



Northern Ireland  
Assembly

Committee for Communities

# OFFICIAL REPORT (Hansard)

Defective Premises Bill:  
Department for Communities

16 May 2024

# NORTHERN IRELAND ASSEMBLY

## Committee for Communities

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**Members present for all or part of the proceedings:**

Mr Colm Gildernew (Chairperson)  
Mrs Ciara Ferguson (Deputy Chairperson)  
Mr Andy Allen  
Ms Kellie Armstrong  
Mr Maurice Bradley  
Mr Brian Kingston  
Mr Daniel McCrossan  
Mr Maolíosá McHugh  
Ms Sian Mulholland

**Witnesses:**

Ms Frances Donnelly	Department for Communities
Mr Gerry McKibbin	Department for Communities

**The Chairperson (Mr Gildernew):** The Committee has decided that it would prefer to have the meeting in open session. Should there be specific legal issues, we may move to closed session, but the majority of the session, where absolutely possible, should be open.

I welcome Frances Donnelly, deputy director of the residential building safety division; and Gerry McKibbin, who is also from the residential building safety division. I think that Derek Kennedy was going to make a brief opening statement.

**Mr Gerry McKibbin (Department for Communities):** Derek Kennedy was to be here, but unfortunately could not make it for medical reasons. Frances will make the opening presentation.

**The Chairperson (Mr Gildernew):** Frances, you can go ahead, and then we will move to members' questions.

**Ms Frances Donnelly (Department for Communities):** Thank you, Committee and Chair, for the opportunity to brief you. First, I will give a bit of background, and then I will pass to my colleague Gerry to talk about the defective premises legislation. Thereafter, I can give you a bit more information on the background to the work that we are doing and our forward work plan.

As we are all aware, the Grenfell tragedy in 2017 led to a review of building safety throughout all of the UK jurisdictions and internationally. Dame Judith Hackitt was appointed to carry out a review of building regulations and fire safety. The findings and recommendations led to the Building Safety Act 2022 in England, which achieved Royal Assent in April 2022. The Building Safety Act is a primary legislative vehicle to address the findings and recommendations, which were that there were systemic

failures in the regulatory system; issues with competence; poor behaviours; a lack of inspection oversight and control in the regulatory system; and roles, responsibilities and accountabilities that were not clear in the end-to-end life cycle process of a building from inception to disposal.

I move now to the local context. In 2021, the Executive agreed that the Department of Finance would establish an expert panel. That panel ran and met for one year. In April 2023, the Department for Communities agreed to take responsibility for taking forward this important work to ensure that Northern Irish citizens had the same level of safety as those in other UK jurisdictions and to address the disparity that existed. The panel's recommendations and findings were not that different from those in the Hackitt report; in fact, they were very similar. It found that there was a fragmented regulatory system; gaps and weaknesses in the end-to-end life cycle process of a building; a lack of inspection, oversight and control; and that roles, responsibilities and accountability were not clearly defined. Those are the same issues as Dame Judith Hackitt had established. The expert panel concluded with 15 recommendations.

Our regulatory and governing systems in Northern Ireland are severely fragmented. Responsibility for building safety crosses six Departments and all 11 councils, so our work, going forward, is a huge, collaborative piece on which we all need to work together to ensure that the disparity is addressed and our citizens are safe in their homes. The defective premises legislation is a small part of our significant forward work plan and is required to give Northern Ireland citizens the same level of safety and to address the disparity.

On that note, I pass to my colleague Gerry, and I will continue on our forward work plan later.

**The Chairperson (Mr Gildernew):** Thank you, Frances.

**Mr McKibbin:** Thank you, Chair, for the opportunity to speak about the Bill. You mentioned that, if any issues arise, we might need to go into closed session. I hope that members will appreciate that, in open session, there are some things that cannot really be discussed as openly as we would like, because we have to respect the processes of the Assembly as well as any legal processes, as the Bill has not yet been introduced to the House.

The Bill is short. I think that you have all had sight of a copy of it or, at least, of the financial memorandum. The Bill has four clauses. We have attempted with the Bill to bring about parity with what already exists in England and Wales. The Building Safety Act came in in April 2022. Section 134 amended the English and Welsh Defective Premises Act 1972, and section 135 changed the Limitation Act 1980 in England. What we have done with the Bill is to bring similar provisions in to amend our Defective Premises (Northern Ireland) Order 1975 and to amend our Limitation (Northern Ireland) Order 1989.

