



Northern Ireland
Assembly

Committee for Social Development

OFFICIAL REPORT (Hansard)

Housing (Amendment) Bill: DSD Officials

24 September 2015

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Fra McCann (Deputy Chairperson)
Mr Jim Allister
Mr Roy Beggs
Ms Paula Bradley
Mr Gregory Campbell
Mr Stewart Dickson
Mr Phil Flanagan
Mr Gordon Lyons

Witnesses:

Mr Stephen Baird	Department for Social Development
Dr Heloise Brown	Department for Social Development
Ms Maryann Dempsey	Department for Social Development
Ms Eilish O'Neill	Department for Social Development

The Deputy Chairperson (Mr F McCann): I welcome the following departmental officials to the Committee: Dr Heloise Brown, head of housing research, policy and legislation; Ms Eilish O'Neill, head of private rented housing; Mr Stephen Baird, policy and legislation manager; and Ms Maryann Dempsey, deputy principal, private rented housing. Who will lead the briefing?

Dr Heloise Brown (Department for Social Development): I will make some opening remarks.

The Deputy Chairperson (Mr F McCann): Go ahead.

Dr Brown: Thank you for the invitation to attend today. We welcome this opportunity to discuss the Housing (Amendment) Bill with the Committee. I am joined by colleagues Eilish O'Neill, head of private rented housing; Stephen Baird, who works on antisocial behaviour; and Maryann Dempsey, who works on statutory grants. At the outset, I will explain the guidance that applies to Departments during periods of vacancy in ministerial office: factual information and explanation of policy positions agreed during the former Minister's period in office may still be provided in the appropriate circumstances.

The Committee originally requested a briefing today to assist in the consideration of the Bill at Committee Stage, specifically to address any issues that had arisen during the debate on Second Stage, and to provide an update on any issues raised during the Department's pre-introductory briefing to the Committee on 25 June. The Bill was introduced in the Assembly on 30 June, and the Second Stage debate is still to be scheduled. I will, therefore, provide an update on the issues raised

by the Committee in June, in line with the guidance on Departments that I mentioned. A separate briefing to assist the Committee during Committee Stage will, of course, follow Second Stage.

The Bill contains three elements: provisions for information sharing on empty homes; extending information-sharing provisions in respect of antisocial behaviour; and provision for the Housing Executive to have the facility to register a statutory charge in relation to housing grants made in the form of a loan. I will very briefly outline those three proposals before providing an update on the issues raised.

The first provision relates to information sharing on empty homes. A need was identified for the Department and the Housing Executive to have access to information about owners of empty homes. It was, therefore, proposed that the information-sharing provisions of the Bill should cover information held by the Department of Finance and Personnel's Land and Property Services (LPS) for the purposes of rates collection. The Bill provides for such information to be shared with the Department and the Housing Executive to enable owners of empty homes to be contacted with a view to bringing these properties back into use. The Bill would also require the Department and the Housing Executive to notify the Department of Finance and Personnel of instances where properties listed as vacant appear to be occupied.

Secondly, a common theme that emerged from last year's consultation on the Bill was the importance of information sharing in tackling antisocial behaviour. The Housing (Amendment) Act (Northern Ireland) 2011 made provision for disclosure of information relating to certain orders of the court where that is required for a limited range of purposes, and those relate to tenancy exchanges, the right to buy and eligibility for social housing. There has been significant support for additional information-sharing provision in relation to antisocial behaviour. The Bill would provide for the purposes for which the relevant information may be disclosed under existing legislation to be extended to allow information to be disclosed to social landlords for a comprehensive range of purposes relating to landlords' responsibility for dealing with antisocial behaviour. The Committee may wish to note that the Bill as drafted does not confer any new or additional powers to tackle antisocial behaviour. It merely provides for the disclosure of information where the Housing Executive or a registered housing association is taking action under its existing powers.

Finally, the Bill proposes the facility to register a statutory charge. A need was identified by the Housing Executive to have the facility to register a statutory charge in relation to housing grants made in the form of a loan. The Housing Executive is examining the feasibility of a pilot scheme offering loans to enable homeowners to carry out repairs and renovations. Registration of a statutory charge in respect of such loans would be the most cost-effective way of securing the loan and ensuring that borrowers do not default.

