



HOUSE OF KEYS OFFICIAL REPORT

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DAALTYN

LANDLORD AND TENANT (PRIVATE HOUSING) BILL COMMITTEE

HANSARD

Douglas, Tuesday, 28th October 2014

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LTPHB, No. 6

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Members Present:

Chairman: Mr C C Thomas MHK
Mr D C Cretney MHK
Mr L I Singer MHK

Clerk:

Mr R I S Phillips

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The Landlord and Tenant (Private Housing) Bill Committee

*The Committee sat in public at 2.36 p.m.
in the Legislative Council Chamber,
Legislative Buildings, Douglas*

[MR THOMAS *in the Chair*]

Procedural

The Chairman (Mr Thomas): Welcome. This is the final evidence session of the House of Keys Committee on the Landlord and Tenant (Private Housing) Bill.

The Bill Committee is taking evidence today from Hon. Chris Robertshaw MHK, Minister for Policy and Reform, and three officers: Miss Sam McCauley, Policy and Legislation Manager; Ms
5 Debbie Reeve, Director of Housing at the Department; and we are very pleased to welcome as a first inside the Legislative Council, Miss Alison Evans, the Bill drafter who is joining us from outside the Isle of Man.

I am the Chair of the Committee, Chris Thomas MHK, and my fellow Committee members are David Cretney MHK and Leonard Singer MHK, and the Clerk of this Committee is Roger Phillips.

10 Especially given the technological innovation, I would hope that Members can make sure that mobile phones are turned off, and iPads, because in our trials we found that could actually upset the technological challenge that we are trying to overcome and make it more difficult for us. And also, please could Members and witnesses help *Hansard* by not talking over each other; and
15 also we have to be aware that there is a slight delay in the communication with Miss Evans, who is outside the Isle of Man.

EVIDENCE OF

**Hon. C R Robertshaw MHK, Minister for Policy and Reform;
Ms S McCauley, Policy and Legislation Manager and Ms D Reeve, Director of Housing,
Department of Health and Social Care;
Ms A Evans, Legislative Drafter, Attorney General's Chambers**

Q403. The Chairman: Would you like to make an opening statement, Minister Robertshaw?

The Minister for Policy and Reform (Mr Robertshaw): Mr Chairman, yes I would, thank you very much indeed.

20 I would like to thank the Chair and the members of the Committee for the time they have given to examine the Bill. There has been considerable written evidence submitted and this is the sixth oral evidence session held. I am sure you have found these useful in examining aspects of the Bill in detail, but there have been misunderstandings of some of the provisions which I will try and address in my statement.

25 However, firstly I would like to focus on the need for this legislation. The driver for this Bill is to protect the vulnerable, one of the main aims of this Government. Tenants are vulnerable because they can fear eviction from their home if they complain about their property or their

landlord. These tenants may be a small proportion but, with the private rented sector now playing a greater role in the provision of housing on the Island, it is important we act now.

30 For these reasons, as I have always stated, it was going to be very difficult for individual tenants to feel secure enough to share their experiences with the Committee, and I am sure Hon. Members will agree that for an individual appearing to give evidence in these surroundings would be daunting. At the start of proceedings some suggested that the evidence supporting the need for this legislation was purely anecdotal, and it was a localised problem. However, the
35 evidence you have heard, and that has been submitted in writing, contradicts this and supports the evidence received by the Department of Health and Social Care during its consultation on the Bill.

Public Health have outlined that they have:

40 'witnessed dreadful conditions... in the interiors of all types of private rental accommodation'

And that:

45 'in the course of these visits heard numerous tenants stating their fear of complaining to the Landlords or the relevant Government Department because of the threat to their eviction.'

Real or imagined.

Local Authorities have supported this, stating:

50 'In the majority of cases, the tenant declines intervention as they are fearful that it will bring about termination of their tenancy by the landlord.'

The third sector has outlined the different types of problems facing tenants' deposits being withheld, harassment from landlords, no tenancy agreements in place. To quote one
55 organisation:

'There are landlords who rent without entering into agreements with their tenants and who appear to have little regard for rules and regulations'

60 DEFA and the Office of Fair Trading have confirmed that these problems are not just located in Douglas but just as prevalent in other areas of the Island.

The evidence clearly supports the need for this Bill.

Next, I would like to remind Members of the aims of this legislation. There are, as the Department of Health and Social Care have outlined, wider changes that are being brought
65 forward which will seek to modernise and streamline our existing housing legislation. But the aim of this Bill is to create mandatory registration for landlords, and to ensure compliance with both the existing minimum standards set out in legislation governing property conditions and new basic standards governing the letting and management of properties. These standards protect both the landlord and tenant.

70 I am therefore pleased that the Committee process has resulted in broad consensus that registration of landlords *is* beneficial.

The Landlord Association stated in their opening statement that they do not object to a register, and that the legislation should focus on registration.

75 Third sector organisations have given their broad support to the aims of the Bill. To quote one organisation:

'a landlord has the ability to protect his interests by utilizing what is available to him, i.e. credit reference checks... Currently a tenant has no such measures...'

80 DEFA have confirmed that the legislation would benefit them in identifying landlords:

'if we have a better understanding of the location and position of the housing stock we will save so much time and we will be in a position to do more work – more important work.'

85 There may still be some dispute on the way this aim is achieved but whilst some have commented that the Bill is slightly lengthy, as the Chair and Members will be well aware, legislation needs to be specific, therefore certain provisions are required.

90 And in practice, whilst the legislation is important, how the aims are achieved is through the registration process itself. We have demonstrated through the operation of the voluntary registration scheme that this will be a simple system for the Island, allowing landlords to register centrally through a process of self-declaration. We have also kept the fees low and any change to these fees would have to be approved by Tynwald. And, whilst there may be some discussion about where enforcement across Government should sit, we have simply used existing enforcement arrangements under current legislation.

95 Whilst the majority of evidence received has been beneficial, I do want to take the opportunity to state that it has also allowed very personal views to be put on public record, which have often been unsubstantiated and unrelated to the role the Committee was given by the House. The Department of Health and Social Care has had to put on written record minutes of a meeting held between myself, officers and a landlord because of the accusations in that landlord's written submission. As I am sure you will agree, officers of Government are here to
100 carry out their duties and so I am pleased that, following this, the Chair asked for individuals' names not to be used when unnecessary in oral evidence.

105 Equally I was disturbed about misleading information provided to the Committee during oral evidence sessions about a third sector organisation, and whilst this was disputed in subsequent written evidence provided I am sure Members will agree that it is vitally important to hear facts rather than hearsay.

There is still a lot of misunderstanding both of existing legislation and the new Bill, and I would like to take the opportunity to clarify a few points for the public record.

110 (1) Firstly, current standards under existing legislation. There are already standards in place that cover the condition of all types of property whether they are public or private, a flat or a house, an agricultural or farm dwelling or Government-owned. Environmental Health officers can, and do, take action against non-compliance with those standards.

115 (2) Inclusion of leasehold properties: to confirm, the Bill was amended following public consultation to clarify that owners of leasehold properties i.e. those with 21 years or more, who then rent out their property *are* landlords under the provisions of the Bill. But leasehold property owner-occupiers themselves, i.e. the person who owns the lease and lives in the property, are not considered tenants.

120 (3) Existing registers: there are already registers already in place but they only cover houses in multiple occupation, and flats when first built or converted. The Housing Standards Regulations 2013 and Housing Registration Regulations 2013 make it a requirement for the local authority to maintain registers of flats and houses in multiple occupancy.

The requirements do not include up-to-date ownership details. So what we have is simply registers of who owned the property the day it was registered. When such premises are sold, the certificate issued is transferrable, so the data at that point then becomes out of date.

125 (4) On tribunals: again, there seemed to be some confusion about this element of the Bill. Please note that Part 4 makes provision for a review of decisions. These are open to a landlord who is given or entitled to be given an appeal notice about a decision of DHSC about registration, and who is aggrieved by that decision.

The landlord may firstly apply to DHSC to review the decision and once a decision has been made following that review they then have the right to appeal to the Tribunal.

130 Finally, what has come out of the Committee's investigation seems to be a limited number of areas of concern. I would now like to address these.

The first point: penalties are too draconian.

I think that this issue has been resolved through the evidence provided.

135 The maximum amounts are consistent with other recent existing housing legislation: for example the maximum penalty for failing to register a flat or house in multiple occupancy under the Housing (Miscellaneous Provisions) Act 2011 is also £20,000.

140 The DHSC also compared levels of fines in other jurisdictions: in England under the 2004 Housing Act individual local authorities are required to register houses in multiple occupancy but can also introduce selective licensing schemes. Failure to be licensed is an offence under the Housing Act and carries a maximum fine of £20,000.

145 Under the new Welsh Act, landlords and agents will be required to register and become accredited with a local authority; if not, they will be guilty of a criminal offence with no maximum fine. In Scotland, registration of landlords has been mandatory since 2006 and there is a maximum fine of £50,000 for being unregistered. It is important to point out that the value of £20,000 is the maximum fine that can be applied. It would be for the courts to determine what level was appropriate dependent on the case.

150 Moving on to the next point: registration should be simpler, voluntary, or for only benefit-funded accommodation. As outlined to the Committee the DHSC have been running a voluntary landlord registration scheme since February 2013: 115 landlords and 233 properties have now registered. Registration is linked to compliance with minimum standards which set out the responsibilities of both landlord and tenant. One of these minimum standards is to have a tenancy agreement in place which covers areas such as tenant's behaviour in respect of the property. The voluntary scheme has been useful in raising awareness amongst landlords of the existing legislation and how the standards can be used to protect themselves, as well as the tenant. However, if the system was purely one of voluntary registration, then legislation would not be required and you would be unable to enforce any links to minimum standards, except those related to property conditions contained in existing legislation.

160 One of the main aims of the Bill is to make registration mandatory which, having heard evidence from witnesses, seems to be broadly supported. This has a number of advantages which have been highlighted previously to the Committee: there is currently no register of all types of private rented property therefore Government do not know how many landlords or private rented properties there are on the Island. Mandatory registration will provide comprehensive data on what is an important and growing market on the Island, which will be beneficial for analysis and further policy development.

165 The second aim is to ensure that enforcement is not reliant on receipt of a complaint from a tenant – a very important point. You have received evidence from various sources about tenants' reluctance to complain. Mandatory registration will resolve this, as Environmental Health officers will be able to use the register to undertake inspections where deemed necessary.

170 Finally, mandatory registration will provide a quality mark for landlords on the Island recognising that they are complying with the minimum standards. I believe that this will be an advantage to landlords, having clear minimum standards in place and the ability for a landlord to demonstrate that they are complying fully with those standards. This will allow the courts to view such cases with a greater degree of balance, clarity and confidence.

175 As you have heard evidence from Environmental Health officers that these issues are not isolated to lower rental value properties, it is not appropriate to limit a registration scheme purely to those landlords who receive rent in the form of benefits. To do so would not be equitable for other tenants across the Island.

180 On the matter of minimum standards being included in the Bill itself, the minimum standards were included in the consultation on the Bill, and have been publically available since the voluntary scheme was launched in February 2013. They were slightly amended following the consultation and feedback from landlords who have joined the voluntary scheme. They are currently, and have been since February 2013, available on the Government website.

