

DÁIL ÉIREANN

AN ROGHCHOISTE UM THITHÍOCHT, PLEANÁIL AGUS RIALTAS ÁITIÚIL

SELECT COMMITTEE ON HOUSING, PLANNING AND LOCAL GOVERNMENT

Dé Máirt, 19 Samhain 2019

Tuesday, 19 November 2019

The Select Committee met at 1 p.m.

Comhaltaí a bhí i láthair / Members present:

Eoghan Murphy (Minister for Housing, Planning and Local Government),	
Darragh O'Brien,	
Fergus O'Dowd,	
Eoin Ó Broin.	

I láthair / In attendance: Deputy Richard Boyd Barrett.

Teachta / Deputy Noel Rock sa Chathaoir / in the Chair.

Housing (Regulation of Approved Housing Bodies) Bill 2019: Committee Stage

Chairman: This meeting has been convened for the purpose of consideration by this committee of the Housing (Regulation of Approved Housing Bodies) Bill 2019. I welcome the Minister for Housing, Planning and Local Government, Deputy Eoghan Murphy, and his officials.

At the request of broadcasting and recording services, members and visitors in the Public Gallery are requested that for the duration of the meeting, mobile phones be turned off completely or switched to airplane safe or flight mode, depending on their device. It is not sufficient to put phones on silent mode, as it maintains a level of interference with the broadcasting system.

Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the House or an official either by name or in such a way as to make him or her identifiable.

We have use of this committee room until 3.45 p.m. If consideration of the Bill is not finished today, we have agreed to resume consideration at 4.45 p.m. tomorrow.

Chairman: I invite the Minister to make his opening remarks.

Minister for Housing, Planning and Local Government (Deputy Eoghan Murphy): I am joined by my officials - Paul Lemass, Rory O’Leary and Catherine Rawson.

We spent a good deal of time on Second Stage and people were able to put their views on record. We all agree we need to regulate and have strong regulation of the approved housing body, AHB, sector. It is important that regulation is effective without it being unduly onerous on the AHBs and that in no way does the regulator seek to control them. It is also important the regulator is independent in its functions. I believe we all share those principles and we all recognise the importance of the AHB sector in delivery much-needed social housing homes. The move to statutory regulation from voluntary regulation is important. I have approached the amendments that have been tabled in the spirit in which they have been tabled. We will try to agree amendments where we can, or see if we can find other workarounds to get the purpose of the amendment either into the legislation or into policy when it comes to the delivery of social housing.

Section 1 agreed to.

SECTION 2

Chairman: Amendments Nos. 1 and 3 are related and may be discussed together.

Deputy Eoghan Murphy: I move amendment No. 1:

In page 8, to delete line 18 and substitute the following:

“ “charitable trust” means-

(a) a charitable trust within the meaning of the Charities Act 2009, or

(b) the Iveagh Trustees (also referred to as the Iveagh Trust) within the meaning of the Iveagh Trust Acts 1899 to 1961;”.

These amendments are straightforward. Amendment No. 1 provides for the insertion of a new definition of “charitable trust”. This was brought to our attention by one of the larger housing bodies.

Amendment No. 3 provides for a new definition of “constitution” to include housing bodies and friendly societies as well. They are straightforward.

Amendment agreed to.

Chairman: Amendments Nos. 2, 27 to 29, inclusive, and 31 are related and may be discussed together.

Deputy Eoghan Murphy: I move amendment No. 2:

In page 8, between lines 20 and 21, to insert the following:

“ “common areas, structures, works and services” means, in relation to dwellings provided for the purpose specified in *section 26(2)(b)(i)*, areas, structures, works and services that are, or are intended to be, common to such dwellings and enjoyed therewith, including, where relevant, access and side roads, architectural features, circulation areas, footpaths, internal common stairways, open spaces, parking areas, utility rooms and that portion of the roof or exterior of any building not intended to form or not forming part of any individual dwelling;

“communal facilities and amenities” means, in relation to dwellings provided for the purpose specified in *section 26(2)(b)(i)*, areas, structures, works and services that are, or are intended to be, common to such dwellings and enjoyed therewith and used for the common benefit or enjoyment of tenants of those dwellings, including, but not limited to, facilities for sanitation, heating, refuse, food preparation, dining, storage, laundry, child care and recreation;”.