I hope that this has given members an overview of the Bill. During the briefing on 25 June, the Committee raised two queries, to which we replied in July. The first related to whether there was any provision relating to information sharing that would give legal indemnity to the person sharing information in respect of defamation. The Committee asked whether any information that is shared should be subject to qualified privilege. Our reply stated that, given that the Bill does not create any specific offences in relation to disclosure of information, the Department is satisfied that no indemnity is required. It is my understanding that while certain reports may be protected by qualified privilege under section 15 of the Defamation Act 1996, any risk in such cases would be to persons disclosing evidence to social landlords rather than to the landlords themselves. Any persons making disclosure should exercise due care to ensure that the information disclosed is fair and accurate. Defamation proceedings are, essentially, actions for libel or slander, and defamation is entirely separate from data protection legislation.

The Committee also noted that the Bill does not make any provision for private landlords to be included in data sharing other than to disclose information about their tenants. The Committee asked that the Department consider this issue and return to it in the autumn as the legislative process was progressing in Committee. Our reply advised the Committee that the Department acknowledges that private landlords have a legitimate interest in receiving such information. The Department sought the views of the Housing Executive and the Information Commissioner's Office on the Committee's proposal to extend the information-sharing provisions of the Bill to private landlords. The Department also took legal advice. A number of issues around human rights and data protection legislation have been identified. It appears that the Housing Executive and registered housing associations would not be in a position to disclose personal details about their tenants unless there was a legal basis for such disclosure. Further, the Information Commissioner advised that such data should not, in any case, be

disclosed without a tenant's agreement and emphasised that private landlords would be expected to store and process the data strictly in line with the principles of the Data Protection Act 1998.

Amending a standard tenancy agreement to notify all tenants of social housing that their details may be shared with private landlords would be a major undertaking that might not be justified, given that private landlords already have powers to deal with antisocial tenants. While the sharing of personal details about tenants of social housing with private landlords would be a significant step, and public consultation on this proposal has been carried out by the Department, the timeline for the Housing (Amendment) Bill is challenging, and, given the human rights and data protection issues around data sharing with private landlords, tabling an amendment on the topic could have implications for the progress of the Bill.

We welcome the Committee's views on these issues and of course any further comments that you wish to make. You are aware that officials may provide the Committee only with factual information and explanation of policy positions agreed during the former Minister's period in office. We will provide a briefing at the Committee's request following Second Stage, including consideration of the comments on clauses received by the Committee. In light of the guidance during periods of vacancy in ministerial office, it is not possible to provide departmental views on those at this time. We are of course happy to answer any queries of fact and/or explanation of the previously agreed policy position. We invite the Committee's views and will note these for consideration by the Minister at the earliest opportunity.

The Deputy Chairperson (Mr F McCann): Thank you very much, Heloise. Do any of your colleagues wish to comment?

Dr Brown: No.

The Deputy Chairperson (Mr F McCann): You raised the possibility of loans, which, in itself, seems a good thing. It has been raised with me that what happens with a loan is that it goes with the house, not the tenant. If a tenant moves on from a house, is the new tenant obligated to continue making loan payments?

Dr Brown: Are you talking about tenants in the private rented sector?

The Deputy Chairperson (Mr F McCann): No. I am talking about when people apply for a loan to upgrade their property and the loan is granted, but, say, a year after that, when they are still paying off the loan, they decide to move on to another property. Does the loan follow them, or is it taken on by the new tenant of the house?

Ms Maryann Dempsey (Department for Social Development): The provision that we are putting in the Housing (Amendment) Bill is there to close a gap. If the Housing Executive decided to exercise its powers under article 9 to give loans, it would be very costly for it to secure them. This is a more cost-effective way of doing it, and it is better value for money. To date, nothing has been developed in respect of a loan scheme. However, it would relate only to the privately owned housing sector, not the social rented sector.

The Deputy Chairperson (Mr F McCann): Thanks very much. Has the Department considered the benefits of also sharing information on empty properties with councils and housing associations?

Ms Eilish O'Neill (Department for Social Development): Yes. Our understanding is that councils are able to get information from Land and Property Services in relation to empty properties at present. They have the facility to get that information.

The Deputy Chairperson (Mr F McCann): Is it the same for housing associations?