185 As we have outlined in our evidence, the minimum standards in relation to property
condition apply to all housing as they are drawn from existing housing legislation. The additions
are around the standards relating to personal requirements, letting or managing the property,
and some of the standards in relation to managing the tenancy. The Department gave this
detailed consideration during the drafting of the Bill. However, because the majority of the
190 minimum standards are drawn from existing legislation, if included in the Bill itself or in a
statutory document, it would have resulted in complex cross-referencing for the reader.

The decision was taken that the minimum standards would sit in a public document where
they could be set out simply alongside guidance to support landlords. This is similar to other
pieces of legislation, for example under the Regulation of Care Act there are minimum standards
applicable to the care service provided; these are set out in public, not statutory, documents.

195 As already detailed to the Committee, Tynwald procedures have been set out in the Bill.
These ensure that if the Department makes any amendment to the standards which prejudices
or might prejudice anyone's rights or interests, then the amendment must be laid before
Tynwald and is subject to positive resolution.

200 On the matter of the exemptions for public sector and agricultural properties being removed,
this is a key issue for the Committee and I am pleased that the Committee has examined this
area in some depth. As I have stated from the beginning of the passage of this Bill through the
Branches, there are already basic property condition standards in place that cover all types of
rented dwellings including local authority and agricultural properties. All landlords have to meet
these standards and Environmental Health officers can take enforcement action for non-
205 compliance with them.

What the minimum standards in the Bill add is specific standards relating to, as I have said,
personal requirements, letting or managing the property and some of the standards relating to
managing the tenancy.

210 On public sector housing, these standards are either not applicable or already apply to public
sector housing as detailed below.

On the issue of personal requirements, this is not applicable to public sector housing as the
letting process is undertaken by the local authority or the DHSC, not an individual landlord.

215 On the matter of letting or managing the property, there are standard Tynwald-approved
procedures in place for the allocation and management of all public sector housing. To give
examples, public sector housing has standard tenancy agreements charging a weekly rent which
is payable in advance, and which is calculated using a common formula. All tenants are issued
with a rent card, or equivalent, which clearly sets out all the charges to the tenant: rent, heating
charges where applicable, and the rates charge.

220 On managing the tenancy, standard procedures such as allocation and arrears management,
are also in place for managing public sector tenancies. Again, to provide some context, landlord
contact details are contained on every letterhead, are printed on the rent card or statement and
tenant's handbook, including office opening hours, how to report a complaint or repair and
emergency repair numbers. Occupancy levels are determined by size of property – that is square
225 floor meterage – and are set out in the affordable housing standards.

230 Public sector properties already have to meet all property condition standards as set out in
existing legislation. Environmental Health officers can, and will continue to be able to, take
action against local authorities or the Department if public sector properties do not meet the
existing standards. Environmental Health officers enforce against the standards regardless of the
owner as they would not be fulfilling their duties if they did not. There are publicly accessible
management arrangements in place for all public sector housing. These are overseen and
audited by the Department and exceed those minimum management standards introduced by
the Bill. Finally, public sector tenants have greater redress if they make complaints, through
formal complaints procedures but also the political process, which is well known to some.

235 The private and public rented sectors are very different markets. Some landlords have
commented that their exclusion from the Bill is not equitable, but for the avoidance of doubt

provision of public sector housing is not a 'light touch' process, it is prescriptive and subject to much greater control than the private sector. For example, DHSC has the ability to determine rents for the sector; local authorities have to submit detailed performance management data to the DHSC. The aim of the Bill is about light touch regulation ensuring compliance with minimum standards through a simple registration process, therefore their inclusion would not be appropriate.

Turning to agricultural holdings and farm premises: these properties already have to meet all property condition standards as set out in existing legislation, and Environmental Health officers have and will continue to be able to take action against landlords for properties that do not meet these existing standards.

Tenancy arrangements for those properties are very different and are contained in legislative provisions under the Agricultural Holdings Act 1969 and Agricultural Tenancies Act 2008. These provide unique conditions and rights of redress for the tenants of those properties. For example, notice to quit periods, a tenant's right to remove fixtures and fittings, rent reviews and compensation for improvements. Their inclusion in the Bill would therefore not be appropriate.

Finally, the Committee had a number of additional queries relating to the drafting of the Bill. These were submitted in writing to the drafter, who provided a very detailed response and is appearing today to provide further information if required. However, as I outlined in my letter to the Chairman, policy questions should be directed to me to answer. Furthermore, I know that the way the Bill has been drafted may differ slightly from some other Bills, especially those that are a bit older, but background has been provided to the Committee on drafting styles and current best practice being followed by the Attorney General's Chambers. I trust therefore that any questions will focus on substance rather than style.

In closing, I hope that the evidence provided to date has helped address the Committee's questions but that today will allow you to raise anything outstanding in order for you to report back to the House of Keys in the timescale outlined by the Chairman in the House this morning.

Mr Chairman, thank you for allowing me that rather protracted statement.

Thank you.

The Chairman: Thank you very much, Minister, for making it. Fortunately the Bishop was not sitting in his normal chair, so he could not actually pass you messages about having exceeded your time!

I appreciate, as well, your comment about reminding us and putting on record that we had to try to stress that officers' names should not be part of our transactions, and I apologise to any officers for any reason if it is necessary for that. I also noticed that you remarked on the fact that we had published written evidence along the way, and we do not believe we have exceeded any of the constraints under which we are operating when we do that – but we do appreciate the feedback from your point of view about that. And finally, I notice you stressed that you wanted us to focus on facts rather than hearsay, and I can assure you that is our intention as we go about our business.

I also wanted to check with Miss Evans whether she had been able to hear the Minister when he was speaking, sufficiently to ensure the process is working. Can I assume that?

Ms Evans: Yes, it's working well.

The Chairman: Lovely.

We are going to start then by asking the Clerk to continue the matters raised in the correspondence to which the Minister referred just a moment ago, with some questions he has and which I will supplement with policy questions when we feel they stray into policy as opposed to drafting.

Q404. The Clerk: Thank you, Chairman.

290 I am just going to go through some of the issues that I raised with you in writing earlier and on which you have very kindly provided me with some written material. Just to get the idea of the general landscape, this Bill was based on a Scottish precedent, I believe, to begin with. Is that correct?

And then Mr Beale, your predecessor, started off writing it and at some stage you came in to deal with the Bill? Is that correct?

295 **Ms Evans:** That is right. I picked up the Bill after it had been to consultation so conceivably when Mr Beale provided it to the Department it was for all intents and purposes a final product. It went out to consultation, the Department collated their responses to consultation and instructed the Attorney General's Chambers accordingly.

300 I have no knowledge of the drafting process that was taken to get to the consultation draft.

Q405. The Clerk: Okay, thank you very much.

To some extent you have my sympathy because it is quite a difficult job to take in somebody else's work 95% of the way through. So all my questions will be bearing that in mind.

305 **Ms Evans:** Thank you, yes. As I outlined in my first written response there were... certain other drafters may well have picked up a draft and rewritten it, that is a stylistic tendency of some drafters to say, 'Well I cannot pick up' – what we refer to as – 'a half-eaten sandwich, I need to start from fresh.' But this one was so very far advanced that it really was preferable to take the lightest touch possible.

310

Q406. The Clerk: I am not inviting you to be disloyal to Ian Beale, but you would presumably have done this your own way and it would have been a different product, because there are lots of different ways of doing this?

315 **Ms Evans:** Yes, that is right. I think anyone who worked with Mr Beale during his time in Chambers, would be aware that Mr Beale has quite a distinctive, very modern drafting style. He is a very experienced, very competent drafter, but at the same time I do understand why some people find some of the techniques that he uses out of the ordinary for what they are accustomed to seeing on the Island.

320

Q407. The Clerk: I think that is put very fairly, thank you very much for that, because I think it is true. We have just had a presentation about the Interpretation Bill and the Legislation Bill and I think there is more of this on its way. It is new, that does not mean it is wrong, but not all new things are necessarily an improvement so we will see – it is a matter of taste sometimes but...

325

Ms Evans: That is right, and I can appreciate in some of the Committee's questions there are a number of points where you said, 'Well why didn't you do it this way?'

330 And unfortunately the simple answer is, 'Well it was not legally wrong.' It would be a bit like having your assignment marked by the teacher before you submit it, and then changing it after the teacher has marked it.

The Department had gone through this consultation process, and it would have been wrong of me to come in and change a lot of things that did not need to be changed from the Department's perspective.

335 **The Clerk:** Fair enough. I think the Chairman has a question.

Q408. The Chairman: Did I pick up you wanted to add something, Miss McCauley?

Ms McCauley: No, not at this stage.

340 **The Chairman:** Okay, thank you.

The Clerk: After I have dealt with Miss Evans, I think the Committee is going to start asking some more policy-based questions –

345 **The Minister:** It was highly disconcerting when Roger was looking at the screen, I thought he was looking at me!

The Chairman: Oh I see, that is what it was.

350 **The Minister:** It is a new experience...

The Chairman: And while we are interrupting, is it working okay from *Hansard's* point of view? Thank you very much.

355 **The Clerk:** Maybe I will put my hand up....

Ms Evans: It is amazing, how culturally reliant we are on eye contact to know when somebody is asking us a question.

360 **Q409. The Clerk:** Well at least we have all got that elephant out of the room!

Clause 2, this may well be one of the points you were just talking about, and all the way through the Bill it is 'DHSC', rather than 'the Department'. Most drafters probably would be more traditional and just talk about 'the Department', simply because any time there is a change in the name of the Department, or a transfer of functions you do not need to reword the entire Bill. It is not a major point, but it is a point that is a significant irritant perhaps to some people who read it.

365

I think we can probably just leave it at that then.

Ms Evans: Yes, I guess I would respond to that by saying that *definitely* was a mark of Mr Beale's style, and to change it... I understand why it is an irritant people, it works in both ways. I understand from the Island's perspective.

370

The Island – and I guess as a background note it might be interesting – has a very particular public sector structure that is not replicated in other Commonwealth jurisdictions, and so when Department names change it is a lot easier in other jurisdictions if you have references across the statute book. In the Island there is a very extended process that needs to be gone through to deal with the Transfer of Functions Orders.

375

Unfortunately when you come into another jurisdiction you do bring your drafting tendencies with you, and that was one of Mr Beale's. Personally, I would have just gone for 'the Department' and as we know there is already one error and it does lead to necessary referencing changes.

380

The reason why I did not change it in this case was it would have been a significant cosmetic change.

Q410. The Clerk: Yes, fair enough, okay.

385 The more significant point which I raised with you was the confusion potentially over 'lodger' and 'tenancy'. In one of your responses you say, 'I consider...' – and you do put this in quotations, so it is obviously lodger in context of the Bill – 'I consider "lodger" to be a particular type of tenancy' and clause 5 has been constructed in a way to make this clear. And you can see why for most people who have had quite a lot to do with the landlord and tenant law, this does seem to be defying gravity anyway, because there is a very clear distinction throughout all the cases, certainly in England and Wales, and I suspect Manx law, between a lodger and tenant.

390

And including the lodger in the tenancy almost by accident was very strange to read, if you see what I mean. It is not expressly done, it is just done almost by way of putting in a surprising exemption.