Let us look at the Defective Premises (Northern Ireland) Order initially. As it stands, it addresses only new build. It is designed for the creation of a dwelling, effectively, and it requires that the person responsible for creating the dwelling has to do it to the best of their skill, using the best materials available to them, to ensure that there is a high-quality house at the end of the process. This legislation will introduce a new article that will extend the Order slightly in accordance with what is in section 134. It will also clearly set it out that the new powers that are being introduced through an additional article in the Order cannot be applied retrospectively. They are purely for work going ahead from the date on which the Bill comes into operation following Royal Assent.

Section 135, as I said, addresses the limitations of it, and we have put in similar provisions to give Northern Ireland citizens the same limitation bars as there are for England and Wales at the moment. We are extending the current limitation periods, in keeping with the decision that was taken in England and Wales, and there will be that retrospective element of it introduced as well, this time round, for new build. There are some limits on it as well that the Bill will clearly set out in terms of whether an ongoing case will be covered by the Bill and how the Bill will be addressed by the courts, should there be any impact on the convention rights of a defendant under human rights legislation.

The other thing that the Bill will do is transfer the Defective Premises Order responsibility from its current home in DAERA to DFC. You may be aware that a transfer of functions order had already started to be developed by DAERA officials with the Office of the Legislative Counsel (OLC) from initial conversations that we had at the tail end of last year. It was decided that that was the cleanest method of making that transfer. It is in keeping with the Minister's stated intention that the Bill proceeds through the accelerated passage procedure, and it does not present any more potential roadblocks for the progress of the Bill through the Assembly.

The fourth and final clause of the Bill is simply a commencement clause that says that the Bill will come into operation in its entirety one day after it receives Royal Assent.

That is the position with the Bill as it stands. We have been working with the Bill Office and the Business Office to schedule the various stages in the Assembly. We hope to have the First Stage within the next week or two, when it should be included in Assembly business. After that, we are in the hands of the Assembly business team to schedule the other appointments.

**The Chairperson (Mr Gildernew):** OK, thank you. Frances, do you want to say something further?

**Ms Donnelly:** I will give the Committee a bit of information on the work that the Department for Communities has done to date. Obviously, we are working at pace to ensure that the disparity issue is addressed as soon as possible. In April 2023, the Department for Communities took responsibility, and, since then, we have established a residential building safety division in the Department. Even before that was established, there was work ongoing with current officials to address some of the key safety measures in the expert panel's report, which was remediation of any existing stock that was potentially at risk.

Seven of 15 recommendations have been substantially advanced. A cladding safety scheme was set up and launched last September for any residents and applicants in buildings that have non-aluminium composite material (ACM) cladding so that they can go through an assessment procedure and potentially get funding to remediate that cladding. We have five applicants, and we are due to do another public call-out to make sure that everyone is aware of the scheme. That scheme is run in conjunction with the Department for Levelling Up, Housing and Communities (DLUHC) and Homes England. DFC has a monitoring role in the scheme.

We have established a full division and all the good governance that we need, with the appropriate skilled resourcing, and the two business cases have been approved. We have started in earnest to implement the recommendations, and our aim is to provide sound policy and legislation and change to address the fragmentation, gaps and weaknesses in the entirety of the system. Part of our work will be to address competency, roles, responsibilities and accountabilities so that we have the right people skilled and qualified to design, construct and manage high-rise residential buildings to reduce any risk of poor safety. We have also developed a road map, which was one of the recommendations. It was published on 2 May. It outlines how and when we will address all the recommendations in the expert panel's report and all the other important work that comes around that.

We have already done some preliminary stakeholder engagement, and, as we progress, we will engage with residents, industry, managers of buildings and public-sector clients of housing to get the relevant expertise. The Northern Ireland landscape is different in several ways from our other UK jurisdictions, so it is important that our approach is proportional to the Northern Ireland landscape. All the problems are the same, but how we will address them and implement change will be different. We are regulated by Building Control. All other UK jurisdictions and the Republic of Ireland are self-regulated as well.

The other thing that we are cognisant of is that Northern Ireland is largely made up of small and medium enterprises, and it is important that anything that we change in the regulatory system is not burdensome but achieves the objectives that we have set out to achieve. We also have a different risk profile in that we do not have as many high-rise residential buildings, but, without risk assessment, it is unknown whether we truly have a risk. The work has already commenced to establish all our Northern Ireland stock. We are looking at above 11 metres or five storeys, because that is predominantly where our high-rise stock will lie. It is obviously important for us to liaise with other central government and local authorities.

