Northern Ireland Assembly

Committee for Social Development

OFFICIAL REPORT (Hansard)

Houses in Multiple Occupation Bill: Department for Social Development

7 January 2016

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 Roy Beggs
Ms Paula Bradley
Mr Gregory Campbell
Mr Stewart Dickson

Witnesses:

Mr David Grimley	Department for Social Development
Mr Stephen Martin	Department for Social Development
Mr Ronan Murphy	Department for Social Development

The Chairperson (Mr Maskey): I welcome Mr Stephen Martin, Mr David Grimley and Mr Ronan Murphy. I remind members that we concluded at clause 61 in the last session on 10 December 2015. There are 91 clauses in the Bill and eight schedules and, again, Stephen and his colleagues will explain to members the import of each of the clauses in turn. This is an opportunity for members to satisfy themselves that they understand what the provisions mean.

Mr Stephen Martin (Department for Social Development): Thank you very much, Chairperson. We touched on clause 62 in an earlier session dealing with broader issues. It deals with the houses in multiple occupation (HMO) register, what is included in that and what is publicly available. We had flagged up to the Committee at a previous session our intention to retain the existing system in terms of the information that is publicly available. We are mindful of trying to achieve a balance between the public interest and the safety of landlords and tenants. We are proposing to make some minor amendments to ensure that that policy intent is followed through on. Those amendments are being drafted and we will have them with the Committee as soon as possible.

The only other issue that was raised in relation to clause 62 was from councils, who asked whether there could be one register relating to the private rented sector. Our answer is no, in the medium term, because the landlord and HMO registers are for very different purposes. At this stage, it would not be appropriate to have one register, but it is something that, in the longer term, we are happy to re-examine. That deals with all of the issues that were raised in relation to clause 62.

Mr F McCann: We spoke about this last time. There is a minor difference of opinion between you and the councils, but the councils will have responsibility for these things, so they believe that it will make life a lot easier for them. You said that you would look at this in the longer term; but that covers a multitude of sins. What sort of timescale are you talking about? Can we deal with this under the Housing Bill? Is it going to be put on the long finger? One of my concerns is that we end up dealing

with different pieces of legislation. We know at the time of that legislation that with tweaks here and there we can make it better, but we never take that opportunity and we end up picking up the pieces somewhere down the line.

Mr Martin: One of the key reasons why it would not be appropriate to merge the two registers at this stage is that, at the moment, the Department is the landlord registrar. We appoint the landlord registrar and we operate the register; we are responsible. Councils will operate the HMO register, so they will have full access, as they do now, to the landlord register, but they will operate the HMO legislation in its entirety and they will be registrars. There will be two different systems because they are for very different purposes. Without revisiting the landlord registration system right now it just would not be possible, but it is something that can be picked up, if there is strong feeling around it, as part of the review of the private rented sector that we are currently consulting on.

Mr Beggs: You say that it can be picked up on but, of course, the danger is that it is never picked up on and we continue with another bureaucratic system where a HMO landlord has to register for both systems. That is bureaucratic and unnecessary. Can you build provisions into this Bill so that it would be possible to do what you have just said without primary legislation?

Mr Martin: We would probably not be able to deal with the integration of registers because we do not yet know what the HMO register is going to look like in detail. There is already a passporting system for HMO landlords through the current registration scheme, so that a HMO landlord who is registered with the HMO registration scheme is automatically passported on to the landlord register. There is no need to pay a fee or to provide further details. We have integration as far as that is concerned, but that is probably as far as we can take it at this stage. The bureaucracy for landlords is minimised by that pathway between the two.

Mr Beggs: Will that continue?

Mr Martin: Yes, it will. That is certainly the aim.

The Chairperson (Mr Maskey): Are you content with that, Roy, at least in terms of understanding the clause? OK, thank you.

Mr Martin: Clause 63 gives the Department a power to make regulations approving a code of practice laying down standards of conduct etc. Two issues were raised. The first was by the Housing Rights Service. Rather than the Department being able to bring forward a code of practice, the Housing Rights Service wants to make it a statutory duty. The Royal Institution of Chartered Surveyors (RICS) questioned the need for a code of practice.

