Northern Ireland Assembly

Committee for Social Development

OFFICIAL REPORT (Hansard)

Houses in Multiple Occupation Bill: Department for Social Development

26 November 2015

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:
Mr Alex Maskey (Chairperson)
Mr Fra McCann (Deputy Chairperson)
Mr Jim Allister
Mr Roy Beggs
Mr Gregory Campbell
Mr Stewart Dickson
Mr Sammy Douglas
Mr Adrian McQuillan

Witnesses:

Mr David Grimley	Department for Social Development
Mrs Christine Hayes	Department for Social Development
Mr Stephen Martin	Department for Social Development
Mr Ronan Murphy	Department for Social Development

The Chairperson (Mr Maskey): We have with us Stephen Martin, David Grimley, Ronan Murphy and Christine Hayes. I formally welcome you all here this morning. The purpose of today's session is to work through the issues paper that has been provided by the Department. That should help us to determine the issues that the Committee believes are appropriately addressed by the Department and to identify other issues that we may want further discussion on. Without further ado, I thank you, Stephen, and your colleagues for being here this morning. Will you give us the benefit of your expertise and wisdom?

Mr Stephen Martin (Department for Social Development): Thank you, Chair. With your approval, I will take the Committee through the briefing paper. I am sorry that it came just yesterday, but we have been trying to reflect the key issues from all your stakeholder briefings. We are currently preparing our clause-by-clause response, and we hope to have that finalised and with you fairly soon.

From the briefings that the Committee has had, I think that most stakeholders have welcomed the new definition of house in multiple occupation (HMO), but some concerns have been raised, particularly on self-contained apartments and how they are treated. There are three main exclusions from the definition of house in multiple occupation: self-contained apartments; housing association-run accommodation; and university accommodation. By way of context, let me say that reaching a satisfactory definition was challenging. The Bill has been the subject of considerable work, looking at best practice in other jurisdictions and the experiences of HMO legislation in Northern Ireland.

We have also taken into account the judicial review into the HMO legislation in 2005, which found that the definition at that time was unintentionally bringing in accommodation that was never designed to

be HMO and that it was too wide-ranging. The new definition and the associated exemptions are intended to bring clarity, to focus the regime on areas of higher risk to tenants and to make sure that appropriate standards are enforced. Research has indicated over quite some time that, for HMOs, the risk is highest in rented accommodation, where there is no clear head of household. There is not the same level of risk in owner-occupied accommodation, so the definition tries to focus on rented accommodation.

I will turn to the three exclusions and then pause for questions. On the first one, which is on self-contained apartments, we were conscious in drafting the Bill — we took legal advice when drafting it — that there are potential human rights issues associated with the unnecessary regulation of those apartments and that considerable expenditure can unnecessarily be imposed on owner-occupiers. The intention of the Bill is that, in future, each apartment will be treated as a separate dwelling and will be counted as an HMO if the occupant numbers and relationship conditions are met. The apartment building in and of itself will not necessarily be treated as an HMO; individual apartments in it could be if they met other aspects of the definition, such as the number of people living there, etc. Regardless of whether they are HMOs, all apartments, including conversions from houses to apartments, need to have planning permission under the Planning (Use Classes) Order (Northern Ireland) 2015 and need to have been inspected by building control. Some of the key things on exits, fire safety and so on will be covered as part of that process. For any apartments within a building that no longer meet the definition, landlords will still have to meet their obligations under the Private Tenancies (Northern Ireland) Order 2006.

The Department feels that housing association accommodation is already very well regulated by other means and that, given that, there is a strong case for excluding it from the HMO regime. Similarly, the university accommodation is to a high standard, and, providing that that accommodation is managed to a standard that is equal or higher than the standards intended in the Bill, through accreditation codes such as Unipol, the Department feels that should be sufficient to ensure that that accommodation is properly managed.

Chair, if it is helpful, I will pause at that point for any questions.

The Chairperson (Mr Maskey): Can I work backward a wee bit for clarity? It is proposed to exempt university accommodation. Are we talking about the Elms and that type of facility or about individual houses dotted around in other residential neighbourhoods? Is there a difference?

Mr Martin: My colleagues can come in on that. It is primarily focused on university-run accommodation such as the Elms or purpose-built and managed student accommodation. It is not intended for individual properties.

The Chairperson (Mr Maskey): I asked that because this is a question that underpins probably all members' concerns. Whether a property is called a HMO, private apartments or something else, by its very nature, there are multiple tenants in a number of those properties and they are not a settled community. In some cases, they may well live there for a lifetime, so it could well be part of a settled community. Sometimes, the difference between what is defined as a HMO and another set of rented accommodation does not mean a ha'p'orth to the local community because it looks the same, feels the same and has the same effect. That is why I am asking the question: is it to do with the likes of the Elms and that kind of bigger complex, as opposed to individual properties?

