Northern Ireland Assembly

Committee for Social Development

OFFICIAL REPORT (Hansard)

Houses in Multiple Occupation Bill: DSD Officials

10 December 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
Ms Paula Bradley
Mr Gregory Campbell
Mr Stewart Dickson
Mr Sammy Douglas
Mrs Dolores Kelly
Mr Adrian McQuillan

Witnesses:

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

The Chairperson (Mr Maskey): I formally welcome Stephen Martin, David Grimley, Ronan Murphy and Christine Hayes back to the Committee. Members will recall that we have been going through clause-by-clause explanations with the Department and addressing any queries that members may have. At our last meeting, we left off at clause 13, and we are ready to pick up at clause 14 this morning. I am not sure what time frame we are working to because we have a number of statutory rules and other matters on the agenda; more so than usual. I suppose that we could work away and see how we get through today's workload. Are members content to work until about noon?

Members indicated assent.

The Chairperson (Mr Maskey): OK, Stephen. This will test you to see how many clauses you get through between now and noon. We will test your productivity and performance.

Mr Stephen Martin (Department for Social Development): We will do our very best, Chair.

I will start with the remainder of Part 2. Clauses 14 to 29 deal with licence conditions. Clause 14 deals specifically with the conditions that might be included in a licence. There was broad support for the clause from most stakeholders. There were some questions about subsections (4) and (5). Those are "better safe than sorry" provisions that outline that anybody who is not directly involved in the management does not need to be named on a licence. That may be somebody like a letting agent. If they are named, it allows conditions to be placed on them, or, for example, if particular builders have

caused difficulties, conditions can be applied so that those builders are not used by the owner or managing agent. They are not particularly vital subsections but we think that it is worth keeping them in.

There were some questions from one of the residents' associations about the broader issue of antisocial behaviour. As members might remember from last week, we will be emphasising the importance of the tenancy agreement and the obligations that will be placed on tenants and landlords through that. We think that is perhaps a better way of dealing with the issue. Those seem to be the main issues that were raised by stakeholders.

Mr F McCann: We have discussed letting agencies a number of times. There are quite a number. I met some who have thousands of accommodations, including houses in multiple occupancy (HMOs). In many ways, they are crucial in much of this because of people who live outside the jurisdiction being brought into it. Is it not better to have their names on the licence along with the owner etc? Some of those people are not contactable.

Mr Martin: Yes. Anybody who is involved in the management of the HMO needs to be named on the licence and to have passed the fit-and-proper-person test. If the owner does not live in the jurisdiction, they have to have a managing agent, and that managing agent has to be named on the licence. If the letting agent is only letting the property and not managing it, they do not have to be named on the licence but they can be. So, there is a difference between the two.

Mr McQuillan: Can the managing agent be a managing agent of multiple properties or just of a single property belonging to one person?

Mr Martin: He could be a managing agent for one property or a number. Regardless, he has to be named on the licence for each individual property for which he has managing responsibility.

Mr McQuillan: So, if he is named on that licence, he is responsible.

Mr Martin: He is responsible, jointly with the owner, yes.

The Chairperson (Mr Maskey): As Fra says, we have all dealt with people who are just not contactable and do not respond. If the managing agent is named, that person is responsible. We do not really care who owns the property as long as we can get the problem sorted out.

Mr Martin: Absolutely. The managing agent has to be named. As we go through the offences later, we will see that they commit offences if they are the named party and do not do what they should do.

The Chairperson (Mr Maskey): OK, so this is not just a buffer between whoever owns it and the tenants or the rest of us who have to deal with the associated problems.

Mr Dickson: I have two questions that flow from that. First, what checks are done to ensure that the person who is named on the licence actually has authority? My experience is that property owners pass responsibility to agents but then tie the agents' hands and not let them do things. How are we going to deal with that problem? Secondly, is there a requirement in the legislation for the display of the licence and, in reality, for the appropriate person's contact details to be displayed in the property?

Mr Martin: I will ask one of my colleagues to deal with the last point. On the first one, the managing agent has to go through the fit-and-proper-person test to ensure they are absolutely bona fide. If they are named on the licence, they are legally responsible for ensuring that the proper provisions are followed. The relationship between the managing agent and the owner is an issue for them, but they are legally responsible jointly with the owner if they are named on a licence. If they do not have proper responsibility or proper authority, they need to deal with that issue with the owner. However, the really important point is that they are legally responsible.

Mr Dickson: OK. Is that legal responsibility clearly spelt out? The issue for agents is often in respect of delay or non-payment. They will pay to deal with rat infestation, for example, but then cannot recover the money from the property owner.

Mr Martin: That is an issue that is not directly related to the management of the HMO, so it is not covered in this Bill. That is really an issue of the contractual relationship between the landlord and the managing agent.

Mr Dickson: Yes, but, having put that person up front as the person who is legally responsible, what change does that make to their relationship with the owner of the property compared with today?

Mr Martin: Under the current registration scheme, they are also named and legally responsible, so it does not change that. However, a managing agent would be acting irresponsibly if they had an improper relationship with a landlord that did not allow them to fulfil their legal obligations. That is a contractual issue between the landlord and the managing agent.

On the displaying of the licence —

Mr Ronan Murphy (Department for Social Development): Yes. I can clarify that there is a requirement in schedule 2 to the Bill that the applicant is to display notice of an application within the HMO. The detail of what exactly will be in that notice has to be brought forward with the councils. We know that landlords are concerned with the public display of sensitive information, so it may be within the confines of the property because that display of the notice is for the occupants of the property as well as those outside. It remains to be seen whether the public display goes on the window of the property so that the neighbourhood knows that an application has been made for that to be an HMO and the information on that desensitised.

Mr Dickson: I understand the need to display the application. I am even more concerned about the display of the licence itself, once granted; that there is adequate information on the licence and that it is displayed within the property so that anyone living in that property will have a name, telephone number and perhaps even an email address for contacting them. That is the bit that really concerns me.

Mr R Murphy: That will be covered in the code of practice and the management regulations that will be brought forward. The detail of that is not contained in the primary legislation.

Mr Dickson: There is no requirement in the legislation that says that the owner "must" or "shall" display.

Mr R Murphy: No, but that will go in the regulations as part of the licence conditions.

The Chairperson (Mr Maskey): You can return to clause 14 if you need to when we do the clause-by-clause scrutiny.

Mr Martin: Thank you, Chair. Clauses 15, 16, 17 and 18 all deal with the temporary exemption notice. This is where an HMO landlord, for example, has given notice to the council that he wants either not to reapply for an HMO licence or stop the property being an HMO. It also deals with landlords who have accidentally and inadvertently found themselves with an HMO because they have perhaps sublet a room in the property. It allows the council to deal with those things and to manage the process of stopping an accidental HMO from being an HMO and an HMO becoming unlicensed or not being up for renewal.

