



Northern Ireland
Assembly

Committee for Communities

OFFICIAL REPORT (Hansard)

Private Tenancies Bill: Committee
Deliberations

11 January 2022

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Ms Kellie Armstrong (Deputy Chairperson)
Mr Andy Allen
Mr Mark Durkan
Ms Ciara Ferguson
Mr Paul Frew
Ms Áine Murphy
Miss Aisling Reilly

Witnesses:

Ms Karen Barr	Department for Communities
Mr Conrad Murphy	Department for Communities
Mr David Polley	Department for Communities

The Deputy Chairperson (Ms Armstrong): David Polley, Conrad Murphy and Karen Barr from the Department are in attendance. Members, questions or comments should be focused on the specific clause under discussion. As discussed at the meeting on 21 December, the Department considered an amendment to the Bill to take a duty to consult on choice of methods of payments for tenants and, if necessary, after consultation, to make regulations. A draft of an amendment that would introduce new clause 11A is attached at annex A.

The Department has discussed with the Committee the requirement to make amendments to schedule 2 and has previously forwarded a draft amendment and an explanation of what each part of the amendment would effect. Included at annex B is a draft of what revised schedule 2 would look like, if those amendments were made. A list of all the proposed departmental amendments to date is attached at annex C. The Committee has already had sight of most of those, but some minor adjustments have been made over the holiday period to refine them further. Changes have been made for clarification of the original policy.

David, can you address the response dated 7 January 2022? I will then ask members for their views.

Mr David Polley (Department for Communities): Of course. Thank you very much, Chair. Let me introduce my colleague Conrad. Conrad and Eilish O'Neill job-share. This is Eilish's non-working day, so Conrad has come in to help Karen and me.

The Deputy Chairperson (Ms Armstrong): Bet you wish that you did not work on this day, Conrad.
[Laughter.]

Mr Polley: You will have noticed that he did not —

Mr Conrad Murphy (Department for Communities): *[Inaudible]* go out later. *[Laughter.]*

Mr Polley: Eilish has been very good about coming in on her non-working days to try to keep some continuity, but she cannot make it today.

As you said, Chair, since we last met, we have sent two letters, on 22 December 2021 and 7 January 2022. Various things are attached to them. Some of them you asked for, and some we included to help the Committee to finalise its deliberations. There is a breakdown of schedule 2 in there and our views on the Committee's proposed clause 2A. There is proposed new clause 11A and a version of schedule 2 showing what it would look like if our amendments were made, because the Committee said that it was all getting quite complicated in schedule 2. Also, there is a breakdown of schedule 2 showing what each bit does. We also sent a composite list of all the proposed departmental amendments so far. The Committee has seen all those, as you said. There are some drafting tweaks, but there is nothing substantial. Everything is to clarify the policy intent. You might notice some little changes as you go through.

The best thing to do is to work through the material in the order that we have been doing it, and go through the clauses.

The Deputy Chairperson (Ms Armstrong): Yes, please. That makes sense.

Mr Polley: For clauses 1 and 2, we think that there are no issues outstanding. For clause 3, there are two or three outstanding issues, depending on what way you count them. The first is that the Department had proposed some amendments so that this clause now relates to all payments made in cash relating to the tenancy and not just payments of rent. We sent that to the Committee. Has the Committee any queries, or is it clear enough what we were trying to do? We think that the proposed departmental amendment does what the Committee asked us to do.

The Deputy Chairperson (Ms Armstrong): Yes. I think that I speak on behalf of everyone. Members should let me know if I speak out of turn. The Committee is delighted with that, David. Thank you.

Mr Polley: That is brilliant. Thank you. The second outstanding issue is clause 3/new article 5(3)(b). The Department's view is that we do not want to take that line out. It is for the Committee to decide whether it wants to propose a Committee amendment. There is no need to talk much more about that, unless anyone wants to.

The Deputy Chairperson (Ms Armstrong): What is clause 3/new article 5(3)(b) about?

Mr Polley: It is the provision that the receipt has to be given as soon as possible or as quickly "as reasonably possible". The Committee asked us whether it had to be "as soon as reasonably possible", or could that bit be deleted so that it says that the receipt has to be given at the time.

The Deputy Chairperson (Ms Armstrong): We have not finalised our decision on that. We will take it later today. I expect that we will have that for you.