Mr Martin: Yes, it is.

The Chairperson (Mr Maskey): It is the former.

Mr F McCann: You talked about the judicial review, which said that the interpretation or definition was too wide, but did it specifically exclude or mention flatlets? One of the debates and arguments from people who live in and represent areas with a large number of those types of accommodation has been that, over this past while, landlords are using this instead of doing what they would normally have done for HMOs or flatlets. They are using that to try to get around this. Where does that leave it in the context of the Bill?

Mr Martin: To convert a property legally, you need planning permission and building control assessment. Some of the issues that stakeholders raised were on things like fire safety and entrances and exits. Those issues are covered by planning permission and building control. There has been an increase in the last 10 years in the number of apartments and apartment buildings. At

the minute, all those apartment buildings are technically HMOs, and it has been quite problematic for the Housing Executive to determine what the intent was and what it should focus on. We are trying to guide councils to focus on the areas where we feel there is greater risk because of the number of people in a property. This is really intended to help councils to differentiate between an HMO and a settled property, where perhaps an owner-occupier lives. At the minute, those are being caught, and there are quite clearly human rights issues around them having proper enjoyment of their properties. This legislation and previous HMO legislation was never intended to target those properties, but, at present, they are being drawn in, so we are trying to exclude those from the regulatory regime.

Mr F McCann: When you talk about excluding, do you mean flatlets?

Mr Martin: I am talking about self-contained apartments and self-contained flats within a building, yes.

Mr F McCann: When you listen to residents from south Belfast, you hear them say that conditions are a big thing in the definition of a HMO. Just as crucial is the impact that these have on the residential nature of many of the communities that live there. If somebody is going to use, say, a relaxation of the definition of a HMO to build flatlets or the like, which will have the same impact on a community, surely that would be wrong.

Mr Martin: If somebody were to convert a building or build an apartment now, they would need planning permission. That planning permission would have to take into account community issues. There would have to be community consultation. The planners would have to take into account a range of issues such as noise, and then there is building control. So, we feel that to address those kinds of issues, the regime is already there. If we do not exclude those kinds of properties, two things will happen: first, we are going to draw in people for whom this regime has never been warranted; and, secondly, we are not focusing the regime on those properties where tenants are at greater risk.

Mr F McCann: Equally, if we are looking at a Bill where you may well decide to put proposals forward that limit the number of HMOs in particular communities to try to protect their residential nature, people who want to run HMOs in the future may turn them into flatlets, which would have the same impact. Surely that is wrong, because rather than closing down some of these difficulties, you are opening them up.

Mr David Grimley (Department for Social Development): Through the Bill we are trying to prevent a Holylands-type situation happening again. The introduction of licensing is linked to planning, particularly with the new student housing and so forth that is coming into north Belfast. However, it is difficult for us to do anything on existing HMOs in particular areas, other than to do what we are saying, which is to note that the current licensing scheme is going to be risk-based. That means that we will allow councils to concentrate predominantly on that high-risk accommodation.

Under the current registration scheme, any flats within a building are identified as HMOs. Under the licensing scheme, as Stephen pointed out, there is a human rights issue. I know that a lot of representatives from different constituencies have been writing to the Department over the last years about owner-occupieds that were being brought into HMOs even though that should not have been the case. With this review of the current HMO regulations, we are trying to take all those issues into account through the Bill.

Mr Ronan Murphy (Department for Social Development): I can add something to that. Obviously, when we looked at the policy behind this, we saw that it was a risk-based approach. The fire studies showed that, where there are certain amenities in a property, the risk of fire increases exponentially. However, where they are behind closed doors and everybody has their own individual use, the risk obviously drops the same way.

I know that a few stakeholders have maintained that this may create HMOs by stealth. To avoid that, they would have to bring all those shared amenities behind a door. An awful lot of the properties in the Holylands are not suitable to have self-contained flats within them, size-wise, under planning control and that sort of thing. So, it would be a great expense to do that. It also may not be suitable because of the space available. They would also have to pass rigorous building and planning control. So, it is not that it is going to be easy and it is just a matter of putting up a stud wall and everything is fixed. Each toilet would have to be moved behind closed doors to satisfy that person. They would have to have cooking and cleaning facilities, as well as those for washing, such as a shower, bath or whatever. It is not just that a simple one or two stud walls will fix this and will allow them to avoid the regulation. Quite a bit of work is involved if they really want to maintain a standard and avoid it.