For the system to operate properly, we will be laying out a code of practice. We will be giving a commitment that that will be done: so, whether it is a power or a duty is neither here nor there; it is going to be done anyway. On the RICS issue, we will be taking into account any existing systems of good practice and any good-practice schemes that professional organisations like RICS have, and, if appropriate, building those into the code of practice so that we can take account of them. We think there is a need to have a targeted code of practice for HMO landlords.

Mr F McCann: Does that mean you are accepting the proposals put forward by the Housing Rights Service to change it from "may" to "shall"?

Mr Martin: There is no need. It would not have any effect, because a code of practice is going to be brought forward and that is the kind of issue where the Minister would be, I am sure, more than willing to give an assurance that that will happen at Consideration Stage. But, if the Committee feels strongly, we have no massive objection. It is just not needed.

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

Mr Martin: Clauses 64 to 66 provide for the fixed penalty notice system. A council can, in lieu of taking a landlord or managing agent to court for an offence, give them a fixed penalty notice. If the landlord pays that within a period of time, they can avoid court action.

Broadly speaking, the Committee was supportive in previous discussions. The question has been about the level of fines handed out by the courts. The Minister is in the process of writing to David

Ford about that, and once he does so, we will let the Committee have a copy. As you know, we have no control over the levels of fines, but the issue, which we raised before, is twofold. First, if the Assembly makes the level of fixed penalty clear, then it would be difficult, in our view, for a court to give a fine lower than that level. Secondly, there is an incentive for landlords to pay the fixed penalty because it is not then necessarily taken into account in the fit and proper person test, whereas an offence would be taken into account in terms of going through the court process.

The figures in the Bill are maximum amounts. The Landlords' Association said that they were too high, but they are the maximum, so councils will have the scope to set fixed penalty notices that are lower than the maximum or provide incentives, for example for early payment, which is one of the things that they are looking for. So, we do not feel that any amendments to clauses 64 to 66 are needed.

The Chairperson (Mr Maskey): Stephen, when you say "councils", does that mean that one council could do something different from another?

Mr Martin: We will be providing guidance, so our expectation is that they will operate a similar system. Until we have had detailed discussions with them, that is not 100% nailed down, but our intention would be that they would operate a common system.

Mr David Grimley (Department for Social Development): We have had our first meeting with council representatives. We asked chief executives whether they want the shared service provision or whether each council wants to be responsible for HMO regulation in its area. We are waiting for them to clarify that.

Mr F McCann: In the evidence sessions, many councils, and many of us who have dealt with things like this, were concerned about a slap-on-the-wrist attitude being adopted by the courts. It would make a bit of a nonsense of the matter if we set fines that judges then reduce. Is there anything we can do to impress upon the judiciary what we are trying to do with regard to conditions in that housing sector?

Mr Martin: The first stage that we agreed just before Christmas was that the Minister will write to David Ford. We are just getting final details from councils on the levels of fines that they have so that we can provide evidence. Once we hear back, we will be in a better position to know the next course of action. The Lord Chief Justice is ultimately responsible for the judiciary, so, following engagement with David Ford, the next course of action might be to correspond with the Lord Chief Justice on this issue and express your concern.

Mr Dickson: This is an important area, because it may very well be that if we set the fixed penalty too high somebody will say that it will be cheaper to go to court because they will get a lesser outcome from a judge in respect of these matters. It is important that we get an understanding, at least, that a court would be unlikely — obviously, it has to hear the evidence — to come in under the fixed penalty. That takes me to my next question. Why is it £5,000? Why not £25,000, for example?

Mr Martin: We have used a rule of thumb to calculate the fixed penalty, which is that it should be a quarter of the maximum fine.

Mr Dickson: Is that the standard process when people come to calculating fixed penalties across a broad range of offences, for example, for traffic offences or whatever? Is there a principle behind selecting that sum of money?

Mr Martin: I will answer while David finds the information. There were long and detailed discussions with the Department of Justice on that. A quarter was felt to be reasonable and broadly in line with other schemes. David, is there anything that you want to add?