Mr Frew: I will keep shtum about that until we talk through the other amendments.

The Deputy Chairperson (Ms Armstrong): Yes. *[Laughter.]*

Mr Polley: OK. You want to do that. All right.

Mr Frew: Yes.

Mr Polley: The other thing in clause 3 is the discussion about methods of payment and making sure that tenants have a choice of method of payment. There are two options. The first is that the Bill Clerk sent proposals to the Department for comment. We sent comments back, and you referred to those being in the Committee's pack in the letter from 22 December 2021.

You also asked that the Department look into this further. You asked us to work with the Bill Clerk on a proposed clause. The Department has sent over a proposed new clause, which we have called new clause 11A. The Office of the Legislative Counsel (OLC) took a view on where the clause should go in

the Bill and thought that it should be clause 11A. The new clause gives the Department a duty to consult on this matter and the power to make regulations on foot of that consultation. It says that we will go out to consultation and submit a report on the consultation to the Assembly within 18 months.

I suppose that the Committee needs to decide which option it wants to take. We are ready to answer questions — well, we will try to answer questions — either about our comments on the Committee's proposed amendment or about our proposed amendment.

The Deputy Chairperson (Ms Armstrong): The proposal is that the Department will go out to consultation and that regulations will come after that, if they are required. To clarify this for the record, what is the proposed timescale? What timescales are you thinking about for that?

Mr Polley: It binds us to carry out a consultation, do a report and submit that report to the Assembly within 18 months. That is set out in the Bill.

The Deputy Chairperson (Ms Armstrong): If anything further needs to be done, will that be brought back to the Assembly?

Mr Polley: The regulations would come after that. Is your question about whether or not the draft regulations are affirmative, so that they would need to come back to the Assembly as well?

The Deputy Chairperson (Ms Armstrong): Yes. I am just checking.

Mr Polley: Conrad, do you know the answer to that?

Mr C Murphy: The answer to that is yes. The regulations are draft affirmative, so they would come back.

The Deputy Chairperson (Ms Armstrong): Do you want to come in, Andy?

Mr Allen: I have two quick questions. David, is 18 months standard for consultations? Is that standard practice, or do you believe that it could be achieved in less than 18 months?

Mr Polley: I did not have a lot of time, but I asked and was told that there really is no standard practice. I looked at the liquor licensing legislation. It has a consultation and says two years, so this is a bit shorter than that. I looked at that because it is within the Department and was considered by this Committee relatively recently.

Mr Allen: Yes.

Mr Polley: This is shorter than that. We need to bear in mind the constraints and practicalities of carrying out a consultation, doing the equality impact assessments (EQIAs), getting the consultation out and writing it up. Events can always intervene. As you know, as we talk about the Bill, we will be doing regulations on energy efficiency at the same time. We will be doing regulations on the clause 1 stuff and regulations on the fire safety things in schedule 3, and I may have forgotten a set of regulations that we are doing at the same time.

We also have phase 2. We want to start on letting agent regulations and things like that, too. We would be concerned about trying to rush it through given that those other important things are happening at the same time. My sense is that 18 months is about normal.

Mr Allen: Have you worked out the detail of how long the consultation would be? Would it be 12 weeks or less?

Mr Polley: As you know, 12 weeks is standard, unless you want to make it longer because it is running over Christmas, another holiday period or over the summer. The only reason that you would make it shorter is if you were trying to rush it. I think that we need a full 12-week consultation and possibly slightly longer. Maybe it should be slightly longer. We are doing quite a lot of short consultations at the same time, which is very difficult for our stakeholders. We are doing that because we are trying to get things through in a pandemic and before the end of the mandate. To be honest, I

do not think that that is fair on anybody. Some of our housing stakeholders are trying to do four or five things simultaneously.

Mr Allen: I am not asking you to be pre-emptive but if, after the consultation, it is deemed that regs should be taken forward, how long does it generally take the Department to do something like that?

Mr Polley: It obviously depends on how complex they are. It depends on what we choose to do. With that one, we have flagged a few issues as needing to be looked at, but that is not to say that they will require complex regulations to work around. It may be that we look at them, and some of them, such as those more complex constitutional-type issues that we just have not had time to look at, melt away.