Councils were concerned about the periods that could be allowed for such notices. Effectively, clause 15 gives six months. We think that that is long enough. Councils felt that perhaps they needed a little bit longer, but they have some discretion around their decisions to enforce, so that would give them a little bit more flexibility. We are fairly convinced, having looked at best practice from other places, that six months is long enough.

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

Members indicated assent.

The Chairperson (Mr Maskey): Thank you, Stephen.

Mr Martin: The same point is made in relation to clause 16, so we have nothing further to add on that clause.

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

Members indicated assent.

Mr Martin: Clause 17 allows that, if works need to be carried out, even during that temporary period, the landlord must make sure that the property is safe. So, although it is not being treated as an HMO, it must be safe and meet standards. Clause 17 allows that to happen. No particular issues were raised. The National Union of Students-Union of Students in Ireland (NUS-USI) made a wider point about overall standards for safety, which we will deal with when we get to that point in the Bill. This just deals with those that are moving out of the HMO regime during that period.

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

Members indicated assent.

Mr Martin: The last clause on temporary exemption notices is clause 18. No comments were received, and we have nothing further to add.

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

Members indicated assent.

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

Mr Martin: Clauses 19 to 24 deal with the duration of a licence and its renewal. Clause 19 deals with the duration of an HMO licence. A couple of points were made by stakeholders. First, some of the council officers felt that they needed more than three months to consider an application, but we think that that is a reasonable time. I think that you could start to get into some difficulties with landlords if you held up an application for longer than three months. The Housing Rights Service suggested that the licensing period should be three years rather than five, but we stuck to the arrangements in the current registration scheme. We think that five years is a reasonable period. The Holyland Regeneration Association made a wider point about over-provision, which we discussed last week.

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

Members indicated assent.

Mr Martin: Clause 20 deals with the renewal of a licence. A general concern is raised at a number of points in the clause-by-clause table by the Housing Rights Service, Queen's University and others about what happens to the tenants if an HMO stops being an HMO. One of the key things that we will do as part of the development of the detail on the Bill is to work very closely with the Housing Executive, as the regional housing authority and the body responsible for homelessness, to make sure that there is a clear link with it so that, if a property stops being an HMO, there is temporary accommodation and other provision for tenants. A landlord still needs to follow tenancy laws and still needs to issue a notice to quit so there is a grace period that allows scope for tenants to find alternative accommodation. Again, we think that there is nothing to add, address or amend in that clause.

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

Members indicated assent.

Mr Martin: Clause 21 provides some of the technical details around renewal and the effective date. No comments were received, and we have nothing further to add.

The Chairperson (Mr Maskey): OK. Thank you very much for that. Are members agreed?

Members indicated assent.

Mr Martin: Clause 22 sets out the procedure for varying a licence. A licence can be varied for all kinds of reasons, such as a managing agent being added and those kinds of things. The councils made some points about this clause; they said that any managing agent should have the fit-and-proper-person test applied. Clause 10 already deals with that issue, so we do not think that anything further needs to be added.

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

Members indicated assent.

Mr Martin: Clause 23 deals with the revocation of licences. Councils are given powers to revoke licences if certain circumstances apply. Again, the Housing Rights Service made the point around what would happen to tenants in those circumstances. That is an issue that is very much at the forefront of our thoughts around the operational arrangements. We will be putting arrangements in place with the Housing Executive to cover those circumstances.

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

Members indicated assent.

Mr F McCann: When you talk to the Housing Executive, will you be talking about making arrangements for tenants to be put onto the housing waiting list?

Mr Martin: It might not be the housing waiting list. It could be, for example, helping them to find alternative accommodation or making use of private lets that the Housing Executive has. It might not necessarily be about putting them on the waiting list but about helping them to find alternative accommodation.

Mr F McCann: Should it not just say the accommodation of their choice? Some people may want to go into Housing Executive accommodation.

Mr Martin: Yes, absolutely. Those are the kinds of details that we will be discussing with the Housing Executive around how those arrangements might work.

The Chairperson (Mr Maskey): That might form part of a recommendation or observation or whatever from the Committee at some point. We just need to bear that in mind.

Mr Martin: Clause 24 introduces schedule 4. Again, this is looking at the detail of how variations of licences are made and how licences are revoked. The councils, as at many points in their responses, are looking for guidance. The team is engaged in that work and has already had the first meeting with representatives from all 11 councils. That detail is being worked up as we speak.

The Chairperson (Mr Maskey): OK, thank you.

Mr Martin: Clause 25 deals with restrictions on applications. The purpose of this clause is to prevent pointless applications being made again and again for the same properties or from the same people, whom we know will fail the fit-and-proper-person test. It prevents that repeat situation. For a restricted period of a year, an application for a property or for an individual to run an HMO will not be reconsidered. The councils made a wider point around consistency of decision-making on issues such as this; again, that is something that we will cover in the operational detail with them and through proper guidance.

The Chairperson (Mr Maskey): OK, thank you.

Mr Martin: Clause 26 deals with joint licence holders. We have spotted a typographical error in subsection 2(b), which should read "any two or more" rather than "any two of more". We will table an amendment to address that issue, but we have no other comments to make on the clause.

The Chairperson (Mr Maskey): OK, thank you.

Mr Martin: Clause 27 deals with the surrendering of a licence. The only point that was raised here was from the councils around the mechanism to prevent people walking away from their obligations. Obviously, we are very mindful of that, and this is designed to deal with a range of circumstances. People will not be able to simply walk away from their obligations, but there may be good reasons why a licence might be surrendered. This clause provides the arrangements for that. We have no further comments or amendments.

The Chairperson (Mr Maskey): OK, thank you.

Mr Martin: Clause 28 deals with change of ownership. We think that an amendment is needed here, and the Minister alluded to it during the Second Stage debate. Landlords have said, with some justification, that not enough time is built into the clause to allow for a licence to be sought when there is a change of ownership. When a property, for example, is sold and somebody buys it, there is not enough time to allow them to make the application. We are proposing to make similar provision to that which is already in clause 29 around the death of a licence holder. That allows for up to six months for arrangements to be made for a new licence to be sought. We will propose something along those lines for clause 28. That is our only point on that issue.

The Chairperson (Mr Maskey): Does that leave any period of time, whilst the various applications are being made, when the tenants are left unprotected?

Mr R Murphy: No, it is to protect against that. The way the clause is written means that on the date of the legal transfer of the property — the date you purchase it — your licence has to kick in too, otherwise the tenants would be exposed or an HMO could be operating without a licence. Obviously, that is inflexible, which is why we are building in a period of flexibility to allow both of the complex systems to mirror one another and work alongside each other.