I can deal with the work streams and forward work plan in questions, if that is OK.

**The Chairperson (Mr Gildernew):** Thank you very much for that. We are unanimous in our view that we want to see people's rights here being protected and enshrined to ensure that they have full access to those rights and protections. Because of that, we want to see robust legislation that will stand up to the rigours of all that. That is the context in which the Committee is engaging today. I hope that that is clear.

You mentioned a fragmented regulatory system and gaps and weaknesses in the system. It is clear that those need to be addressed in a way that stands up to rigour. Also, you said that the responsibilities cross six Departments. At this minute in time, if someone identifies a structural problem in a building, in terms of the departmental and regulatory framework, who picks that up and addresses it?

**Ms Donnelly:** Currently, the Department for Communities will pick up the residential elements. As the team builds, we are concentrating initially on fire safety to ensure relative parity with our UK counterparts. As for structural safety, we will liaise with other Departments to see which one is best placed to pick that up and has the skills to take it forward. Over the next year or two, we will be picking up structural elements in high-rise residential buildings.

**The Chairperson (Mr Gildernew):** Is there a clear pathway to how that gets assigned for follow-up, remedy and mitigation? Is it Building Control? Is it the Health and Safety Executive (HSE)? Who finishes up doing the follow-on work after identification?

**Ms Donnelly:** The following-up work in responding to a query?

**The Chairperson (Mr Gildernew):** Yes, responding to an identified problem.

**Ms Donnelly:** At the minute, as we have different responsibilities across Departments, we are liaising closely to try to get things transferred to the best place. For instance, we try to answer any residential mica or reinforced autoclaved aerated concrete (RAAC) structural elements that come our way.

**The Chairperson (Mr Gildernew):** Will the Bill reinforce that system?

**Ms Donnelly:** Yes. We hope that there will be some kind of regularity in that the system will be more streamlined and there will be clear areas and paths for members of the public when they need a query addressed.

**The Chairperson (Mr Gildernew):** Will there be clear accountability?

**Ms Donnelly:** There will be clear accountability, yes.

**The Chairperson (Mr Gildernew):** And that will rest with the Department for Communities.

**Ms Donnelly:** Not for all buildings.

**The Chairperson (Mr Gildernew):** But residential?

**Ms Donnelly:** It will rest with the Department for Communities for residential building safety.

**The Chairperson (Mr Gildernew):** What issues are being dealt with by the Bill, and are they contentious or complex?

**Mr McKibbin:** They are considered complex to the extent that they are cross-departmental. The legislation, as I said, will transfer the functions of one piece of legislation from DAERA to DFC. There has been a question with DAERA for some time as to why they landed with it in the first place. It may just have been down to one of those decisions that were taken in the late sessions in 1999 prior to devolution. That is one of the things that are being addressed and, going back to Frances's point, will go some way to addressing the fragmented nature of the current system. It reduces the number of Departments with responsibility from six to five for a start. It takes DAERA out of the picture. There is nothing in the Bill that is perceived as contentious from a residents' perspective. I understand from our friends in the industry that there are some concerns about the impact that it will have on the industry, but there is certainly nothing that is perceived as contentious.

Another thing to bear in mind, of course, is that, as Frances said, this forms a small part of the work that we are doing to address residential building safety in Northern Ireland. That work will eventually lead to major legislation coming to the Assembly in the shape of a potential building safety Bill. While it will be similar to legislation that is in place elsewhere across the UK, it will be designed to be fit for purpose for Northern Ireland, taking into consideration the fact that we have different structures and

different mechanisms here. We are also in discussions with the remaining five Departments that will have building safety powers on where they best sit. Interdepartmental groups have already been established at deputy secretary level and at director level in the Departments that have the responsibility, and that will be part of their discussions and debate on whether it is more appropriate to transfer those powers to the Department.

On the contentiousness of it, we see at the heart of all of the legislation, including this Bill and the work that we are driving forward under the larger Bill, citizen safety. One life is too great a cost to pay where we can bring in legislation that will prevent that loss of life or injury from occurring. From a citizen safety perspective, this is certainly not seen as contentious. From the feedback that we have been getting from the various parties that are aware of the Bill's creation and the process following the Minister's oral statement, this is very much welcomed.