I am wary of tying myself down, but, in general terms, if there is an experienced team in place, regulations could be done in about a year or a year and a half. They are not four or five years' worth of work. I am wary of saying that we could rush them through in six months or something like that, because you have to take your time over them and do them properly.

Mr Allen: Potentially, we are looking at an 18-month period for the Department to run the consultation exercise and produce a report and then, if the Department is minded to do something, another year on the other side of that.

Mr Polley: Yes.

Mr Allen: OK.

Mr Frew: My question is on the wording of new clause 11A, but, first, I thank you for your work on drafting an amendment. You have been responsive to the Committee and to what we are trying to do in giving as much choice and as many options as possible for tenants and landlords. I ask you to explain to me — maybe it is a typo, but I will ask the question anyway — your new clause 11A(5) that starts:

*"The Department must consult the following persons as to whether to exercise the power conferred by subsection (1)—
(a) district councils,
(b) such persons as appear to it to be representative of landlords,
(c) such persons as appear to it to be representative of tenants".*

Can you follow on with the rest of that clause? Maybe it is a typo, but I want to be sure.

Mr Polley: It is:

*", and
(d) such other persons as it considers appropriate (which may include landlords or tenants)."*

Mr Frew: I see a series of numbers here, but it might be a typo, and I want to clarify what that means.

Mr Polley: Is it a printing message or something like that?

Mr Frew: It could well be, and it is off an email, so it might be wrong. I just wanted you to clarify. So, that clause reads:

*"(a) district councils,
(b) such persons as appear to it to be representative of landlords,
(c) such persons as appear to it to be representative of tenants, and
(d) such other persons as it considers appropriate (which may include landlords or tenants)."*

Is that right?

Mr Polley: Yes. It is (a), (b), (c) and (d), and (d) is:

"such other persons as it considers appropriate (which may include landlords or tenants)."

Then we go into subsection (6).

Mr Frew: OK. Subsection (6) reads:

*"The Department must prepare a report on the consultation and—
(a) lay the report before the Assembly, and
(b) publish it in such manner as the Department considers appropriate."*

What do you mean by "as the Department considers appropriate"?

Mr Polley: That is fairly standard text. Once upon a time, there was a formal way of publishing things, but, normally, they are now put on the Department's website. The OLC uses a form of words that it considers to be future-proofed.

Mr Frew: OK. Andy and the Deputy Chair took you through the issues on the 18-month period. I am not sure that you need 18 months. I think that you are giving yourselves space and time. That is not necessarily a bad thing, because you want to get it right first time, so that it serves the public, and there is never a sign on legislation that says, "Are we not good, because it took us only six months or a year?".

We think that the requirement is necessary, so, although I am a bit nervous about the 18 months, I can understand why, with everything else that is going on in the Department, you have put 18 months there. What is important to me is the timeline up to the end of the 18 months. To assuage my concerns and assure me that the Department will act as speedily as it can, will you consider drawing up a timeline before the Bill is passed so that we can clearly see the steps that the Department will take, when it will launch a consultation and how long the consultation period will be? I know that you have cited 12 weeks. You mention holiday periods, for example. It is important that the Committee know when you plan to launch the consultation and over what period. That is also important for the duration of the consultation. Doing a 12-week consultation over July and August is completely different from doing it in September and October or May and June. We need a wee bit more from you guys on your intent leading up to the 18 months.

Mr Polley: We can provide that.

Mr Frew: That would assuage some of my concerns around the 18 months.

Doing a consultation does not necessarily mean that you need to legislate. Bearing that in mind, a decision still has to be made after a consultation on whether to legislate. While I do not want to preempt any consultation — it might say that nothing more needs to be done, although I doubt that, because this is important — could something be put in the Bill that commits the Minister and the Department to make a decision after the consultation on whether it is necessary to legislate? If so, should there be a duration for that?

Mr Polley: I will ask Conrad and Karen to respond, but, before I do, I will say that, in principle, the Committee and the Department can put anything that they want in the Bill. I am trying to think whether I have seen something like that anywhere before. We have not talked about that with the people who draft Bills and who have much more experience of them.

Mr Frew: I get that.

Mr Polley: You have to imagine what its effect would be. The amendment says that we will do a report and bring it to the Assembly. You could add that the report should make a clear recommendation about future steps, or something like that. I imagine that it would have to.