Mr F McCann: I understand what you are saying. I believe that all the facilities, whether classed as HMO or not, should have the highest standard of facilities. One of the reasons that we are sitting here is that that has not been the case in the past. Our concern is not only about the conditions — although I think that those powers being moved to councils will allow them, along with their other powers, to deal with some of that stuff — but about the overall impact in the longer term on the residential nature of an area. Being the sad person I am, I watched a programme on housing a while ago. It dealt specifically with flatlets in England, which were built to a high standard. They were clearly calling them HMOs.

The Chairperson (Mr Maskey): OK. We are still teasing that out. A number of members indicated that they wanted to speak.

Mr Campbell: We had some housing associations with us last week, and, although I am paraphrasing, they seemed to be indicating that they were content not to be included but would probably not be overly concerned if they were. That is probably a paraphrase, but it appeared to be their position. I am looking at your response, particularly on enforcement notices served. It says that 97 notices were issued on housing association buildings in three years, but nearly half of them seem to revolve around just two properties, which sounds particularly acute. In all Northern Ireland, almost half the enforcement notices over three years boil down to two properties. I do not know whether there is any significance in that. Is there?

Mr Martin: What we can say is that this demonstrates the rigour of housing association regulation. Those two properties formerly belonged to the Students Housing Association Co-operative (SHAC). Following intervention by the Department a number of years ago, SHAC was effectively closed down and merged with Choice, which is now dealing with legacy issues from SHAC. That, in a way, demonstrates the effectiveness of the existing housing association regulation regime.

The Committee got some figures from us recently on Housing Executive inspections. They show that over the last couple of years there has perhaps been a focus on some of the easier hits, such as universities and housing associations. The proportion of inspections of those kinds of accommodation has gone up. It is not therefore surprising that they are picking up some issues, and as you say, most of those are in those two properties, and Choice is dealing with them very robustly.

Mr Campbell: Further on in your briefing you said:

> *"the Department also intend to bring forward a new regulatory framework for social housing that will also take account of the health and safety standards expected."*

Have you any idea when? Is that likely to be in this mandate or some time later?

Mr Martin: That is tied up with the social housing reform programme, so a lot of preparatory work has been done. I guess that when it is implemented will depend on the overall decisions made on the social housing reform programme. Certainly, a lot of work has been done and is ready to go at an appropriate time.

Mr Dickson: I would like to go back to the universities. I take it that your intention is to exempt or exclude only university-owned property. I know that a number of Churches provide halls of residence at universities, and other organisations may provide it. It is strictly speaking only university-owned property that is exempted. The obvious examples would be Elms Village at Queen's, and at Jordanstown, there is a considerable amount of university-owned accommodation in the grounds of the university.

Mr Grimley: Our intention in the Bill was to have university-managed accommodation that would be signed up to an accreditation scheme. But we know that there are quite a lot of applications for other types of student housing that are apart from universities, and if they signed up to a similar accreditation scheme that was acceptable to councils, we anticipate that would be acceptable as part of the Bill.

Mr Martin: I draw your attention to paragraph 6 of schedule 1, which provides:

> *"any building which is occupied principally for the purposes of a religious community whose principal occupation is prayer, contemplation, education or the relief of suffering"*

is exempt. A religious community would therefore be exempted as well.

Mr McQuillan: I will just go back to Fra's point about the people who are making flats inside these buildings. Are we dependent solely on planning applications and building control to regulate this? It seems to me that we could do with something a bit stronger. If someone is going down the road of trying to avoid the Bill, they are not going to look for planning permission or building control. If they cannot get a fire escape or whatever they will try to make it some way. Do we not need something a wee bit stronger in the Bill that means that can regulate this ourselves, rather than depending on another Department?

Mr Martin: I take Mr McQuillan and Mr McCann's points. The problem that we struggled with is that it is difficult to find a way to separate out different types of apartment. Planning and building control will deal with the key issues on entry and exit — it is totally appropriate that they do so — as well as with some of the issues that Mr McCann raised on —

Mr McQuillan: That is only if they know about it.

Mr Martin: If somebody converts in breach of planning permission, they are breaking the law, so councils obviously have opportunities to take robust action. The issue is that there are a lot of apartments in Northern Ireland now; there probably were not when HMOs legislation was first thought about. There are lots of people who live in apartments in a settled way and are owner-occupiers. The Bill is not intended for them; they are not creating risks for themselves or for anybody else. That is what we tried to do, but we take your point — there might be a minority.

We can take it away and look at it, but we pondered this long and hard and found it a struggle to create some distinction that would allow us to focus on that minority. On balance, because of the human rights issues, we felt that it was important to exempt all those types of properties. We felt that planning and building control would address a lot of the issues with conversions and make sure that there is proper —

Mr McQuillan: I understand that it is not easy to get a balance. OK, thanks.