**The Chairperson (Mr Gildernew):** I have a final question, and then I will go to members. Frances, you mentioned that the landscape here is different in several ways. What steps have you taken to ensure that those differences do not become a difficulty with the Bill? Gerry, you mentioned some concern among the stakeholders. What engagement is ongoing to address or identify those concerns?

**Ms Donnelly:** The expert panel did good work in the first place identifying weaknesses and gaps in our current end-to-end system. As a team, we are taking forward several work streams to address those, one of which will be extensive stakeholder engagement. That will commence shortly, and we will draw in expertise where we need it and some task-and-finish groups so that it can be designed appropriately and with every element that we need to address in mind. We are looking to streamline the disparity that exists in the system between the responsibilities of six Departments and 11 councils. Working with stakeholders, we are also liaising closely with our counterparts in other jurisdictions. As we have lessons learned, we are in a fortunate position here to learn from those who have gone before us. England, Scotland, Wales and the Republic of Ireland have all done good work so far. The competency is not so much restricted to the system but restricted to the actors in the system in that it will be the same regardless of whether you are in Wales, Scotland, Northern Ireland or England.

**The Chairperson (Mr Gildernew):** Let me focus a wee piece. I get that all that work will, you say, happen post the legislation. That is all valuable work and good work, and it should be done. What I wonder, on the legislation itself, is, given the differences that you have outlined and given that this is largely a cut-and-paste exercise, what steps have you taken to ensure that the legislation will not encounter significant difficulties in relation to the different picture here? It is a different landscape, as you described it.

**Ms Donnelly:** The different landscape is more in the regulatory element and the fact that we have Departments with different responsibilities, not so much in what the defective premises legislation is trying to achieve. That is the same in all UK jurisdictions.

**Mr Bradley:** Chair, I think that you have stolen my thunder. I wanted to get my head around why six Departments and 11 councils have a shared responsibility and what the plans are to streamline such a fractured system going forward. How do you reduce the number of Departments and councils that have responsibility? How do you streamline it? What will be the impact on the building industry?

**Ms Donnelly:** We have working groups set up with all Departments, and we are commencing our engagement with local authorities. We understand that our Health and Safety Executive in Northern Ireland does not currently have the powers that the Building Safety Regulator under the Health and Safety Executive in England has at present. We need to work that through collaboratively. In the policy development, our research and engagement will inform what direction and what shape we take forward in trying to rationalise those responsibilities and in trying to focus on collective oversight and control. England has done that in the form of a Building Safety Regulator. That may be something that we look at here, with proportionality, of course, because local authorities have responsibility for building control here.

Sorry, Maurice; can you repeat the second part of your question, please?

**Mr Bradley:** Yes. How do you plan to streamline while reinforcing safety, competency and quality? What impact do you think it will have on the existing building industry?

**Ms Donnelly:** A lot of our industry works across other jurisdictions, and there is an awareness of the Building Safety Act and what it has brought in. To ensure the least impact on the industry, we will have

stakeholder engagement and try to shape something that works and achieves our objectives. Given that our industry works across other jurisdictions, we will have lessons to learn and can take those into account when we develop and shape our policy, but, at its core, the focus has to be on life safety. That is our focus: safety for the citizen. It will not be an overnight solution. We need to change culture and behaviours, and the competency piece will help us do that. We want to support, guide and work with industry so that it is as seamless as it can be.

**Mr McKibbin:** Can I add something to that conversation, Maurice? One of the things that the English Act did was create a statutory advisory committee to advise the Secretary of State on building safety. That is one of the things that we will look at in consultation and in workshops with industry, with practitioners across local authorities and with the other public bodies that have a responsibility, such as the Fire and Rescue Service and the HSE. Obviously, I do not want to pre-empt the outcome of those discussions and that consultation, but I envision that, if we do not set up a similar body under the Northern Ireland building safety Act, when that comes in, the mechanisms that we are putting in place at the moment for that discussion could certainly continue beyond the introduction of the Bill to create a workshop, if you like, or an advisory group or a working group that will consider this across the spectrum of the structure as it stands to advise us on any changes that are required going forward.

**The Chairperson (Mr Gildernew):** Maurice is on mute, but I think that he is thanking the officials for their answers. Thank you, Maurice.