Mr Frew: I will be completely straight with you. It is not just the Department; it is the way in which government runs. My worry is this: the Bill, through this amendment, commits the Department to laying a report within 18 months; that report could have clear recommendations arising from a consultation that says —

Mr Polley: Yes. It could just sit there and not be acted on.

Mr Frew: — that the Department needs to do something in legislation, but nothing might happen after that. Cogs turn slowly in government; I am trying to make sure that the cogs are well greased. I do not want a consultation to be conducted, a report to be laid that demonstrates clear commitments and direction, and for nothing to happen. I do not want to pre-empt the consultation. Is there a form of words that can be put in the Bill that would commit the Department to doing something if it is required? You would know whether it was required from the consultation and the report. I am talking and thinking out loud at the same time, which is always a dangerous thing to do, David.

Mr Polley: It is even more dangerous to try to answer a question on the record while thinking at the same time. *[Laughter.]*

Mr Frew: I know that decisions have to be made by the Committee today, but I will leave that with you, because there will be Consideration Stage and Further Consideration Stage. Be warned.

Mr Polley: OK. If we leave it at that, it will give us time to get an answer.

The Deputy Chairperson (Ms Armstrong): To make it worse for you, David, the other thing is that that will be in the Committee report, not just as part of the report on the Bill but as something flagged so that the future Committee will be aware that, once the 18 months are over, it will need to look for outcomes.

Sorry. Andy?

Mr Allen: I will just expand on Paul's point. Is it standard practice for a consultation report to detail the way forward?

Mr Polley: Yes.

Mr C Murphy: The normal protocol is that, once a consultation has taken place, the Department produces a report in which it sets out what it plans to do as a result of the consultation.

Mr Polley: Especially because we will be given a duty. The way in which it is drafted gives us a duty to consider things. To do that properly, you will have to say what you think after you have considered such things.

Mr Allen: Given the timeline, the way forward will be detailed at the 18-month point at the very least.

Mr Polley: Yes; at the latest. It could be earlier if things go well, as I said.

Mr Frew: That report will not necessarily put down a timeline. It might recommend that you need to legislate in a certain way, with detail, but it will not necessarily put down a timeline.

Mr Polley: I should make the point that it is hard to bind the hands of a future Minister. A future Minister might get our recommendation and decide that they have other priorities or that they do not want to do it. At the end of the day, secondary legislation will need to be signed off by a future Minister, and we do not know who that will be or what their views will be.

Mr Frew: That is what we are scared of.

Mr Polley: That equally goes for a future Committee or a future Assembly.

The Deputy Chairperson (Ms Armstrong): As part of our report for a future Committee, we will put in a recommendation to keep that on the agenda and look at it after the 18 months have passed. We have teased out that one. David, do you want to carry on with the next one?

Mr Polley: OK. We do not think that there are any outstanding issues with clauses 4, 5 and 6.

We have proposed an amendment to clause 7. The Committee asked us to look at an amendment that provides for three months' rather than two months' notice of a rent increase. We have therefore proposed that as a departmental amendment.

We do not think that there are any outstanding issues with clauses 8, 9 and 10. We will come back to schedule 2, which links to clause 9.

The Committee was going to get legal advice on clause 11. As we said, the Department's consultation is ongoing, and we are reserving our position until after the consultation has ended. We are here today, however, and can answer any questions that the Committee may have thought of. I know that you were taking legal advice and considering what to put in in support of this and what you want to do.

The Deputy Chairperson (Ms Armstrong): I will start off. If any of our members on StarLeaf want to come in on this, will you raise your hand, because I cannot see your faces? Andy will come in after me.

David, we have said this before, and I will say it again: we are extremely frustrated that the consultation started after the Committee had already begun its scrutiny and will conclude after the Committee Stage ends. What I can say at this stage is that we as a Committee are pretty fed up. We feel that our hands are tied. We will not do anything at this stage that pre-empts the outcome of the consultation. The Committee respects consultations and knows the value of getting public input. However, we do not feel that the Department has respected the Committee's position through its scrutiny role. We will ensure that the future Committee takes account of that.

We have a few questions. Can you give us an idea of how many submissions the Department has received so far? How have you promoted the consultation? Will the consultation be available and published in advance of Consideration Stage? If not, would it not be better to hold back Consideration Stage? I will let you answer those, and then I will bring in Andy.