Ms E O'Neill: Housing associations would be covered by part of this. I am looking to Heloise to —

Dr Brown: I am not entirely sure for what purpose housing associations would need it. It is the Housing Executive that has the empty homes strategy, and it would need to locate the homes for the specific purpose of contacting the owners and bringing them back into use.

Ms E O'Neill: The information would be shared with housing associations, in so far as the Housing Executive is delivering the strategy, when properties are reported to be empty. At the moment, two housing associations deliver that part of the pilot, Apex and Clanmil. First, the Housing Executive identifies and makes contact with the owner of a property. If, at that point, the owner is willing to take part in the scheme, the details are passed to the housing association helping to deliver the pilot.

Mr Beggs: On that issue, you said that it was your "understanding" that councils would have access to it. Why is that not in the Bill? Why is it not definitive that they have access to it? We cannot just go on understandings. In my mind, it must be very clear that they have access to it. I am aware of a property in the Monkstown estate, for instance, that has been sitting empty for a couple of years. It is a perfectly good former Housing Executive house, but young people are congregating at it; access is not secure; and it is a potential fire hazard — there is a whole range of issues. That antisocial behaviour is left for the police and the council to try to deal with. Why is it not definitive that councils have access to that information?

Dr Brown: The process at the minute, as I understand it, is that it is open to anybody to report an empty home to the Housing Executive, which will then attempt to make contact with the owners.

Mr Beggs: My question is this: why is it not clear in the Bill that councils have access? You advise us that it is your understanding that councils have access. So that it is clearly defined, why is it not made very clear that councils have access and under what legislative authority they have access?

Ms E O'Neill: I will attempt to answer that, but I am relatively new to the team. I do not mean that to sound like an excuse, but I am trying to give you the information as I understand it at present. The Bill had been written and the contents, which included information sharing with the Housing Executive for the purpose of delivering the empty homes strategy, had already been set down when a query was raised by a council about the possibility of its being included in the data-sharing arrangements. My colleagues in the housing division had conversations with LPS, which indicated that councils already had access to information on empty homes. That is why I am saying that it is my understanding. That is the information that came from LPS to my colleagues in the housing division about the inclusion of councils in the data-sharing provision.

Mr Beggs: You are saying that it is not just your understanding but that it is very definite: councils have access.

Ms E O'Neill: That is my understanding of the conversation that was reported to me, but I was not part of it.

Mr Beggs: Will you provide us with the legislation that gives them that access so that we can be satisfied that they have access and can determine whether there is a need for an amendment?

Ms E O'Neill: We will.

The Deputy Chairperson (Mr F McCann): Phil had his name down to ask a question: is it about the same thing?

Mr Flanagan: It is about the sharing of information in clause 1, but it is not about antisocial behaviour or anything like that. I have not read the consultation document that was issued in 2013, so forgive my ignorance on the matter, but one of the big issues is the potential for tackling tenancy fraud through sharing information on whether people are using electricity. During the formulation of the policy, was consideration given to allowing the Housing Executive to make contact with electricity providers to find out whether electricity is being used in what are commonly called "dole drops" to see whether we could use the Bill to try to tackle tenancy fraud in any way?

Dr Brown: The provision is specific to antisocial behaviour, which is defined in the legislation. We are aware of legislation in England and Wales that looks at the prevention of social housing fraud and which takes that approach. The Department is aware of that and is looking at it very closely. The Northern Ireland Audit Office (NIAO) also looked into that last year, so it is being looked at. It has not formed part of this Bill, and we are reliant on the previous decisions agreed by the Minister, but we are very aware of it.

Mr Flanagan: I am aware that you cannot really give us much more information than we have, but was any consideration given to including in this Bill a provision to share the information with electricity companies, or to get information from electricity supply companies, as opposed to saying that you will look at it some other way?

Dr Brown: It is not in this Bill because our assumption has been that for the particular issues involved in the prevention of social housing fraud, a wider suite of work is necessary, possibly a bespoke Bill looking at fraud, which is, for example, what was taken forward in England and Wales. There was a specific Bill.

Mr Flanagan: How far advanced are those policy proposals?

Dr Brown: I cannot say at the moment, I am afraid. I know that the work is progressing in the Department, but I am not aware of the most recently agreed position on it.

