Committee for Social Development

OFFICIAL REPORT
(Hansard)

Houses in Multiple Occupation Bill: Committee Consideration

14 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)
Ms Paula Bradley
Mr Stewart Dickson
Mr Sammy Douglas
Mr Phil Flanagan
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 welcome Stephen Martin, David Grimley, Ronan Murphy and Christine Hayes to the Committee. I remind members that, last week, we completed the clause-by-clause discussions to ensure that members understood what the clauses were referring to. Today, we want to get a sense from the Department of what changes it was preparing to make to the Bill, a number of which it has already indicated — we will go through those — and to seek any further clarification that we might want. I would like to think that, next week, we could go through the formal clause-by-clause process to get the Bill turned round as quickly as we had hoped. I leave it with you, Stephen, in the first instance.

Mr Stephen Martin (Department for Social Development): We wrote to the Committee on two issues. I will deal with clause 50 before I move on to the amendments. Just before Christmas, in our most recent session, the Committee raised some issues with clause 50. The clause deals with a suitability notice, where a council decides that a house in multiple occupation (HMO) is suitable for a certain number of people and then serves a notice on the owner or managing agent that the HMO is licensed for x people. The issue that the Committee raised was to do with clause 50(4)(b). Essentially, as our letter stated, this is a backstop provision. Most HMOs, if they meet the minimum standards, will be licensed, but, where there is a very unusual layout or very particular circumstances, the council may need to take other factors into account. There are two ways that we could deal with this. One would be to make very prescriptive and detailed minimum standards that cover every possible scenario, but that would be very bureaucratic, and it is difficult to envisage how we would do that. The second is to do what we have done: set minimum standards that cover most HMO accommodation but allow some latitude for councils, in very specific circumstances, to fail an HMO

even if it meets the minimum standards. We have given an example in our letter, and we are building up examples with councils.

The example that we have given uses a top-storey flat with laminate flooring and no proper soundproofing underlay. If there were three people in that, the noise disturbance for neighbours below might be acceptable; if there were seven, it might be undue, so that type of accommodation would not be suitable for licence. This is to allow circumstances such as that. It would be used very few times. If the Committee has very strong feelings against it, we could take it out, but it would tie the hands of councils for a small number of applications each year.

The Chairperson (Mr Maskey): Thanks for that, Stephen; that is very helpful. Are members happy with that explanation?

Members indicated assent.

Mr Martin: Moving on to the amendments, Chair, what we have given the Committee is a list of all the amendments that are planned and a list of the amendments. Most of them are final; we know that there is a little bit more work to do on some of the drafts that we have given you, but we thought that it would be helpful to let you have sight of them as early as possible. I will take you through our table, followed by the amendments. The first amendment that we are planning is to clause 3, which is about seasonal and migrant workers. The Committee might remember that the Council for Ethnic Minorities and a number of other stakeholders said in its evidence session that it was concerned —

The Chairperson (Mr Maskey): Sorry, I wonder if you could give the members a copy of that table. It is on page 18

Mr Martin: There were concerns that seasonal and migrant workers would not be covered. We are confident that migrant workers are covered because they will have a main residence, and that main residence may be an HMO, so they are protected. There is an issue for seasonal workers, so a seasonal worker, for example, whose main residence is in Belfast, but who moves around the country picking apples and doing seasonal work, would not necessarily be protected as the Bill stands. If they are picking apples in Armagh, for example, where they live during that period would not necessarily be covered. The amendments that we have tabled deal with that issue. So, for a seasonal worker, wherever they are living at that time, that will be deemed to be their main residence, and therefore, if it is an HMO, they will enjoy the protection of this Bill.

The Chairperson (Mr Maskey): Good. Members, happy enough?

Members indicated assent.

Mr Martin: There are two amendments relating to the same issue on clause 10. This is the fit-and-proper person test. The Committee may remember that the Department acknowledged that we had not fully reflected the judicial review from 2005 in drafting this clause. The judicial review stated that the word "locality" was not properly defined and that landlords could only be liable for the behaviour of their tenants in the curtilage of the building. So the amendments that we have tabled to clause 10 reflect the finding of the judicial review. They define a landlord's responsibility for relevant living accommodation and for tenants while they are in the accommodation or in its curtilage. It is just narrowing it down to reflect the judicial review, which we had not properly reflected when we were drafting the clause.