Mr Polley: OK. I am hoping that Karen knows more than I do about the details of the day-to-day work on the consultation. I know that some events are planned for this week. It would make sense for it to be published before Consideration Stage, but we are not in control of when Consideration Stage starts. From our point of view, that would be really sensible. Karen, do you want to update the Committee on the consultation?

Ms Karen Barr (Department for Communities): I do not know the number of people who have responded. Three responses came in separately in a Word document, but I do not know how many have come in electronically. I can find that out for the next session. The consultation is due to end on 25 January, and we will then aim to get the report written up as quickly as we possibly can.

Mr C Murphy: May I add to that? The Deputy Chair asked about our promotion of the consultation. Obviously, we have published it on the departmental website. We also wrote to all those on our normal list of consultees to make them aware of it. As David was going to say, we have two consultation events planned for tomorrow. To capture people who are not about during the normal 9-to-5 working day, one will take place early tomorrow morning, and the other will take place tomorrow evening. That will give us significant information about how the consultation questions are being viewed.

The Deputy Chairperson (Ms Armstrong): Just for the record, when did the Department decide to go to consultation on the notice to quit?

Mr Polley: We should write to you with the exact date, Chair, rather than my trying to remember, given that this is on the record.

The Deputy Chairperson (Ms Armstrong): OK. We would like to have that in writing. The Committee is aware that it was suggested at a conference and that it was mooted in informal discussions. It is just that the Committee did not know anything about that until well into the scrutiny period. We would like clarification in writing on when the Department made the decision to go to consultation, so that we have it on record.

Mr Polley: OK.

Mr Allen: David, you will be very aware that the Committee is taking a keen interest in the interaction with homelessness legislation around the notice to quit and related areas, specifically article 3(6) of the Housing (Northern Ireland) Order 1988. Are you able to give us more detail of any work that the Department has undertaken to review the point at which a person can be considered as homeless by the Northern Ireland Housing Executive?

Mr Polley: Part of this year's business plan for two of my teams, the private tenancies team and the homelessness team, is to review the homelessness legislation and to make recommendations on what could change in it. That work is ongoing. One of the issues raised is whether the period of 28 days gives the Housing Executive enough time to help people, and why it has to be 28 days. I have discussed that with the Housing Executive. It says that it provides advice and support, and that it does not matter how long it is until the end of the tenancy. It does not have to be 28 days: the 28 days relates to when someone can be considered to be homeless, but the Housing Executive's housing options service should be able to help and support people before that. In the initial discussion, the Housing Executive was open to the idea that it would make sense to make that period a bit longer. The definition is one of a threat of homelessness and the point at which homelessness comes in and that support can be taken into account.

It might be useful, if the Committee has time at the end of the session, to have an update on that from the homelessness team.

Mr Allen: That would be very helpful.

Mr Polley: I know that you are very busy.

The Deputy Chairperson (Ms Armstrong): We are very busy, but we have a report coming out on our consideration of this legislation, and we can also put it on to our forward work programme.

Mr Allen: David, it will come as no surprise to you that I want to ask whether you have any information on the timeline for that review.

Mr Polley: This is an official review. We did a stakeholder consultation and have really good links with homelessness organisations, such as the Council for the Homeless NI, which has changed its name — I have forgotten what it is called now — and others. We have had discussions, and we have close links with other Departments that are involved. This is an initial scope of what might change. Some of that will involve primary legislation, so we will need more formal proposals, which will need to be considered properly. We will need to introduce primary legislation, a Bill, or put those proposals, along with other things, into a housing amendment Bill. That would take a while — I will not pretend otherwise — particularly the proposal to change the 28 days. Some might be more easily changed, but the 28 days is in primary legislation and would need to be changed by amendment to that Bill, so it would not happen quickly.

Mr Allen: No worries. Cheers, David.

The Deputy Chairperson (Ms Armstrong): I will not pre-empt what will happen with the Programme for Government, but I think that cross-party support is there for a housing outcome. One housing output that we want to see is a reduction in homelessness. That is something for that team to consider, David, going forward.

Paul, I am just checking whether you want to come in on the issue of tiers.

