



Northern Ireland  
Assembly

Committee for Social Development

# Report on the Housing (Amendment) Bill (NIA Bill 58/11-16)

Together with the Minutes of Proceedings, Minutes of Evidence,  
Memoranda and Submissions relating to the Report

Ordered by the Committee for Social Development to be printed 07  
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## Powers and Membership

The Committee for Social Development is a Statutory Departmental Committee established in accordance with paragraphs 8 and 9 of the Belfast Agreement, section 29 of the Northern Ireland Act 1998 and under Standing Order 48.

The Committee has power to:

- consider and advise on Departmental budgets and annual plans in the context of the overall budget allocation;
- consider relevant secondary legislation and take the Committee Stage of primary legislation;
- call for persons and papers;
- initiate inquiries and make reports; and
- consider and advise on any matters brought to the Committee by the Minister for Social Development.

The Committee has 11 members including a Chairperson and Deputy Chairperson and a quorum of 5. The membership of the Committee since 23 May 2011 has been as follows:

Mr Alex Maskey (Chairperson)

Mr Fra McCann<sup>21</sup> (Deputy Chairperson)

Mr Jim Allister<sup>7</sup>

Mr Roy Beggs<sup>14</sup>

Ms Paula Bradley<sup>1</sup>

Mr Gregory Campbell<sup>3</sup>

Mr Stewart Dickson<sup>11</sup>

Mr Sammy Douglas<sup>8,12,13,15,16,17</sup>

Mr Phil Flanagan<sup>22</sup>

Mrs Dolores Kelly<sup>10</sup>

Mr Adrian McQuillan<sup>19,20,23</sup>

- <sup>1</sup> With effect from 20 February 2012 Ms Paula Bradley replaced Mr Gregory Campbell
- <sup>2</sup> With effect from 26 March 2012 Mr Alastair Ross replaced Mr Sammy Douglas
- <sup>3</sup> With effect from 01 October 2012 Mr Gregory Campbell replaced Mr Alex Easton
- <sup>4</sup> With effect from 01 October 2012 Mr Sammy Douglas replaced Mr Alastair Ross
- <sup>5</sup> With effect from 11 February 2013 Mr Sydney Anderson replaced Mr Sammy Douglas
- <sup>6</sup> With effect from 07 May 2013 Mr Sammy Douglas replaced Mr Sydney Anderson
- <sup>7</sup> With effect from 09 September 2013 Mr Jim Allister replaced Mr David McClarty
- <sup>8</sup> With effect from 16 September 2013 Mr Trevor Clarke replaced Ms Pam Cameron
- <sup>9</sup> With effect from 16 September 2013 Mr Sammy Wilson replaced Mr Sammy Douglas
- <sup>10</sup> With effect from 30 September 2013 Mrs Dolores Kelly replaced Mr Mark H Durkan
- <sup>11</sup> With effect from 01 October 2013 Mr Stewart Dickson replaced Mrs Judith Cochrane
- <sup>12</sup> With effect from 06 October 2014 Mr Sammy Douglas replaced Mr Trevor Clarke
- <sup>13</sup> With effect from 17 November 2014 Mr Maurice Devenney replaced Mr Sammy Douglas
- <sup>14</sup> With effect from 09 February 2015 Mr Roy Beggs replaced Mr Michael Copeland
- <sup>15</sup> With effect from 25 March 2015 Mr Maurice Devenney retired as a Member
- <sup>16</sup> With effect from 20 April 2015 Mr Gary Middleton was appointed as a Member to the committee
- <sup>17</sup> With effect from 18 May 2015 Mr Sammy Douglas replaced Mr Gary Middleton
- <sup>18</sup> With effect from 03 June 2015 Mr Mickey Brady resigned as a Member
- <sup>19</sup> With effect from 29 July 2015 Mr Sammy Wilson resigned as a Member
- <sup>20</sup> With effect from 07 September 2015 Mr Gordon Lyons was appointed as a Member to the Committee
- <sup>21</sup> With effect from 08 September 2015 Mr Fra McCann was appointed as Deputy Chairperson to the Committee
- <sup>22</sup> With effect from 14 September 2015 Mr Phil Flanagan was appointed as a Member to the Committee
- <sup>23</sup> With effect from 05 October 2015 Mr Adrian McQuillan replaced Mr Gordon Lyons

## List of Abbreviations used in the Report

<b>CIHNI/ CIH</b>	<b>Chartered Institute of Housing Northern Ireland</b>
<b>DFP</b>	<b>The Department of Finance &amp; Personnel</b>
<b>DSD</b>	<b>The Department for Social Development</b>
<b>ECHR</b>	<b>European Convention on Human Rights</b>
<b>Helm</b>	<b>Helm Housing</b>
<b>ICO</b>	<b>Information Commissioner's Office</b>
<b>LANI</b>	<b>Landlords' Association for Northern Ireland</b>
<b>NIFHA</b>	<b>Northern Ireland Federation of Housing Associations</b>
<b>NIHE</b>	<b>Northern Ireland Housing Executive</b>
<b>NIHRC</b>	<b>The Northern Ireland Human Rights Commission</b>
<b>NILGA</b>	<b>Northern Ireland Local Government Association</b>
<b>SCNI</b>	<b>Supporting Communities NI</b>