Mr F McCann: What happens if there is a disturbance that overspills into the curtilage? How is that dealt with? Does it become purely a matter for the police? What happens if I phone the letting agent, or the owner, and say that there is a serious problem with the thing, but they do not respond? How is it dealt with if you are ignored?

Mr Martin: If it is an issue — the classic one in the Holylands is St Patrick's Day — and if tenants in a particular dwelling are causing difficulty further up the street, the landlord is not necessarily liable and would not fail a fit-and-proper persons test because they had not properly dealt with that issue. It would be a police or a community safety issue. However, there would be nothing to stop the police letting the landlord know so that the landlord can raise that matter with the tenant, but it would be not be an enforceable part of a tenancy agreement because the landlord can only be held accountable, following the judicial review, for the behaviour of their tenants within the curtilage of the building. If the

same issue happened in the garden of the property, the landlord could hold the tenant to account, but if it happens 100 yards from the property they cannot. They can raise the issue with the tenants and warn them, but they cannot enforce the tenancy agreement because it is not related to the tenancy.

The Chairperson (Mr Maskey): OK, that is fair enough, Stephen. Thank you.

Mr Martin: I will now turn to clause 28. This is one of those instances in which we have given the Committee the working draft of the amendment. It is not quite finalised yet; there is a little bit of further work to do, but we thought that it would be helpful. There are consequential amendments, then, to clauses 26 and 29 that, again, are not quite finalised, but they are pretty close. Clause 28 deals with the issue of the sale of an HMO. The way in which the Bill was drafted would not have allowed proper time for a new licence to be obtained; the amendment would allow that scope and would still keep tenants protected during the transitional period. It was not quite as easy as we had anticipated. There is quite a lot of text there, but that is essentially what it does.

The Chairperson (Mr Maskey): OK.

Mr Martin: I will now move on to clause 62 and our next set of amendments. This was to do with the HMO register and the information that is publicly available from it. We had indicated to the Committee that the policy intent was to keep the position as it is now for the HMO registration scheme. Landlords are concerned about their personal details being widely available. We are planning to table a number of very small amendments, but, essentially, they will give effect to the original policy intent. If an individual has an interest, and that interest is defined in the amendments, they can get access to a landlord's details. If they do not have that interest, they will not get access to the landlord's details. The statutory authorities will still have access, so the PSNI, for example, will have access to the full register, as will councils. For example, a vexatious party, who might just want details because they want to run a newspaper story about the number of properties that Mr X or Mrs Y owns, would not necessarily get access to the register.

Mr Dickson: I understand what you are saying. It raises an interesting question about somebody, perhaps, wanting to run a newspaper story, but there may be some solid reasons why they would want to do that. Will you confirm that, regardless of these restrictions, that information would be discoverable under a freedom of information (FOI) request?

Mr Martin: I am not an expert on FOI, but my understanding is that personal information can be withheld under FOI if it is to protect the security of the individual. It would not necessarily be discoverable under FOI or data protection.

Mr Dickson: There is a balance to be struck here between a legitimate concern among property owners about interference in who they are and their business. I also have a concern that we should not overtly restrict that information for public disclosure purposes. I would be very concerned that someone might be trying to hide behind a restriction on who or what they are. I do not think that it is unreasonable for a journalist or someone else, who might be following through a story about a noisy floor or rats, or whatever it happens to be, to be able to quantify the number of properties that an individual might own and, indeed, to seek the records of all those other properties. That is perfectly legitimate information. Many of the tenants will be in receipt of public funds to fund those landlords.

Mr Martin: What we are trying to do is strike a balance. We have defined under amendment (8A) three categories of individuals who would have an interest and be able to access a range of information: somebody who has a freehold or leasehold interest — the owner of the leasehold, for example, or the mortgage company; any resident of the HMO; or — a fairly broad category — somebody:

> *"otherwise sufficiently concerned with the information contained in the entry."*

That envisages neighbours or public representatives for the area getting access to the information, but somebody could not use it to go on a fishing expedition, to find out, for example, that Mr Dickson owns x properties in x places. We are trying to achieve a balance between the interests of residents and the interests of landlords and their safety and security.