Mr Frew: Yes. We are talking about a Bill but also about a consultation. I echo the Deputy Chair's sentiment: this is not ideal. It is almost as though the Department has been feeling its way in the dark around this stuff. The Department should know its mind before it puts any text on to the blue pages of a Bill. To me, that in itself says that this is not the way to do legislation. We are where we are, and we have to be thankful that you are consulting on something. That is my position. Forgive me, because I should know this, but does that consultation cover not only the duration for notice but tiering? The Bill talks about periods of:

"more than 12 months but not more than 10 years".

Within that, a sizeable chunk of people may well move after five, six or eight years. Does the Bill also afford an opportunity to amend that thinking within the Department?

Mr Polley: The consultation asks separate questions on each of the three periods. Correct me if I am wrong, Karen, but does it not ask whether the first one should be 12 months?

Ms Barr: Yes. It talks about being under 12 months.

Mr Polley: There is under 12 months, over 12 months, less than 10 years and over 10 years. It asks about the notice to quit for each of those three tiers. It also asks whether it is reasonable to have different rules for under 12 months.

Ms Barr: There are different rules for different periods.

Mr Polley: Yes, you are right: there is a general question. There is a general principle. We wanted to re-establish a general principle that it is right to have different lengths of notice to quit for different periods of tenancy. It is also different for landlords and tenants. The consultation also asks about exemptions.

Mr Frew: Yes, for me, that is the important piece, because it is important to get the right balance between tenant and landlord. Thinking that through, I am not sure that the large period of more than 12 months but less than 10 years is adequate to allow for that balance. Is the Department concerned that we have not got the duration right? It may be that you are considering smaller periods. If I were to amend this, that is what I would be looking towards. The duration is as important as the notice to quit or notice to move.

Mr Polley: This is an amendment Bill, so we based it on what is already in the legislation, and it has three different tiers: one to five years; five to 10 years; and 10 years and over. In the amendment Bill, we suggest moving the five-year line down to 12 months and keeping the basic structure, rather than doing anything more radical. It is reasonably complex as it is. Generally, people focus on the period of 12 months to 10 years because that covers most tenancies. There are a few longer ones. For anything shorter, the notice to quit tends to be given on the first day at the end of the first-year contract, unless it has been decided to extend. There already are quite a lot of different ones, and if it were to be more subtle than that, it could become confusing.

Ms Barr: There is also a general question:

"Do you agree that notices to quit should vary depending on length of tenancy?"

There is a comments box for everyone to state their opinion. We have specifically asked about the length of notice for shorter-term tenancies. We have also asked what people think about the notice to quit for tenancies of 12 months to 10 years. There are boxes for people to put in their views. There is a chance that we will be able to gather that information through the consultation.

Mr Frew: OK. I am happy to leave it there.

The Deputy Chairperson (Ms Armstrong): Finally, we are now at the consultation, and then there is Consideration Stage. The Committee feels like its hands are tied. We do not want to pre-empt the outcome of that consultation, which will come out when it comes out. Consideration Stage is another matter. We know that we have just weeks until the end of the mandate. Are we absolutely certain that Consideration Stage will happen after the consultation has been reported on?

Mr Polley: I have had a go at answering that. From the Department's point of view, although it is not in control of when Consideration Stage happens, it seems obvious that it will be done that way.

The Deputy Chairperson (Ms Armstrong): I am not sure why the Department is not in control. I sat on the Business Committee for long enough, and it is the Department that asks the Business Committee to schedule Consideration Stage.

Mr Polley: The Business Committee makes that decision. If your point is that we should ask it to make sure that Consideration Stage is after a certain date, that, I think, is sensible.

The Deputy Chairperson (Ms Armstrong): I am asking whether the Department will wait until the report on the consultation has been published before asking for Consideration Stage to be scheduled.

Mr Polley: We want to make sure that Consideration Stage is after the report. We will do whatever we have to do or request. I do not want to make it sound as if the Department decides when Assembly business is scheduled, because it does not. That option, however, is sensible, and I think that you would want that as well, given that the Committee and the Department want to do it that way. I will talk

to the people who know how those procedures work and try to find the best way to do that to make sure that that happens.

The Deputy Chairperson (Ms Armstrong): The Committee scrutinises but we also support. The Minister has to stand up at Consideration Stage. If, at that stage, we are still waiting for the consultation report to come forward with recommendations, I would not like to be her.

Mr Polley: I entirely understand that point.