Mr Allister: I want to take Mr Grimley back to the point that Stewart raised or rather in consequence of something that Stewart said. You made the observation that, apart from universities providing accommodation for students, there is quite a rash of planning applications from private providers in the York Road area of Belfast, for example. You said that those private providers, provided that they met a relevant protocol, would also be excluded.

Mr Grimley: That would be for university-type accommodation. It is accommodation that is solely for students.

Mr Allister: Or principally for students.

Mr Grimley: Yes, principally for students.

Mr Allister: That is the language that is used in the schedule.

Mr Grimley: What we are trying to do in the Bill is this: if we are exempting for universities that are signed up to an accreditation code and there were other similar types of accommodation for students, we could not really make a differential just because they are managed by universities. The accommodation is the same spec, and the provider is signed up to the same accreditation.

Mr Allister: Would it be the same accreditation?

Mr Grimley: We would ensure that it is the same accreditation.

Mr Martin: It would have to be to satisfy the requirements. The Bill sets out the parameters for a code of practice, and unless the accommodation meets that code of practice it will not be excluded.

Mr Allister: Is that at schedule 1(5) to the Bill, which refers to:

"Any building —

(a) which is occupied solely or principally by persons who occupy it for the purpose of undertaking a full-time course of further or higher education"?

It goes on to say:

"(b) where the person managing or having control of it is the educational establishment in question or a specified person or a person of a specified description."

Schedule 1(5)(2) says:

"'specified' means specified for the purposes of this paragraph in regulations made by the Department."

Is that where that private provider would be specified in the regulations?

Mrs Christine Hayes (Department for Social Development): Yes, it would be private, purpose-built, managed student accommodation — the likes of the new planning applications that we are having in town. In England, if a university takes over the management of that building and it is signed up to Unipol or one of the other accreditations, that building is excluded. We plan to do the same thing. If a purpose-built, managed student accommodation facility is managed by the university or by an accredited company, it will be excluded.

Mr Allister: Would that become clear in the regulations that you will make under the schedule?

Mrs Hayes: Yes. A university can have a protocol with a company, as Queen's University and Jordanstown currently have. Someone else owns the building, but they run it. So, because they are running it, they are managing it to the same standard as a building they would own.

Mr Allister: Or it could be managed by some accredited person.

Mrs Hayes: Yes, but it is the managed bit that is key to whether it is excluded.

Mr Allister: OK, I understand now.

The Chairperson (Mr Maskey): There are two core issues for me in trying to work out the balance in all this. The last point is an interesting one for me, so maybe it is a quicker one to get an answer on. The developments that are proposed for planning might get planning approval for whatever they are going to do, and, because it involves building accommodation, they will have to meet all the physical and safety requirements and all the rest of it. If, for example, they do not enter into a management contract with the university, what happens after that?

Mrs Hayes: It will be a HMO.

The Chairperson (Mr Maskey): It will be a HMO.

Mrs Hayes: Yes.

The Chairperson (Mr Maskey): That takes me to the big, fundamental question in all this. The rationale going back almost 10 years was for a subject plan, which kept HMO provision in any given area to a number of zones. As you will remember, some were 10% and some were 30% in particular streets. My big concern with this Bill is that it does two things. First, it de-designates a number of properties that are currently defined as HMOs. It takes them off the register, if they are on it. It takes them out of HMO categorisation, so they do not feature as HMOs in that particular street. If you continue in the vein of light-touch regulation, how does that square against the rationale of the subject plan, which was to protect the residential character of a number of areas? Unfortunately, we have experience in the city here.

How do we protect against the future undermining of residential communities if we, first, take out a number of properties that are currently in HMO designation and, secondly, move to a point where we

are excluding quite a number of other ones and making a difference between the definition of a HMO and contained apartments? As I said, to someone living around the street, a contained apartment or a HMO-designated building is the same thing. In my view, this Bill does not deal with the residential nature of any street at all. It does deal with safety, building control and all those matters, which are very important. For me, the Bill focuses on the safety the building and, obviously, the safety of people living there. That is very important, but it does not deal with the residential nature of any area, and I feel that it undermines some limited protections that are there already.

Mr Martin: You have hit the nail on the head. The intention of the Bill is to protect HMO tenants. That is the whole purpose of the Bill. The whole purpose of planning is to plan land use, and the Bill connects with planning. Ultimately, deciding what is an appropriate residential make-up of an area is an issue for the planning system and now for councils through local development plans. This Bill could never address the residential pattern of development in an area; that is not its intention, and it could never do that. Importantly, what it does is connect with that planning system, which has never been there before. If a development plan or subject plan limits the number of HMOs, the Bill would help to stop further HMOs being created. Yes, we acknowledge that the Bill would also take some properties that are currently HMOs out of HMO regulation and then outside that subject plan. In many of those areas, those existing buildings are in areas that vastly exceed the proportion of HMOs, particularly in south Belfast.