Amendment No. 2 is a technical amendment, which provides for the insertion of definitions of “common areas, structures, works and services” in the communal facilities and amenities, and is necessary if amendments Nos. 27 to 29, inclusive, and 31 are accepted. These amendments provide that, where any dwellings are required to be transferred under section 54, any associated common areas and communal facilities are also required to be transferred. For ease of reading, the Office of the Parliamentary Counsel opted to redraft sections 3 and 4. They are technical amendments to make sure communal facilities will transfer across, as well as the units themselves.

Amendment agreed to.

Deputy Eoghan Murphy: I move amendment No. 3:

In page 8, to delete lines 24 to 32 and substitute the following:

“ “constitution” means the rules, in writing, that govern the administration and control of an AHB and regulate its activities, and includes-

(a) in the case of a company, the constitution (within the meaning of section 2 of

the Act of 2014) of the company,

(b) in the case of a charitable trust (within the meaning of paragraph (a) of the definition in this section of “charitable trust”), the deed of trust establishing the charitable trust,

(c) in the case of a charitable trust (within the meaning of paragraph (b) of the definition in this section of “charitable trust”), the Iveagh Trustees (also referred to as the Iveagh Trust) within the meaning of the Iveagh Trust Acts 1899 to 1961,

(d) in the case of a registered society, the rules of the registered society, and

(e) in the case of a friendly society (within the meaning of the Friendly Societies Acts 1896 to 2018), the rules of the friendly society,

but does not include any other enactment or rule of law applicable to the carrying on of the activities of the AHB;”.

Amendment agreed to.

Section 2, as amended, agreed to.

Sections 3 to 7, inclusive, agreed to.

SECTION 8

Chairman: Amendments Nos. 4, 5 and 35 are related and may be discussed together.

Deputy Eoghan Murphy: I move amendment No. 4:

In page 12, lines 3 and 4, to delete “*An tÚdarás Rialála na gComhlachtaí Tithíochta Faomhaithe*” and substitute “*An tÚdarás Rialála Comhlachtaí Tithíochta Ceadaithe*”.

These are technical amendments to correct the Irish language names of approved housing bodies, AHBs, and the AHB regulator. The names are incorrect in section 8 and the Long Title.

Amendment agreed to.

Deputy Eoghan Murphy: I move amendment No. 5:

In page 12, line 8, to delete “*Rialtóir na gComhlachtaí Tithíochta Faomhaithe*” and substitute “*Rialálaí na gComhlachtaí Tithíochta Ceadaithe*”.

Amendment agreed to.

Section 8, as amended, agreed to.

SECTION 9

Deputy Eoghan Murphy: I move amendment No. 6:

In page 12, to delete lines 20 and 21 and substitute the following:

“(f) under *Part 6*, protect tenants and AHBs and cancel the registration of AHBs;”.

This amendment proposes to reword section 9(1)(f) to better reflect the fact the regulator

would not be involved in the day-to-day running and management of AHBs but, rather, that one of its functions is to protect tenants and AHBs and cancel the registration of AHBs under Part 6. This was raised by Deputies on earlier Stages of the Bill and we are trying to accommodate a revised wording.

Amendment agreed to.

Chairman: Amendment No. 7 is in the name of Deputies Bríd Smith, Richard Boyd Barrett and Gino Kenny. As the members are not present, this amendment cannot be moved.

Amendment No. 7 not moved.

Section 9, as amended, agreed to.

Section 10 agreed to.

SECTION 11

Question proposed: "That section 11 stand part of the Bill."