395

Ms Evans: This is a really complex issue I think, and I can appreciate the point of view you are bringing to it. That is that we have got two concepts that are used very distinctly in the case law and never the twain shall meet, in some regards.

400 I think there are a number of things going on in the Bill that need to be borne in mind when thinking through the analysis of what is happening. The first thing is the legislation is setting out a concept of tenancy, so when I have said I consider lodger to be a particular type of tenancy, what I am looking at is the definition of tenancy that sits within the legislation. What would have been technically wrong would have been to say a tenancy is whatever it means at land law and then a tenant is excluded from that concept. That would have been technically legally wrong.

405 But I think what we have got here is a very broad definition of a concept that encompasses things that are not technically leasehold tenancy. The Bill has deliberately captured things which are licensing arrangements, and things like that, as a matter of fairness – and I understand that was the underlying policy but the Department may be able to give you a bit more detail on that.

410 So I think that it is important to remember that the legislation is what is determining our definition of the concept of tenancy. We are not looking to case law for the definition. We are overturning basically what the case law says and I think the definitions that I have looked at... or the case law that I have looked at focuses specifically on pieces of legislation as well as the interpretation in those contexts.

I think the litmus test for us all should be – can you still hear me okay?

415

The Clerk: Yes, sorry –

Q411. Mr Singer: Can I just say one thing to Alison?

As a lay person to me there is a big difference between a lodger and a tenant.

420

Ms Evans: I guess –

The Clerk: It is partly to do with the experience of most people who may take in a lodger or may not.

425

Ms Evans: Perhaps the other way, or the better way to think about it is to flip it on its head –

[The connection was lost on the live video link.]

430 **The Chairman:** We just lost you for one moment, so while we are –

The Clerk: Yes, we have just lost her.

Mr Singer: It says ‘reconnecting’.

435

The Chairman: So while we are catching up with that perhaps as the legislative drafter talked about the policy intentions, I am just going to give you a warning that it would be helpful for us to understand the policy intentions as well as the legislative drafting.

440 **The Clerk:** Can we just delay... ? If we finish with this point, because it is particularly crucial, I think.

The Chairman: It never happens at Manx Radio, does it!

445 We have just got a technical break – for the recording – while we reconnect with Brussels, I see from the number.

Mr Singer: Houston, we have a problem!

450 **The Chairman:** As they would say on a radio broadcast, we apologise to our listener! (*Laughter and interjections*)

[The live audio link was re-connected.]

455 **Mr Singer:** If Alison can hear us, can we continue talking?

Q412. The Clerk: Now that we have seen each other, shall we carry on just talking, blind...?

Ms Evans: We will continue, with just...

460 I think I was halfway through a sentence to say that if we flip this on its head, and just for a moment consider that we did not have the paragraph in the legislation that referred to lodgers – if we do not did not have it there at all, would there be a problem with the operation of the legislation? And would someone who picked up the legislation who was a lodger, or who *had* lodgers, be worried about whether or not they had to register under the scheme?

465 I think the answer to that would be yes, because of the way the definition of tenancy is built, because I think someone who is a lodger does have some kind of agreement. Under that agreement they are paying rent and they are granted a right to exclusively occupy. I know there is a little – well, to me there is, there may not be to the Committee – but to me there is a little bit of a lack of clarity around the distinction between the concept ‘exclusive occupation’ and ‘exclusive possession’.

470 Exclusive possession is very clearly a land law concept required to establish that a tenancy exists. It is about the idea of being able to exclude people from premises, to be able to act like you owned the property and exclude people for trespass, and things like that.

475 From my reading of the case law, ‘exclusive occupation’ is not as fulsome a right as that, and the case law I read around lodgers, and having exclusive occupation, is that you still may not have that full right to exclude people completely –

Q413. The Clerk: Can I just pause for a moment there?

480 I would have thought that exclusive possession and exclusive occupation were often used to mean very closely the same thing, and that the line of distinction –

Ms Evans: And I think that is correct.

485 **Q414. The Clerk:** Yes. And that the line of distinction, actually, is the sort of thing as in *Street v Mountford* where they refer to rather an older case in the 19th century about having the right to *enjoy* exclusive occupation, but you do not have actually *have* exclusive occupation, and that is what a lodger has.

So one of the difficulties I face with the right to exclusively occupy, is that really is defining what a tenancy is, and it does not include lodgers.

Are you still there?

490

Ms Evans: Yes, I am still here.

Q415. The Clerk: I would have thought... that is why I am concerned that this might be an avenue that would lead to litigation; because people might not quite unreasonably say, that if

495 you do not have a right to exclusively occupy but you have a right to *live* in the room but that is not the same thing, then the Act does not apply to you.

Can you see why I am worried that there would be litigation on this point when there are so many cases about this sort of statutory provision?

500 **Ms Evans:** Yes, I can see there is an argument to be raised there.

Q416. The Clerk: Okay. It is not just us talking, because otherwise this would be very enjoyable, we could spend a long time on it. So I want to move on, but I sense that partly for technological reasons and partly for every other reason, people would like me to move on. So I think we will just park that, because at least I think we understand each other that there is a problem that might be thought through a little bit more?

505 **Ms Evans:** I am certainly happy to think through the problem, I think though, if... just as a final note on it, I think that if that is the problem, the problem does not necessarily only lie with the inclusion of lodger.

510 **The Clerk:** That may well be true, it is just the one that leapt out off the page to me when I was looking through the Bill. There may well be other more fundamental problems.

515 **Q417. The Chairman:** Is there anything, from a policy point of view, you would want to add at this point? So it is connected in time –

Ms Reeve: Obviously we can talk at some length in terms of the definitions, but the reason it is in there is to *exclude* lodgers of up to two in any individual property, so that they are *not* captured by the Bill. But the whole... it is what the definitions are, around that.

520 **Q418. The Clerk:** In a way you would be better off not having tried to exclude the lodgers at all – it might have been simpler. But the fact that you are trying to exclude them in a limited way raises the difficult question about what exactly we are talking about here.

525 **Ms Reeve:** I think it is about the exemption, isn't it, because there are arrangements where friends will lodge with other friends, and obviously that is – ?

Q419. The Clerk: You can just imagine the situation where somebody, typically somebody from not on the Island rents a flat, has a couple of mates to stay from the same town in wherever... and then a third person comes along and... query, has he suddenly got someone who has to be registered or not?

It is absolutely tailor-made for some serious problems which might lead to litigation.

535 **The Minister:** How would that extra person have to be registered?

Q420. The Clerk: Because the exclusion only applies to two lodgers, do you see?

540 **The Minister:** Oh, I see.

Ms McCauley: But also I think in terms of somebody staying and having an arrangement in place whereby rent is paid is quite a different arrangement. Having an informal –

545 **Q421. The Clerk:** Well, 'exclusively occupy', a lot of it turns on that.

Ms McCauley: But also is based on, as Alison pointed out, the definition of the tenancy which also includes the fact of having an arrangement in place for the payment of rent, so it is the inter-linkage between the two.

550 **Q422. The Clerk:** That is right, but you can see how in the real world there may be quite a formal arrangement with rent passing hands, and a definite agreement, and yet it may be a surprising outcome for some of the people involved.

Can we move on to 'closely related', Alison?

555 **Ms Evans:** Sure.

Q423. The Clerk: Section 5(1)(d) exempts the Bill from a landlord and a tenant if they are closely related, and then the definition of 'closely related' is clause 5(3), where they are:

560 'closely related to another person if the persons are connected by whole blood, half blood or by marriage, civil partnership or some affinity other than kinship'

And I just wondered what sort of relationships would be covered by this rather wide phrase 'are connected by some affinity other than kinship'.

565 What does it mean?

Ms Evans: This is a difficult question to answer in a way. (**The Clerk:** Yes!) I have picked up the definition from the Regulation of Care Act, as I have noted in my evidence.

570 I think you have to read 'affinity other than kinship' as qualified by marriage or civil partnership. So I think it would have to be some kind of legal formal arrangement that joins two persons together legally. I think it is quite a limited scope.

I do not think you could say... a person I went to university with, we were in the same fraternity together, so therefore we have affinity other than kinship. I think it has quite a narrow scope.

575

The Clerk: But when the whole phrase is read together, a person:

'is closely related to another person if the persons are connected by...'

580 – the various things –

'or some affinity other than kinship'

585 Does that extend to children of a relationship?

Ms Evans: The children would have to be the connection by whole blood.

590 **Q424. The Clerk:** Not necessarily, if it is qualified by marriage or civil partnership or some other affinity; because you are already allowing whole blood or half blood relationships. So it could be two people in a former partnership, could it not?

Ms Evans: 'Connected by marriage': yes, to me that would capture children –

595 **The Clerk:** You can see it is getting fairly –

Ms Evans: – of your new partner. That to me would capture stepchildren, you are connected by marriage.

600 **The Clerk:** You could go through the whole degrees of relationship; you can see why –

Ms Evans: You could go through the whole degrees of relationships.

The Clerk: It is a very vague provision, considering that it is actually disapplying the Bill.

605 **Mr Singer:** You do not need it?

Ms Evans: Well, I am afraid I have to refer that back to the Department, because I was explicitly instructed to include that definition.

610 **The Clerk:** Okay, absolutely fine. It is a policy issue and the Committee can deal with it as that, I am sure.

Q425. Mr Singer: Can we deal with that now?

615 **The Clerk:** Yes, absolutely.

Ms McCauley: Why is it required at all? (**Mr Singer:** Yes.) Because there are a number of relationships that people have whereby they do potentially have a form of rental agreement even if it is with, say, a child in some form, and so we want to ensure that they were not captured within that. So in terms of, you were closely –

620 **Q426. Mr Singer:** Doesn't that come under all of these definitions: marriage, civil partnership... ?

625 **Ms McCauley:** But to cover that broadly in the same sense, we asked to use the same definition from the Regulation of Care Act for consistency to cover all those types of relationships in fullness.
That was our instruction.

630 **Mr Singer:** Okay.

The Clerk: The next point I was going to raise was about clause 8 and the inclusion of minimum standards in the Bill or not – and that is really a policy issue. So Chairman, if you wanted to take over at that point?

635 **Q427. The Chairman:** Clause 8(3) proposes a regime by which substantive changes must be laid before Tynwald, but minor corrections may be made without reference to Tynwald.

640 So the question is, what is so onerous about having to lay any change before Tynwald? And, would a bit of formality not have been a better thing to do, to make sure the minor details were correct as well as the bigger details?

645 **Ms McCauley:** They are laid before and subject to positive resolution, so what that was to capture was very minor changes, i.e. if there was a spelling error, which obviously unfortunately with human error can sometimes occur; or if new legislation was brought in, say the Equality Act, and we wanted to refer to that legislation in the standards because they are a working document. There is supposed to be a procedure, they are supposed to incorporate the guidance so that they are fulsome and practical for landlords to be able to use. So it was to capture elements like that.

650 It would not be onerous, no, for us if we were to actually fundamentally change one of the standards to go back, and that would be when we had laid before and they would be subject to positive resolution.

655 **Q428. Mr Singer:** Who makes that decision as to whether it is a very minor, or it is perhaps more onerous?

Ms McCauley: Again, to see whether it prejudices anybody's rights. So if we thought in any way we were prejudicing someone's rights by including something in guidance, I think that is what would be the judgement we would have to make, and obviously we could be questioned upon that by members.