The Chairperson (Mr Maskey): The key to all this is accountability, good management, and protecting people's rights; it is about striking that balance. OK, Stephen, thanks. We know what that is referring to.

Mr Martin: The next couple are not listed in the appendix, because they are essentially technical amendments. At clause 70 we are doing some very simple legislative tidying up to make it a bit clearer what we mean. The first two amendments that we propose to clause 73 do exactly the same; they make our intent a little bit clearer.

We were planning to table a third amendment to clause 73. One of the things that we are not clear on entirely yet is whether councils will decide to run this as a shared service, where all 11 join together, or whether they will each want to run their own HMO scheme. If they choose to operate their own, we need a provision that allows councils to share information. The last proposed amendment to clause 73 simply allows them to do that. If they are running a shared service, that is not an issue; if they are not, the amendment is a backstop.

Mr McQuillan: Is it 73 or 83?

Mr Martin: Seventy-three.

The Chairperson (Mr Maskey): It is not in the table.

Mr Martin: It is not in the table, but it is listed in appendix 2. Sorry for the confusion.

It would probably be helpful, by next week if we can, for us to send all the amendments and update the table to reflect every amendment, even the technical ones, to make it all a bit clearer for the Committee.

Mr Dickson: I would like to go back to clause 73. It is not to do with the technical reason: I clearly understand what you are trying to achieve. I appreciate that you cannot prescribe this, but is the Department supportive of the notion that this should be done on a group basis, perhaps with an east/west split or with all district councils working together under a lead authority? Certainly, from the outward-facing side of it, it puts expertise in one group of people and cuts out inconsistencies between councils. Would you be supportive of that notion?

Mr Martin: That would be our preference, because it would also be cheaper. However, councils will have to make their own decisions.

The Chairperson (Mr Maskey): Thank you very much. Happy enough, members?

Mr Martin: There is another technical amendment to clause 74 that is not in the table but which is in the list of amendments. Again, this is just to clarify our intent.

The next one in the table, Chair, is to clause 83. The Committee raised that last week. If it stays, it would mean that a tenant could not refuse to pay their rent, even if the HMO landlord does not abide by the licensing scheme. The Committee was concerned that this would change the balance. I think that we will table an amendment to remove clause 83 following the Committee's view on that matter.

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

Mr Martin: There are two amendments to clause 88, one of which you have and one of which we are drafting. The first one, and the one that you have, removes "cousin" from the definition of family for the purpose of determining what an HMO is. We felt that, given the different family structures and living arrangements in Northern Ireland, and students living together and so on, it was probably sensible to remove it.

The Chairperson (Mr Maskey): Thank you.

Mr Martin: We discussed the second one last week. It is about the definition of a managing agent. Anybody who manages a property on an ongoing basis needs to be named on the licence and needs go through the fit-and-proper-person test. However, the way that we have defined managing agent is

too broad and would capture letting agents. We are trying to go through with the draftsmen the process of finding a revised definition that would take out those who just let the property and are not responsible for ongoing management. We will have that with the Committee as soon as we can.

Mr F McCann: I am just trying to work out in my own mind the difference between a managing agent and a letting agent. It depends on who you talk to in that profession. There are letting agents who might have 300 or 400 or 5,000 properties and a mixture of their own properties and privately rented properties or HMOs. What is the difference?

Mr Martin: The Landlords Association explained it to us in these terms. A letting agent advertises the property, shows prospective tenants around, fills in the paperwork with them, signs the tenancy agreement, takes and protects the tenancy deposit, and takes the first month's rent, which is passed to the landlord. Their involvement ends at that point. Either the landlord directly manages the property — repairs and the ongoing collection of rent — or a managing agent does it on their behalf. The way that we have the clause drafted at the minute means that a letting agent who has nothing else to do with the property after collecting the first month's rent is legally liable for the ongoing management, even though they are not involved. If we kept it like this, there would be a chopping and changing of who goes on and who comes off the licence, and it would become quite cumbersome. It is better if we try to define that a bit more.