# Table of Contents

Executive Summary and Recommendations	6
Introduction	10
Consideration of the Bill	13
Clause-by-Clause Scrutiny	27
Links to Appendices	30

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# Executive Summary and Recommendations

1. The Housing (Amendment) [Bill](#) was introduced in the Assembly on 30 June 2015, and encompasses three key areas. These are:
  - Sharing of information relating to empty properties;
  - Disclosure of information relating to anti-social behaviour; and
  - Registration as statutory charge of certain loans.
2. The political situation in September/October 2015 meant that it was unclear when the Second Stage of the bill would take place.
3. Noting the potential impact on the time the Committee for Social Development (the Committee) would have to consider the bill as a result of this delay, the Committee agreed to proceed with oral evidence sessions in advance of the bill reaching Second Stage and being formally referred to the Committee.
4. During Committee Stage members considered the issues raised in evidence sessions with assistance from the Department for Social Development (DSD/the Department), conducted its clause-by-clause consideration of the bill on 10 December 2015 and agreed its report on 7 January 2016.
5. Over the course of briefings and evidence sessions, a number of issues in relation to the bill were raised by both stakeholders and members of the Committee. These were:
  - The scope of information-sharing in relation to empty properties and in particular, extending the provisions of clause 1 to housing associations, private landlords and councils;
  - Accessing and sharing information in order to identify empty properties including that from the Land Registry and utility companies;
  - The appropriateness of the information-sharing provisions of clause 2 which relate to anti-social behaviour and related definitions;
  - The lack of *compulsion* on social landlords to disclose information related to anti-social behaviour;
  - The potential need for an indemnity in respect of defamation as a result of sharing information on anti-social behaviour; and

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- Guidance relating to the bill to be provided and placed on a statutory basis.
6. Stakeholders were broadly supportive of clause 1 which relates to sharing of information relating to empty properties in order to assist with the delivery of the Empty Homes Strategy however there was some debate around the scope of the clause.
  7. The Committee was content that the Department had sufficiently addressed the issue of not including housing associations and private landlords in the drafting of the bill as relevant information to assist in the delivery of the Empty Homes Strategy will be provided by the Northern Ireland Housing Executive (NIHE) as appropriate.
  8. The Committee was content that the Department had sufficiently addressed the issue of not extending information-sharing to councils under clause 1, acknowledging that data protection requires that information sharing must align with the purpose of the bill.
  9. The Committee accepted that councils do not have a role in delivering the Empty Homes Strategy and therefore amending the bill to include councils in information-sharing under this clause would not be for the purpose of delivering this strategy.
  10. The Committee agreed with the Department that, if councils required such an information-sharing provision in relation to empty homes, that this should be made in local government legislation rather than housing legislation.
  11. Members did however express a concern that there has been a potential missed opportunity for a joined up approach to information-sharing and agreed this should be considered by the new Department for Communities which will have responsibility for local government.
  12. The Committee is of the view that there may be benefit in the Department exploring options for establishing information-sharing protocols with utility companies within the current legislative provisions in order to identify the addresses of empty properties which could then be brought to the attention of Land and Property Services. This additional information could also have the wider application of helping to address the issue of tenancy fraud.
  13. Clause 2 of the bill deals with disclosure of information relating to anti-social behaviour.
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14. Key issues raised under this clause were: the appropriateness of the information-sharing provisions which relate to anti-social behaviour and related definitions; the lack of *compulsion* on social landlords to disclose information related to anti-social behaviour; the potential need for an indemnity in respect of defamation as a result of sharing information on anti-social behaviour; and guidance relating to the bill to be placed on a statutory basis.
15. The bill will introduce new powers for information-sharing for the purpose of pursuing possession action (in accordance with grounds 1, 2 and 3 of Schedule 3 to the Housing (NI) Order 1983 (the 1983 Order)).
16. The Committee agreed with Housing Rights who told the Committee in oral evidence that they believe the definition of “relevant information” and “relevant purpose” goes beyond what is necessary.
17. The Committee discussed this issue at length with the Department. In the end, the Department stated that while the Minister did not believe that the references to grounds 1 and 3 in the bill do go beyond what is necessary, if the Committee requested their removal from the bill, he would accept this in order to ensure the bill’s timely progress through the Assembly.
18. At its meeting of 10 December the Committee agreed that reference to grounds 1 and 3 in clause 2 should be removed by way of an amendment provided by the Minister.
19. While the Committee believed there was a legitimate argument to include private landlords in the information-sharing provisions of clause 2 it also recognised the serious concerns about individual landlords being equipped to handle personal data in accordance with data protection legislation.
20. The Committee therefore decided against amending the legislation to include an enabling clause for information-sharing with private landlords.
21. The Committee welcomed the fact that this issue has been included in the recently launched discussion paper, [Review of the Role and Regulation of the Private Rented Sector](#):

*“It has been suggested that the Bill should go further and enable social landlords to share relevant information with a registered private landlord to enable anti-social behaviour to be addressed in a more consistent*

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*way across housing sectors. The feasibility of such a provision is being examined.”*

22. The Committee was content that all other issues raised under clause 2 of the bill had been sufficiently addressed by the Department and no substantive issues were raised under clauses 3 - 5.
23. The Committee therefore makes the following recommendations:

### **Recommendation 1**

24. The Committee recommends that SOLACE and NILGA consider if there is a requirement for statutory information-sharing between DFP and councils in relation to empty properties. If such provision is required then this should be made in local government legislation rather than housing legislation.