Mr Flanagan: Do you think that it would not be appropriate for this Bill to deal with that issue, or do you think that it would be better if it were dealt with in a much broader Bill?

Dr Brown: You could have a more comprehensive range of powers in a separate Bill that was not specifically about information sharing. For the prevention of fraud, you would want a wider range of powers, I think.

Mr Flanagan: That does not mean that it would be inappropriate for this Bill to deal with it.

Dr Brown: It could go in under information sharing, but it has not been consulted on yet. Given that it is likely that we may need to do a wider Bill, and the Department might look at that in the future, it would make sense to put all of those into the one Bill that sets out a comprehensive approach to tackling fraud.

Mr Flanagan: I am just concerned about how much longer we leave it. I think that it was over a year ago that a 'Spotlight' programme revealed that no investigations had been carried out into tenancy fraud. Since then, I have heard nothing from the Department about any action taken, and we are still looking at it. I am keen to explore this as a matter of priority instead of waiting for an all-encompassing Bill that does not seem to be materialising.

Dr Brown: We can certainly give you more information.

Mr Dickson: I want to follow up on the point that Mr Beggs raised about the sharing of information. I think that you are right that we need clarification. Roy may remember that, when we were both members of Carrickfergus Borough Council, all of our staff were deployed on an empty homes expiration journey at the behest of Land and Property Services. Therefore, there must be some connection between the two in that respect, but I think that it needs to be fully incorporated into legislation, and it may be that Departments could request the assistance of local authorities. I think that, now that we have the new large local authorities, we need to put that on a very clear statutory footing. They have an important role to play. They are the feet on the ground for much of central government and can deliver a great deal of information. That information should be shared.

I agree entirely with Mr Flanagan that it is important that we do not wait for all-encompassing fraud legislation when there are things that we can do now to deal with it. Many of the people whom I represent constantly come to me about "dole drops": houses used as addresses by people for all sorts of reasons but primarily as accommodation addresses to receive various things. They then become focal points for antisocial behaviour. This may not be the main purpose of the Bill, but including additional organisations such as electricity providers could only be a good thing, if that allowed them, in turn, to deal with antisocial behaviour or, indeed, fraud.

The Deputy Chairperson (Mr F McCann): Do you want to comment on that?

Dr Brown: I completely appreciate the point that it would be a useful addition. My point about waiting for a more comprehensive Bill is that, in the existing legislation in England and Wales, the information-sharing provision is there, and the ability to act on it to tackle fraud specifically rather than antisocial behaviour is in that legislation. It gives them the powers to act as well as the powers to share information. That is the rationale for putting it all in the one Bill.

Mr Dickson: At the very least, however, many organisations in Northern Ireland have the power but not the information to deal with fraud. If it takes us another step along that route, all the better.

The Deputy Chairperson (Mr F McCann): Antisocial behaviour information-sharing protocols have been in place going back to, maybe, 2012 or 2013. People then hoped that it would include all housing providers and statutory authorities. Although it includes the Housing Executive, police, councils and the Youth Justice Agency, housing associations still seem to be saying that they are left out of any information-sharing protocols and it makes their job more difficult. In fact, I have dealt with cases involving them in the past couple of weeks, where, had information been passed on to them, it would have allowed them to deal with some of the allegations. Can you explain the role of housing associations in this? Will they be included as full partners in the sharing of information?

Dr Brown: Yes, the clause in the Bill is quite permissive: any person — anybody in any organisation — can disclose information to a registered housing association or the Housing Executive. It brings them in more or less on an equal footing with the Housing Executive, for the specific purpose of tackling antisocial behaviour. It should have the effect of removing the uncertainty from a member of an organisation to have to think whether there is a legal gateway to sharing such data. It puts that legal gateway in place, so that they are aware that it is permissible to share the data with the social landlord.

The Deputy Chairperson (Mr F McCann): So, all bodies that share the information will be fully aware that they have an obligation to ensure that the likes of housing associations are given that information.

Dr Brown: Yes. It is clear in the Bill that any person can disclose.

Mr Allister: I have a couple of points about clause 2. Why is the private landlord excluded from being a recipient of disclosure of information about antisocial behaviour?