Deputy Eoin Ó Broin: We had a good discussion about this section and the issue of applying fees for registration. A number of us who had supported the Minister on previous legislation that applied fees to AHBs for accessing services from the Residential Tenancies Board, RTB, felt it was appropriate to apply fees when getting a service but that there should not be a registration fee. I understood from the officials that even though they wanted this to remain in the Bill, it was not their intention to apply fees for registration. My view is to just take it out. I remind the Minister that it was the support of myself and others that ensured the fees that currently apply to AHBs for RTB registration and access to other mediation and adjudication services got through. While I am not opposed to fees, it is just that, in this case, they are unnecessary. I will press my opposition to the section.

Deputy Darragh O'Brien: We discussed this at length and I know the Minister's officials said it was not their intention. However, section 11, as drafted, gives *carte blanche* to the Minister to impose or propose any fees. It states: "...determine the fees to be paid to it in relation to the performance, by or on behalf of it, of its functions." This was a concern raised with me and other members in regard to cost issues for AHBs. I will also oppose this section. It would be interesting to hear the Minister's response. We discussed this at a previous committee hearing. Why does he believe the section needs to be as it is if the intention is not to charge additional fees?

Deputy Eoghan Murphy: I will try to be helpful to see if we can come to common ground on this. I want to be clear that we do not intend for the regulator to be self-financing. We are not trying to use the section as some sort of back door for the regulator to start imposing fees on housing bodies to try to cover all of their costs. There are things that the regulator might want to charge fees for, even in interim. They may not necessarily apply to AHBs but perhaps to members of the public if they want a copy of the register. Perhaps someone wants to make an appeal and there may be a need to charge a fee for that reason.

The section 11 permits the regulator, when established, to charge fees under a number of other sections. I do not want to take away the power of the regulator to charge a fee to an individual in a case where he or she might be looking for a copy of the register but, to alleviate the concerns of Deputies, I could propose the deletion of two of the sections that would give the regulator the powers to charge fees to AHBs. For example, I could delete section 35(5).

Section 35 deals with the transfer period between when the regulator is established and AHBs are deemed to be registered, but they will register over a period. Section 35 is only relevant for those first three years and within it subsection (5) provides for an AHB to be charged a fee by the regulator. The Deputies are saying that we should just take that out because it will not be needed or used and it does not need to be there. Section 28(2)(e) relates to applications to the register being accompanied by an appropriate fee. Given that we have said that the AHB sector will pay fees for registration with the RTB, in the initial stages we do not want to charge any fees in this regard. I think that, again to alleviate concerns, if we remove that section then it will not be possible.

Section 11 is about warehousing, but I do not know if that is the best way to put it. It is a framework by which the other sections will be implemented, but if we take out those two sections, the Deputies' fears will be alleviated. However, the regulator can still charge fees in the normal course of business to someone looking for a copy of the register or to someone making an appeal at a later stage in the process.

Deputy Darragh O'Brien: That is helpful. Section 35(5), in particular, is significant because that is prescriptive on charging an AHB. I agree that if people are looking for copies of reports or the register or whatever else, there needs to be a fee to prevent spurious complaints or requests. I completely get that. The Minister is proposing the removal of section 35(5) and section 28(2)(e), which refers to applications being accompanied by the appropriate fee. The purpose of Fianna Fáil opposing section 11 was to protect the AHBs from additional registration fees. According to what the Minister outlined, the deletion of section 35(5) and section 28(2)(e) would have that effect. I am happy with that as a compromise.

Deputy Eoin Ó Broin: I agree with Deputy O'Brien. If we can agree to that, we can proceed.

Deputy Eoghan Murphy: Can I go back?

Question put and agreed to.

SECTION 12

Chairman: Amendments Nos. 8 and 9 are related and may be discussed together.

Deputy Eoin Ó Broin: I move amendment No. 8:

In page 14, line 36, after "Minister" to insert "from a short list approved by the Public Appointments Service".