Mr Ronan Murphy (Department for Social Development): That is correct. When we spoke to the draftsman, we looked at other fixed penalty notices, not just within housing but within other council areas. The rule of thumb is to have it between a quarter and a fifth of the maximum fine. We felt, for ease of reference within the Bill, because this is quite a complicated area, that a quarter was the best way to go.

Mr Dickson: It is very helpful to have it explained to us. When cases first come to court with a new piece of legislation, a judge will quite often read over the Hansard report on this type of discussion. The fact that you have stated that there is standard reasoning behind the figure is very helpful, so thank you for that.

Mr Martin: Moving beyond the fixed penalty regime, clauses 67 to 69 deal with appeals. We are trying to assure transparency of decision-making. There were no significant issues raised on those clauses. There was a minor issue raised by RICS on how notices are served, but that can be dealt with through the guidance. There were no issues raised, and we do not propose any amendments.

Mr Dickson: You raised the point of how notices are issued, so will I ask again whether you are sure that this is foolproof and that we will not be given the runaround by landlords who attempt to dodge being issued a notice.

Mr R Murphy: That is very much an operational issue, and we are going to discuss it with councils because they obviously have long-established fixed penalty notice procedures in place. It is our intention for it to be served in two ways: either face to face with the individual or through registered delivery in the post, which means they have to sign for it.

There are issues with landlords who wish to avoid the notices, as you said, but we will be discussing that because we are drafting this. It is being done in line with existing policy and legislation in other areas, so we will be discussing the operational aspect of it with the councils on the way forward.

Mr Dickson: If they tell you that, operationally, it is very difficult and that it is a problem that they have in serving other fixed penalty notices, how will you deal with that?

Mr R Murphy: There is the scope to then add more detail to the subordinate legislation on the back of it.

Mr Martin: We have kept the primary legislation fairly broad to allow for that detail.

The Chairperson (Mr Maskey): You are also tightening the ownership and/or the letting management facilities. Is that right?

Mr Martin: Yes.

The Chairperson (Mr Maskey): So there is less scope for people to avoid responsibility.

Mr Martin: Yes.

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

Mr Martin: Clauses 70 to 76 are about obtaining information to help councils fulfil their duties under the Bill and the offences associated with failing to provide information, providing false information and council employees not securing the information that they obtain. Some minor issues were raised by councils about the period of 21 days, but that is fairly standard, and we think that there is no need for a change.

Councils also asked that some statutory bodies be included as organisations that are legally obliged to provide information. However, we do not think that that is necessary because there are fairly good information-sharing channels between them and the Housing Executive, which currently runs the registration scheme in those bodies. We envisage those running over into councils, so we see no reason for those bodies to be included. There were no other points on clauses 74 to 76, and we do not propose to table any amendments to them.

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

Members indicated assent.

The Chairperson (Mr Maskey): Stephen, go ahead.

Mr Martin: Clauses 77 to 79 are about powers of entry that councils might require to help them to fulfil their functions. On clause 77, councils raised a fairly standard point about the level of notice that they have to give, which is 24 hours, if they enter with agreement rather than by warrant. This is a very standard clause across all powers of entry. We are trying to achieve a balance between individual rights and council functions. This is fairly standard across similar provisions, so we do not really see any need to change that.

Clause 78 deals with powers of entry with a warrant from a magistrate for more serious issues. At one stage, the Committee and others had raised an issue about the terms "magistrate" and "lay magistrate", but there is no need for a change because they have exactly the same meaning. We have no intention of tabling any amendments to those clauses.

Mr F McCann: Chair, the only reason why I raise this subject is that I remember that, the last time the legislation came in front of the Committee, some towns were mentioned in which there were a number of HMOs in fairly poor condition, but, by the time that council officials or whoever got to them, the landlords had upped and left and just moved on to another place. Is there anything there that allows you to deal with that? That example makes a bit of a nonsense of it. I think that all landlords should accept and appreciate what the legislation is trying to do. There are many landlords who provide good, decent accommodation. We are trying to deal with those who do not. It is about how you deal with landlords who do not provide good accommodation.