The Bill will not be able to address those wider residential issues. That is a planning issue for the local development plan, HMO subject plans and planning policy. It is not something that an HMO Bill could ever do, and none of the similar Bills across the other jurisdictions attempt to do it either.

The Chairperson (Mr Maskey): What you are really saying is that, ultimately, the Bill is designed to tackle the HMOs whatever about any other planning framework that there is within which they will exist. In other words, as far as you are concerned, there could be a cap on the number of HMOs in a street or an area or there may not be, but this is to deal with specific properties.

Mr Martin: It is to deal with specific properties, but it also makes a connection with the planning system that has never been there before. For an area like north Belfast, for example, new HMOs could not be created outside the planning system. To apply for a HMO licence, you need to have planning, and to have planning, you need to demonstrate that it is within the bounds of the 10% or 30% cap in the Belfast HMO subject plan. In making that connection, the Bill will help to prevent Holylands-type situations arising in other parts of Northern Ireland.

If councils do not have local development plans that set caps or there is not some other mechanism, it is important that they deal with those issues when developing their local development plans. In Belfast, the Holylands situation could not be recreated, partly because of the link between this Bill and the planning system.

The Chairperson (Mr Maskey): OK, that is helpful.

Mr Allister: If a private developer wants to provide student accommodation, he does not need an HMO licence if he can get accreditation to take himself outside it.

Mr Martin: If he meets the various requirements, potentially yes. Purpose-managed —

Mr Allister: If he meets the accreditation, he is, therefore, not subject to any cap in an area.

Mr Grimley: He would have to make an application for a licence to run a HMO.

Mr Allister: No, he will be excluded as an HMO under schedule 1 if he is accredited. So, if he is accredited, he escapes HMO classification and escapes the cap.

Mr Grimley: In the council regulations, they would have to apply the planning orders for any applications for that area and take account of HMO as consequential regulation.

Mr Martin: Perhaps there is a simpler answer. Yes, they could potentially be taken out of the HMO regulatory system, but the HMO classes order for Belfast is in addition to the local development plan, so a council, through its planning system, could put other constraints on particular types of

development in any area. There is nothing to stop a council doing that, so it could put constraints through the local development plan on, perhaps, the number of student dwellings in an area.

Yes, you are right in that developer A puts in a planning application, meets all the criteria and it is not an HMO, but the planning authority could say, "That is not in accordance with our local development plan, which puts a wider limit". It could be dealt with in that way but that is a matter for a council to decide as part of its local development plan.

Mr Allister: That presumes that a council does that as part of its local development plan.

Mr Martin: They all have an obligation to have a local development plan.

Mr Allister: Yes, but the content is up to them.

Mr Martin: Yes, it is.

Mr F McCann: There are considerable projects or programmes under way. In what is now called the College Gate area of Belfast, there are planning applications for upwards of 1,200 student units, and that is not taking into consideration what is planned for lower north Belfast. Does the Department keep an eye on those plans? If there is information on the number and type of such planning applications, can we get that?

Mr Martin: That is something that DOE could possibly provide. We do not operate the planning system, as you know, so could not provide that information. Perhaps the Committee could ask for it from DOE, or we could ask DOE, but we do not have that information.

Mr F McCann: When we had the university witnesses up, I think they said that they had plans for something like 2,500 units over the next number of years. The UU is planning substantial developments in Belfast. Even to get an idea of what is going on in that type of development would be interesting. Maybe the Committee could ask for that information from the DOE.

Mr Martin: Chair, we are picking up a view that the exclusion of university accommodation is a matter on which the Committee feels strongly. Would that be a fair impression?

The Chairperson (Mr Maskey): It sounds like a bit of a chicken-and-egg situation. Whether capped or not, the issue seems to be the point at which that is determined. It looks like some kind of a gap or disjoint there at least.

Mr Beggs: It would be a useful if there was a way of acknowledging the numbers involved that might be excluded, but, at the same time, there is no point creating duplication of inspection and costs. Is that a way forward — some way of capturing the numbers that may be excluded, so that it would be clear which establishments have been excluded, and there would be transparency of the overall HMO numbers in an area?

Mr Martin: To perhaps answer both questions, if we in conjunction with our DOE colleagues — it is really a Belfast issue — can speak to Belfast City Council and if the planning department there is willing to provide us with that information, we could give you a sense of the prospective number. The universities can obviously give us the numbers of current student accommodations that they operate, and the planning applications would give us the prospective numbers. Belfast City Council does not have to give us that information, but we can ask for and provide that if it is forthcoming.

The Chairperson (Mr Maskey): OK. I am happy enough.