The Deputy Chairperson (Ms Armstrong): Yes.

Mr Polley: I am cautious about making it sound as though the Department tells the Assembly when it does its business, because it definitely does not do that. You know that point. If your question is whether we agree that Consideration Stage should be after the consultation report is published, the answer is yes, absolutely, we agree with you.

The Deputy Chairperson (Ms Armstrong): We do not know when that consultation report is coming out, and I am worried about there being enough time left in the mandate for Consideration Stage, Further Consideration Stage and Final Stage. We know that a whole range of legislation comes forward at the end of a mandate, and I am worried that this Bill may fall if it does not get through by the end of March.

Mr Polley: We are very focused on getting the Bill through by the end of March as well. From our preliminary discussions with the people who organise those things, we are hopeful that the Assembly will have the time to consider the Bill and get it through.

The Deputy Chairperson (Ms Armstrong): After doing all this work on the Bill, we hope so, too. Otherwise, it will be nearly like starting again.

Mr Polley: I am with you on that one.

The Deputy Chairperson (Ms Armstrong): Absolutely.

David, carry on. We have finished clause 11. Is there anything else?

Mr Polley: We do not think there are any outstanding issues with clauses 12, 13 and 14. Really quickly, I want to raise one point about clause 13. The Committee is probably aware that the coronavirus emergency legislation lasts until 4 May, and it has made changes to the notice to quit periods.

The Deputy Chairperson (Ms Armstrong): Yes.

Mr Polley: If the Bill gets past the Assembly, it is possible that it might get Royal Assent ever so slightly before 4 May. It would be only a matter of days, but it would mean that the notice to quit might change quite quickly over a few days. We have therefore asked the OLC whether, if the Bill happens to get Royal Assent before that, we can delay the commencement of the notice to quit clauses until after the end of the emergency period. Did I explain that clearly?

The Deputy Chairperson (Ms Armstrong): You did. To be honest, I certainly see that as a sensible approach, rather than confusing the issue for people. Is 5 May election/polling day?

Mr Polley: It is not very far away, is it? It would seem daft to have different rules for just a couple of days. We propose to keep the coronavirus notices to quit provisions until the end of the full two years and then start after that.

Mr Frew: You make me very nervous when you start to talk about coronavirus regulations and emergency powers. Whilst I see that one as being sensible, I cannot say that for most of them. What happens if those regulations are extended?

Mr Polley: They cannot be extended for any longer. They can be extended for only two years, and they have been extended for two years.

The Deputy Chairperson (Ms Armstrong): It is primary legislation.

Mr Polley: They will stop on 4 May.

Mr Frew: Is May the concrete end?

Mr Polley: Yes. It was emergency legislation, and we could extend it. At the start, as you might recall, it was for 12 weeks, because we thought that it might be over by then. *[Laughter.]*

Mr Frew: Tell me about it.

Mr Polley: It has now been extended. You could only ever use them for up to two years, and that period ends on 4 May. On 5 May, that will be the end of them.

Mr Frew: Thank you for that clarification. You have assuaged the concern.

The Deputy Chairperson (Ms Armstrong): There we go. Thank you for that. That was clauses 12, 13 and 14.

Mr Polley: Yes. We do not think that there are any outstanding issues with schedule 1, so I will turn to schedule 2, which is about the power to make energy efficiency regulations and the processes around that. We sent over two documents. You asked us to go through each bit, line by line, to show what they do. We sent that detail over before Christmas, and, in order to help you — us as well — we also sent over what schedule 2 would look like with our changes made to it. I know that you talked about that earlier with the Examiner of Statutory Rules. We are happy to answer any questions.

As I said, over Christmas, some slight tweaks were made to the text of the two documents to try to clarify a few things. For example, we clarified one thing by changing the language slightly. There was a bit around landlords who own houses. The word that was used was changed to make it clear that it was anyone with an interest in a house. That could involve, for example, a bank that had just repossessed a house. We sent it to the Departmental Solicitor's Office (DSO), and it suggested a few changes. That was one of them. Things like that were changed to clarify and improve the quality of the drafting and to clarify the policy intent.