### **Recommendation 2**

25. The Committee recommends that the issue of effective information-sharing with local government should be considered by the new Department for Communities which will have responsibility for this area.

### **Recommendation 3**

26. The Committee recommends that the Department seek to improve information-sharing protocols between NIHE and utility companies to assist in identifying empty properties.

### **Recommendation 4**

27. The Committee recommends the Department consider the inclusion of information-sharing provisions with utility companies in its consultation on the proposals to introduce new fraud legislation in May 2016.

### **Recommendation 5**

28. The Committee recommends that the issue of enabling social landlords to share relevant information with a registered private landlord to enable anti-social behaviour to be addressed in a more consistent way across housing sectors is given close consideration within the Department's Review of the Role and Regulation of the Private Rented Sector.

## Introduction

29. The Committee for Social Development (the Committee) received a pre-introductory briefing from the Department for Social Development (the Department/DSD) on the bill on 25 June 2015 and raised initial queries and comments in relation to various aspects of the bill. All correspondence between the Committee and the Department in relation to the bill can be found [here](#).
30. The Housing (Amendment) [Bill](#) was subsequently introduced in the Assembly on 30 June 2015.
31. The bill encompasses three key areas. These are:
- Sharing of information relating to empty properties;
  - Disclosure of information relating to anti-social behaviour; and
  - Registration as statutory charge of certain loans.
32. The bill, as introduced by the Minister on 30 June 2015, contains 5 clauses and includes the following statement:
- “In my view the Housing (Amendment) Bill would be within the legislative competence of the Northern Ireland Assembly”
33. The Committee, conscious of the time pressure surrounding the Assembly’s legislative programme in the final year of the 2011-16 mandate, issued a call for evidence on the bill in June 2015, in anticipation that it would be formally referred to the Committee in Autumn.
34. The Committee sought submissions by contacting stakeholders directly and by placing advertisements on the Northern Ireland Assembly website, in the Belfast Telegraph, the Newsletter and the Irish News.
35. The Committee received 17 responses to its call for evidence from a broad range of stakeholders. Written submissions can be accessed [here](#).
36. The political situation in September/October 2015 meant that it was unclear when the Second Stage of the bill would take place.
37. Noting the potential impact on the time the Committee would have to consider the bill as a result of this delay, the Committee agreed to proceed with oral evidence sessions in advance of the bill reaching Second Stage.

38. The Committee received a briefing from the Department on 24 September 2015, updating it on the issues raised by the Committee in June.
39. Stakeholders provided oral evidence at the Committee meetings of 1 October, 8 October and 15 October 2015. Minutes of Evidence relating to the bill, including briefings by the Department, can be found [here](#).
40. The Committee took oral evidence from:
- Landlords' Association NI (LANI);
  - Housing Rights;
  - Supporting Communities NI (SCNI);
  - Northern Ireland Federation of Housing Associations (NIFHA);
  - Helm Housing;
  - Chartered Institute of Housing Northern Ireland (CIHNI);
  - Information Commissioner's Office (ICO);
  - Northern Ireland Local Government Association (NILGA); and
  - Representatives from local government.
41. The Minister resumed normal duties on 20 October 2015. The Department subsequently responded to the issues raised in Committee and in stakeholder submissions in correspondence on 22 October 2015. The Department briefed the Committee on this response at its meeting of 5 November 2015.
42. The bill was brought to Second Stage by the Minister on 9 November 2015 and officially entered Committee Stage on 10 November.
43. During the Second Stage debate on 9 November 2015, the Committee Chairperson noted the Committee's support for the principles of the bill.
44. To ensure there was time to fully engage with the Department on all outstanding issues, the Committee brought a motion to the Assembly on 24 November 2015 to extend the Committee Stage of the bill to 15 January 2016. This was agreed by the Assembly.
45. During Committee Stage members considered the issues raised in evidence sessions on 12, 19 and 26 November and 3 December 2015.

46. The Committee conducted its clause-by-clause consideration of the bill on 10 December 2015 and agreed its report on 7 January 2016.

## Consideration of the Bill

47. The Housing (Amendment) Bill was introduced in the Assembly on 30 June 2015.
48. The Bill encompasses three key areas. These are:
- Sharing of information relating to empty properties;
  - Disclosure of information relating to anti-social behaviour; and
  - Registration as statutory charge of certain loans.
49. The Committee received written and oral evidence from a broad range of stakeholders. Written submissions can be accessed [here](#) and minutes of evidence can be accessed [here](#).