Mr Dickson: Just briefly, in terms of existing university accommodation, I think that some form of exemption is OK, but I would have concerns about then handing it over for future applications and effectively transferring the control to the city council, in the case of north Belfast, for planning because the University of Ulster, for example, has a very poor track record when it comes to housing. That can be clearly seen in its rather difficult attempt to sell off its existing site in Jordanstown. I suppose it is down to the university, but, at the end of the day, it wants to maximise the amount that it can get, so I do not have any particular faith that the University of Ulster does not want to create another Holylands

in order to cram x number of students in. I have concerns that the only regulation on them would be planning. My preference would be to see that it is both HMO and planning.

The Chairperson (Mr Maskey): OK. Are you happy enough with that?

Mr Martin: I will move on to the next issue, which is fire safety. The approach to fire safety under the HMO Bill is designed to avoid overlapping regimes and duplication by operating a single fire safety regime. Article 48 of the Fire and Rescue Services Order 2006 restricts the ability, through a licensing scheme, to apply and enforce fire safety standards. That is something for the Fire Service. So, if we tried to enforce fire safety through the Bill, it would be null and void because of that condition.

However, it is really important to say that it is envisaged that the new protocols for fire safety will, as far as possible, mirror the current arrangements for HMOs. There will be no diminution, and the Department does not envisage any increase in work for the Fire and Rescue Service, other than more cohesive working across authorities. It is a really important point to get across. Although fire safety is not on the face of the Bill, the fire safety regime will not change as a result of the legislation. The same standards will apply; it will just be managed in a different way.

To make sure that those management arrangements are in place, we are setting up a stakeholder group to examine the detail of the new regime for fire safety, which will include the operating arrangements for councils and the Fire and Rescue Service in protecting HMO tenants. Such issues will be detailed and clarified in a code of practice and guidance to assist councils and the Fire and Rescue Service in operating the scheme and the fire safety regime as part of that scheme.

The Chairperson (Mr Maskey): This principle is good: do not overlap or duplicate two regimes because that could cause confusion. That seems to me to leave it a little vaguer, because you have to set up stakeholder groups and all the rest of it. People would just presume that fire safety regulations should be a straightforward go-to point. There should not be any ambiguity around that.

Mr Martin: There is not really ambiguity, in the sense that the Fire and Rescue Service, under its legislation, has a very specific remit. We want to make sure that, when councils are doing inspections, they inspect fire safety on standards compatible with those that the Fire and Rescue Service expects. There are agreed points for how information is shared so that we make sure that the protections are there. It is really about the detail of the regime and the operating arrangements. There is clarity through the Fire and Rescue Services Order. The Fire and Rescue Service is in the lead on fire safety, but it is about how that dovetails effectively with the HMO regime.

Mr Grimley: Yes. That will be just one part of what the stakeholder groups will take forward in relation to the code of practice and the guidance. All the stakeholders will be part of the consultation on what is required.

The Chairperson (Mr Maskey): Is the Fire and Rescue Services Order the statutory locus for all that?

Mr Grimley: It is.

The Chairperson (Mr Maskey): Fair enough, OK. Thank you.

Mr Martin: There are just a couple of minor points then, Chair, where we are going to propose amendments. On clause 3, the Northern Ireland Council for Ethnic Minorities (NICEM) was here and raised some issues around the fact that accommodation for migrant or seasonal workers might not necessarily be included. We are proposing a clause that would make sure that accommodation occupied by them is included as HMOs. They are a transient population, and we want to make sure that they are protected.

I move onto clauses 4 and 88. The Committee has heard some evidence that we have perhaps broadened the definition of a family too much for the purposes of a HMO by including "or cousin". We propose an amendment to remove "or cousin". We drew the cousin reference from England, but there are very different family arrangements. Some students from rural areas tend perhaps to live in broader family groups, with cousins living together and so on. We think that there is a small risk of some student housing being excluded from the HMO definition if we retain "or cousin". We take that point and propose an amendment to remove that.

Mr Beggs: Which clause is this?

Mr Martin: It is clause 88 on the definition of family for the purposes of determining what is an HMO.

The Chairperson (Mr Maskey): In some parts of the world, everybody is a cousin of everybody else. *[Laughter.]*

Mr Martin: There is that point as well.

Mr F McCann: You are starting to sound like Mickey Brady. *[Laughter.]*

Mr Martin: In clause 88(3)(b), we propose to remove "or cousin" so that it ends with "nephew or niece."

The Chairperson (Mr Maskey): Thank you for that.

Mr Martin: I move on to clause 13(2)(b). The Committee has raised some issues around the use of the word "type", as in type of person. This is where the council would take into account not only the standards of the accommodation but the type of person expected to live in that accommodation. The Committee had some issues with that word. We can change that word and use a different word that has the same meaning, if the issue is with the word, or we can remove it completely.