**Ms Armstrong:** Thank you very much, Gerry and Frances. I will bring us back to the Defective Premises Bill, rather than the building safety Bill, which we do not have in front of us. You talked about the complexity that exists because there is another Department involved. To be honest, I have no argument with the changeover. It makes perfect sense for this to be in Communities, where housing is. You talked about designing the other building safety Bill appropriately, talking to stakeholders and having all of that. While we all would like the Defective Premises Bill to go through quickly, we do not want poor legislation. This Committee and the Assembly are being asked to approve accelerated passage. Will you confirm why a Committee scrutiny stage would not have helped to design it appropriately?

**Mr McKibbin:** At the minute, we are working on the instruction of Minister Lyons, who stated in the joint statement that he produced with Minister Archibald that this was to be done at the earliest possible opportunity, subject, of course, to Assembly and Executive approval. On 25 May, the case was put to the Executive that the Bill should proceed under the accelerated passage procedure, and they supported that.

As we see it, the evidence that we have been gathering to support the Bill is based on the experiences in the Department for Levelling Up, Housing and Communities when the English Bill was being put together and on advice from our legal advisers that the Bill is within the legislative competence of the Assembly and there are no issues about it going forward. This is not necessarily an opportunity per se, but it is a step that we are taking because a clear disadvantage was identified through the recent court case that Northern Ireland homeowners were sitting with this disparity between what was happening here and what was happening in England and Wales. The Minister wanted to address that quickly.

It was something that we had been considering as part of the overall building safety Bill, but, on the current timescale for that, it is not likely to happen until, possibly, the next Assembly mandate, because it is complex legislation. A lot of discussions would have to happen beforehand, and we have to make sure that we carry out the proper and appropriate engagement to bring the changes across. It also potentially offers us a chance to look at what my former colleagues in legislation used to refer to as the "unanticipated outworkings" of any draft legislation, and it gives us another chance to address anything else that might come up in the meantime. There will be a couple of years between the defective premises legislation being introduced through the Bill and a building safety Act coming in.

**Ms Armstrong:** I have another question. "Proper and appropriate engagement" would be a Committee Stage where we could have scrutiny, and that could be done quickly — in 30 days, as is the statutory limit. If accelerated passage is confirmed by the House, the Committee will have no role in scrutiny. Therefore, this is the only time that I can ask my next question. You may say that this is a legal piece, but I need to know what is meant in clause 2(5) by:

*"settled by agreement between the parties or finally determined by a court or arbitration (whether on the basis of limitation or otherwise)."*

because I do not have access to anything that would enable me to scrutinise exactly what that means and what the impact is.

**Mr McKibbin:** We have sought counsel on that from two legal sources, the first of which was the Office of the Legislative Counsel, when the Bill was being drafted. The senior legislative counsel confirmed that it was their opinion that it means that a case that has been taken is not seen as being finally settled by a court until it has exhausted its appeal process. Therefore, while there is an appeal registered with a court or while there is still that period after an initial decision in which they can register an appeal, it is still seen as an active case. Following an Assembly question from one of your colleagues, that was reinforced. We sought separate advice on that from the Departmental Solicitor's Office (DSO), and it confirmed the advice that we had been given by OLC.

**Ms Armstrong:** It would be useful if members had access to that, because we will be determining whether accelerated passage or, indeed, the content of the Bill covers all that we want it to cover. I do not know whether that can be shared with members.

**Mr McKibbin:** We can look into sharing the legal advice, certainly. I was talking to the Minister this morning before coming here. He intends to make the case clearly at the Bill's Second Stage. He will emphasise that it is based on the two sources of legal advice that we have received to date.

**Ms Armstrong:** From evidence that I have received, other legal advice says otherwise: that it excludes some homeowners. It would be useful to have that evidence in advance of Second Stage.

**Mr McKibbin:** I can pass that through to the Committee Clerk.

**Ms Armstrong:** It would be useful, given that there are questions like this, to understand why there is no opportunity for a 30-day Committee scrutiny stage. We could do that quite quickly. It would be useful to have that in writing from the Minister, to explain why a Committee Stage is not being included.

**Mr McKibbin:** I understand that the Minister has written to the Chair.

**Ms Armstrong:** We have been asked for accelerated passage and we have been given reasons, but we have not been given a reason why the Committee Stage was not to be included.