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

Mr McQuillan: I am not clear on who is responsible for the property within that six months. Say somebody dies, who is responsible until the time of the new licence? What happens within the six months? They have six months to get a new licensee.

Mr Martin: Yes.

Mr McQuillan: Who is in charge within that six months?

Mr Martin: The owner or the managing agent will continue to be in charge.

Mr McQuillan: If he is dead, he cannot be in charge.

Mr Martin: Whoever is the owner of the property will still have the legal obligations. There will not be a formal licence, but councils will have inspected the property and they will be going through the process.

Mr McQuillan: If there is a problem within that six months, who —

Mr R Murphy: We understand. Six months is an arbitrary amount of time. We are not expecting somebody who purchases a house to take six months to get their application in order. Rather than both things having to happen on the same day, we are giving a bit of leeway, maybe a couple of weeks either side, to allow that to happen. If somebody is the legal owner of the property, they have legal responsibility for the contents of the property. It is more to provide protection in cases where there is a hold-up in the legal process for the sale of the house that has a knock-on effect for the application for the licence and vice-versa. It is just to allow a wee bit of flexibility.

The Chairperson (Mr Maskey): If the owner passes on, there will be a managing agent still in place. He or she would be responsible against the estate. Is that right?

Mr R Murphy: That is correct.

The Chairperson (Mr Maskey): That is important, because we do not want loopholes or difficulties to provide mitigation around ownership.

Mr McQuillan: If the managing agent is the property owner and he passes away, there is no point of contact.

Mr Beggs: What are you suggesting?

Mr McQuillan: I do not know. I am —

The Chairperson (Mr Maskey): Ronan, you were trying to address that. Fra, is your question on the same point?

Mr F McCann: Yes. I understand that there could be a lapse in circumstances like that, where there are challenges to wills or on different aspects. The owner may also be the letting agent. If it is clearly written into the Bill that there is a responsibility on the estate to —

Mr Martin: I can provide some comfort on that. We are dealing with clause 29, and subsection (1) states:

> *"Where a sole licensee dies, the HMO licence —*
> *(a) is to be treated as being held, from the date of death, by the licensee's personal representatives".*

If somebody dies, essentially, the executor of their will, their next of kin or, potentially, the managing agent is responsible. When we are drafting the amendment to clause 28, we will make sure that we do not leave a loophole and that somebody remains responsible during that transition period.

Mr McQuillan: That satisfies me.

Mr Douglas: Does that mean that there would be some sort of written contractual arrangement? You know about community and voluntary organisations, for example. If one of them decides to wind-up, within their constitution they will have some sort of statement to say that, in the event of them winding-up, whatever money is left should transfer to a similar type of organisation. Is that the thing you are talking about?

Mr Martin: Yes, what we will do is exactly that — make sure that there is somebody who remains responsible during that transition period. So, we will take that very much into account when drafting the amendment.

The Chairperson (Mr Maskey): OK. Thanks for that.

Mr Martin: In dealing with that issue, I have dealt with clause 29, which concerns where a licence owner dies and deals with the transition arrangements. There is flexibility there to allow for probate to happen, but, again, somebody is responsible during that period.

The Chairperson (Mr Maskey): OK. Thank you.

Mr David Grimley (Department for Social Development): I will take you through Part 3, which deals with the enforcement of licensing requirements. Clause 30 deals with unlicensed HMOs. As set out in the summary, the comments from the Chief Environmental Health Officers Group (CEHOG), which were replicated by the councils, were about agent responsibility for an unlicensed HMO. The Bill refers to "a reasonable excuse" that would have to be taken account of. We foresee an example of that being where the owner is overseas or outside the jurisdiction. In that case, the requirement would be to appoint a managing agent who would have responsibility. The managing agent would then be liable for any offences caused in or around the unlicensed HMO.

On that clause, the Landlords' Association also raised the issue of an agent being held liable in the event that he permits or facilitates the occupation of an unlicensed HMO. Again, as was said, that relates to the fact that he is named on the licence. These issues would have to be taken forward in

the regulations, which would form part of the subsequent detail for the guidance to be provided to councils and landlords on the standards, roles and responsibilities expected.

Belfast Holyland Regeneration Association raised an issue relating to clauses 30 to 33. It thinks that the penalties are not sufficient. One of the paragraphs mentions that penalties should possibly include jail terms for extreme cases of mismanagement or non-compliance. Of course, that is out of our hands, but we have looked at the penalties in place, and we added fixed penalty notices on top of the criminal aspect. That means that it is less time-consuming to sort out these things. Having fixed penalties means that they would not have to progress to court directly and it would be more cost-effective.

College Park Avenue Residents Association raised issues around antisocial behaviour in HMOs. It is looking to tie that into the fixed penalty notices and the question of who is responsible. The Department has covered that previously. We think that it is good practice — we will put it in our guidance — for landlords to ensure that they make reference to antisocial behaviour in their tenancy agreements.

College Park Avenue Residents Association also raised the issue of the landlord's responsibility to provide sufficient bins for the disposal of rubbish. That is a fair point, and we foresee that landlords would need to provide adequate recycling domestic bins and refuse facilities for all occupants. It would be for the council to inspect and to ensure that there were adequate facilities in place, based on the number staying in the HMO.

The National Union of Students made the point that it welcomes the clause, and it emphasises the issue of adequate funding being provided to councils to police this. We are taking that forward with councils, as part of a stakeholder group, and that is one of the aspects that we will discuss with them.

Are there any issues on that?

The Chairperson (Mr Maskey): You have dealt with the issue of rubbish and bins and what have you. One of the things that I want to draw attention to — it is not particular to the Holylands — is where you have a big number of HMOs on a given street and the practice was to provide Eurobins. They were invariably all left at the bottom of the street, the bottom of an alleyway or the corner of the street. They lay there all week, even though they had been emptied. Sometimes, they were emptied halfway through the night by people coming home late and acting the goat. Invariably what happens is that people, through their own laziness, rather than going down the street to the Eurobin, dump stuff over their yard wall into the alleyway. I think that it should be put on the record that that end of it needs to be given good attention in the Bill or guidelines, or however it is dealt with.

Mr McQuillan: As well as that, Chair, it is all right putting in legislation to make sure that bins are provided, but who is responsible for leaving them out for collection?

The Chairperson (Mr Maskey): That is an area of work that we will want attention to be paid to.

Mr F McCann: You would think that the agent or somebody acting for the agent or the landlord would have a responsibility to ensure that. I know that it probably does not happen, but I do not know whether you would put that into legislation. The point that I was going to raise was around the unlicensed HMOs and the enforcement and punishment. This is probably one of the difficulties that there has been for quite a long time. The Minister said this week that there were something like 5,300 registered HMOs and there could be up to 30,000 out there. That is a figure —

Mr Grimley: Sorry, it would be 30,000 occupants.