660 **Q429. The Chairman:** Would you stick by that, or perhaps this is one area that we have actually had brought to our attention more than many others – if not the most – and a worry, a scepticism about potential abuse of this. I wondered whether this was something that you were completely focused on and insisted upon, or is it something that you might be prepared to concede on?

The Minister: But couldn't the Department be taken to task, because it quite clearly says if the amendment prejudices or *might* prejudice? Therefore, it encompasses a very broad range of requirements to lay before and therefore it is only the *very* minor, that clearly did *not* prejudice that would be adjusted internally.

The Department could be taken to task if it tried to avoid the Court.

670 **Q430. The Chairman:** Is it worth getting a drafter's comment?

675 **The Clerk:** I think this is more of a policy issue.

Ms Evans: Could I just add something to that?

680 I think if you were to make changes to the minimum standards, and the change did prejudice or might prejudice anyone's rights or interests, I think it would be beyond power to make the amendment in the first place.

Q431. The Clerk: Yes, absolutely, point taken.

Could I draw your attention, Alison, to clause 11, which is:

685 'Provision to put into context certain references to defined terms'

I just wondered if you would not mind explaining what clause 11 is for?

690 **Ms Evans:** This one is quite a challenging clause to read; I found it challenging as a drafter to try and understand what it was Mr Beale was doing with it. Let me start with what the provision I *think* is trying to do.

I think what it is there to do is to create a narrative context for references that occur throughout the Bill. And so when I talk about something being in the narrative, in drafting terms we talk about... we might have a provision that says, 'If *a* person does X, Y or Z, then *the* person may be liable for an offence'. That is a stock standard way of drafting in the narrative.

695 I think what Mr Beale is trying to do here is to set up that narrative for particular types of things within the Bill. So when we look at paragraph (a):

700 'in a provision about a particular privately-rented tenancy or rented dwelling, a reference to the landlord or the tenant is a reference to the particular one under the tenancy'

If we did not have a provision like that, what you would have to do in *each occurrence* referring to a particular privately rented tenancy, would be to say in that particular provision when you wanted to refer to the landlord or the tenant, you would have to say, 'The landlord *for the particular privately rented tenancy in question*'.

705 So I think what clause 11 is there to do is to, as the section heading says, really give context to certain concepts that are defined throughout the Act; and it is a highly technically legal accuracy device. I think if I was drafting this, personally I would avoid trying to use a device like that because I do think it can be confusing for readers.

710 **Q432. Mr Singer:** In that case, Alison, it is lay people who are going to – Members – have to understand this in order to vote for it or against it. Therefore if it is difficult for *you* to understand and explain, it is not going to be understood by the Members of the House of Keys, and therefore should it not be redrafted so that it is easy for the Minister to stand up to explain when he is moving it, and so there is no worry that people are passing something that they do not understand?

715 Would you not think it would be better to redraft it more simply?

Ms Evans: To be honest I would need to redraft the entire Bill. I would need to sit down, go through each occurrence that this provision is operating on, figure out how it works and then re-craft language around it to make it work without that operative provision.

720

Q433. The Clerk: I think your, if I may say so, explanation has been extremely clear of something that is a *very* difficult. I do not want to put you on the spot unfairly, but clause 11(b): is there anywhere in the Bill where actually this does apply, and in particular '*vice versa*', whatever that may mean in this context?

725

Ms Evans: I would have to go hunting, Mr Phillips. I am happy to go hunting if you would like me to but I would really have to sit down and do a bit of analytical work on that.

730 **Q434. The Clerk:** I think that if you had been the original drafter it would have been a fairer question, but I am very aware that you have come to this very late so I am not going to detain you. It is just ... I think we have established this is an enormously puzzling clause for most people and it is a feature of the modern style of drafting.

735

Let us leave it at that, shall we?

Ms Evans: Yes, but I would qualify that to say that I would be carefully listening to the views of people saying that it is a complicated provision to understand. Given an opportunity to revisit it – and I think it is something that certainly drafters, I would like to think, would take on board as feedback. Modern devices can go a little mad sometimes, they can be very technically accurate, but potentially unhelpful.

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The Clerk: I think it is maybe being a bit over-clever to compress things too much; yes, I agree with you.

745 **Q435. Mr Singer:** Can I ask one question of you, Alison?

Obviously you came in, as you said, nine tenths of the way through this Bill. What actually have you drafted in this Bill, as opposed to what Mr Beale drafted?

How much have you drafted?

750 **Ms Evans:** That is a difficult question to answer. My instructions related to... let me just, I have got a bit of a list at the front of my evidence.

We worked around the concepts of landlord and tenant, in particular a lot of consideration went into how to impose the obligations on the correct landlord, this issue of the 100-year lease and making sure that the leaseholder, or the tenant, under that 100-year lease effectively stood in the shoes of the owner.

755

I included a new defence about tenants' and agents' conduct.

We added an exemption to clause 5, I cannot remember... Miss McCauley may be able to remind me which one it was.

760

I included the definition of 'closely related'; I varied the provisions about the appeals process after the consultation; and we made some small, minoring readability changes; and I moved around some provisions that people had had a particularly difficult time in understanding – I simply swapped the order

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So, to be honest with you, my pen has not touched a lot of this drafting for the reasons that I have outlined before; and I would say this does not reflect my drafting style. So if the Committee finds things a little unusual, I have come to it with the same approach as having to understand the work of someone who has done something before me.

Q436. Mr Singer: So you are trying to defend something which you have not produced, which does not seem very fair.

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Ms Evans: That is the drafter's lot, to an extent. *(Laughter)* Well it is, because every time we pick up an amending Bill to amend another piece of legislation, it has often been done by a drafter who no longer exists. So we have to become very good at speculating on what we think it is that provisions do. And 90% of the time we can figure it out. But this has been a particularly unusual Bill: Mr Beale's style, the extended consultation process that the Department undertook – not that that was unusual, I think it is a terrific thing – but the state that the Bill came to me in meant that my remit was quite limited.

775

Q437. The Clerk: Okay, thank you very much.

780

Could we go, Alison, to clause 12(2). Would you like to talk us through this one because it does read very oddly?

Ms Evans: Yes, and I think this one is one that we can look to amend, to have it more readable. When I first got the Committee's questions I did a bit of a double take and thought, 'Has it really gone so skewiff?' But I now realise what it is that I have done and I think we can reword it.

785

I think what I suggested to the Committee, which was moving the scope of 'one or more of the following circumstances' so that it reads a bit more clearly, I think will improve readability.

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Q438. The Clerk: Your explanation was, as ever, very clear and lucid, but it does need to be done because obviously we have got your experience but the person reading it will not necessarily have it.

Okay, thank you very much for that.

Clause 61(3), I know it is bit of a leap forward:

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'If more than one penalty is stated for an offence joined by the word 12 "and" or "or", the penalties may be imposed cumulatively or alternatively.'

Can you just talk us through that one?

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Ms Evans: As puzzling as it may appear, I am afraid that it is the state of the law now. We have section 25 of the Criminal Jurisdiction Act, which already says that very thing. We are going to be including this as the law in the... I believe it is going into ... is it the Legislation Bill?

805 This really just clarifies the position that even when you are using 'and' that you also have the capacity to impose it as an alternative. And this is not uncommon, this is the case in Australia as well, which is the jurisdiction I am most accustomed to drafting in.

So I appreciate that it may appear a little obfuscating to the Committee, but it is quite a common device.

810 **Q439. The Clerk:** Okay.

Clause 13, the point taken there about a non-compliant landlord, and whether this was intended to prohibit the landlord from managing the property, that is I think something you regarded as more of a policy?

815 **Ms Evans:** Just one moment, just let me track to clause 13...

820 Yes, this is ultimately a policy question for the Department, but I think what we are trying to do is... and it was not very clear to just prohibit 'management' because we could think of when we were looking at the provisions, and when we set out the concept of 'representative agent'. This was, now that I talk of it again, one area where we clarified the way the concepts were set up from the consultation draft. So this defined label of 'representative agent' is a new idea to distinguish from the case where you have got just a nominated agent who is acting for you

825 **Q440. The Clerk:** You say in one of your answers that it would be imprecise to refer simply to 'the landlord'. Why is that?

Ms Evans: Yes.

Q441. The Clerk: Why is that?

830 **Ms Evans:** Because the defined term says that they are generally a landlord in accordance with the definition, but there are going to be some situations where they are *not* the landlord.

Q442. The Clerk: Can you give an example?

835 **Ms Evans:** I am afraid that I cannot.

Q443. The Chairman: Can we ask from a policy point of view?

The Minister: Sam.

840

Ms McCauley: To give a specific, I could not at this stage. I am sorry, I apologise. It is quite –

The Clerk: I know this is a very difficult session to follow.

845 **Ms McCauley:** It is not that. It is quite difficult just to track through where you have got to with the questions and what Alison has already provided, so I do apologise. I am happy to come back, in terms of that, in writing.

850 **Q444. The Clerk:** Because of the time constraint the Committee is under, could you come back to me in the next day or so?

Ms McCauley: Yes. So that was specifically an example...?

855 **Q445. The Clerk:** Actually, if I can help you, it is about the answer that Alison gave... answer number 38 in her paper to me, where she says, 'There will be situations where the person is not a landlord.' So you just need to give me an example of that. That would be very helpful.

The Chairman: The use of 'a registered person' under schedule, and so on.

860 **Q446. The Clerk:** Can we turn to clause 18(4)(b) and (4)(c)? Is this stating the obvious or is it actually necessary?

Ms Evans: Maybe it is stating the obvious but I think it is also stating it completely.

865 **The Clerk:** Right. Is it – ?

Ms Evans: So, yes, it may be the obvious circumstance but legislation is not always about just stating things that are not obvious. I think for the sake of completeness those two things have been included there.

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Q447. The Clerk: I take your point that sometimes statement of the obvious is very useful actually because people forget what the obvious is, especially if they are reading a complex Bill; but it just struck me as being a bit otiose. I was not sure quite why they were necessary there.

875 **Ms Evans:** Okay. So you have got the DHSC giving, at any time, a landlord a notice of contravention. If the landlord gets the notice of contravention they cannot then benefit from it; it is a punishment to them (**The Clerk:** Correct.) once they get the contravention notice.

You have got the contravention notice and you also cannot get rent, and you also cannot then terminate the tenancy because the person has failed to pay that rent; but this provision:

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'does not apply –
(a) to an amount that is a charge for a service provided in connection with the right to occupy the dwelling;'

– so I presume that is electricity –

885

The Clerk: That is okay.

'(b) if the landlord becomes, and continues to be, registered or an exempt landlord for the dwelling;'

890 **Q448. The Clerk:** So that is covered by (3)(a) because it refers to all or part of the contravention period?

895 **Ms Evans:** No. I would say that... yes, I would think that (4)(b) is necessary because I think what it is saying is that just because you got in trouble for doing something, you cannot then overcome that by registration –

The Clerk: Well, (4)(b) says –

900 **Ms Evans:** – and you cannot overcome it if you suddenly become exempt. So it is preventing a landlord from engineering their circumstances such as to be exempt from the application of the Act. That cannot undo a regulatory failure that has gone before.