Mr Martin: Clause 77 deals with powers of entry with agreement, but you have to give 24 hours' notice. Under clause 78, if a council has a suspicion that there is a need for a spot inspection because there is a serious issue, it can apply for a warrant from a magistrate. One of the cases that it can make to the magistrate is that, by using the clause 77 power and giving notice, it would be defeating the purpose of the inspection. In more extreme cases, the councils can use clause 78, but, because of privacy issues in terms of human rights and so on, it is appropriate to get a warrant from a magistrate.

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

Mr Martin: I will move on to the supplementary provisions, which are covered in clause 80 and beyond. Clause 80 allows an owner to deal with issues such as a joint owner not agreeing to works and so on. No comments were made, and we do not propose any amendments.

Clause 81 is about the obstruction of works required under the Bill. No comments were made, and we have no amendments.

Clause 82 deals with situations in which tenants have to move out of a property to allow works to happen. It keeps their tenancy unbroken when they return. There were no significant comments. Councils welcomed it, but there was nothing else. We do not feel that any amendments are needed.

Under clause 83, in a situation in which a landlord has not fulfilled his obligations under the legislation — for example, he has not applied for a licence when he should have — that does not excuse the tenant from the tenancy agreement. If there is rent due, it still has to be paid. It avoids the situation of a tenant using the excuse of an offence under the legislation not to pay rent. It leaves the tenancy agreement unbroken, despite breaches of the legislation. No significant issues were raised. Councils seemed fairly happy with it but wanted a bit more guidance, which will be provided in the guidance that the Department will issue.

The Chairperson (Mr Maskey): Stephen, will you explain that a little further? If the landlord has breached the contract, is the tenant not entitled to some redress? Does clause 83 not preclude that?

Mr Martin: Essentially, Chair, the landlord would not necessarily have breached the tenancy agreement by not fulfilling all their obligations under this legislation, but they may well do. A better way of putting it is that this provision ensures that a breach does not invalidate a contract between tenant and landlord automatically. There might be particular circumstances in which, through the contract, a tenant might seek some redress. However, a landlord not adhering to all the provisions of the legislation does not automatically invalidate the contract.

Mr R Murphy: Yes, that is correct. I will just add a little to that. We looked at the other jurisdictions in relation to this because it is one aspect that we had not considered before the examination. We delved into it in a little more detail to find out why it was required, and the logic is that it could be a

minor breach of the licence, meaning that some redress is required to the physical property. If you cut off the income stream from landlords by disallowing the payment of rent, they may not be able to address the issue, so it might be counterproductive.

The Chairperson (Mr Maskey): I am concerned that the right of the tenant to seek redress for any breach is being denied by this provision.

Mr R Murphy: Not necessarily. It turns into a civil matter because it is a breach of the tenancy agreement, so it could be pursued through the courts should a tenant feel aggrieved and that they have been denied redress. This is quite a wide clause, in that it tries to account for every scenario. There may be scenarios, as you mentioned, in which a tenant has the right to seek redress because of the seriousness of the breach.

The Chairperson (Mr Maskey): Does that tip the balance away from the tenant and in favour of the landlord? If we had not considered introducing it in the first instance, why is it a problem? Do you know what I mean? Why do we shift the balance away from —

Mr R Murphy: Yes, I understand. We spoke to officials in Scotland, and they thought that its inclusion was justified. They have used it for the scenario that I outlined. However, there may be other areas, as you said — for example, a tenant would have reason to feel that they should not be paying rent because there was no roof on the property. Throughout the Bill, there are other ways to deal with such serious breaches. It may be that a tenant needs to be rehoused and has to go down the homelessness route and apply to be rehoused because the property is not suitable. In that case, of course, no rent would be paid. We intend to flesh that out through the guidance and will contact our colleagues in Scotland about it.

The Chairperson (Mr Maskey): I am just not clear. I appreciate that you have given an explanation, but I am just not sure whether it shifts the balance away from the rights currently held by a tenant who has cause to seek redress. You say that they will still have redress, but does this mean that they have to find a new way of getting redress? Does this clause raise the bar for a tenant with a genuine grievance? I do not know.