**The Chairperson (Mr Gildernew):** The Minister has indicated his intention to ask the House for accelerated passage.

**Mr Kingston:** Thank you, Gerry and Frances, for your presentation. You have helpfully set out the context for all of this, including the Grenfell tragedy, the Hackitt inquiry in England and the Building Safety Act 2022. Locally, the Department of Finance set up an expert panel that produced a report with 15 recommendations. This was already an issue that had been identified as needing to be addressed. Obviously, the public's attention has been drawn in particular to the Victoria Square situation, and that has highlighted the fact that there is an issue that needs to be addressed. It is reassuring, I hope, for members to see that this is only a small part of what will be a much larger Bill, addressing all of the issues. However, I note what you have said about the likely timescale for that and that it would, in all likelihood, happen in the next mandate.

There is a desire across the Executive and the Assembly to see the issue addressed, but members want to see it done in a quality manner that will stand up to scrutiny or challenge. You have set out that there are four clauses in the Bill. Involvement of five Departments is still an awful lot, but, at least, one will be removed. There has been agreement at Executive level that the Bill should move forward by way of accelerated passage, and all the Executive parties are committed to that.

My question is about the wording of the Bill. The Minister will bring this matter to the Assembly on Monday, I believe. Will the wording of the Bill be available then?

**Mr McKibbin:** It should be published at that stage, yes. The Bill and the accompanying explanatory memorandum will be made available to all Members at that stage.

**Mr Kingston:** OK, so, at least that will be in the public domain and available to Members when the Minister brings it forward.



**Mr McKibbin:** Yes, on Monday.

**Mr Kingston:** OK. It is helpful to set that context: that this is a specific issue that is being brought forward because of the profile that it has been given.

**Mr McCrossan:** Thank you, Gerry and Frances. Just following on from what Kellie said, the request for accelerated passage raises a number of questions, given that it would add only about 30 days to the process were the Committee to be given its rightful role to scrutinise the legislation. If that would take only an extra 30 days, why the haste? Surely the outcome would be much more satisfactory in the public interest to ensure good law.

**Mr McKibbin:** Everyone involved, including the Minister, recognises the important role that the Committee plays in the scrutiny of legislation. However, the Minister has instructed us to bring this forward at the earliest possible opportunity and favours the accelerated passage process as the mechanism to do that.

**Mr McCrossan:** Is it the Minister's instruction for accelerated passage and not a recommendation from the officers?

**Mr McKibbin:** The Minister wants this to go forward under accelerated passage, just to get the legislation in as soon as possible, recognising that the disadvantage that homeowners here face can have a substantial financial burden attached to it. That is what he wants to address at the earliest possible opportunity.

**Mr McCrossan:** Thirty days would not make much of a difference to that overall. I am sure that you find it a reasonable enough request for the Committee to express concern in relation to it.

I have questions in relation to this matter. How confident can we be that the Bill is within the legislative competence of the Assembly?

**Mr McKibbin:** We have sought advice from the solicitors, who have confirmed that it is within the Assembly's legislative competence.

**Mr McCrossan:** OK. What legal challenges do retrospective remedies potentially face as a result of the Bill?

**Mr McKibbin:** The ones that have been identified at the moment under the Bill would be potential clashes with a defendant's convention rights. The Bill will allow, then, for the court to decide on that.

Other legal remedies are open to people. The Defective Premises (Northern Ireland) Order 1975 gives them legal redress to take action in the first instance. That is subject to the normal court scrutiny and processes that a case goes through: the initial hearing, the appeal and any further appeals submitted after that.

**Mr McCrossan:** That answer is probably directly linked to this question. What impact might the Bill have on those who successfully defended themselves against liability in recent court actions?

**Mr McKibbin:** If a recent court action has been heard and is considered to have been finally determined by the court, it cannot proceed, because no further action can be taken. The legal advice that we have says that, if a legal action has not yet been finally determined — it goes back to Kellie's point about appeal processes — the Bill opens that claim up to the 30-year period.

**Mr McCrossan:** OK. Interesting. This question is also linked to that: how might the European Convention on Human Rights bear on the effect of the legislation as drafted?

**Mr McKibbin:** The right to peaceful enjoyment of property in article 1 of protocol 1 was looked at as one of the convention rights. It should be recognised that the approach taken in the Bill, similar to the approach taken in England, is different from normal approaches in that it is left to the court to determine whether a defendant's convention rights have been breached. At that stage, the court can dismiss the case on that basis.

We have sought advice from legal representatives. The Attorney General for Northern Ireland gave advice on the Bill and the convention rights when this was first mooted. She seems to be content that leaving the matter to the court, while not a common approach, is appropriate enough in this case.

**Mr McCrossan:** To be honest, I am not entirely sure that that will give comfort to those directly affected, whom we are thinking of today. That is why, again, I question the request for accelerated passage and the avoidance of Committee scrutiny.