It is straightforward. We raised the issue of various appointments, whether it is the chief executive officer, CEO, or board members, and the need to go through the Public Appointments Service, PAS. The officials indicated that is the intention anyway so the amendments are just to make that a legislative requirement.

Deputy Eoghan Murphy: My understanding is that what the amendment seeks is covered in subsections (2), (3) and (4). Subsections (2) and (3) provide for the holding of the competition by the PAS and refers to a recommendation of not more than three persons. Subsection (4) allows for the appointment of the CEO designate by the Minister rather than by the regulator if the competition is held before the office is established. That is the intention, namely, to get a CEO in place before we establish the regulator to do a lot of the preparatory work for the setting up of the regulator so that he or she is hitting the ground from day one. The amendment is not

necessary given that we think the issue is covered.

Deputy Eoin Ó Broin: My concern is that while it is intended to use PAS, if that is not a cast-iron provision in the legislation, it could be possible for a future CEO to be appointed by a Minister outside of that process. Is the Minister saying there is no set of circumstances within the Bill where a Minister could act outside of the PAS process in the appointment of a CEO? As he will be aware, the previous Administration made a high-profile appointment outside the PAS process. Our view is that it should be done in accordance with that process.

Deputy Eoghan Murphy: I am informed that the power would only exist before the establishment of the regulator and then after that, it would have to be done through the PAS system. What we are talking about is the interim period in terms of appointing a CEO designate before a regulator is put in place, but once the regulator is appointed, future appointments will go through the official system as per standard Government practice.

Deputy Eoin Ó Broin: Sure, but there have been occasions in a previous Administration where Ministers have acted outside of that process because the legislation they were operating under did not make it mandatory. That is all I am seeking to avoid.

Deputy Eoghan Murphy: This is only relevant to the period prior to the establishment of the regulator. It would be possible before the establishment of the regulator but subsections (2) and (3) provide for the holding of the competition and section 12(4) allows for the CEO to be appointed without the regulator being in place. The fear expressed by the Deputy cannot arise once the regulator is in place. It cannot arise for the CEO under the regulator. As far as I am concerned it is not necessary as a safeguard. The legislation captures what the Deputy hopes it should capture.

Deputy Eoin Ó Broin: I am happy to withdraw the amendment on that basis.

Amendment, by leave, withdrawn.

Deputy Eoin Ó Broin: I move amendment No. 9:

In page 15, lines 18 and 19, to delete “without the consent of the Regulator given with the prior approval of the Minister”.

This is a related issue about people having additional employment. I am trying to remove the possibility of secondary employment. Does the Minister want to make the case as to why secondary employment should be permissible, albeit with the consent of the regulator and the prior approval of the Minister of the day?

Deputy Eoghan Murphy: It is standard practice. The same applies to the Charities Regulator as well. We looked at other regulatory offices when establishing this office to see what the practice is. There is nothing to prevent the person having other employment provided that consent is given by the Minister. We are just following that practice. I am not sure of the implications in terms of employment law if we were to change this by accepting the amendment. I cannot envisage someone having another form of employment if he or she were the CEO of the regulator of AHBs, given how busy the current team is in the Housing Agency. My understanding is that this provision is taken from the Charities Regulatory Authority Act and that it is a standard provision.

Deputy Eoin Ó Broin: If secondary employment was to become a consideration, what processes are in place to ensure that when the regulator and the Minister are making a decision,

there are no conflicts of interest? Is there a formal mechanism for making that assessment?

Deputy Eoghan Murphy: I do not believe there is. It comes down to the views of the regulator, which in this case is a board, and the views of the Minister on whether they envisage a conflict of interest. Of course it is a matter for the committee as well. I am sure the CEO would appear before the committee in the future if that were to arise. If the committee thought there was a conflict, the CEO would be able to explain why there was not, if there was not, and I, as Minister, would be able to answer that case as well if I had deemed it appropriate, as to why I did not believe there to be a conflict.