Mr F McCann: It took me back, because I remember a guy from the Housing Executive saying that there were probably about four or five times as many unlicensed HMOs as there are licensed. That is where the difficulty lies. At one stage, people talked about heavy fines as punishments. There are already heavy fines in place. I would be interested to find out how many people have been fined to the maximum, because there is still an opinion that what they get is a slap-on-the-wrist fine when they go to court. So, there has to be robust legislation to ensure that that is taken into consideration. It is no use us going through this exercise if, at the end of the day, we are passing legislation that does not mean anything when it comes to a court case.

In the past, I know that when Alex was in South Belfast, he was at pains to argue the point that it is not just the fines; it is the follow-up. It is how they deal with their tenants and houses, especially around cleanliness and conditions.

Mr Martin: Absolutely. The issue of fines is a critical one, and £20,000 is the new maximum fine for running an unlicensed HMO. The point that Mr McCann makes about the courts is one that we share. The current maximum fine is less than that, but the courts are giving out 10% of the current maximum as the penalty. So, it would send an important signal to the courts of the importance of this issue. It would be the legislature saying to the courts that this is the importance with which it takes the issue. The level of fines following the implementation of the legislation is something that we will monitor closely, and it may be something that our Minister and the Executive more widely may want to take up with the Lord Chief Justice at some point, but this sends out a really important signal that this is a serious offence that should be taken seriously by the courts.

Mr F McCann: It is important to consider that the daily fine of £50 could be increased. The argument the last time round said that it was something that the courts have no control over because it was a fine that just came into operation, but you could look at that and increase it from £50 to £100.

Mr Martin: OK.

The Chairperson (Mr Maskey): The issue is enforceability. If there is enforceability of robust penalties, which will act as a deterrent against bad management — or bad tenants, for that matter — that is really the issue.

Mr Martin: Yes. The other thing that is worth saying at this point, and we will come to it later, is that the fixed penalty notice system will give a quicker way of dealing with this issue and an effective deterrent. It is something that is being copied now. An HMO Bill was introduced in Parliament in Westminster a number of weeks ago, and it copies the fixed penalty regime that we have in this Bill. So, it is something that we are quite keen to see operate.

Mr Beggs: This legislation is following on from HMO legislation elsewhere. The ultimate sanction is to remove the licence.

Mr Martin: Absolutely.

Mr Beggs: That is the ultimate penalty. Has that penalty been enforceable? Has it happened elsewhere?

Mr Martin: It has not happened yet in Northern Ireland because we do not have licensing, but, elsewhere, I am not sure of the details.

Mr R Murphy: We do not have the details to hand, but we have them back in the office. It has happened but not on a regular basis, because the intent of the licensing situation is not to weaken that sector of housing by removing a lot of landlords, so they would be more proactive and use enforcement. So, if there is an issue with the building, rather than say that that person is not fit and proper because the building is substandard, work is carried out to address the building either through the landlord or the local authorities coming in and carrying out the work and billing the landlord for it. If you require figures, we can provide those.

Mr Beggs: Yes, I would be interested.

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

Mr Grimley: Clause 31 is on exceeding the licensed occupancy or a breach of the licence conditions. CEHOG referred to the fact that the council would need guidance on the terms in the clause to take account, again, of "reasonable excuse". The Department agrees that the detail will be provided in the regulations and the guidance.

Clause 32 deals with where there is an untrue claim that the HMO is licensed. The National Union of Students welcomed this clause, and that was the only comment.

Clause 33 deals with agents not named in the licence. No comments were received.

Clause 34 sets out circumstances in which the owner of an HMO has a reasonable excuse, which is alluded to earlier in clause 31. CEHOG and the councils noted the provisions in this clause and the need for guidance to assist councils to operate the scheme. The Housing Rights Service also mentioned that "reasonable steps" and "reasonable excuse" should be detailed in the guidance. That has been covered already. The Landlords' Association indicated that this presents a problem with reasonable excuse where a landlord wants to change agent or appoint a new agent. It wanted more low-level detail, which was not in the provisions, based on the fact that this is primary legislation. We intend to cover those aspects in the subordinate regulations and guidance, namely that an agent on appointment will have to undergo the fit and proper person test. The detail to appoint the agent will cover details around how much it will cost and any other operational matters. Is that OK?

The Chairperson (Mr Maskey): Yes, thank you.

Mr Grimley: Clause 35 is on the power to require the rectification of a breach. It relates to any issues that inspectors may come across in the HMO application that need rectified. There was only one comment, and that was from the Northern Ireland Fire and Rescue Service, which indicated issues that it comes across in relation to fire safety. As the Committee is aware, under licensing, fire and safety will be the responsibility of the Fire and Rescue Service under article 48 of the Fire and Rescue Services (NI) Order. However, inspectors will still have to take account of the fire and safety risks identified on inspection, and they can refuse a licence on that basis. The Department also intends to provide the council inspectors with the basis of an HMO fire safety guide, which is currently in place under the registration scheme. Is that OK?

The Chairperson (Mr Maskey): OK, thank you.

Mr Grimley: Clause 36 is on revocation of a rectification notice. No comments were received on that, and we do not have anything else to add.

The Chairperson (Mr Maskey): OK, thank you.

Mr Grimley: Clause 37 is on failure to comply with a rectification notice. There was one response from the National Union of Students, which welcomed this clause. We do not have anything further to add.

The Chairperson (Mr Maskey): OK, thank you.

Mr Grimley: Clause 75 — sorry, clause 38 is on revocation orders and disqualification orders. I was looking at the page number. *[Laughter.]*

The Chairperson (Mr Maskey): If you had not let on, we could have continued.

Mr Grimley: It gives a court the powers to revoke a licence and disqualify an owner from holding a licence. CEHOG and the councils suggested that the Department should provide a specified template for disqualification orders and revocation orders and more detail around that. The Department intends to do that as part of its collaboration with councils in providing the guidance. Are you OK with clause 38?

The Chairperson (Mr Maskey): We are happy enough. Thank you.

Mr Grimley: Clause 39 is "revocations and disqualifications: appeals". It specifies that a person may appeal against a revocation or disqualification order. CEHOG and the councils referred to the fact that they would require more guidance on that and asked whether a temporary exemption would apply in that case. The Department's view is that, if a licence is in place and the landlord has appealed a decision, the conditions would remain in place until the result of the appeal is known. Is that OK?

The Chairperson (Mr Maskey): Yes, thank you. We are happy enough.

Mr Grimley: Clause 40 concerns the discharge of disqualification orders. There were no comments on that clause, and the Department has nothing further to add.

The Chairperson (Mr Maskey): OK. We are happy enough with that. Thank you.

We are moving into Part 4 of the Bill. That is a fairly significant part, but I think that we need to work away and get on with it.