I will touch on another area that Frances briefly mentioned: mica and RAAC. I missed what you said about that, Frances: what is the relevance of that to the defective premises Bill?

**Ms Donnelly:** I was not making a connection; I was just saying that any structural queries about residential properties, such as some of the Assembly questions we have received in the Department about mica and RAAC, are directed to the Department for Communities.

**Mr McCrossan:** OK. Given that the legislation is on defective buildings, would people affected by those issues be protected under it?

**Ms Donnelly:** It would depend on the circumstance and on whether they fell within the legislation and were able to take a court case. It very much depends on the circumstances.

**Mr McCrossan:** A family of five, living in some constituency in Northern Ireland, whose house is riddled with mica or RAAC and crumbling around them, creating a safety issue for them: are they protected by the legislation?

**Ms Donnelly:** Once they put their claim forward, it is up to the courts to decide, as part of the next step, whether they fall within the defective premises Bill.

**Mr McCrossan:** For the record, do you have any numbers in front of you on declared traces of mica or RAAC in properties in any constituencies across Northern Ireland?

**Ms Donnelly:** So far, we are aware of some cases in social housing in the direction of Derry, which have been remediated, and of one other case.

**Mr McCrossan:** Finally — this is important — what engagement have you had with councils about the work they are doing locally to identify traces of mica or RAAC in defective properties across those council areas? For instance, Derry City and Strabane District Council has a programme that welcomes people to register such concerns. Has the Department had any communication with councils? If not, why not and will you do so in future?

**Ms Donnelly:** I will come back to you, Daniel, on whether the Department has had correspondence or any engagement. We respond to everything that comes to us about mica.

**Mr McCrossan:** My concern, Frances — if you will indulge me briefly, Chair — is that every answer to every question for written answer that I have submitted to the Department has stated that the Department is not aware of any traces of mica or RAAC in properties across Northern Ireland, with the exception of the ones that you have mentioned. However, I am aware of cases of mica and traces of RAAC in my constituency and neighbouring ones, and Derry City and Strabane District Council has been notified of same. Is the Department just not doing the necessary work to identify such cases in defective premises?

**Ms Donnelly:** Not at all, Daniel.

**The Chairperson (Mr Gildernew):** That is, without doubt, an important issue, Daniel, but, to be fair to the officials, this briefing is on the legislation. They may not have answers; I think that they have committed to coming back to you with answers.

**Mr McCrossan:** Just to clarify, my point is that I want to see protections for the defective residential properties that, I have no doubt, will come forward in the coming years.

**Mr McKibbin:** I may be able to address some of your concerns, Daniel. The legislation that we are putting forward will amend the existing Defective Premises (Northern Ireland) Order 1975. That Order, as it stands, clearly states that, if there is a defect to a new dwelling and that defect is seen to render the dwelling uninhabitable, the defective premises route is open to a building owner or homeowner to address that. Our Bill will introduce a 30-year period for new dwellings. That will provide homeowners with a further period in which to take action against the developer or builder who constructed the premises using defective materials. It will be for the courts to determine whether the material was defective or how that defective element of the building has rendered it uninhabitable and what the outcome of that will be. Our Bill will extend the opportunity for a homeowner to take those actions. The approach will be the same, whether the issue is about RAAC, mica, cladding or an internal one with something that has been created because of a structural issue. There is no restriction on the Defective Premises Order as it stands in terms of building height, building materials or anything else; it is purely where a building is determined to be defective.

**The Chairperson (Mr Gildernew):** I thank the officials for coming today for this evidence session. I will come back to you, Kellie, in a second.

I was struck very strongly by something throughout the presentation. It is not just about scrutiny, which is a very important role. I go back to the point about ensuring that the legislation provides adequate robust and rigorous protection. We have heard reference to a larger Bill coming through that could take a number of years and might not even happen in this mandate. The defective premises legislation will provide protection for 30 years, and the Committee Stage will last for 30 days. In that context, is it not a missed opportunity to ensure that the Bill is as rigorous as it can be and still be delivered in time to provide that protection? Should that not be considered or reconsidered?

**Mr McKibbin:** It is certainly a point that could be considered. We would be happy to discuss it with Minister in the briefing after this.