Q449. The Clerk: Do you mean that you cannot backdate that claim for rent if you subsequently become registered? Is that –

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Ms Evans: I think that is right. That is what I would interpret it to do and similarly with (d) –

The Clerk: But one would argue –

910 **Ms Evans:** A new landlord cannot also go backwards, or actually *can* go backwards; they could recover stuff because it does not apply to them.

Q450. The Clerk: Yes. We will have to re-read that and think about it again. I am not sure it is necessary still, but anyway. Can I turn to a slightly more general point and that is the right to be registered?
915

Ms Evans: The right to be registered, yes.

Q451. The Clerk: Do you think there is a right to be registered?
920

Ms Evans: Yes, I think there is a right to be registered. I think –

The Clerk: How could that be enforced?

925 **Ms Evans:** Sorry, Mr Philips, that just got blurred for a moment then.

Q452. The Clerk: How could that be enforced? Do you think someone could go for a petition of dolence if the Department behaved unreasonably and declined it?

930 **Ms Evans:** Yes, I think they could. I think they could, but it would be very unusual. I think the right is contained in 24(1)(a) I think it would be very unusual for a legislative provision to include a penalty for a Department that fails to comply with an obligation of that kind.

Q453. The Clerk: It is not about a penalty, is it? It is more about a statement of... because you are talking about the use of people's property and their right to let their property, which is kind of a fundamental right to the fruits of what you own. It just seems strange that it is not... (**Ms Evans:** Yes.) having just talked about stating the obvious – not to put it in the Bill, to say actually, 'You have the right to be registered, unless...' if you see what I mean? One could have approached it in a different way.
935

940 **Ms Evans:** I think what is there is tantamount to an effective right. I am just glancing through the Bill, to look for a provision that says that even if the register is not up to date, it does not mean that it is not in force, if you understand what I mean, because that would be a roundabout way of dealing with the issue that you are suggesting.

945 I can understand what you are saying: because significant rights hang off registration for a landlord, that if a Department does not do what it is obliged to do under the piece of legislation the consequences flow from that for a landlord.

Q454. The Clerk: If you want to give us a note in the next day... because I do not want to put you in an unfair position, and if you have an hour or two to think about it subsequently and you just want to send me an e-mail, that would be fine.
950

Ms Evans: Yes. There is not a provision that I have seen. In some locations it is not present, but I guess one of the fundamental assumptions that a drafter gets taught is that you can assume that if you impose obligations on the executive that they will comply with those obligations, for the better or for the worse. I am not suggesting that is the case in all circumstances.
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In this case, this would be one where I would assume that you would impose an obligation on the Department and that they would comply with their obligation.

960

Q455. The Clerk: Okay. Thank you.
Could you turn now to clause 34(a)(ii) –

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The Clerk: – and just talk us through that one because that is slightly strange: ‘the person for the dwelling’. It reads really strange.

970

Ms Evans: Yes. As I have said in my response to the Committee, this one is again one of those narrative devices; and I will say a strong feature of Mr Beale’s drafting is the use of these narrative devices (**The Clerk:** Yes.) and relational devices, where you define a concept, you attach a particular label to it. You will notice throughout the provisions of the Bill that he uses a lot of what we refer to as ‘labels’ and he picks them up and he relates things to them and then uses –

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Q456. The Clerk: If you are a drafter it makes sense, but if you are anybody else it is quite difficult to read, to be honest.

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Ms Evans: I take that point and that is certainly some feedback that I have received from a number of readers of legislation over the 10 or so years I have been drafting, so I try to avoid them unless I absolutely have to use them. (**The Clerk:** Okay, thank you.)

But ‘of the person’ really has to be related to the concept of ‘letting agent’, which if you go to the definitions in schedule 1, letting agent is ‘letting agent of a person’, so that means every time we use it we have to say ‘letting agent of *the* person’ in order to capture that relational setting.

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Q457. The Clerk: Okay. I think I have only one more point which I want to raise with you and that is about clause 41: ‘all reasonable steps’ –

990

Ms Evans: Yes.

The Clerk: What that means... because that is one of those very practical issues that your ordinary landlord is going to want to know about and may lead to penalties or not?

995

Ms Evans: As I am sure you are aware, whenever we use ‘reasonable’ in a drafting context we are imposing both an objective and a subjective component. We are asking for a consideration of what would a reasonable person do in the circumstances, but then we are looking subjectively to the circumstances to figure out what it is that would be reasonable in that particular case to do.

1000

We have then gone on to add a gloss to that to say it definitely is this thing of searching in the Landlords Register, but we are not locking it out to other things that they might be able to do. So I guess another thing that they could do, would be to make reasonable enquiries, they could call one of the Departments or something like that, to ask them.

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Say the internet was down on the particular day they went to search the Register and they said, ‘Okay, instead, we will call the Departments or we will write them a letter’ or something like that. It would be something that the defendant would be required to prove, that they took steps that were reasonable in the circumstances.

1010 I guess it is a matter for the Department as to how they might deal with that. Perhaps they would issue administrative guidance. That is really a matter for the Department, as to how they would see that playing out.

1015 **The Clerk:** Alison, I just want to say thank you very much indeed. You have been enormously clear and I think we are all aware of what a difficult job you have been handed. This is not the easiest of reads and you have taken it over at the last minute, as it were, in its life. So thank you very much indeed for all your assistance so far.

Ms Evans: Thank you. No problem at all.

1020 **The Clerk:** Chairman.

The Chairman: Also, thank you for accepting the invitation as a legislative drafter to come to our Committee, because that is relatively novel in the Isle of Man context. We have found it particularly valuable and I think we will do as we finish off our work in the next month.

1025 **Ms Evans:** Okay, terrific. I will say it is a fairly unusual thing for a drafter to do – not in all jurisdictions. In countries like New Zealand, the drafters appear as a matter of course at the Committee once the Bill has been introduced. But it is quite difficult to coax a drafter out of their natural habitat (*Laughter*) into a public forum.

1030 **The Clerk:** It may be nice if you were to hang around though, to listen to other...

1035 **Ms Evans:** Certainly. Yes, please. I would like to hear the rest of the evidence and there may be matters that the Department wants to throw back at me, so I am certainly willing to stay around.

The Clerk: Okay. Thank you very much.

1040 **The Chairman:** So put the clock on half-time, if there is a concept like that in the legal world. (*Laughter*)

1045 **Q458. Mr Singer:** Chairman, could I ask Mr Robertshaw in relation to his opening address, which was quite forthright: you were the first person to give evidence to this Committee and since then there has been a lot of written and verbal evidence, and you have obviously seen it or it has been reported to you. Having listened to the evidence on both sides – the landlord *and* the tenant's side – have you come to any conclusions that certain things that you had proposed maybe should be altered, or are you still adamant that your initial statement, considering all the evidence we have taken, is still your same statement?

1050 **The Minister:** Yes.

Q459. Mr Singer: A lot of criticism was that it was a 'Landlord and Tenants Act' and some of the criticism was, in fact, it was more of a 'Tenants Act' and did very little to protect the landlord, that there was an imbalance. What is your comment on that?

1055 **The Minister:** In my evidence in my opening remarks I deal with that, actually. Do you want me to repeat it again? (**Mr Singer:** Well...) With the greatest of respect, we do seem to be repeating the same questions and we are giving the same answers, and I think we are beginning to feel we are on the third circuit of the same issue.

1060 Either you accept what I am saying the first or the second time... Do you want me to repeat it a third time?

1065 **Q460. Mr Singer:** No, but it seemed to me that you were picking up certain items. For example, I think you said that we heard evidence that there was harassment on certain tenants and they were scared to report it. But you can also say that... and I would say there is probably a minority of landlords harassing, because we have got the other examples on the other side that there are bad tenants and we have had letters of information where the landlord has found it impossible to remove the tenant. And if you are concerned about one, are you not also concerned that there should be equal protection on the other side for the landlord, that they can remove the tenant if the tenant does not comply with the regulation?

1070 **The Minister:** But I dealt with that and I have dealt with that –

Mr Singer: No, you have not.

1075 **The Minister:** Yes, I have. I will repeat it. The fact of the matter is that when these issues get to court it is important that the landlord can give evidence of his, or her, or their suitability and competence, and being registered as a good landlord will help the court in their judgment.

1080 The problem I would put to you is that when these matters come to court, the quality and standard of the landlord's behaviour is unknown to the court, therefore it could be reasonably argued by landlords – and I have some sympathy for this – that there is an emphasis towards the tenant. If, however, it seemed that the landlord is complying and is a good landlord, then greater cognisance is going to be taken of that landlord's position or submission. So that is very much in the favour of the landlord.

1085 There are issues. We see here, the number of landlords that have registered so far, the average number of units that they have is, by mathematics, either one or two; and many landlords are new to the whole concept of renting and will find this process helpful. We have had indications that they do find it helpful and a guide. And I have said this a number of times, in exactly the same way as when employment law came in and embraced the issue of employers, the initial response from employers was, 'Oh, we really don't want to be part of this. This is an encumbrance. This is an imposition for us.' Then very quickly they found that employment law helped them and that actually it was *helpful* to go to industrial relations to get guidance.

1090 Before employment law came in that sort of thing did not happen and a lot of issues, I would submit to you, in landlord-tenancy relations emerge out of ignorance – sometimes on the part of the tenant and sometimes on the part of the landlord, or actually both. What we are doing in this, in making sure that there is a tenancy agreement – which in many cases does not happen now – is bringing both parties together and saying, 'These are the rules that we would ask you to comply with. These are fair and reasonable rules.'

1095 It therefore is very helpful to both parties and I refute this concept that it is simply about the tenant. It is about the *relationship* between the landlord and the tenant that we are talking here, in exactly the same way I have talked about it in employment law. It is a helpful guide.

1100 **Q461. Mr Cretney:** You referred in your opening remarks, and several times since, in relation to standards of property. You may recall I came to see you in advance of the matter coming before the House of Keys, and I had concerns at that time in relation to local authorities and agricultural tenancies, and my experience of property standards in both of those situations.

1105 You indicated to me that the Department – at that stage anyway – was looking at a separate piece of legislation in order to modernise those areas of responsibility. Now that you have moved on, I just wonder is it still the case that the Department will be looking to do that, are you aware?

1110

The Minister: I will have to ask Sam or Debbie to comment.

1115 **Ms Reeve:** In terms of where we are up to with regard to agricultural tenancies and also local authority tenancies, as the Minister made mention in his opening remarks and as we have discussed, the standards as in this Bill apply to public sector anyway; and Environmental Health have warned local authorities and they have taken the action they needed to get property up to standard.

1120 The piece of legislation you are referring to, I believe, is the potential for a new primary Housing Act – a primary piece of legislation on the Housing Act, because our Housing Act dates back to the 1950s (**Mr Cretney:** Yes.) and it is quite archaic.

1125 It is still a proposal that we bring that forward, but that does not impact on the issue around the quality or the standards, so they still apply anyway, regardless of where they sit – and they are currently in place for both sides. As the Minister made mention, again, in his statement, about agricultural workers' cottages, the standards sit in a separate piece of legislation for them as well; but it is enforceable. That is the issue here: it is about having enforceable, clear, transparent standards that can be taken regardless of who you are.