Mr R Murphy: OK. I will provide some detail on Part 4 and on clauses 41, 42 and 43, which are very closely related.

Clause 41 concerns the definition of overcrowding and defines an HMO as being overcrowded when the number of persons sleeping in it contravenes either the room standard or space standard. We note that one of the residents' associations referred to overcrowding by members of the same family. As those properties are not classed as HMOs under the Bill, they will not be provided for under the provisions of the Bill. It should also be noted that that situation would not be classed as an HMO in the other UK jurisdictions. In the Bill, the amended HMO definition will not fundamentally change how overcrowding is dealt with outside the HMO regime. There is no statutory provision for overcrowding outside HMOs in Northern Ireland, and, again, that will not change under the Bill.

A study undertaken by the Department in 2011 found that, unlike other parts of the UK — particularly London — overcrowding was not a significant issue in Northern Ireland. Anecdotal evidence has been provided by various bodies to suggest that overcrowding exists on a more widespread basis than has been reported, but the Department is aware of no statistics to back that up. As previously mentioned, we looked at that in greater detail and the private rented sector review has incorporated the issue of overcrowding as an area for further discussion.

I will move on to clause 42, which concerns the room standard. The clause outlines the circumstances that are designated as a contravention of the room standard. Those are circumstances in which persons aged 13 or over must share with another person of that age or with a couple. I know that there is some confusion about the age group, which I hope to clarify.

The Department has carried forward to the new regime the current room standards that are used by the Housing Executive in the registration scheme. The current room standard used in the HMOs in Northern Ireland is provided for in article 76 of the Housing (Northern Ireland) Order 1992, with further detail provided in associated guidance. Some confusion has arisen about the wording. Both the legislation and the guidance that are currently used refer to children "over the age of 12". That means that if a child is 12 years and 11 months, they are still legally classed as being 12. We have clarified that. It is only on their thirteenth birthday that they truly become over the age of 12. We have changed it by amending the wording to "aged 13 or over". Essentially, it means exactly the same thing. I know that a number of bodies mentioned that in their evidence and that there was a bit of confusion.

The Council for Ethnic Minorities suggested that we should adopt room standards from England and Wales, where the age limit is 10 rather than 13. As mentioned previously, the current overcrowding standards for HMOs have been in operation in Northern Ireland since 1992. Those standards have been replicated in the HMO Bill. The issue of overcrowding was examined to establish whether the existing standards were sufficient or needed to be strengthened in the Bill. The information available shows that overcrowding is not a major issue in Northern Ireland and that the existing standards, which have operated successfully here for over 20 years, were sufficiently robust and did not require further amendment.

Clause 43 outlines the circumstances that are designated as a contravention of the space standard, which relates to the amount of floor space in a property for each person who is resident within it. The Committee has previously mentioned that it is unsure whether the level of detail associated with the space standard is suitable for inclusion in the primary legislation and that it may sit more comfortably in regulations. I will touch on that point.

The space standard does not sit within the legislation under the current HMO registration scheme and, instead, sits within guidance. That was identified as a possible weakness that required redress when designing a new regulatory system. It is our intention to bring that detail into the primary legislation to avoid confusion. Due to the threat posed to health and safety by breaching those standards and creating a situation of overcrowding, it was felt that that detail was warranted within the Bill. When researching where that technical detail had been sourced, it was found to be replicated from section 137 of the Housing (Scotland) Act 1987. That means that the same level of technical detail as is included in our HMO Bill is included in that primary Scottish legislation.

That deals with overcrowding. Are there any questions? I took those three clauses together.

The Chairperson (Mr Maskey): Are members happy enough with that?

Mr F McCann: It is hard to visualise it. In social housing or other forms of housing, we have all dealt with rooms that are called box rooms, where you are lucky if you can get a bed into it. Some in the private sector have said that you should maybe put a set of bunk beds in, so that people fit into it. I take it that the Scottish model is much more generous than the model that may have been used here with regard to box rooms.

Mr R Murphy: For HMOs, the regimes are exactly the same as operated previously. We touched on this yesterday with the housing selection scheme and the space allocations for it. We compared the two and found that the box rooms that you mentioned would not necessarily be suitable for HMOs and that the space standards are much greater and much more generous.

Mr F McCann: Would you need to say that in any legislation?

Mr Martin: Yes. The space standard that Mr McCann raises gives the minimum sizes of particular rooms. As Ronan said, they are bigger than those used for the Housing Executive in determining whether a house is overcrowded. The standards are clearly set out in clause 43, and there is a lot of detail there. I think that the Committee previously raised that issue.

Mr F McCann: I will have to take my own measure and go into some of the rooms and see.

Mr R Murphy: I understand. There is quite an amount of technical detail, but it is provided for the environmental health officers who will go out and will have their tape measures with them. Hopefully, that should be OK.

The Chairperson (Mr Maskey): Fra comes from an era when there were five in the one bed.

Mrs D Kelly: Somebody's feet in your mouth.

Mr F McCann: And you're not kidding.

The Chairperson (Mr Maskey): You had to learn how to swim before you could walk. *[Laughter.]*

Mr R Murphy: Clauses 44 and 45 relate to overcrowding notices and their content. An overcrowding notice must, for each room, either stipulate the maximum number of people who may occupy the room or specify that the room is unsuitable for occupation. That makes clear the maximum possible sleeping arrangement in the house. The Royal Institution of Chartered Surveyors made suggestions as to the operational procedure and protocol on the serving of such notices, and we intend to take them forward with councils in future discussions. It is how those notices should be served to the individuals in a HMO. As it is an operational issue, we intend to address it directly with councils.

The Chairperson (Mr Maskey): OK. Thank you.

Mr R Murphy: Clause 46 deals with the requirement as to overcrowding generally. The terms of the notice must not be breached by allowing an unsuitable room to be occupied as sleeping accommodation. That is all tied into the overcrowding issue. The Housing Rights Service made the point that priority should be given to rehousing options for people who are unable to remain in their home due to overcrowding. That was already touched on by Stephen. It is an area that the Department is aware of, and we intend to progress the issue in discussion with local councils and the Housing Executive to ensure that homelessness is avoided.

The Chairperson (Mr Maskey): OK. Thank you.

Mr R Murphy: Clause 47 deals with the requirement not to permit new residents essentially when an overcrowding notice is in place. It prohibits a landlord from bringing anyone else into the property for obvious reasons. No comments were received on that clause.

The Chairperson (Mr Maskey): OK.

Mr R Murphy: Clauses 48 relates to the notice requiring further information. The rationale behind this clause is that it allows a council to serve a notice requiring further information in relation to overcrowding. The information requested may be, among other things, the number of people who sleep in a HMO, their names, the number of households to which they belong, and the rooms used by individuals and households respectively. This information may be used to determine whether an overcrowding notice has been breached but may not be used in criminal proceedings against the person who provides the information.