Mr Martin: Chair, we are happy to take it away and look at it again to see whether it is essential. The fact that there were no comments from people such as the Housing Rights Service indicates that it does not alter the balance. We will have a conversation with that service, think about it and get back to the Committee.

The Chairperson (Mr Maskey): OK. That is all I am looking for.

Mr Campbell: I was just going to add something. Having a conversation with those working in housing rights would be useful, but will you also have a conversation with your colleagues in Scotland about the experience there? You said that they did not —

Mr R Murphy: There may be more detail back in the office, in the early research that we did, that provides some illumination on this. If so, we will provide it to the Committee.

The Chairperson (Mr Maskey): That is very helpful.

Mr Dickson: I want to ask about clause 83 as well. I am concerned about any clause that appears on the surface to diminish the rights of tenants. I know that, at the top level, people will say, "The final sanction is that I will stop paying you rent". Of course, you are right in saying that, if the income stream was to stop, it would not allow the landlord to make a repair or whatever, and it may be the case that there is only a very minor issue. However, it is about scale: at what point does the tenant take action? The Department's response was that, if a property poses an imminent risk to the health and safety of the occupants, they will be evacuated. I think that we all understand that and the fact that rent would, presumably, cease at that point. On the other hand, if it was a faulty light switch, for example, that could be repaired over time. There will be very many ongoing issues for tenants that ultimately reach the point at which they say that enough is enough. It might be that damp, cold or a constant drip or leak has not been addressed over a long period, and the tenant reaches frustration point and says that their only sanction is to stop paying rent. I would never advocate that somebody do that unilaterally, but perhaps this clause builds in more rights for the landlord and means that a tenant can never take action unless it is in the most extreme of circumstances. I am concerned about

that. I suppose that the alternative is that, rather than stopping paying rent, tenants could put their rent into an independent fund in the interim until the issue was resolved. That is perhaps a much broader issue, but I am concerned that this gives too many rights to the landlord.

Mr Martin: We will look at it again and come back to the Committee.

Clause 84 enables the Department to make subordinate legislation that sets the various fees required. In previous Committee sessions, we talked about the intention that this be cost neutral for councils. With the councils, we are working through the costs and delivery mechanisms that David outlined. Those are most of the points raised by councils about fees.

Clause 85 is the overarching guidance power that we have referred to on quite a number of occasions. It enables the Department to issue to councils guidance that they have to take into account in fulfilling their function.

Clause 86 sets out the general regulation-making powers and the forms of Assembly control. The detail is set out in the delegated powers memorandum, which the Committee now has. We will be happy to take the Committee through that at an appropriate time.

Clause 87 is about general notices given under various provisions and how those are to be given. There are no comments, and we do not have any proposed amendments.

Clause 88 deals with the interpretation, and I want to draw the Committee's attention to one issue. In previous evidence, I said that there was no intention that a letting agent who simply does the let will be included in the licence, because he is not managing the property. Following further discussions with the Landlords' Association, it appears that most letting agents take the first month's rent and hand over the keys as part of the process. Our definition of managing agent would mean that all letting agents who took any payment whatsoever were automatically classed as managing agents. As letting agents tend not to have any further management responsibility for the HMO, it would be inappropriate for them to be named on the licence. I was not aware of that when I gave evidence to the Committee before, so we need to do a little redrafting to make sure that letting agents who have no management responsibility beyond collecting one month's rent are not named on the licence and, therefore, are not subject to the full legislation.

The Chairperson (Mr Maskey): The underpinning principle there is the protection of tenants. Tenants have their own legal responsibilities and obligations, but this provision is to ensure that letting agents who have those responsibilities are captured in the Bill or, if need be, excluded.

Mr Martin: Yes. Landlords who have an ongoing management responsibility are managing agents and will be included. It is not, however, appropriate to include landlords who just show the property, hand over the keys and take the deposit and first month's rent, because they do not have an ongoing management role in the HMO.

The Chairperson (Mr Maskey): I presume that, if it is deemed that certain letting agents do not need to be captured in that provision, somebody else will be held accountable.

Mr Martin: Yes, the managing agent will certainly need to be named on the licence.