### Key Issues

50. Over the course of briefings and evidence sessions, a number of issues in relation to the bill were raised by both stakeholders and members of the Committee. These were:
- The scope of information-sharing in relation to empty properties and in particular, extending the provisions of clause 1 to housing associations, private landlords and councils;
  - Accessing and sharing information in order to identify empty properties including that from the Land Registry and utility companies;
  - The appropriateness of the information-sharing provisions of clause 2 which relate to anti-social behaviour and related definitions;
  - The lack of *compulsion* on social landlords to disclose information related to anti-social behaviour;
  - The potential need for an indemnity in respect of defamation as a result of sharing information on anti-social behaviour; and
  - Guidance relating to the bill to be provided and placed on a statutory basis.

## Clause 1: Sharing of information relating to empty properties

51. Clause 1 provides for circumstances in which the Department of Finance & Personnel (DFP) must disclose to DSD or the Northern Ireland Housing Executive (NIHE) certain information about empty properties.
52. Clause 1 also provides for circumstances in which DSD and NIHE must disclose certain rating-related information to DFP.
53. The Committee noted the benefits of this clause, particularly in the case of sharing of information relating to empty properties which could assist DSD/NIHE in delivering the Empty Homes Strategy by bringing vacant dwellings back into use.
54. Stakeholders were broadly supportive of clause 1 however there was some debate around its scope.

### **Sharing information relating to empty properties with housing associations and private landlords**

55. Helm Housing suggested that the sharing of information in relation to empty properties should be extended to housing associations and LANI felt that it should be extended to private landlords.
56. During a briefing on 24 September 2015 the Department explained that the information would be passed by the NIHE to housing associations who are helping to deliver the Empty Homes Strategy pilot.
57. The Department also wrote on 22 October:

*“Once owners are identified and contacted then using the soon to be introduced Matching Service Private Landlords and Social Housing Providers could be matched to empty properties.”*

58. The Committee agreed that it was content with this approach.

### **Sharing information relating to empty properties with councils**

59. Local government representatives stated on 15 October 2015:

*Councils believe that any sharing of information should include the councils in support of such issues as enabling a council to shape its own future in relation to the community planning duty; assist to utilise regeneration; help in the identification of property owners in relation to dilapidation and blight projects; and assist councils in dealing with*

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*dangerous buildings and relevant dangers to the public. Having legislation to assist in information sharing would allow councils to play their full part in the partnership”.*

60. On 5 November, NILGA wrote:

*“...an extension of Clause 1 (to) councils, would save the need for complex data sharing agreements which can be cumbersome and do not facilitate the fluid exchange of information.”*

61. The Department stated in correspondence on 22 October 2015 that:

*“...there is no statutory provision for the Department of Finance and Personnel to provide such information to councils or housing associations, and that, for the purposes of the Empty Homes Strategy, there is no requirement for such provision.”*

62. The Department did however indicate on 22 October 2015, in response to NILGA’s written submission, that it intends to work collaboratively with the 11 councils and with the Department of Finance and Personnel to ensure that information is shared legally to assist both Departments and all 11 councils.

63. It also stated, in response to various Council submissions that:

*“Information will be shared at nil cost... the Department will work with Councils and if there is evidence that an information-sharing gateway is needed between Councils and others this will be considered.”*

*“Belfast City Council and other Councils have signed up to the information-sharing protocols for the purposes of landlord registration and (we) will work with those councils experiencing problems to iron out any management/ handling/operational issues”*

64. The Committee acknowledged that data protection requires that the purpose of information-sharing must align with the purpose of the bill.

65. The Department advised the Committee in writing on 2 December 2015 that the Minister had decided that, if councils required an information-sharing provision in relation to empty homes, this should be made in local government legislation rather than housing legislation.

66. The Committee recognised that councils do not have a role in delivering the Empty Homes Strategy and therefore amending the bill to include councils in

information-sharing under this clause would not be for the purpose of delivering the Empty Homes Strategy.

67. The Committee was content therefore not to propose an amendment to include councils in information-sharing under this clause. The Committee recommends that SOLACE and NILGA consider if there is a requirement for statutory information-sharing between DFP and councils in relation to empty properties. If such provision is required then this should be made in local government legislation rather than housing legislation.
68. Members did however express a concern that there has been a missed opportunity for “joined up government”.
69. The Committee therefore recommends that the issue of effective information-sharing with local government should be considered by the new Department for Communities which will have responsibility for local government.

#### **Alternative sources of information relating to empty properties**

70. LANI pointed out that there is no referral to the Land Registry, the definitive register of ownership of property, in the bill. The Department responded on 22 October 2015 that it intends to explore what role Land Registry can also play.
71. LANI also suggested that electricity supply companies be used by government departments as an efficient and effective source of information to determine if a property is empty. Some members were supportive of this suggestion, particularly because of its potentially wider application to reducing tenancy fraud.
72. In correspondence on 22 October 2015 the Department indicated that it has asked NIE to share data but data protection law prohibited this. The Department also stated, as regards the delivery of the Empty Homes Strategy:

*“ information on whether or not a property might be empty is of relatively limited value: what is essential is information on the owner of the empty home and how they may be contacted. This is the nature of the information that could be shared by Land and Property Services.”*

73. On 3 December 2015 the Department briefed the Committee on the information-sharing protocols that currently exist between the NIHE and utility

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companies and the Committee noted that there was only one such information-sharing protocol in place.