Mr Campbell: Would that be "to be or not to be"? *[Laughter.]*

Mr Martin: We think that it is a valid issue. The council should consider whether it is for students, older people or whoever and read the context, but it is not a point that we are necessarily completely wedded to. If the Committee feels that we need to change that word or just remove the provision in its entirety, we are relaxed about doing that.

The Chairperson (Mr Maskey): In the words of the old refrain, "You say potato, I say po-tah-to".

Mr Douglas: Stephen, you mentioned that this is included in legislation in Scotland, is that right?

Mr Grimley: And England.

Mr Martin: It is.

Mr Douglas: Is it important to have that in then? I am sure that they had this debate when they were drawing up their legislation.

Mr Martin: Mr Douglas raises a really good point. Ten or 15 years ago, most HMO accommodation was occupied by students, and it was not an issue. There is now a variety of people living in HMOs. We are trying to capture that and enable the council to take it into account. Something that is relevant to three students is not necessarily relevant to older people and vice versa. That is what we are trying to get at.

The Chairperson (Mr Maskey): OK.

Mr Martin: The next point is on change of ownership, which is clause 28. The Landlords Association and a few others raised an issue around the arrangements for obtaining a licence when there is a change of ownership of an HMO. We agree that an amendment is probably needed to allow a reasonable timescale for the new owner to obtain a licence. We are consulting our legal adviser on the wording of such an amendment. We think that there is a valid issue there that needs to be looked at.

Similarly, there is a concern that, upon change of ownership, a prospective HMO landlord's application may be turned down on the basis of over-provision. The Landlords' Association for Northern Ireland (LANI) has indicated that that would have serious financial repercussions for HMO landlords. We took advice on that issue, and we can confirm that the Bill, as drafted, would not allow a licence application on the change of ownership for an existing HMO to be rejected on the grounds of over-provision. To do that would, I think, leave us subject to a challenge under the Human Rights Act, because we would

be depriving somebody of their property. It would greatly devalue the property. If the regime was allowed to take a licence off somebody and redesignate an HMO as family accommodation, the value of that accommodation would drop dramatically, and, I think, we would find ourselves, very quickly, with a legal challenge. Had we included that provision, we do not think that the Bill would have been competent; we would have been challenged on that. The policy intention of the clause is to prevent new areas becoming over-provided with HMOs in future. It does not have the scope to reduce over-provision in existing areas, such as the Holylands, that already have a high number of HMOs. As I said, we looked at the issue quite seriously during the policy development process.

The Chairperson (Mr Maskey): That simply means that if a house that is currently designated as an HMO is sold to somebody to be retained as an HMO, you cannot take the licence away, even if the house is on a street or in a neighbourhood that is oversubscribed.

Mr Martin: Exactly.

The Chairperson (Mr Maskey): OK. Are members happy enough?

Members indicated assent.

Mr Martin: I move now to the appointment of a managing agent. The Committee heard some concerns about managing agents and licensing. It is important to differentiate between a managing agent, who manages a property, and a letting agent, who lets the property but the property is managed by the landlord. We feel that where an owner wishes to appoint an agent to act in a management capacity, it is important that they are licensed and undergo the fit and proper person test because they are managing a property. Obviously, there is detail on the procedure to change or appoint an agent that we need to work through. Landlords were trying to say that they need to change managing agents very frequently and that this could be very difficult. Our understanding is that that would not be the case. Letting agents are a different story; managing agents, not so much. The detail of how those amendments are made if a managing agent is changed is something that we will look at in regulations and guidance.

The Chairperson (Mr Maskey): OK. Thank you for that. Are members happy enough?

Mr Dickson: I want to say something, briefly, on managing agents, although it may not be within the scope of the Bill. Quite often, managing agents tell me that they cannot manage, because the landlord does not give them sufficient resources to do the job that they are contracted to do. That is a regular occurrence, so there is quite a turnover of them. As soon as a landlord is told by his managing agent that x amount of pounds has to be spent on something, the reaction from a number of private landlords is not to do the job but to change the managing agent and to push the problem further down the road. I do not know if that is a matter for regulation of private landlord relationships in the future. Is there scope for us to do something in the Bill in respect of the resource that is available to the managing agent?

Mr Martin: I think that there is a wider issue of letting agents, managing agents and their regulation. It is something that was flagged up as an issue in the review of the private rented sector. I think that we are coming to brief the Committee on that review on 10 December. Perhaps, it is an issue that we might be able to pick up at that point.

Mr Beggs: Following on what Stewart was saying, if there is an attempt to keep pushing the problem further down the road by changing managing agents, are you satisfied that there is adequate provision in the Bill to allow the HMO licence or status to be revoked, so that the owner could be required to repair the property or have his tenancy agreements ceased because of dangers?