1130 **Q462. The Chairman:** Back to the spirit of the question that Mr Singer asked, which is about would you do things differently and also the issue of standards raised by Mr Cretney, I wanted to put something to you that I think I heard you say, and also describe something that has happened over the time that you have been working on this Bill and while we have been looking at this Bill. That is, that you said, I think, that in February 2013 you decided it was impossible to cross-reference all the different standards in different places, so therefore you decided to refer to a document outside the legislation.

1135 **Ms McCauley:** I think we will just interject to say we did not find it impossible; we said that cross-reading could be difficult for the reader, so we turned those minimum standards into something that is written more in plain English, because obviously, as we have explained today, legislation and even regulations can be quite difficult for people to understand.

1140 **Q463. The Chairman:** But an alternative to you, as you have just said, would have been to try to actually consolidate the legislation in the area of tenants' standards and landlords' standards in the spirit of the process that is beginning now, through the Interpretation and Legislation Bills that are just coming to our House.

1145 So perhaps, to address the same question back to the Minister, with hindsight perhaps it would have been better to be more ambitious and actually to help people understand the standards – that they exist – by actually going through the process of consolidating them into some sort of Landlord and Tenant Bill that actually brought together the archaic 1950s Act in all its different places, exactly as was described to us by Miss Evans' boss yesterday in the Members' briefing about one of the purposes of the Legislative and Interpretation Bills?

1155 **The Minister:** We are entitled to dream of Utopia; but we are trying to be practical on a reasonable timescale with a specific issue that must be got on with, and that is dealing with the protection of vulnerable tenants. If we want to, as it were, move over to an all-embracing situation that may take a given number of years, the question is: are we protecting the vulnerable? And the answer is, no.

1160 Therefore, we get on with a specific and particular task which we have set out here, and I reiterated again in my opening statement – which was very powerfully articulated by the Director of Public Health – which I am sure the Committee will want to take into very close account in the consideration of this.

This is a very straightforward piece of legislation which deals with a specific area and ensures that we get a fully embraced, fully holistic identification of those who are landlords and tenants, which we simply do not have.

1165 **The Chairman:** Just for the avoidance of any doubt, I think everybody on the Committee shares the dissatisfaction with the situation described by Dr Emerson in his evidence to us, but that does not mean that there is only one way forward; and our job is to make sure that this is the right way forward and the Bill is properly structured to actually approach the situation described by Public Health officials.

1170 Perhaps I could just ask the Clerk to build on the idea of standards and perhaps he might want to involve the legislative drafter.

1175 **Q464. The Clerk:** Yes – this may well be one for Alison Evans. But would it not have been possible to have had an all-embracing set of standards that applied to all tenancies, irrespective of any other particular obligations that various sections might have had, such as agricultural tenancies and local authorities? Would it not have been possible to have said, ‘Whatever else in any other legislation, this is the minimum standard of decency’?

1180 **Ms McCauley:** I am happy to pick that up, Alison, sorry, and you can come in if you want. There are, in terms of property condition from the 1955 Act, standards that apply to all tenancies. We would have had to go back and revisit the Tynwald resolution which was included in the Housing (Miscellaneous Provisions) about the allocation and management of public sector housing, so we would have had to unpick that issue and take that through.

1185 **Q465. The Clerk:** Can you just slow down and explain why that would be necessary?

1190 **Ms McCauley:** Because that sets out that there has to be Tynwald approval for the allocation and management of public sector housing that was inserted into the existing Housing (Miscellaneous Provisions) Act via the 2011 –

Q466. The Clerk: What has that got to do with standards of decency?

1195 Because the minimum standards that are contained in this Bill, as we have outlined, the property condition standards apply to all; they draw on the existing legislation, so that is what we have built on.

1200 What we have added, in addition, are around the management and the letting of that tenancy, and those public sector properties already contained in separate existing legislation that was inserted because of the Tynwald resolution that was made into our now current legislation. So there is already the same, in terms of there having to be Tynwald-approved allocation and management.

I do not know whether Debbie wants to come in on that.

1205 **Q467. Mr Cretney:** Can I just ask in terms of... and I respect what the Minister is saying in relation to vulnerable people, but I think what we are now saying is in terms of the standards – which has been my concern from day one – that may be some years off. The 1955 Act may not be altered for some years and, as such, isn’t that going to place vulnerable tenants in an invidious position for some years to come?

1210 **Ms Reeve:** If I just come in on that. With regard to the housing standards, what this Bill is doing is adding the standards transparently to the private sector, so that landlords, when they take up a property to rent, know what they are getting into, both in terms of property standards which already exist and also in terms of management standards.

1215 When you look at the public sector, they already have at least that, if not more, with regard to both the Housing Act, the Housing (Miscellaneous Provisions) Act and also the will of Tynwald with regard to having shared policies, allocation policies etc. So that ties it in. This Bill is plugging that gap.

1220 **Q468. The Clerk:** Would it have been too complex to have replaced all of those with a single statement of decency that applied to all lettings, that would have been in one place in a schedule to the Bill so that everybody could have read it?

Ms Reeve: As a housing practitioner, the standards of decency are consistent across all the pieces of legislation.

1225 **Q469. The Clerk:** That is not quite the same thing. You know, because you are housing practitioner, but I am thinking about a landlord, someone who wants to go into the business and who needs to be told what is fundamentally decent.

1230 Would it not have been possible to have put that in a schedule that applied to everybody? So you are a farmer, you have got tenants, you have got workers who live in your cottages; you are a local authority – it does not matter who you are – you are a private sector person. These are the basic standards that apply if you are going to let property.

Could that not have been done as a sort of replacement for all of this rather complex and now out-of-date legislation?

1235 **Ms Reeve:** If I just pick up, if I may, on the out of date legislation. The Housing Act is some years old but actually the standards still apply and the same standards apply here in terms of property condition. So they are what they are, in terms of what we are bringing forward.

Q470. The Clerk: But some of the things like rent books are –

1240 **Ms Reeve:** The management standards, so the property condition is –

The Clerk: They are older than I am!

1245 **Ms Reeve:** Indeed, but they are standards that have been applied in this Bill to the private sector. So they are not onerous standards in that respect; however outdated they may be they are not onerous standards.

1250 From our perspective, in terms of the Department, we clearly have public sector that work to a specific set of standards and are monitored and overseen by Government in terms of how they are applied. The Agricultural Workers Cottages Act applies the same standards in terms of the property condition and the rights to redress and compensation for repairs, etc. Obviously, what we do not have is a private sector bit, that we are bringing forward at the moment.

1255 If we were to try and combine all of those pieces of legislation – the Housing Act, the Housing (Miscellaneous Provisions) Act, the Agricultural Workers Dwellings and potentially private sector – that would be a very large piece of primary legislation. And in timescale and sheer resources, I could not estimate how long that would take to bring forward.

1260 **Q471. The Clerk:** But you would not be taking *all* the legislation, you would just be taking the decency standards. You would be taking one bit of it and you would just be codifying it for the modern world, to say, 'This is what is decent and this is...'–

Ms McCauley: But that is exactly what we have done via the minimum standards, in giving them compliance via this legislation –

The Clerk: Exactly the same. But why not –

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Ms McCauley: – so we have rewritten them into –

Q472. The Clerk: I am trying to understand (**Ms McCauley:** Okay, so –) why they are not extended to everybody, if you see what I mean.

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Ms McCauley: Because they already exist in existing legislation for the public sector, so the comment back to the Committee would be, you would have to revisit what has already been approved in existing legislation for those procedures for public sector, because it is fundamentally different to the private sector in terms of management and letting standards. There are different standards that are in operation there.

1275

Q473. Mr Singer: That is the way it is managed but surely there should be equal treatment to all sections. Are you saying that the standards apply –?

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Ms McCauley: In terms of the allocation? No, because obviously for public sector there are various eligibility criteria that are in place for the public sector, and that is all dealt with and that is all part of the management of that overall tenancy, because the public sector operates in a very different way.

1285

Q474. Mr Singer: But it still applies to a standard, doesn't it? However it is handled or managed, it still applies to a standard... We were told by the local authorities that they felt that their standards were actually higher than the standards applied to private lets. (**Ms McCauley:** If you –) So there is no reason why they should not be included and if their standards are higher, all the better.

1290

The Minister: Isn't it the case that you are trying to unnecessarily complicate (**Mr Singer:** No.) this whole process by stretching –

Mr Singer: Simplifying it.

1295

The Minister: No. You may think you are but what you are doing is, as we try to identify a gap that really does need urgent addressing – and I will not go back and repeat what I already said. What you want us to do then is to codify it right across the piece, unnecessarily, when the area of vulnerability sits in the private sector. And you have got to ask yourselves the question in the end, are you concerned with trying to bring together a lot of things which ultimately at some stage in the future will be? And I would be very disappointed if it did not.

1300

In the meantime, there is a task at hand which is to protect vulnerable tenants in the private sector – and that is what this sets out to do. So you must ask yourself really, hand on heart, what you are really trying to achieve as a Committee here? We know what we are trying to achieve. Are you trying to achieve something else?

1305

Mr Cretney: One of the people –

Ms Evans: Just one point –

1310

The Chairman: Please, Miss Evans.

Ms Evans: Something that often strikes me when you look at any large consolidation task for legislation... If I had a dollar, or a pound, for the number of times people said to me, 'This could do with a good rewrite to consolidate it all together'.

1315

1320 It is a laudable goal to consolidate things into one place. But I guess in this particular realm you have a lot of subject matter specific legislation and whilst, yes, sometimes it is good to have an overview of all of that legislation, often it is actually better to keep it subject matter specific, because the only people who care about that piece of legislation are people who fit into the subject matter.

1325 The moment you try and consolidate a large group of disparate concepts into a single area of legislation, you immediately start carving out exemptions and then it becomes complicated. So what starts out as a simplification exercise can quickly turn into a complicated exercise. And I suspect that underlies the existing structural approach to a lot of housing legislation – not just in the Isle of Man but all over the world.

Q475. Mr Cretney: Thank you, Alison.

1330 I was going to ask, on a separate issue: I think one of the people who has been into the Committee to speak, and I have seen comment elsewhere, made the assertion that if certain standards were imposed on landlords that certain landlords may leave the business. Is that a concern for you?

1335 **The Minister:** You have to put that together with the evidence you have heard from the Director of Public Health. Are there or are there not properties there which are not fit for occupation? It seems that there are.

Are we as legislators, as politicians, going to say that is acceptable? The answer is no, we are not.

1340 Is it possible that a small number of landlords working at that end would either decide to lift their standards – and I hope that they do – which is why we are sitting here today, all of us; or they might choose to migrate outside, to sell up.

1345 Either, I would suggest and put to you, is totally acceptable because there are investors outside of the Island who would come in and buy into property investment if they knew there was a basic standard in the private sector. They will not come into the Isle of Man, they will not invest in the Isle of Man until that is the case, because they do not believe that their investment should be undercut by substandard operators. So I think that the outcome of this Bill will be an entirely healthy one, both for landlords, their property values, and the tenants.

1350 **Q476. Mr Singer:** We also heard the opposite from the single landlords, who are letting – maybe they had an extra property they could not sell and they let it – and they were very perturbed by some of the conditions and the fines.