74. The Committee has also noted correspondence from the Department of 1 December 2015 on the outcome of a base-line exercise which indicates a level of tenancy fraud below 2%. The Committee noted that the exercise will be repeated in 3 years to confirm the base rate and identify changes or significant trends.
75. The Committee is of the view that there may be benefit in the Department exploring options for establishing information-sharing protocols with utility companies within the current legislative provisions in order to identify the addresses of empty properties which could then be brought to the attention of Land and Property Services. This additional information could also have the wider application of helping to address the issue of tenancy fraud.
76. The Committee therefore recommends that the Department seek to improve information-sharing protocols between NIHE and utility companies to assist in identifying empty properties.
77. The Committee also recommends the Department consider the inclusion of information-sharing provisions with utility companies in its consultation on the proposals to introduce new fraud legislation in May 2016.

## Clause 2: Disclosure of information relating to anti-social behaviour

78. Clause 2 provides that a person may disclose certain information about anti-social behaviour to the Housing Executive or a registered housing association where such information is required for certain housing management purposes. Those purposes include applying for injunctions on grounds of anti-social behaviour; applying for possession orders on such grounds; withholding consent to the mutual exchange of secure tenancies; and determining that a person is not eligible for accommodation on the basis of their unacceptable behaviour.
79. The Department emphasised in its response to stakeholder written submissions that the purpose of clause 2 is to enable disclosure of information related to anti-social behaviour and that this did not change the

existing powers of organisations to act, nor did it change the statutory rights of an individual provided for in existing housing legislation.

80. Further, the Department made clear that organisations disclosing information would have a responsibility to ensure that the information disclosed is fair and accurate and is managed in line with the requirements of the Data Protection Act 1998.

### **Definitions contained in clause 2**

81. Several stakeholders made comments on the definition of “a person” for the purposes of clause 2 of the bill. In correspondence on 22 October 2015, the Department provided clarification in the form of an extract of the Interpretation Act (Northern Ireland) 1954 which provides that:

*“words in an enactment importing (whether in relation to an offence or otherwise) persons or male persons shall include male and female persons, corporations (whether aggregate or sole) and unincorporated bodies of persons”.*

This means that, in law, “persons” means organisations as well as individuals. The Committee was content with this explanation.

82. Several stakeholders emphasised that where information is shared it is important that it is not excessive and that it should be “truly relevant” information to ensure that an individual is treated fairly.
83. The Department stated in correspondence on 22 October 2015 that it believed the bill defines the terms “relevant information” and “relevant purposes” for which such information can be provided, in some detail.
84. The bill will introduce new powers for information-sharing for the purpose of pursuing possession action (in accordance with grounds 1, 2 and 3 of Schedule 3 to the Housing (NI) Order 1983 (the 1983 Order).
85. Housing Rights told the Committee in oral evidence that they believe the definition of “relevant information” and “relevant purpose” goes beyond what is necessary.
86. Housing Rights recommended to the Committee:
- the deletion of subsection 4(a) & (b) which relate primarily to the condition of the dwelling rather than anti-social behaviour; and

- amending 2(8) to narrow the “purpose” to an order of possession on ground 2 of Schedule 3 of the 1983 order only (i.e. grounds 1 and 3 should be omitted)
87. The Department wrote on 22 October that ground 1 of schedule 3 of the 1983 Order is only “relevant” in the context of the bill insofar as it relates to behaviour that creates a nuisance or annoyance.
88. On 5 November the Department said that it may be that grounds 1 and 3 would rarely be cited in cases of possession orders related to anti-social behaviour but that either/or *could* be cited in such cases. Therefore a facility that allows the sharing of this information between relevant parties would be of benefit to landlords. The Committee was also advised by the Department that nothing in clause 2 *obliges* a court to make an order and that it is a data sharing provision intended to ensure courts have all the evidence needed.
89. While the Department acknowledged on 5 November that grounds 1&3 may not be greatly missed if they were removed from the bill, the Department did not believe that their inclusion would create any disadvantage or injustice. Nor did the Department believe there is justification for delaying the bill by amending it as proposed by Housing Rights.
90. However, following subsequent discussions with the Committee, on 3 December the Department stated that while the Minister did not believe that the references to grounds 1 and 3 in the bill *do* go beyond what is necessary, if the Committee requested their removal from the bill, he would accept this in order to ensure the bill’s timely progress through the Assembly.
91. At its meeting of 10 December the Committee agreed that reference to grounds 1 and 3 in clause 2 should be removed and, as such, agreed that it was content with an amendment provided by the Minister to remove reference to grounds 1 and 3.
92. SCNI raised concern that the definition of relevant information includes applications for injunctions or orders which are simply pending before any court.
93. The Department responded that certain orders of the court can be applied for by a number of public bodies and it is important, to avoid duplication, for NIHE to know whether another organisation has applied for such an order. The Committee was content with the Department’s response.