**Ms Armstrong:** I will be careful with my language, because I will be talking about some legal stuff. Conflicting information and conflicting legal advice has been provided to us about what we have heard today. We know that the UK Supreme Court has been clear that, when the Bill is introduced, it should deal with all of the issues and that it should not be left to the courts to make further decisions. The conflicting advice that we have received is that, if we allow plaintiffs to reopen a case that has already been determined by a court, the Assembly would be interfering with the judicial process. I am still not 100% certain that the definition of clause 2(5) is clear enough.

In a scrutiny position, I would be able to go into this in a lot more detail, but I am not convinced that what is proposed will not end up in other courts to be determined. On that basis, is there anything that you guys can provide to us? I have asked you to check with the Minister whether we can access the legal advice. I am just concerned that, by being provided with information today, the Committee is being drawn into discussion at a stage at which we cannot scrutinise this in detail and will be asked at Consideration Stage and beyond, if it goes through by accelerated passage, to move forward on something on which we do not have the evidence. What can you do to help us with that?

**Ms Donnelly:** We will endeavour to provide whatever evidence we can. We will take comments back to the Minister for discussion.

Gerry, do you have anything to add?

**Mr McKibbin:** This has, as you know, been based largely on the experiences of the officials and lawyers in DLUHC of pulling their Bill together. We have tried to apply that to Northern Ireland, where possible, through the drafting that OLC has done for us.

**Ms Armstrong:** I am concerned about that because, from the Minister's letter, the basis for the decision on accelerated passage seems to be evidence that:

*"homeowners here will continue to be at a disadvantage"*

by being left "with substantial financial burdens" or presented with problems with mortgages, for example. That seems to be evidence from here rather than DLUHC's evidence. To be clear on that, is there evidence?

**Ms Donnelly:** There is disparity in that citizens here are at a disadvantage by not having the provisions of the legislation in England and Wales. If citizens are at a financial disadvantage or if there are safety questions, they should have the same recourse to the justice system as citizens in other parts of the UK.

**Ms Ferguson:** I do not want to repeat or copy what anybody has said. I will follow up on your last point, because it is very much about the impact of the Bill, its purpose and how that will be achieved. The Assembly Research and Information Service (RaISe) gave us a summary of comments about the limitation periods, so I will zoom in on that.

Concerns were raised about how tenants or leaseholders would fund their legal costs. Many people felt that, without a legal scheme, the Bill's extension of limitation periods would be meaningless for ordinary people. Have officials considered making such a scheme part of the Bill?

**Mr McKibbin:** No, they have not. The judicial system is open for anyone to apply for redress under the Defective Premises Order. The changes that the Bill makes just give people extra time to do so. There has been no consideration of the overall legal costs. They are seen as something that would have to be borne by the applicant or the defendant, depending on the outcome of the case. Any outcome would come with a ruling on costs.

**Ms Ferguson:** We are conscious that the Westminster Bill changed as it went through the House. The period changed from 15 years to 30 years, for example. We are not privy to the detail of that, so could you throw any light on the changes to the Bill that were made at each stage in Parliament? We are, obviously, privy only to the original Bill and to the evidence of those who presented to the Committee. The industry, for example, raised concerns. I want to get a feel for that.

**Mr McKibbin:** The 30-year period in England was introduced on the back of concerns about a period of deregulation in the late 1980s and early 1990s that was perceived as having led to a downturn in the quality of construction and to the use of cheaper materials in the housing market. The intention behind the 30-year period was to address as much of that as possible. That is certainly what we have been led to believe in our discussions with DLUHC and the other devolved Administrations. As I said, the driving force behind that is deregulation and changes in legislation over there, with the likes of the introduction of approved inspectors into the building regulations areas. We do not have that here. We are still completely regulated by local authorities and the DOF building regulations team, in terms of the legislation itself.

There is still a perception that there was a period in the '90s during which people were building to a slightly poorer standard. That is part, as well, of the culture element of the work that is going on. It is part of the bigger piece of work to be done on the Bill around culture and competencies and looking at how we address that. It is what Dame Judith Hackitt called, in her report, a "race to the bottom". That applies across the legislators, practitioners, industry and materials manufacturers. It is about trying to reverse that. With changes in legislation, practices and approaches, we recognise that that is happening, to some extent, naturally. We want to make sure, however, that the legislation that we put in place — all the legislation that we bring forward on building safety — helps to create a culture where safety is very much the first and foremost consideration.

**The Chairperson (Mr Gildernew):** Thank you very much for coming along today, Frances and Gerry. I appreciate your attendance. We can let you go. Thank you very much.