Deputy Eoin Ó Broin: I am happy to withdraw the amendment on that basis.

Amendment, by leave, withdrawn.

Section 12 agreed to.

Sections 13 and 14 agreed to.

SECTION 15

Deputy Eoin Ó Broin: I move amendment No. 10:

In page 16, to delete lines 31 to 34.

I have a strong view on this amendment and I am going to press it. The lines in the section that I am seeking to remove prohibit the CEO from expressing an opinion on the merits of Government policy, Ministers and the objectives of such policy. They are too restrictive. If we appoint experts and knowledgeable and experienced people to positions and if they have a view, we cannot have such a rigid prohibition on their views. I accept they are employed as officials in some senses, albeit independent of the State.

They have to carry out their functions with due diligence and regard to Government policy. It is very rigid. We should afford a little more flexibility than what is provided for. This is one amendment that I will certainly be pressing.

Deputy Eoghan Murphy: It is important that we have looked at similar provisions in the Charities Act, the Personal Insolvency Act and the Health Service Executive (Financial Matters) Act. We have looked at a number of Acts in which this language is standard. However, it is also about the remit of the Committee of Public Accounts. Its terms of reference state it “shall refrain from inquiring into the merits of a policy or policies of the Government or a member of the Government or the merits of the objectives of such policies”. This is about how the Committee of Public Accounts does its business, not how this committee or the regulator does its business. It is also about accountability and transparency. It is to recognise that where the chief executive appears in front of the Committee of Public Accounts as Accounting Officer, it is to answer questions about how money was spent. Policy debates take place in different committees of the Houses of the Oireachtas.

Deputy Eoin Ó Broin: Sure, but this is meant to be an independent regulator. While I accept what the Minister is saying about the separation of functions of the Accounting Officer and broader issues of policy and legislation, the two are inextricably linked. Therefore, as Accounting Officer, there may well be situations where issues will arise relevant to legislation or policy. I would not like to constrain an independent regulator in appearing before that important committee as a witness. The fact that it is standard practice does not necessarily mean that it is good

practice. I hear what the Minister is saying, but I will still press the amendment.

Deputy Eoghan Murphy: As a former member, the benefit of the Committee of Public Accounts is that it does not get into political debates on policy. It looks at the money and asks whether public money was spent appropriately and if value for money was achieved. It has been the long-standing practice for the committee to take off the policy and political hats to have a proper interrogation of the finances. While it might appear to be unduly cumbersome to some outside to have a regulator appear before the Committee of Public Accounts to answer questions about the finances and before this committee to answer questions about policy, that is the established practice. I am not sure to what extent it is enshrined in the Constitution, but the Committee of Public Accounts has special standing in it, as the Deputy knows. I would, therefore, be very reluctant to set a precedent with this Bill that might undermine the Committee of Public Accounts.

Deputy Darragh O'Brien: The amendment and the section deal specifically with the appearance of the chief executive before the Committee of Public Accounts. They would not restrict any other comment a chief executive might have to make. As a former Vice Chairman of the Committee of Public Accounts, it is important that we do not do anything that would impinge on its work. In the main it should be down to questions to any regulator about financial management. I have a question for the Minister or his officials in that context. Are they aware of any other regulator or Accounting Officer who do not have these provisions in legislation governing his or her appearance before the Committee of Public Accounts?

Deputy Eoghan Murphy: No, I am not aware of any other. Even if there was an unintended gap in legislation, the rules of the Committee of Public Accounts would not allow it to speak about policy matters.

Amendment put and declared lost.

Section 15 agreed to.

Sections 16 to 20, inclusive, agreed to.

SECTION 21

Chairman: Amendments Nos. 11, 12 and 20 are related and may be discussed together.