94. SCNI also raised concerns that information is considered relevant if someone is “guilty” of conduct even though they may not have been convicted of any offence. The Department, before going on to draw parallels with the Housing (Northern Ireland) Order 1981, stated in correspondence on 22 October 2015:

*“Clause 2(6)(a) refers to information which indicates or suggests that a person is “guilty” of conduct that would amount to offences of certain descriptions even though the individual has not been convicted of such an offence. It is therefore clear from the context that the term “guilty” as it is used in clause 2(6)(a) is not meant to imply that an individual has been found guilty of any offence by a court.”*

95. This issue was discussed in Committee on 12 November 2015 and members did not raise the issue in subsequent meetings.

**Extending the disclosure of information to private landlords.**

96. During the Department’s pre-introductory briefing in June 2015, members expressed concern that the bill only provides that information may be shared with the NIHE or housing associations and private landlords are therefore kept “out of the loop”.
97. The Committee acknowledged that LANI presented a legitimate rationale why private landlords should be included in the information-sharing provisions of this clause:

*“This would provide landlords, supplying social housing, with the same or partial information relating to anti-social behaviour as that to be supplied to Housing Associations.”*

98. The Committee recognised that this lack of information-sharing could potentially result in a person who has been removed from social housing due to anti-social behaviour being subsequently housed in the private rented sector, without the landlord being aware of their history of anti-social behaviour.
99. However, LANI also acknowledged in oral evidence on 1 October 2015 that adherence to data protection legislation would be a real issue for private sector landlords and did not know how that could possibly be dealt with.
100. During this evidence session the Committee noted that the Department did not appear to have consulted with LANI on the non-inclusion of the private

sector in the bill. The Department has itself acknowledged that sharing information related to anti-social behaviour with private sector landlords had not formed part of the consultation on the bill.

101. The Committee heard arguments against extending the scope of the clause 2 to private landlords from a number of stakeholders including Housing Rights and the NIHRC. The concerns expressed by stakeholders and the Department related to timing, consultation, data protection and human rights issues.

102. Housing Rights, who made a range of recommendations in relation to the scope of clause 2, said specifically of extending information-sharing on anti-social behaviour to private landlords:

*“The public sector is heavily regulated for, because social landlords are public bodies. Guidance can be issued, and there are constraints on how they deal with information and apply that information. They are held accountable under human rights legislation and equality legislation. As private individuals, you are not.”*

*“.....it may be that another mechanism is needed to help address the private rented sector.”*

103. The Information Commissioner’s Office stated in oral evidence 15 October 2015 that:

*“Not all private landlords are necessarily as well constituted as social landlords, and we would be a little uncomfortable with the possible additional risk of information being mishandled and their not complying with the Data Protection Act.”*

104. The CIH, who reminded the Committee that private landlords already have some checks and balances in place such as guarantors or references stated:

*“Before that information could be shared with private individuals, we need to make sure that the private rented sector is up to a standard and that properties are being managed well.”*

105. Representatives of local government said on 15 October 2015 that:

*“Provided that the information is shared properly in a form that protects that data, we are of the view that it would be helpful in managing*

*antisocial behaviour..... From a council point of view, the criticism that we get... is that there is inconsistency.....”*

*“The antisocial behaviour forums and the sharing of information in those might provide protection around that (data protection issues). How we engage with landlords in that forum might provide some protection around how information is shared and stored.”*

106. When asked how engagement can occur in order to address anti-social behaviour at an early stage and thus potentially reduce recourse to evictions, the representatives stated:

*“If we could use landlord registration data and engage them through our recognised antisocial behaviour forums, that would be the best way of doing that.”*

107. The Department told the Committee on 5 November that it had been considering the possibility of issuing a legal direction to the NIHE to disclose certain information about anti-social behaviour to private landlords. However, legal advice received by the Department on this matter was clear that it would have no power to issue such a direction.
108. This is because while the Department has the power to direct the Housing Executive in the manner in which it discharges its functions, the disclosure of information to private landlords is *not* a function of the Housing Executive, therefore the Department would have no power to direct it to do so.
109. The inclusion of an enabling clause that would allow information-sharing on anti-social behaviour with private landlords in the future, when the private rented sector is appropriately regulated, was discussed with the Department on 12 November 2015.
110. Some members argued that the detail of such an enabling power could be appropriately set out in secondary legislation.
111. On 19 November the Department stated:

*“The Committee proposed that the Bill contain an enabling power for the Department to prescribe descriptions of private landlords who would be in a position to meet the standards for holding sensitive personal information required under data protection legislation. While the Department has no objection in principle to taking such a power, it is important that any enabling provisions are drafted in such a way that*

*the private landlords who meet data protection standards can be identified and accurately described. Given that compulsory landlord registration, which is designed to facilitate the identification of private sector landlords, has been introduced only recently, it is difficult, at this stage, to envisage the criteria that would be used to assess a landlord's capacity to meet whatever data protection standards might apply at a future date. The only certainty that I can offer on this proposal is the fact that it would be several years at the very least before such an enabling power would be used. If such a provision could be introduced, I would return to the Committee's initial concerns that gave rise to this request: namely, that individuals evicted from social housing go on to find accommodation in the private rented sector. The success of any information-sharing provision would depend entirely on whether a private landlord opted to make use of it. It may, therefore, in itself not prevent the issue that the Committee identified."*

112. For clarification the Committee Chairperson noted that the Committee had *not* made any proposal on this issue but had rather discussed the pros and cons of such an enabling clause.
113. The Committee welcomed that the Department has stated in its recently launched discussion paper entitled Review of the Role and Regulation of the Private Rented Sector:
- "It has been suggested that the Bill should go further and enable social landlords to share relevant information with a registered private landlord to enable anti-social behaviour to be addressed in a more consistent way across housing sectors. The feasibility of such a provision is being examined."*
114. While the Committee believed there was a legitimate argument to include private landlords in the information-sharing provisions it also recognised the serious concerns about individual landlords being equipped to handle personal data in accordance with data protection legislation.
115. On balance therefore the Committee decided against amending the legislation to include an enabling clause for information-sharing with private landlords.