Mr R Murphy: Obviously, if the manager passes the fit and proper person test, or does not, he can appoint a managing agent who does have to pass the fit and proper person test. If that managing agent opts out, it is up to the landlord to designate to somebody else. If the landlord is not a fit and proper person, and there is no responsible person in charge, they are in breach of their licence conditions. A certain amount of flexibility would have to be built in to allow them to appoint somebody else. If it turns out that it is happening on a regular basis — we are back to a pattern of behaviour — councils can come in. If there is an issue where the licence breach is to do with a problem within the property, the councils have the facility in the Bill to address that problem in the short term. The enforcement actions and protocols in the Bill would certainly be able to accommodate such a scenario.

Mr Martin: On the fit and proper person test, the Landlords' Association raised some concerns. It felt that the Department had not properly reflected Judge Girvan's judgement in 2005 on the definition of a landlord's responsibilities for dealing with antisocial behaviour. At the time, Judge Girvan talked about "the locality" and said that an HMO landlord could not be responsible for his tenant's behaviour outside the curtilage of the building, so we could not use the word "locality". We acknowledge that we got that one wrong: we included the words, "in the locality", erroneously. Maintaining them would probably leave that element of the Bill open to legal challenge, so there probably needs to be an amendment to address that.

Landlords have also indicated that they are limited in how they deal with antisocial behaviour by visitors to HMOs. We will look at that and consider whether there is merit in changing the wording in clause 10(6)(b)(i) and (ii) from "occupants" to "tenants". That said, we still feel that landlords have a duty to neighbours. Through tenancy agreements, at the very least, they need to make sure that their tenants are very clear on their obligations in terms of their behaviour and that of anybody whom they invite onto the property. That is a reasonable expectation, and it is something that will be dealt with in the detail around guidance. So, we do not totally accept the point that they cannot be held responsible for visitors, but the mechanism for doing that is the tenancy agreement.

The Chairperson (Mr Maskey): Everybody would accept that anything that goes on in the property that impacts on neighbours and the surrounding area has to be included somehow. Obviously, a balance needs to be struck with all these things.

In my experience, we have had landlords saying they had no jurisdiction outside the front door, but there were wee gardens and you had beer festivals and parties in them. That is all very well if you are all like-minded, but, if you are in a residential street, it is not good enough for it to be party time every other day outside your front door. That is not acceptable at all. A balance needs to be struck between the responsibility the landlord has in the immediate environment and what goes on within the curtilage of the property.

Mr R Murphy: I was just going to touch on that point. The judicial review made reference to curtilage, and it is certainly something that we want to reflect in the Bill so that it takes into account the scenario that you just outlined, Mr Chairman, where, if something happens within the confines of the property — for example, outside the walls but in the garden — that affects neighbours, it is still the landlord and the tenant's responsibility. That should be covered in the tenancy agreement as well.

Mr F McCann: If the Department has a copy of the judicial review, could one be sent to us so that we can refresh ourselves on it?

The Landlords' Association was critical of what you were trying to do. One of the biggest single complaints about HMOs in the private rented sector is about the lack of action by landlords against their tenants who are causing uproar within a local community. Hopefully, we will deal with that in the discussion on the private rented sector, but they have to have some obligation to ensure that, when one of their tenants has a party or invites people over, they leave the area safely and without causing uproar in the community.

Mr Martin: On the final point about the HMO register, the Committee heard a range of evidence from landlords and residents' associations about, on the one hand, the need for transparency from residents' associations and, on the other hand, fears of personal safety from landlords. In the Bill, we tried to acknowledge that wider public interest in transparency, in the availability of information, and the points that were made by landlords on the importance of the safety and security of landlords and their families. In drafting the clause, we were mindful of Judge Girvan's words in that judicial review, that a:

> *"fair balance must be struck between the general interest and the needs of the individuals".*

The policy intention was to try to maintain that balance.

The current registration scheme regulations in relation to the register are not much different from the new provisions in the Bill. However, in light of the concerns that have been raised, we agree that the technical language that was used in the clause leaves a bit of ambiguity. So, to clarify the original policy intent, we are considering a number of minor amendments, which are referenced in the briefing paper. That will not change the nature of what is intended; it just clarifies what is intended. We will try to strike that balance.

The Chairperson (Mr Maskey): OK. Are members content with those explanations?

Members indicated assent.

The Chairperson (Mr Maskey): All right. No members have raised any other issues. Stephen, are you and your colleagues happy enough?

Mr Martin: Yes. Thank you.

The Chairperson (Mr Maskey): You have given us a good rundown. Thank you again for your attendance and for helping us through all those issues. The meeting has been very helpful and will allow us to deal with our consideration of the Bill. Thank you very much for that.