Clause 49 provides that the person commits an offence if they fail to provide the information requested by an information notice or if they provide false or misleading information. We think that this is an important aspect because the situation could exist whereby overcrowding is caused by tenants of the property without the knowledge of the landlord, or it could be proactively caused by the landlord's trying to cram as many people into the property as possible. There is a need to work out who is to blame and how best to address the situation.

The Council for Ethnic Minorities made the point that this generates the potential for tenants of ethnic minorities to be unfairly and disproportionately punished. The Chartered Institute of Housing (CIH) also mentioned that literacy issues, visual impairment and language barriers may mean that it is inappropriate for an occupant's failure to provide information to constitute a prosecutable offence. The Department, when drafting the Bill, had human rights issues to the forefront of the policy. It seeks to improve conditions for all people living in HMOs and therefore the clause will not have any adverse impact on any particular group.

The Department intends to liaise and collaborate with councils to provide guidance to assist them in the operation of the scheme. It is envisaged that documents would be provided in a suitable language and that councils would make use of interpreters where appropriate. CIH acknowledged that occupants are a vital source of this information with regard to establishing whether a HMO is overcrowded. Additionally, the Bill makes provision for a reasonable excuse with regard to any potential offence, so illiteracy, visual impairment and language barriers could all be taken as reasonable excuses and therefore a means of avoiding prosecution. That offers some protection to vulnerable tenants.

The Chairperson (Mr Maskey): OK.

Mr R Murphy: I move on to chapter 2 on suitability for numbers in occupation. Clause 50 makes provision for the suitability notice. This clause makes arrangements for how notice can be served in relation to any HMO that the local authority considers is not reasonably fit for the number of people occupying it.

The Chartered Institute of Housing pointed out that there may be some ambiguity when reading clause 50(4)(a) together with clause 50(4)(b) and has recommended an amendment. However, the Department does not feel that an amendment is required or merited here. Whilst the provision in clause 50(4)(a) may seem to contradict directly that in clause 50(4)(b), that is not the case. As we have said, the minimum standards in the Bill will be specified in regulations and will be geared at capturing as many HMOs as possible. Those standards will be applicable across all HMOs and, as such, will be tailored to incorporate the majority of occupancy levels, which we envisage to be between about three and 10 people. The property may meet those minimum terms and be suitable for the occupation of, say, six. However, the council may feel that it is not suitable for occupation by 15 or 20 people, which may be what the landlord proposes.

So, even though it meets the minimum standards as laid down in the regulations, there may be outlying situations where it is still not suitable and more is required. That is really what that means.

Mr Allister: I struggle to understand part of clause 50. Clause 50(3)(a) says:

> *"the minimum standards set under section 13(3) for the accommodation's condition, facilities or equipment for that number of persons..."*

The minimum standards reflect the number of persons. Then you reach clause 50(4), which says:

"In having regard to the minimum standards referred to in subsection (3)(a), the council... may decide that the HMO is not suitable for occupation by that number even if it does meet the standards."

Mr R Murphy: Unfortunately, that means that the minimum standards in clause 50(3)(a) in relation to that number of persons will be an arbitrary number of people — as I mentioned, between three and 10. Otherwise —

Mr Allister: Let us say that they find, "Here the standards for eight."

Mr R Murphy: Those minimum standards will not necessarily be suitable for 15.

Mr Allister: Yes, but then they would not be meeting the standard. Where I struggle is at clause 50(4)(b). It provides that the council:

"may decide that the HMO is not suitable for occupation by that number even if it does meet the standards."

It meets the standards for the eight. Why is it not suitable for eight?

Ms Christine Hayes (Department for Social Development): There could be, for example, a building converted into apartments, and the apartment itself meets all the standards, but the building in the location really is not suitable to have that many people in it. Even though the unit of accommodation has met all the standards, it still is not suitable to be used as an HMO. It may be rented out to maybe two people but not to 10 or 15.

Mr R Murphy: We cannot create minimum standards for each individual property as we go along; we have to have a set of standards that are laid down. That will not be able to incorporate those HMOs that have an extremely high number of people in them. Even though they might meet the minimum standards for a lesser degree, all that clause really says is that there could be other things needed over and above that which would be required for them to meet everything that is needed for the tenants' welfare and safety.

Mr Allister: But the applicable standard reflects the number of persons; that is what clause 50(3)(a) says.

Mr R Murphy: For that number of persons, but what we are saying is that, in that, it is just an arbitrary figure. Most HMOs would fall within that minimum standard.

Mr Martin: I wonder, Chair, if it would be helpful if we took this away and wrote to the Committee on the issue because it is something that might be better reflected in writing, and then we can follow it up at a future meeting.

Mr Allister: Please.

The Chairperson (Mr Maskey): It does appear to —

Mr R Murphy: — to contradict. It could just be that the legislative parlance has caused ambiguity and needs a bit of reworking.

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

Mr R Murphy: Clause 51 deals with the contents of the suitability notice. It must specify what the council considers to be the maximum number of persons for whom a HMO is suitable. There were no comments received here.

Clause 52 moves on to the occupancy requirements. It provides that the:

"person on whom the notice is served must refrain from permitting more than the maximum number of persons to occupy the HMO."

That is similar to the overcrowding notice. If one of those notices is in force, it essentially puts a freeze on the property and does not allow the landlord to bring in any additional tenants. There were no comments on that from any of those called to give evidence.

Clause 53 relates to a statement of remedial work that the owner of a HMO may undertake and which, if done, will lead to the lifting of the suitability notice. Although the owner is not required to carry out the work, they can choose to do so as an alternative to having the restriction on occupancy imposed by the suitability notice. CEHOG and councils have asked why fire safety issues may not be incorporated into those works. I believe that we dealt with the issue of fire safety earlier today and in the previous meeting.

Mr F McCann: How does that compare with other jurisdictions? I have heard that there are fairly strict regulations in Scotland in relation to fire safety. We seem to have taken a number of points from other jurisdictions, especially Scotland.

Mr R Murphy: Scotland is exactly the same. We looked at fire safety in England, Wales and Scotland, and it is exactly the same scenario. Because these are licensing schemes, they simply opt out of their legislation. That means that, if there is an issue in the property, it cannot be dealt with under fire legislation, but it does not hamper the environmental health officer in their efforts to deal with that under health and safety, either by revoking a licence or by putting a licence condition on the property. It can be dealt with in some other way. If it is such a serious issue, the Fire and Rescue Service can certainly be brought in to look at the property. It just means that the Fire and Rescue Service is not required to go out into a property for every inspection with an environmental health officer, as that would not be feasible, resource-wise. However, all the same issues will be looked at upon every inspection.