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116. The Committee does however recommend that this issue is given close consideration within the Department's Review of the Role and Regulation of the Private Rented Sector.

### **Compatibility with the European Charter of Human Rights**

117. The Human Rights Commission raised a number of issues on the breadth of the provisions under clause 2; in particular, that the bill may not meet the proportionality test under Article 8 of the European Convention on Human Rights in relation to the definition of "person", "relevant information", and the definition of "relevant purpose".
118. The Department set out its response to these issues in correspondence on 22 October 2015.
119. The definition of "person" is set out in the Interpretation Act (Northern Ireland) 1954 and the Department did not consider that there was any reason to apply a different definition of "person" for the purposes of the bill.
120. The Department considered that the definitions of "relevant information" and "relevant purpose" within the bill are neither broad nor disproportionate. They are limited to information and purposes which are required for tackling anti-social behaviour. The Department also stated that the ability of social landlords to successfully tackle anti-social behaviour is intended to protect the Article 8 rights of others.
121. The Department also stated that it had considered the issue of proportionality at an early stage and concluded that the proposals were proportionate given the purposes for which personal information could be shared would be circumscribed in primary legislation and limited to those that are necessary for tackling anti-social behaviour.
122. On 22 October 2015, the Department provided the following statement in correspondence, setting out the basis for its assessment that there are no compatibility issues with the ECHR:

*"The Charter of Fundamental Rights of the European Union sets out a series of individual rights and freedoms, including those contained in the European Convention on Human Rights. Section 6(2)(c) of the Northern Ireland Act 1998 provides that the Northern Ireland Assembly has no competence to make any provision that is incompatible with any of the Convention rights.*

*The Department received legal advice that the Minister could make a statement that the Bill would be within the legislative competence of the Assembly. On the basis that the Bill must be compatible with the Convention in order to be within the legislative competence of the Assembly, the Department does not consider that there are any compatibility issues with the Bill, as drafted. If the Committee continues to have concerns on this point, it may wish to pursue the matter with the Attorney General.”*

123. The Committee was content with the Department’s explanation.

#### **Lack of compulsion to share information**

124. The Committee noted that the bill only provides that any person *may* disclose information. Some members were concerned that this creates a situation whereby someone can “happily offload” a disruptive tenant onto another housing provider by choosing not to disclose relevant information.

125. On 22 October 2015, the Department stated the following in correspondence:

*“...The Department will give consideration as to whether there should be a legal requirement for information about tenants with a history of anti-social behaviour to be shared between social landlords. However, other Departments may have their own views on any proposal to compel any statutory body to disclose information to a social landlord.*

*Presumably, a compulsion to share information may mean that, in order to comply, all information must be shared. This would bring a much wider range of information, including one-off complaints and complaints that were closed with no further action, within the scope of the information that must be shared. The implications of this, particularly in respect of ensuring proportionality, may need to be considered in more detail.”*

126. The Committee was content with this response.

#### **Lack of legal indemnity in respect of defamation**

127. Concern was raised in Committee regarding the lack of any provision under clause 2 that would give legal indemnity in respect of defamation to the “public spirited” person who unintentionally shares inaccurate information.

128. The Committee was content with the Department’s explanation set out in correspondence on 22 October 2015 that no indemnity is required.

**Guidance to be provided and placed on a statutory basis**

129. Housing Rights believe that Departmental guidance to NIHE should be placed on a statutory basis. They suggest that as a minimum, DSD’s ‘Anti-Social Behaviour Guidance for the Northern Ireland Housing Executive’ be fully revised to ensure that proper safeguards are put in place and extended to all relevant authorities who may be engaged in information-sharing in relation to anti-social behaviour.

130. Housing Rights proposed that the Committee amend the clause as follows:

*“Any person who, by virtue of this Act, must or may provide information or who provides or receives information for the purposes of any provision of this Act shall have regard to any relevant guidance given by the Minister”.*

*“This would ....mirror the arrangements which are currently in place to safeguard the disclosure and sharing of information on similar issues in Scotland.”*

131. The Committee was content with the Department’s response of 22 October 2015 that:

*“.....the Department will revise its Guidance to the Housing Executive, taking account of the Scottish Guidance. As always, the Department will work with the Housing Rights Service in revising the Guidance. While the Guidance on dealing with Anti-Social Behaviour issued by the Department to the Housing Executive is non-statutory, decisions by the Housing Executive would obviously be vulnerable to challenge if they appear to conflict with Departmental Guidance.”*

**Clause 3 - Registration as statutory charge of certain loans**

132. No substantive issues were raised on this clause however the Department’s response to the comments of SCNI, NILGA, CIH and Helm Housing is provided in annex B of its letter to the Committee dated 22 October 2015. Correspondence in relation to the bill can be found [here](#).