I come to the last two amendments listed in the schedules. In schedule 1, there is an issue that the Committee raised. The Bill, as drafted, would mean that any properties that a housing association or the Housing Executive owns but does not manage, as well as the ones that they own and manage, would not be deemed to be HMOs. The Committee said that it was content with that for those housing association properties where the housing association manages and controls the property because the DSD regulatory regime means that those properties are being checked. However, you had a concern about those that are owned by a housing association but operated by a voluntary sector provider, as you were concerned that they would fall between two stools. The amendment that we propose would exempt from being an HMO those that the housing association or the Housing Executive own and manage and are in direct control of on a daily basis. However, those that the housing association or the Housing Executive own but do not directly manage and are managed by somebody else would be brought back within the definition of a HMO.

The Chairperson (Mr Maskey): OK. Thanks, Stephen.

Mr Martin: The final one, which we do not have yet but are drafting, is in schedule 2. We got quite a complex procedure for how an application for an HMO licence is made. We realised that there is quite a lot of detail that needs to be sorted out. We will not be able to do that in time to get the Bill progressed, so we think that the best way of dealing with this is to table an amendment that removes schedule 2 but puts in a power for the Department to make by regulations the procedure for an application. Most of this detail will be in the regulations, but we need to do a bit more detailed work with councils. When we were drafting the Bill, it really was 50:50 whether this went in regulations or a schedule. We opted for a schedule, but the detail is just not right. Following discussions with councils and the Landlords Association, we realised that there are four or five things that we need to correct there. We think that that is the best way of dealing with it.

The Chairperson (Mr Maskey): OK. It appears that members are content with all the evidence and, therefore, the clauses that you have referred to, Stephen. We have satisfied ourselves that we understand what the Bill is all about and what the clauses refer to. That has been further clarified with the amendments brought forward this morning. I suppose it is now just for us and the Department to prepare for next week when we want to start the formal clause-by-clause consideration of the Bill. On the back of what we have heard, members seem to be content with the Bill.

At the beginning of this process — I might be paraphrasing here — the Bill was referred to as light-touch regulation of HMOs. From my direct experience in recent years, we need the opposite of light-touch. My main concern, which I think would be applicable to most members, has always been about the volume of HMOs as opposed to a lot of the technical and important issues that you raised, not least who is the managing agent to contact and where is the accountability. Of course, there is then a range of health and safety issues and standards. For me, though, the big issue is the volume of HMOs, and we have clearly established that the Bill has no bearing on that whatever. It is a planning matter, really.

Mr Martin: Yes, that is right.

The Chairperson (Mr Maskey): I will certainly recommend that we have a narrative about that from the Committee.

If there is such a thing as light-touch as opposed to extant legislation, how does the Department view that impacting overall? Do you see it as a good thing or a bad thing?

Mr Martin: I am not sure that we would say that this is light-touch. This is comparable with HMO licensing legislation in Scotland, which is certainly not referred to as "light-touch". The current regulation of the wider private rental sector could be called light-touch; this is quite strong legislation that does a lot to protect tenants. We have a licensing scheme because we realise that there are gaps in the current registration scheme that need to be addressed. If the Bill becomes law, it will protect tenants much more fully. It is a licensing scheme; there is a fit-and-proper-person test for landlords. It is quite a robust system. While you could describe the broader private rented sector and, perhaps, the current HMO registration scheme as light-touch, this is anything but, in our view.

The Chairperson (Mr Maskey): I appreciate that. Certainly, some provisions in the Bill are quite robust, to the extent of talking about laminated floors in terms of noise and so on. I just wanted to put it that to you, because it was in mind that that was referred to somewhere along the line in the early stages of the discussion.

On that basis, are members content that we go through the clause-by-clause next week?

Thanks, Stephen, and your colleagues for being here this morning to help us and for the engagement with you on the Bill. Thank you very much.

Mr Martin: Thank you, Chair.