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

Mr Martin: Clause 89 is a technical clause dealing with consequential amendments and repeals. It refers to the variety of repeals in schedules 7 and 8. No comments were received, and no changes are needed.

Clause 90 is the standard commencement clause. No comments were received, and there is nothing to add.

Clause 91 is the short title.

Mr R Murphy: I will take the Committee through the associated schedules, which contain an awful lot of the technical and procedural detail of serving notices etc.

Schedule 1 contains details of the buildings or parts of buildings that are not classed as HMOs for the purposes of the Bill. We discussed this in some detail in previous meetings. Comments from stakeholders identified two main areas of concern, and the Committee has also asked questions on those areas. I would, however, like to touch on each topic again to provide an update.

The first area covers buildings controlled or managed by housing associations, as we previously discussed. We believe that an amendment is required to schedule 1 to bring properties managed by voluntary bodies on behalf of housing associations back within HMO regulations, because they contain some of the most vulnerable members of society. We have instructed the drafter of the need for this amendment. A draft has been received, and we are examining the proposed amendment to make sure that it still meets the policy requirement.

The second concern is university accommodation. A point previously made is that exempting this type of accommodation from the definition of a HMO brings Northern Ireland into line with the rest of the UK. As we previously stated to the Committee, the accreditation that they will be required to sign up to is of an equal or higher standard to that required in the Bill, and we are content with that. We do, however, note that it has a knock-on effect not only on the provision of these types of properties now that they are outside HMO provisions but on planning permission. We have done a bit more research on that. As some Committee members may be aware, the likes of large-scale, purpose-built student accommodation is currently accounted for in the subject plan, so we will engage with our planning colleagues to see whether the detail of that can be taken forward. It is now a devolved planning issue, so there is no reason why they should change their principles simply because we have made a minor amendment to our Bill to remove them. As the Chair mentioned, the problem remains that these will be viewed as houses of multiple occupancy, whether or not they are defined as such in legislation. I will provide some details on that. The development of any complex must consist of 50 units or a maximum of 200 occupants. All units must be self-contained, which means having a bathroom and kitchen available etc. The location must not be within a primary residential area, and provision must be made for the management of all accommodation. It suits what we have in the Bill. If they are able to take that forward, we will engage in discussions. We will also try to pick up on the ad hoc converted self-contained properties — the likes of houses that the universities own and run. We will engage with them further.

Schedule 2 contains the detail of the procedure for the consideration of an application. When re-examining this schedule in light of the proposed amendments that Stephen mentioned to clause 62 — the HMO register — we realised that there was a slight divergence between the two. Stakeholders highlighted that potentially sensitive landlord information may be required to be displayed, so we are re-examining that. In displaying the notice, a landlord's name and address may have to be put up and be seen by the public. It is the same scenario as with the HMO register. We want to ensure the safety and security of landlords and, at the same time, take account of the public interest. Slight reworking may be needed. We are looking at it and will be at a better stage to brief the Committee on it next week.

Schedule 3 contains the detail of provisions relating to the notice requiring works to be carried out. There were a few stakeholder comments, and one related to eviction. We dealt with that at Committee previously, when it was explained that it would be a matter of last resort. Nothing in the Bill requires somebody to be made homeless, but existing homelessness provisions will apply. We have already mentioned the serving of notices. As it is an operational matter, it will be discussed further with councils to determine the best way forward. Further detail can be provided in subordinate legislation if needed.

Schedule 4 contains details of how and why councils may vary or revoke a licence. There was one point on the serving of a notice, which we have covered.

Finally, schedules 5 to 8 provide further consequential detail on the Bill. No comments were received from any of the stakeholders.

The Chairperson (Mr Maskey): OK. Very good. There are no other comments from members. Are you happy enough with the briefing that you have given the Committee this morning? If there are no other comments on what we have heard so far, are you content that we invite you back next week to assist the Committee in the continuation of our consideration of the Bill? I am just checking a wee note that I have here. Was there an issue with clause 50 on which you still have to provide us with an update?

Mr R Murphy: Yes. The response to the Committee has been drafted and is with the Minister, so you should, I hope, have it within the next couple of days.

The Chairperson (Mr Maskey): That is perfect. OK. Thanks very much.