Dr Brown: It was not an area that we had done a policy consultation on. You may be aware that the origin of the Bill was from a wider proposal around social housing tenancies and secure tenancies. So, the approach has been to listen to housing associations coming back and saying that they need that gateway. At the time that the proposals were being put together, we were not aware of private sector landlords saying that that gateway would be useful. It was simply a matter of that.

Mr Allister: One of the relevant purposes defined in clause 2(8) for which you can give that information is injunctive action for breach of a tenancy agreement. A social landlord may be as interested as anyone in bringing such proceedings. Why is there no provision to facilitate the private landlord as much as the housing association or Housing Executive? It seems an obvious lacuna in the Bill. Why is it there?

Dr Brown: It partly reflects, I think, the difference in structure between social and private tenancies. A housing association has procedures in place and mechanisms for dealing with antisocial behaviour and is perhaps more likely to take that forward in an organised way. For a private landlord, looking at somebody who appears to be exhibiting antisocial behaviour under a private tenancy, the process of bringing such a tenancy to an end is slightly different. Under a secure tenancy, the detail for how that is worked out is very specific —

Mr Allister: If there is a tenancy agreement, you can still have the injunctive proceedings that are talked about in the Bill. I just do not understand why, having had the issue drawn to your attention when you were last here, the Department still does not seem to have considered widening the ambit of the Bill to include that.

Dr Brown: We are looking at it actively and taking legal advice on the best way to do that.

Mr Allister: You are looking at it.

Dr Brown: Yes. We are considering the feasibility of doing it. You will be aware of the timescale of the Bill and that the Department is looking in more detail at the regulation of the private rented sector. Again, it is quite a significant amendment to make to the Bill as it was introduced. We are looking at the feasibility of any amendment that could be made.

Mr Allister: I am not sure that it is that significant an amendment; it simply widens the ambit to embrace, probably, more of the entirety of the housing providers rather than simply the social housing providers. Antisocial behaviour exists in private rented accommodation as much as in social rented accommodation. If we are to tackle issues pertaining to antisocial behaviour, why would we close out one sector of the market?

Dr Brown: The Bill does not change the powers that are available to those private sector landlords. There are issues around disclosure, and that is why we have sought advice from the departmental solicitor, the Housing Executive and the Information Commissioner.

Mr Allister: We are not helping the private landlord.

Dr Brown: It is important that we determine exactly what the data protection and human rights issues are.

Mr Allister: If you ease the provision of information about antisocial behaviour and enable the Housing Executive or housing associations to take action against antisocial tenants, is one of the consequences not that they will simply walk round the corner to the hapless private landlord and continue their antisocial behaviour, because no one saw fit to provide them with equality of protection?

Dr Brown: The best that I can say in the current circumstances is that we are looking at a range of options. We have taken advice from the Information Commissioner and the departmental solicitor to see how that could most usefully be done.

Mr Allister: How would that have anything to do with the Information Commissioner?

Dr Brown: It involves information sharing and disclosure.

Mr Allister: In that sense, yes.

In your letter to us, in July, you responded to the point about whether there would be indemnity for anyone who supplies information to protect them against defamation proceedings. I have to confess that I do not understand your reply:

"Given that the Bill does not create any specific offences in relation to disclosure of information, the Department is satisfied that no indemnity is required."

What does the absence of specific offences have to do with the need to protect someone against defamation claims because they have provided information on someone? It is nothing to do with offences. Defamation is a civil matter. Offences are criminal matters. That is nothing whatsoever to do with the issue that was raised with you. The issue that was raised was that, if someone, thinking that they are a public-spirited citizen, provides information about an individual, alleging antisocial behaviour, and somehow gets it wrong, the person they got it wrong about can come after them in defamation. The question was whether you would provide any indemnity to protect the public-spirited citizen in that situation. The answer that we got is:

"the Bill does not create any specific offences".

That has absolutely nothing to do with the point raised. Has that issue been properly addressed at all?

Dr Brown: We took advice on that.

Mr Stephen Baird (Department for Social Development): That reply was based on legal advice, and I think that —

Mr Allister: I would like to see the instructions. They obviously raised an issue that was not the issue that was raised by the Committee.