Mr Frew: Thank you, David. Again, I understand why you changed schedule 2. It is important to get it right. It gives you large powers by regulation, which, of course, makes us legislators nervous, especially those of us who have a libertarian streak. In new article 11G(3), which is inserted by schedule 2, you have gone from a four-line paragraph to a full page, where you have new subparagraphs 3A, 3B, 3C and 3D. Can you explain the rationale for having all that? Is it to give you more power or to define your power?

Mr Polley: I could not have put it better myself. The point of putting it in primary legislation is to constrain the powers of the Department, especially its ability to create offences and what those offences are. A lot of the extra text defines what the offences can be and limits us by saying what the penalties can be and what they cannot go above. It puts constraints on the regulations that we can make. We will do a consultation on it. We need to take time and get it right. We need to talk to all sorts of different people about how fast to go, what levels of energy performance certificates (EPC) to aim for, how the exemption system will work and who will manage that. That will take time. Those regulations will be made through the draft affirmative procedure. They will have to come to the Committee. We will have to talk about them, and they will have to be agreed on the Floor of the Assembly. This puts in as much detail as possible to make sure that we are constrained in primary legislation. Some of the things that you pointed out relate to offences. A lot of the detail in that now is about offences, and it constrains the Department in what it can do.

Mr Frew: That is the most correct answer that you have ever given me, David. Thank you. *[Laughter.]*

The Deputy Chairperson (Ms Armstrong): Thank you.

Members, we still have to decide — we will do so today — whether to support schedule 2. Members have all the tabled papers and the full information. Thank you very much, David.

Is there anything else left to cover?

Mr Polley: There is schedule 3. You will see at the end of the list that we made some changes to schedule 3. The substantive one is that we want to add that we will consult tenants. Also, some of the numbers have had to change because we changed the numbers in schedule 2.

The Deputy Chairperson (Ms Armstrong): Yes.

Mr Polley: I think that we have gone through all of the Bill.

The Deputy Chairperson (Ms Armstrong): That is it. Later today, the Committee will go through its formal clause-by-clause consideration of the Bill.

I know that we have been through the wringer on the Bill. It has been quite complex, and there are bits of it that we cannot really deal with because the Department is out to consultation on them. At this stage, thank you very much, David, Conrad and Karen. Please pass on the Committee's thanks to your whole team. It is a big Bill, and there are a lot of things in it that can help landlords and tenants.

David, you are staying with us for our next briefing. If we have any further questions, I am sure that we will come back to you. You will love to hear that.

Mr Polley: Of course, you can. As you said, I am staying on the line for the next briefing. A few things were raised. Karen and Conrad will try to get back to you on those and send information to the Clerk as quickly as possible to inform the next discussion.

The Deputy Chairperson (Ms Armstrong): Yes, please.

Mr Polley: I cannot make promises on their behalf. I do not know how easy that will be. I hope that the next item that I am covering will be quite short.

If that is the end of the Committee's scrutiny of the Bill, I want to thank you all. It has been really useful for us. It is quite an odd Bill in places because the consultation and a lot of the policy work were done a while ago, but we are really quite pleased with how it has gone. The Committee has raised some really good issues and aired a lot of things that were really helpful for us to think through and explain to you, and you have made some changes. I think that we found quite a lot of common ground on almost all of the Bill, so thank you very much. Thank you, Chair and all the Committee members.

The Deputy Chairperson (Ms Armstrong): David, thank you and your team. It is not just about giving you guys and the Minister a hard time. As a Committee, we are trying to do what is best in legislation. As you said, we found a lot of common ground, and that is very welcome.

Mr Frew: It has been emotional. *[Laughter.]*

The Deputy Chairperson (Ms Armstrong): All that hard work was worth it, sure.

Mr Polley: I also thank the Clerk and her team. Having two meetings a week requires an awful lot of administration between meetings. We have had to work fast to get things over to you, but I know that there has been a big impact on the Clerk's team. The members have large Committee packs and set meetings, but pulling everything together and working out how to do everything has been very difficult for the Clerk's team. We thank them as well.

The Deputy Chairperson (Ms Armstrong): Absolutely.

Mr Polley: Maybe I should stop before I get too emotional. *[Laughter.]*

The Deputy Chairperson (Ms Armstrong): Absolutely. You are right. I have not yet broken the news that we are moving to three Committee meetings from this week, due to the number of Bills that we are considering. *[Laughter.]* I will put the Private Tenancies Bill to bed for the moment. We will come back to it.