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## Clause-by-Clause Scrutiny

133. The Committee completed its clause-by-clause scrutiny of the bill on 10 December 2015.

### Clause 1: Sharing of information relating to empty properties

134. Clause 1 provides for circumstances in which the DFP must disclose to DSD or the NIHE certain information about empty properties.
135. Clause 1 also provides for circumstances in which DSD and NIHE must disclose certain rating-related information to DFP.
136. The Committee noted the benefits of this clause, particularly in the case of sharing of information relating to empty properties which could assist DSD/NIHE in delivering its Empty Homes Strategy by bringing vacant dwellings back into use.
137. Stakeholders were broadly supportive of the clause however there was some debate around the scope of the clause.
138. The Committee was content that the Department had sufficiently addressed the issue of not including housing associations and private landlords in the drafting of the bill as relevant information will be provided by the NIHE as appropriate.
139. The Committee was content that the Department had sufficiently addressed the issue of not extending information-sharing to councils.
140. **At its meeting on 10 December the Committee agreed that it was content with Clause 1 as drafted.**

### Clause 2: Disclosure of information relating to anti-social behaviour.

141. Clause 2 provides that a person may disclose certain information about anti-social behaviour to the Housing Executive or a registered housing association where such information is required for certain housing management purposes. Those purposes include applying for injunctions on grounds of anti-social behaviour, applying for possession orders on such grounds, withholding consent to the mutual exchange of secure tenancies

- and determining that a person is not eligible for accommodation on the basis of their unacceptable behaviour.
142. The Committee was content that the Department had adequately addressed most of the issues raised under this clause, however, the Committee has made one recommendation and agreed one amendment brought by the Minister in relation to clause 2.
143. While the Committee believed there was a legitimate argument to include private landlords in the information-sharing provisions it also recognised the serious concerns about individual landlords being equipped to handle personal data in accordance with data protection legislation.
144. On balance therefore the Committee decided against seeking to amend the legislation to include an enabling clause for information-sharing with private landlords.
145. The Committee has however recommended that this issue is given close consideration within the Department's Review of the Role and Regulation of the Private Rented Sector.
146. The bill will introduce new powers for information-sharing for the purpose of pursuing possession action (in accordance with Grounds 1, 2 and 3 of Schedule 3 to the Housing (NI) Order 1983 (the 1983 Order).
147. The Committee agreed with Housing Rights who told the Committee in oral evidence that they believe the definition of "relevant information" and "relevant purpose" goes beyond what is necessary.
148. This Committee discussed this issue at length with the Department. In the end, on 3 December 2015, the Department stated that while the Minister did not believe that the references to grounds 1 and 3 in the bill go beyond what is necessary, if the Committee requested their removal from the bill, he would accept this in order to ensure the bill's timely progress through the Assembly.
149. At its meeting of 10 December the Committee agreed that reference to grounds 1 and 3 in clause 2 should be removed by way of the following amendment provided by the Minister:
- Clause 2, Page 3, Line 4, leave out subsection (4)
- Clause 2, Page 4, Line 1, leave out 'or 3'

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Clause 2, Page 4, Line 2, leave out from '(convictions' to end of line 3 and insert '(conduct and convictions) (whether or not the order is also sought on other Grounds);'

150. **At its meeting of 10 December 2015, the Committee agreed that it was content with Clause 2 as amended.**

#### Clause 3: Registration as statutory charge of certain loans

151. Clause 3 provides that so long as any part or principal of, or any interest on, a loan made by the Housing Executive under Article 9 of the Housing (Northern Ireland) Order 1981 (for certain purposes including making repairs or improvements to a house) remains outstanding, the loan is to be a charge on the house or building (s) in question, and that such charges shall be registered in the Statutory Charges Register.

152. **At its meeting on 10 December 2015 the Committee agreed that it was content with Clause 3 as drafted.**

#### Clause 4: Commencement

153. Clause 4 provides that the Act will come into operation at the end of 2 months beginning with the date on which it receives Royal Assent.
154. **At its meeting on 10 December 2015 the Committee agreed that it was content with Clause 4 as drafted.**

#### Clause 5: Short title

155. Clause 5 provides that when the bill receives Royal Assent it shall be known as the Housing (Amendment) Act (Northern Ireland) 2015.
156. **At its meeting on 10 December 2015 the Committee agreed that it was content with Clause 5 as drafted.**

#### Long Title of the Bill

157. **At its meeting on 10 December 2015 the Committee agreed that it was content with the Long Title as drafted.**

## Links to Appendices

You can view the Housing (Amendment) Bill [here](#).

You can view the Explanatory and Financial Memorandum [here](#).

Memoranda and papers from the Department for Social Development can be viewed [here](#).

Minutes of Proceedings can be viewed [here](#).

Minutes of Evidence can be viewed [here](#).

You can view written submissions regarding this Bill [here](#).

Research papers can be viewed [here](#).

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