 1983, **not** the 2003 Order.

- The version of Ground 1 set out in the paper suggests that there are grounds for possession where “any obligation of the tenancy has not been broken”. This of course should read “any obligation of the tenancy **has** been broken”.
- The paper suggests that Ground 2 includes domestic violence. In fact, domestic violence is an entirely separate Ground 2A (this was inserted in the 1983 Order by the Housing (Northern Ireland) Order 2003).
- While the paper refers to Ground 5, which applies where a tenancy has been granted on the basis of a false statement, this is not one of the grounds for possession mentioned in clause 2 and there is no suggestion that there should be any provision made for data sharing in respect of this ground.

I can confirm that officials will attend the Committee’s meetings on 12 and 19 November.

I hope this information is helpful.

Yours sincerely,

**Dr Heloise Brown**

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         Ashleigh Mitford  
         Alicia Muldoon  
         Billy Crawford  
         Mick Shine  
         Bernie McCafferty  
         Ellen Corry  
         Kate Jeffrey