Mr Baird: I think that the answer to the question about indemnification against civil proceedings is that we would not intend to. The other way of looking at it is that we do not intend to give carte blanche to

people to lay information that may be inaccurate or defamatory. There is a responsibility on individuals and organisations that provide information to make sure that it is fair and accurate. That will remain the position, as far as we are concerned.

Mr Allister: Somebody, genuinely, could get something wrong. They could be quite public-spirited, but they could get something wrong. They could get a name or the identity of someone wrong, and, if they get it wrong, they would be open to defamation proceedings. The Department, which is the recipient, simply stands back from that and says, "Look after yourself".

Mr Baird: Unfortunately, that is the case. The responsibility lies with the informant.

Mr Allister: Do you think that that will encourage information gathering?

Mr Baird: We hope that it would encourage people to be careful about what they say.

Mr Allister: Will people be given a warning before they say anything?

Mr Baird: We are talking about organisations rather than individuals, and any responsible organisation will have its own internal arrangements and legal advice.

Mr Allister: Do you not understand the frailty of the issue? Someone believes that the person next door is called John Brown, and they give information about John Brown. In fact, the person is George Brown; they have got the wrong guy. John Brown lives in the same street. Do you not think that John Brown will be pretty exercised and come after that individual?

Mr Baird: I should emphasise that the example that you have given is probably not a realistic example of the use of such provisions. They are aimed at large organisations and statutory bodies rather than next-door neighbours or individuals. That is not the way this information sharing would be used.

Mr Allister: It includes next-door neighbours. Clause 2 says, "A person".

Mr Baird: "A person" in the legal sense of the word —

Mr Allister: Which includes individuals.

Mr Baird: It includes individuals, but, in reality, I think it highly unlikely that individuals would seek to make use of this facility.

Mr Allister: Do you? So, you would not receive information from individuals.

Mr Baird: The Housing Executive already receives information from individuals; there is no legal problem with that. The information-sharing issues are problems with organisations that are reluctant to provide information because they feel that they could fall foul of data protection legislation. Where individuals have a problem with their neighbours, they are not slow to come forward. No data protection issues have been raised with that, because individuals do not hold data that is legally protected. That is the purpose of the information-sharing gateways. It is a data protection issue.

Mr Allister: Sorry, it is any "relevant information", which is then defined in the Bill.

Mr Baird: That is correct, but it is relevant information that would be subject to data protection.

Mr Allister: Where does it say that?

Mr Baird: It does not specifically say that.

Mr Allister: It does not.

Mr Baird: This is an information-sharing gateway, which implicitly is for the purposes of data protection legislation.

Mr Allister: Do you not think then that the Bill should say that?

Mr Baird: I do not think that it is necessary to say that.

Mr Allister: I did not know that. How would the man in the street know it?

Mr Baird: It is a matter for the courts.

Mr Allister: It would be an expensive lesson learned by someone.

The Deputy Chairperson (Mr F McCann): A number of valid points have been raised. There is a huge difference between the private rented sector and the housing providers, in that housing associations and the Housing Executive are heavily regulated, but, with the private rented sector, we are dealing with an almost totally unregulated sector where thousands of individuals own individual houses. The Department is in the process of reviewing the private rented sector, and the Committee is keen to move it down that direction. Maybe a lot of the issues can be taken up in that discussion. A sector that is in receipt of hundreds of millions of pounds in housing benefit and remains unregulated needs to have regulations that bring it into line with present housing providers, especially given that they are the biggest provider of social rented accommodation at present. Would that be OK? I know that that is coming up, Jim.

Mr Allister: I have made the point.

The Deputy Chairperson (Mr F McCann): The Human Rights Commission has questioned the Bill's compatibility with the European Convention on Human Rights. What is the Department's position on that?

Mr Baird: Departments are required, obviously, in the case of Assembly Bills, to certify that Bills are within the capacity of the Assembly to deliver. One of the big issues in that is human rights compatibility. In order for the Minister to certify that the Bill is within the Assembly's capabilities, we take legal advice. We took legal advice from the Department's legal advisers — it was confirmed by the Attorney General — that there was nothing, in their opinion, in the Bill that would conflict with human rights requirements.

The Deputy Chairperson (Mr F McCann): OK.

Thank you for your presentation. Is there anything that you wish to say before we finish?

Dr Brown: Thank you for your comments.

The Deputy Chairperson (Mr F McCann): Thank you very much.