Mr Grimley: We envisage that councils should set up a memorandum of understanding with the Fire and Rescue Service when this is in operation to cover the aspects that Ronan mentioned, if there are any major issues as a result of some of the inspections.

Mr Campbell: What does:

"A statement of remedial work may not specify any fire safety measures"

at clause 53(5) mean?

Mr Martin: That is simply because article 48 of the Fire and Rescue Services Order, as the team mentioned, prohibits any licensing scheme from attempting to address fire and safety issues. This is to cover that. As Ronan and David said, we are acutely aware of the importance of fire safety, and we will make sure, through all the detail, that standards do not drop. They will just be enforced in a different way. That is the fundamental point.

Mr R Murphy: I move now to chapter 3, which relates to hazards and the definition of a hazard. Clause 54 defines that a hazard in a HMO is something that constitutes a risk of harm to the health and safety of an actual or potential occupier. Mid Ulster Council noted that the word "hazard" does not align particularly well with the terminology used in the fitness standard in Northern Ireland and that it is more applicable to the housing health and safety rating system, which is the fitness standard in England and Wales. It should be noted that the fitness standard is applicable to all tenures of housing, not just HMOs. That standard is taken as the baseline with regard to the fitness and safety of HMOs, with the addition of aspects such as hazard notices as supplementary provisions to account for the higher degree of risk presented by HMOs. We have taken the fitness standard as our baseline and topped it up with the additional provisions in the Bill.

The Chairperson (Mr Maskey): You were saying that there was a query from the Mid Ulster Council.

Mr R Murphy: The housing health and safety rating system uses the word "hazard". It is the use of the terminology that the council has an issue with. If the housing health and safety rating system were introduced into Northern Ireland, we might have to take another look at the Bill, because that might cause some issue. At the minute, however, it is more suited to the current fitness standard, which is what we are operating under.

The Chairperson (Mr Maskey): OK. Thank you.

Mr R Murphy: Clause 55 gives detail about the hazard notice. Such a notice can be served where a council is satisfied that a hazard exists in relation to a HMO. There is also provision for that notice to be treated as an emergency hazard notice that can come into operation immediately where there is an imminent risk to the occupiers. The Housing Rights Service referenced the rehousing of people who cannot remain in their home due to hazards. Once again, similar to the overcrowding notices, it is an issue that the Department is aware of and which we intend to progress with the Housing Executive and with councils.

The Council for Ethnic Minorities recommended that the Bill be amended to allow councils to take emergency remedial action to address hazards that present an imminent risk of serious harm to the health or safety of occupiers, as provided for in England and Wales under section 40 of the Housing Act 2004. No amendment is required, as Part 2 of schedule 3 already makes provision for councils to carry out work required by a hazard or rectification notice. I think that that body maybe missed that, because the detail is at the back of the legislation.

The Chairperson (Mr Maskey): OK. Thank you.

Mr R Murphy: The Council for Ethnic Minorities raises a valid point with regard to fire safety that would benefit from clarification. The council asked whether, in the event of the local council inspector coming across a HMO with dangerous conditions relating to fire safety measures, they can deal with them. I think that we have just touched on that. It is the same issue again. They will be dealt with under health and safety.

If that is OK, I will move on to clause 56, "Contents of hazard notice: prohibitions". A hazard notice may impose prohibitions on the use of any premises as a council considers appropriate in view of the hazards to which the notice relates. The only point mentioned here is that adequate guidance is required, which the Department intends to provide for councils on this operational matter.

Clause 57 is "Contents of hazard notice: other matters". A hazard notice must specify in relation to each hazard the nature of the hazard, the HMO in which it exists etc. Councils asked for the same level of detail in clause 57 as in clause 56. The Department does not feel that that is needed because clause 57 is a more general provision and does not require the same detail. Clause 56 goes into quite a bit of detail because it is about prohibitions and restrictions on the property.

Mr F McCann: Ronan, what does the Fire and Rescue Service say about that? When they were in with us, I thought that they were saying that they had the capacity to deal with that type of stuff.

Mr R Murphy: I spoke to Kevin O'Neill from the Fire and Rescue Service the week before, and they were concerned that there would be resource implications when the Bill was laid out. I attempted to allay those fears, but they still came across to the Committee.

The way we see this operating is that an environmental health officer will go out and will give due consideration to all aspects of health and safety in a property. That moves into the area of fire safety, so they will look at whether there is an adequate smoke alarm, means of escape, and fire extinguishers. They cannot deal with any of those breaches under fire safety legislation, but they can proactively deal with them if there is an absence. We wrote to the Fire and Rescue Service to say that they will not be required to go on every inspection to enforce fire safety. However, if there is a serious breach of what is classed as a fire safety issue, environmental health officers will go back to the Fire and Rescue Service and say, "You will need to go out and look at that property specifically" because there may be issues that they need to deal with under their own legislation that are much more serious.

Mr F McCann: Do any jurisdictions have sprinklers, along with smoke detectors, as part of the system?

Ms Hayes: No. Wales thought about it. New builds in Wales have to have sprinkler systems, but current ones do not because it is too costly. There is talk that, if some HMOs in certain parts of England voluntarily put them in, they would get help. A sprinkler system is a good thing to have in a HMO, but it is very expensive, and we could not legislate for it.

Mr F McCann: Quite a number of planning applications are for HMOs that are much bigger than what we are talking about. Sprinklers in such huge buildings could mean the difference between life and death when people are trying to get out. I am thinking of the likes of colleges —

Ms Hayes: That will be addressed. Each type of HMO will have its own level of fire safety. A small, three-bedroom terrace house will need a certain set of fire protection, and big premises will need a different set. There will be guidance on what is needed for each type of property.

Mr F McCann: Will that be in secondary legislation?

Ms Hayes: That will be in the fire guidance.

Mr F McCann: Will it say "sprinkler system"?

Ms Hayes: If a sprinkler system is needed for the size of property, they will be asked to provide it.

Mr F McCann: How do you determine the size of the property?

Ms Hayes: It will be up to fire safety officers to guide that.

Mr R Murphy: A new set of fire safety guidance was produced by the Fire and Rescue Service for the current registration scheme, which we intend to bring forward. That was published in July. The detail in it is sufficient and will read across to the new provisions of the Bill. Essentially, the detail is there already; we will just be making a few tweaks.

Mr F McCann: Would you agree that we are moving into a different picture now with huge buildings? In the part of Belfast where I live, there are at least three or four planning applications and each has hundreds of units of accommodation. That moves them way outside. I understand houses of multiple occupation, but these are huge; I think that one has 500 units of accommodation. Do we need to look at those differently?

Mr R Murphy: It is a level of detail that we need to take another look at to see whether we have covered it.