1355 We know we have talked about it being a maximum fine, but they were concerned for the fact that they may be fined in a court for not filling in a form etc. They actually said, and they have stated to us in writing that they were so concerned that they were really thinking, ‘I’m not going to risk this and let my property.’

The Minister: If I can say briefly –

Mr Singer: This is how they felt.

1360 **The Minister:** That is an unreasonable fear and only time will eradicate that issue.

We are all, as citizens, every day subject to a myriad of laws which, if we transgress, will find us in the arena of criminal justice and we could end up in prison or fined. Does that create fear? Does it stop us going out on the street?

1365 **Q477. Mr Singer:** I am sorry, we are talking about a different level here.

The Minister: No, it is –

Mr Singer: It is a totally different level.

1370 **The Minister:** No. I am sorry, it is not.

The question that you have to pose here is: do we or do we not trust the courts to act in a fair and reasonable fashion? My argument to you is, yes, we would. Yes, we do.

1375 This concept of a maximum fine, I would imagine, would only apply if an appalling scenario developed, in which case our society would want to see the imposition of significant fines. If you reduce the fines to the maximum, which is why I think they are where they are, to such an extent that they were a simple business risk for a big player... an operator with 100 properties at £500 a month over a year – what is that turnover? If the risk to them was so minimal, would they take a view that actually they could still continue to sit below minimum standards and cope with the problems that would occur in the event of fines of such a low level? So it is horses for courses.

1380 The vast bulk of people will never end up in court. The vast bulk of people will not get fined. One does not want to see that happen, because the imposition of that concept will help to ensure that it does not happen.

1385 **Q478. Mr Singer:** That may be the fact, but that is not the way it has come over to these individual landlords, and maybe that is where some more work needs to be done.

Ms McCauley: Obviously, we know that there is a vast amount of work to be done. We had already started some relationships with OFT around what information will need to be provided, both to landlords and tenants, when the Bill came into operation.

1390 I would also say that from the opposite side though, our learning from the voluntary scheme, and one of the reasons why we introduced the voluntary scheme was to get feedback from the landlords, and I would say actually that a surprising factor is the number that are unaware of their obligations now and that there are actually penalties in place around property condition that they would be subject to now. So a lot of them have found it very beneficial to have joined the scheme and have an understanding that actually they are meeting all of those.

1395 So they do not need to have any fear that there is anything or any fines that could be imposed. Before that process they were not aware of a lot of those elements that they were already having to meet.

1400 **Q479. Mr Singer:** One other thing, if I may just ask, when we had the Environmental Health people giving evidence, they said that they felt that most of the matters that are in this Bill they actually covered now, they were responsible for. It has appeared the problem was that they were so short staffed that they could not carry out their responsibilities. Have you got any comment on that?

Ms McCauley: I apologise, but I sat in on that evidence session and that was not the impression –

1410 **Mr Cretney:** I think that was the lady from Housing Matters.

Ms McCauley: Right. I apologise.

1415 The evidence from the Environmental Health officers was saying that a lot of the standards that were covered were obviously already the property condition standards that they enforce now; the additions are around some of the conditions of the furnishings.

Then the separate element surrounds letting and having standard tenancy agreements in place is something that will be dealt with by the Department of Health and Social Care, and so there was a split in terms of the enforcement. I did not feel that they were saying they did not have the resources.

1420 Their director made quite clear that actually one of the benefits of the legislation would have been that they would be able to identify landlords more quickly, and they obviously explained some of the issues to the Committee around some of the timescales that protracted that issue.

Mr Singer: I did not read it quite that way.

1425

Q480. The Chairman: Okay.

So I wanted to go back, catch up and begin to move towards a conclusion on some of the topics.

1430 The first one is to go back to this idea of a schedule, rather than a document outside the statute in which the standards are contained. Is that something that you dismissed? It is something that would cost a lot of money to do? Is it possible to do in the time that we have available?

1435 **Ms McCauley:** It was not something that we dismissed; it was something that we considered as part of the drafting and before we gave our drafting instructions, because obviously we would have had to say what we wanted to set out in regulations or in a schedule to the Bill.

1440 We felt that it was more beneficial to the reader and obviously, as we have discussed today, legislation is not the easiest to read. And I think even Alison would probably agree that if we did do a redraft, it would still take a reader some interpretation and some time to read through the legislation to gain an understanding.

1445 What we feel that we have done is to draw out those minimum standards and put them into a document that can be easily understood, and that also contains the guidance element; to put that in a schedule, because having worked on drafting regulations and because of what you have to meet in terms of the legal requirements, I would say they would not be as easily understood within regulations or within a schedule to the Bill.

Q481. The Chairman: Okay. Thank you.

1450 I now want to move on to the register, because the Minister, when he was making his opening remarks, talked about the register and it was an agreed process. But he also came back to the fact that Environmental Health only had a register at the start, rather than a continuously-maintained register.

Ms Reeve: For houses in multiple occupation, it is not the same.

1455 **Ms McCauley:** Sorry, it is not their register. Local authorities hold the registers –

The Chairman: That is true.

1460 **Ms McCauley:** – for the flats and houses in multiple occupancy.

Q482. The Chairman: Local authorities and Environmental Health work closely together with legal and operational responsibilities – that is what you described in your evidence.

1465 But, obviously, during the course of our work we had the situation presented to us by the Minister of Home Affairs, having liaised with the Fire Service, who had actually managed to go behind that to maintain their register.

1470 Did it ever occur to you that you might want to build on one of the several existing registers, rather than putting together a new register? Because that perhaps goes back to the point that Mr Singer was making about use of resources. Could we not have added extra fields somehow to existing databases?

The Minister: That is what this Bill does. It adds an extra field to the area that we cannot see.
(The Chairman: Okay.)

1475 We are blind to a significant proportion of private sector landlord renting. We cannot see it. We do not know where it is. We do not know who they are. We do not know who the tenants are. You are agreeing with me: we are filling the gap.

You started off with your comment about houses in multiple occupancy: that is only a small element. You cannot build on that because you have still got this this gap that exists where you cannot see and do not know, and this is a single list that will embrace all of that.

1480 **Q483. The Chairman:** I am glad that we agree in lots of things.

But I go back, with hindsight, two years ago, there were two approaches: one was to have a new piece of legislation and the other approach is perhaps the fireman approach, to actually go and work with what we have got and actually try and build the register using what they have already. Was that not an option open to you at that point?

1485 **Ms McCauley:** I apologise, I do not know the details of the Home Affairs evidence. It was not an oral evidence session that I sat in on and so I do not know in terms of the background.

1490 In terms of building on the flats, and houses in multiple occupancy registers which are held by the local authority, what we wanted to create was a central list. So that is why, obviously, we included a register within it and did not build on those, because landlords have properties across the Island. It was to make it a single point of contact to be able to register with us.

1495 Forgive me, but I do not know if Home Affairs have their own legislation that they are working under or whether they have just created a list on the basis of information that they hold and they use that information just within the Department. If there is no legislative basis for that, it would not have been something we would have been able to build on.

Q484. The Chairman: There is a legislative basis and the evidence is on our website with the published evidence, and I refer you to it.

1500 **Ms Reeve:** If I can just clarify, really, for me, if you could.

The issue of Home Affairs is purely to do with the fire registration, isn't it, and regulations, and which my understanding of it is for flats in particular? So it would not apply to general needs properties.

1505 So if you have got a landlord, who has got a house in multiple occupation or a block of flats, then clearly there would be a reference for that to register, or an individual who owns a property in that, they would register; but they would not necessarily have the same information with regard to general needs family housing, which actually if you look at our private sector provides quite a significant proportion of housing on the Island for families.

1510 **Q485. The Chairman:** It was not the detail I wanted to get into, it was just the processes, an alternative process. Our starting point was asking the Minister, might we have done things differently?

1515 Another question like that is again, Minister: you said in your opening statement that this was helpful to build a picture of the state of the housing market, to see to what extent the damage that we all regret is being done to people, and there is talk of 40 extra deaths a year because of the standard of housing, and so on and so on. That is obviously a very troubling statement, but we do not need to have a register of every house to do that. We could sample through something like a housing survey, and so perhaps that would have been another approach that might have been helpful, and I wanted to lead on to that.

1520 Has the Department done a full impact assessment of this legislation? In other words, it has cost a lot of money. It has cost tens of millions of pounds to put social housing to the standard of decency that is being described. Does the Department have a financial assessment of the impact

on the landlords who have houses to put them to the standard that you want? Have you thought through the consequences of this Bill?

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Ms McCauley: Those standards are in existing legislation, in terms of property condition. So they should already be meeting those.

Q486. The Chairman: As they were for social housing, but it cost a lot of money to make sure the standards were in force.

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Ms Reeve: Yes, if I can just come in on that point.

Obviously, the multi-million pounds' worth of taxpayers' money or local authority money that has been spent on those properties, in terms of public sector, is not just to bring them up to decency standards; it is to replace older stock, it is to redesign estates, it is to replace infrastructure. So it is not simply to do with meeting the basic standards.

1535

There are still issues with some of our older properties, where the properties are not what we consider fit for the future, but they are meeting the basic standards.

So if I can just go back, Mr Chairman, to the original point; just repeat the question? In terms of the multi-million pounds that has been spent on public sector, it is not just to meet the minimum standards – that is just for me to clarify. And the point of your question was?

1540

Q487. The Chairman: Have you done an impact assessment of what it will mean and how landlords are likely to behave, when this land law comes in and what the impact will be on tenants who are living in decent homes? We know the impact already.

1545

There is an impact on their health, but have you actually made an assessment? Have you actually done quantitative and social qualitative impact assessments?

Ms Reeve: If I can just come back before my colleague, Ms McCauley, there. Again, from the housing practitioner's side, as an Island we do not know what our private sector is. We have no measure of quantifying it. The nearest we get to it is through the census data with some of the statistical information, which gives a proportionate figure of about 16% to 17%.

1550

For us to actually do anything policy-wise or to look to do anything for the private sector, even with regard to developing some of their skills, what they are offering people in terms of engaging with them and being able to provide decent quality accommodation to meet all needs of the Island, we need to know who they are. We need to be able to work with them and ultimately one of the successes that I have had from doing this piece of work with this Bill is we have now got private landlords engaged; albeit they have got concerns or they have raised questions, but they are engaged, and actually to start that process off has been really helpful.

1555

If we look at the multi-million pounds spent on the public sector to bring them up well above the basic standards, now landlords have got a line of communication with the Department and with Government to say, 'Well actually, Government, we need some help' or 'We might want to look to work with you to do something differently in the future', which again increases the availability of decent housing on the Island.

1560

So it has been a good way of engaging with people, to get people realising that they are a big proportion of our market and we need to be helping *them* through that process as well.

1565

Q488. Mr Singer: One more question.

To come back to one of the original questions I asked on the balance within the Bill: when the Landlords Association came here to give evidence they said that they supported this Bill, but they did feel that, as far as the misbehaviour by the tenants, their experience was it was very difficult to get the court to give them possession – they were often very reluctant to take people out.

1570

1575 Therefore I come back to the point that should it not, within this Bill, be made quite clear on the responsibility of the *tenant*, as to their behaviour? So that if they are breaking those regulations that are there for them, the court can evict them, where the Landlords Association say it is very difficult now to get possession?