The Chairperson (Mr Maskey): And that is all done in conjunction with the Fire and Rescue Service, building control and everybody else?

Mr R Murphy: Yes. Chair, I beg your indulgence. Can I quickly touch on the other two clauses? I know that we are reaching our time limit.

The Chairperson (Mr Maskey): Yes. You are doing very well. Thank you.

Mr R Murphy: Clause 58 is in relation to the works requirement. It sets out that the work requirement is that an owner should carry out any work to remove a hazard that has been identified in a property. Councils and chief environmental health officers have expressed the opinion that management orders would have been a better solution to deal with the situation where a landlord is not in a position to carry out works.

Just to provide some background, a management order exists in the legislation of England and Wales in relation to housing. Provision for management orders is made under Part 4 of their Housing Act 2004, and orders come in two forms. Interim management orders are issued with an expiry not more than 12 months after it is made for the purpose of securing any immediate steps that the authority considers necessary to protect the health and safety of persons occupying the house or any other steps that the authority thinks appropriate. A final management order is one that expires not more than five years after it was made, which is for the purpose of securing proper management of the house on a long-term basis. Essentially, it allows local authorities in England and Wales to take over the running and management of a property to ensure that it meets the standards.

The use of management orders was considered by the Department, but we are content that the notices provided for in the Bill — the rectification notice, suitability notice, hazard notice etc — and the works associated with them, are sufficient in this regard. The notices in the HMO Bill are all based on

these orders and due consideration was given; therefore we feel that they will achieve exactly the same outcomes, just in a slightly different manner. As mentioned previously, Part 2 of schedule 3 already makes provision for a council to carry out works required by a hazard or rectification notice.

The Chairperson (Mr Maskey): Happy enough? OK. Thank you for that.

Mr R Murphy: Clause 59, "Approvals as to use of premises" states that the approval of the council as regards a prohibition placed on a property must not be unreasonably withheld. No comments were received in that regard, so we have nothing further to add.

The Chairperson (Mr Maskey): OK. Thank you for that. I think we should move on. We can do clauses 60 and 61 to finish that Part, which allows us to start afresh on Part 5. Is that OK?

Mr R Murphy: Clause 60, "Offences", sets out the key criminal offences regarding notices under Part 4 and relates to failure to comply with requirements set out in the notice. The only comments noted in relation to this clause were from the Chief Environmental Health Officers Group, which voiced concern that fines are being issued at levels significantly lower than the fixed-penalty level. That matter must be addressed in order to assist councils in discharging their enforcement duties, was the comment that it made. The Department notes that concern, and it is something that the Committee itself has touched upon. However, this matter is, unfortunately, outside the remit of the Department as it has no power to direct magistrates when court fines are being set. However, the establishment of levels of fixed-penalty notices will, hopefully, provide some clarity in the legislators' intent and the seriousness with which it takes breaches of HMO legislation. Essentially, fixed-penalty notices, and the fines associated with them, could provide a guide to any fines that a magistrate may issue. However, once again, it is outside the Department's remit, and we can only hope that that is so.

The Chairperson (Mr Maskey): You mentioned earlier, Ronan, that it might be possible that the Executive will take a wee initiative on this as well to engage with the Lord Chief Justice.

Mr R Murphy: I think so, because it is an issue that councils mentioned, in meetings with us and when they gave evidence to the Committee. I know that it is an issue that extends wider than the private rented sector, with councils and their statutory functions and how they feel when they reach court.

The Chairperson (Mr Maskey): I think that the essential thing here is to give confidence to people that enforcement — we dealt with this earlier — is robust and that penalties are a deterrent.

Mr F McCann: Again, it goes back to what was said earlier. We can go through these processes and bring in what we think is the most robust legislation and it is all for nowt because a magistrate gives a slap-on-the-wrist fine to somebody.

I remember, going back a number of years, discussing legislation — I think that it was the Private Tenancies (NI) Order 2006 — and, even then, council officials were saying, "This is not strong enough because it ties our hands and we cannot do it". A lot of it might have been down to fines, but it is also ensuring that legislation is robust enough. I think that Executive involvement is a must. We also need to talk to the judiciary, as, sometimes, they are seen as a law unto themselves. Some of their decisions have serious consequences in many communities throughout the North.

Mr Martin: I think, Chair, as a first step, we could ask Minister Storey to write to David Ford about this issue to raise the Committee's concerns with him. We can report to the Committee in the new year on Minister Ford's response.

The Chairperson (Mr Maskey): OK. If you send it along with a Christmas card, you may get a positive response. *[Laughter.]*

Mr Allister: The councils say that they are not adequate, but, under this legislation, councils are to get the power to issue fixed-penalty notices for most of these offences. Have the councils suggested that the fixed-penalty notice is too limited in the amount of fine that it can impose?

Mr R Murphy: That is not the feeling that we have got from our engagement with them. We have provided the tools for them, and they are quite comfortable with the framework. It is that, if they issue a fixed-penalty notice or pursue court action, when they get to court, the fine issued is considerably

less not just than the maximum criminal sanction but, for example, a fixed penalty, which would be a quarter of the sanction anyway.

Mr Allister: Yes, but, once you have the matrix of a fixed penalty and someone rejects that and goes to court, invariably the fine is heavier than the fixed penalty.

Mr R Murphy: Not necessarily. It should be. It is only anecdotal, but they have said that they do not have confidence that that would be the case. We hope that, because there is a structure and a framework, any magistrate would see that and not dip below the fixed-penalty notice. That would at least be a step in the right direction. However, it is a council concern.

Mr Martin: The other thing is that there would be a discouragement for landlords to opt for the court option because, if they lose and are found guilty, they could lose their licence and, potentially, their livelihood. We think that the fixed-penalty option may be one that starts to bed in quite well, but we will take up that issue with Minister Ford through our Minister.

The Chairperson (Mr Maskey): You said earlier that you are broadly content that the framework around enforcement will deliver what you want. However, people's concerns are that enforcement has never been robust enough and the penalties have never been a deterrent at all. That is what people are anxious to avoid in the new legislation.

Mr R Murphy: I will finish on clause 61, which is further provision. This introduces schedule 5, which makes further provisions about notices. There were no comments received.

The Chairperson (Mr Maskey): Can you give us a flavour of some of those further provisions?

Mr R Murphy: When I made my notes, I did not foresee that question. The detail of further provisions is provided in schedule 5. It is about the operational side of the notices, the turnaround time and that sort of thing. Sometimes the wording in the Bill can be a bit misleading. You caught me off guard there.

The Chairperson (Mr Maskey): I should have read the schedule; that is the point.

OK, members, I think that we are happy enough that we have concluded Part 4; we will turn to the next Part at our next session. Thanks very much for being here this morning and for being as comprehensive and helpful as you have.