1580 **The Minister:** Well, can I bring you back – and I am sorry to do this, but I think it is very important – to the parallel between employment law and... You are shaking your head, but I have to take you to it, because the point being that in employment law there has to be a contract of employment, and that contract has to specifically set out the behaviour and conduct of an employee. It is not for the state to interfere and to ensure that the employee conducts themselves properly: it is up to the *employer* to ensure that happens. If that relationship breaks
1585 down, that is the point that then you seek external guidance and advice in whatever form that takes, whether it is the courts or industrial relations. What we are doing here is something very similar.

In the tenancy agreement we are laying down, effectively, behaviour and conduct, which at the moment there is an absence of, because some landlords do not know how their tenants should behave and some tenants do not know how they should behave either, and there is no tenancy agreement. To insert that set of rules gives guidance to both landlord and tenant, and also in the event of a situation breaking down – where in the case you argue there, that the tenant misbehaves – it puts the landlord in a much stronger position, in terms of the courts, when he, or she, or they are able to show that they have conducted themselves in a proper and fit fashion.
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1595

Imagine that a landlord was trying to evict a bad tenant and there was no tenancy agreement and there was no understanding of how one should conduct themselves. How would the court then view that individual position? Exactly the way that you find some landlords say they are in difficulties over? So we are creating an environment that helps both parties, and external parties, to judge that relationship should it breakdown.
1600

So I defend it with a great deal of passion – (*Interjection*) vigour, thank you! It needs to come in. It needs to happen for the sake of a landlord, and for the sake of a tenant – and for the sake of those who are sitting outside trying to assemble a reasonable and fair view when relationships break down.
1605

Q489. The Chairman: So building on that idea, we wrote to you asking what you thought about changing the terms of the Bill to allow a system of voluntary registration of landlords, linked to stated minimum standards of behaviour of tenants, in cases where the landlord and premises are registered, and which would be backed up as a *quid pro quo* to a speedier process for gaining possession of premises, as a way of balancing the rights of tenants and landlords.
1610

Do want to put on the record how you replied to us and what you thought of our suggestion to you?

Ms McCauley: We had to say in the response that we were not clear when you said ‘process’ what you were envisaging there. There was no detail behind how you saw that working.
1615

One of the major obstacles that we have had to overcome in terms of the Bill, was explaining to people that around enforcement there are a number of stages. In the same way that we could not automatically deregister a landlord, there are legally stages you will have to go through to test that compliance with the legislation; in the same way that a landlord has to go through some stages of compliance in terms of testing in a legal case as to whether a tenant should, to go through the eviction process. So, to be clear, we were not sure what the process was that you were envisaging to be able to comment on that clearly.
1620

In terms of having a voluntary registration scheme, that would not be changing the terms of the Bill. We would not need legislation to have that, we already have that in place currently. We have a voluntary registration scheme that has been up and running for a year and a half now.
1625

Q490. The Clerk: I think if I can summarise what the Committee had in mind, was that it was a response really to some of the evidence that was – as has been said before today – a bit one-sided. It was a bit ‘pro-tenant’, if you could put it that way.

1630 It was an attempt to explore whether or not there was a compromise position, where landlords would want to register because they would *gain* rights, because there would be a set of standards of behaviour to which tenants had to adhere so that they should not destroy the landlord’s property. I know that that is already in the law, that you can prosecute them for criminal damage but you cannot get your flat back, necessarily.

1635 **Ms McCauley:** You can. (**The Clerk:** *Necessarily.*) If it is the terms of the tenancy, then they would be breaching the tenancy and you would be able to take that case to court and seek possession of the property.

1640 **The Clerk:** In practice it can be very expensive.

Ms McCauley: It can be lengthy, which is what I was explaining. There are stages that you have to go through, in the same way that we would in terms of deregistering a landlord.

1645 **Q491. The Clerk:** Exactly, what the idea was to try to define the duties of the tenant a little bit more clearly so that there could be a shorter truncated procedure for gaining possession, which would actually benefit any landlord, whether they were in a big way of business or they only had one property to let out. It makes things simpler, because it allows the courts to react and to point to particular standards that the tenant might not have adhered to. So that really was the thinking behind it.

1650 **The Minister:** But there is a fundamental weakness in the proposition in the first instance, that you talk about ‘voluntary’. The point is that the registration should *not* be voluntary, because we want to embrace all landlords. There are going to be some landlords... and I would put it to you that some of the landlords who would not want to register would want to stay outside for very, very good reason. And it is terribly important that they are not *allowed* to stay outside a registration system.

1655 So, effectively, the concept of trying to make it a voluntary system that draws people in is not going to draw the very people, or the very landlords, that we want to see within the system. So the concept of voluntary is outwith the whole principle of what we are trying to do here, which is identify all landlords and tenants really in the private sector.

1660 **Q492. The Clerk:** If it were *not* voluntary, but it was still mandatory, would a system that balanced the landlord's duties and standards of behaviour with the defined standards of behaviour for tenants so that it was all easily readable in one document, that a court could enforce – but also that a landlord would know a court could enforce – would that be an advantage or would it be something that you would not regard as a good idea?

1670 **Ms McCauley:** I think the way you could do that, and we have not had it raised with us by the Landlords Association, is we already have in the minimum standards set out what should be included in the tenancy agreement. You could broaden the terms of that to include specific standards of behaviour for a tenant. But again it would still be the process you would need to go through: if there was a breach of that tenancy agreement, that you would have to go and seek possession through the courts – that is the standard due process.

1675 **Q493. The Clerk:** But you might well have a truncated procedure, which the courts often do provide for. If all you had to prove was that the standards had been breached, then you can get possession much more quickly than, maybe, the norm.

Mr Singer: And the Landlords Association was in favour of registration.

1680 **Ms McCauley:** Yes, in terms of that.

I could not comment on the court's process for whether they would believe that would encourage a quicker route or be able to facilitate a quicker route. I could not comment on that from our side.

1685 **The Clerk:** Okay. Thank you.

Q494. The Chairman: Three more quick issues to try and put together, in the spirit of 'Would you do things differently'?

1690 The first one is at the beginning of this process, whether it be in 2012 or 2013, there was a perception that the social housing deficit was £7 million, and that has come down to £4 million; but we have had evidence from Treasury that the amount paid out for housing-related income payments has gone up from £4 million to £7 million.

1695 So I come back to the point the Minister made in his opening address to say it could not have been addressed through the Treasury or through Social Care, in terms of trying to do something about standards in properties for which you paid money, or state money. Do you still think that is the case? Do you still think you had an obligation?

1700 **The Minister:** Chairman, this is completely outwith this whole issue here. This is about the development of how we are making public sector housing sustainable, and that is not relevant to this Bill here.

1705 **Q495. The Chairman:** But now we know that £20 million is the amount of money paid for housing out of the Income Support system and formerly under social housing. Perhaps there are some lessons to be learnt about housing policy that –

Ms Reeve: If I could clarify because, again, I am just a little bit unsure, Mr Chairman.

Are you referring to the £4 million worth of housing deficiency payments that are paid to local housing authorities? Is that the £4 million you are talking about? (**The Chairman:** Yes.)

1710 That money is used to underwrite local authority housing loans, which has been spent on the multi-million pounds' worth of investment we were talking about.

If you are talking about the £20 million – and I must admit that I am not familiar with that figure – is that a reference to the amount of rent allowance paid out through the benefits system that Treasury –

1715 **Q496. The Chairman:** Not only rent. The £7 million is to do with private rented, and the rest is to do with houses.

Ms Reeve: Is that a rent allowance to an individual –

1720 **The Chairman:** Housing payments.

Ms Reeve: – to pay to their landlord, whether they are public or private? Is that the £20 million you are referring to?

1725 **The Chairman:** Yes, and also owner-occupiers.

Ms Reeve: So they are completely different.

1730 **Q497. The Chairman:** I accept that. But I am making a statement to see, with hindsight, with that information which was not available to you in 2013, but it has come out during the course of our questioning, whether that will make you reflect on policy.

1735 Well, let us move on then, and the next one is to do with the tribunal, because again you have raised some points quite aggressively, about a misunderstanding on our part, about a tribunal. What we have said is that perhaps you build up false expectations as a tribunal by, for instance, giving it the name that you propose in the Bill. Perhaps it would be better just to have a new tribunal called the 'Landlord and Tenant Registration Tribunal', rather than suggesting that it is to do with other things?

1740 **Ms McCauley:** It is to be combined with the existing Rent and Rating Appeals Commission. What we did is we sought consultation with the Appointments Commission and with the current Chair and that was the name that they proposed; it was not a name that we came up with.

The Chairman: There was no deep thought behind it, but to me –

1745 **Ms Reeve:** It was their proposal.

1750 **Ms McCauley:** But I do also think that currently the Rent and Rating Appeals Commission... It is not always in a name; it is about the education and the information that you provide around what the functions of that tribunal or that committee are; and that is part of the work that we have already built in, in terms of around potential implementation of the Bill. That would be around that guidance and ensuring people understood exactly what it was that the tribunal was there to do.

1755 **Q498. The Chairman:** And, finally, this Bill was originally part of a combined Bill with the Property Management Company Bill. With hindsight, do you think it would have been better to approach this process of cleaning up the relationship between landlords and tenants at the same time as cleaning up the relationship between property management companies and the people for whom they provide a service, and estate agents, and so on and so on?

1760 **Ms McCauley:** I would say from our perspective, no. Obviously, as the OFT have given in their evidence, there is an element where there is some overlap in terms of definitions; and obviously Alison has been involved in drafting both Bills, and we have said that there could be some subsequential amendments, but they are quite different elements and different topics.

1765 Like we said, broadly, would it have been easier to understand for the reader? I do not necessarily think it would have been. Would it have been too broad a subject, as we talked about, in trying to encompass everything, rather than being subject specific? So I think, in short, no, with hindsight we would not have reversed the decision to separate the two.

1770 **The Chairman:** Thank you.
Any more questions?

Mr Singer: No.

1775 **Mr Cretney:** No, thank you.

The Chairman: Okay. Well, I would like to thank very much Miss Evans for joining us, via the telephone... or via the video conference. Are you still there? Excellent, so we –

1780 **Ms Evans:** I am still here. *(Laughter)*

The Chairman: I was going to say I thought I had saved us money then!

Ms Evans: Listening. Well, this is not a telephone call. This is –

1785 **The Chairman:** Is there anything you would like us to add?

Ms Evans: No. Thank you to the Committee for making it possible for me to attend. It has made it easy to fit it into the schedules of a number of complicated timetables.

1790 **The Chairman:** Thank you very much indeed, and we can move on to the other Bills we are discussing now.

I would like to thank each of you in the room here, the Minister, the Director and obviously the Legislation Manager for your very helpful submissions in writing and the process, along the way, as we have been carrying out the work, and for your attendance here today to take questions.

1795

The Minister: An enjoyable experience, Chairman. Thank you very much. *(Laughter)*

1800 **The Chairman:** It reminds me of a lecture that I once heard a lecturer give, and he stopped at the end and said, 'Oh my God, is that the time? Oh my watch must have stopped.' At which point one of the students shouted out, 'Thank God we have got a calendar in here, sir.' *(Laughter)*

Thank you very much indeed everybody.

For the benefit of *Hansard*, this session is now closed.

The Committee adjourned at 4.39 p.m.