Deputy Eoin Ó Broin: I move amendment No. 11:

In page 20, between lines 18 and 19, to insert the following:

“(c) following consultation with the Joint Oireachtas Committee on Housing, Planning and Local Government.”.

The amendments speak for themselves. I would like to give the committee a formal role at a consultative level in considering key issues such as the development of the strategy for and other activities of the regulator. Obviously, we would not have a veto or a vote, but the amendment is simply to provide for consultation with the committee on important issues, particularly the development of the strategy, which is the underpinning document. On that basis, I am hopeful the Minister will, at least, accept the spirit of the amendments, if not the wording.

Deputy Eoghan Murphy: I am afraid that I cannot accept the amendments as worded, but that is not to say that on Report Stage we might not be able to get at what the Deputy would like to achieve. As worded, the amendment would, in effect, makes this committee a statutory

consultee. That is not best practice and we have fears about how it might undermine the independence of the regulator. I do not refer to the current membership of the committee, but we are setting up something that is going to be independent of government and the Oireachtas and will do very important work for a number of years. The amendment would perhaps undermine certain aspects of those functions, notwithstanding the fact that, of course, the regulator's office will be accountable to the committee in public appearances and answering questions about its operations.

Deputy Eoin Ó Broin: It is precisely because I want it to be a statutory requirement that I have tabled it. It would only undermine the independence of the regulator if we were to be given a formal function in deciding on issues or had the ability to have a veto. This is simply about allowing the committee to be a formal structure or statutory part of the consultation process. The strategy statement referred to in section 21, for example, still provides that it has to go to the Minister for approval, which in some senses is probably a more significant undermining of the independence of the regulator. I am not, however, challenging it. Given the importance of the committee and its representative, I see no reason it should not be a statutory consultee. On that basis, I will press the amendment.

Deputy Fergus O'Dowd: On a point of information, it is important that the committee discuss the regulator's report, but is it not *ipso facto* entitled to seek reports from all bodies that appear before it? Is that not already the case?

Chairman: That is the case. The question is whether they should be required to provide them. It is the custom more than an obligation or a requirement.

Deputy Fergus O'Dowd: Yes.

Deputy Eoin Ó Broin: The Minister can correct me if I am wrong, but I assume the regulator will draft the strategy statement and submit it to the Minister for approval. Once approved, it will be published. That is the point at which we will get to discuss it. What I am saying is the regulator should discuss it with us prior to its submission to the Minister in order that our views could be taken on board.

Deputy Eoghan Murphy: There will be nothing to prevent the committee from inviting the regulator, but my advice is that it would not be good practice to insert the provision in the legislation and that if we were to do so, there might be a risk to its independence.

Deputy Eoin Ó Broin: There will be nothing to stop us from inviting the regulator, but there will be no statutory obligation on it to take up the invitation, which is the issue. I will not labour the point.

Deputy Eoghan Murphy: That cuts to the core of making the committee a statutory consultee, on which we do disagree. I do not know if the language used on Report Stage will bridge the gap in that regard.

Amendment put.

The Committee divided: Tá, 2; Níl, 3.	
Tá;	Níl;
O'Brien, Darragh.	Murphy, Eoghan.
Ó Broin, Eoin.	O'Dowd, Fergus.

Amendment declared lost.

Section 21 agreed to.

Section 22 agreed to.

SECTION 23

Deputy Eoin Ó Broin: I move amendment No. 12:

In page 21, between lines 28 and 29, to insert the following:

“(2) The Regulator shall present the annual report to the Joint Oireachtas Committee on Housing, Planning and Local Government within a month of submitting the report to the Minister.”.

Deputy Eoghan Murphy: This amendment is a little different. It is about requiring the regulator to present the annual report to the Joint Committee on Housing, Planning and Local Government within one month of submitting it to the Minister. The standard practice in the code of governance is that normally when an annual report is received from a body, it is given to the Minister who takes it to the Cabinet to be noted. It is then laid before the Oireachtas. That has to happen first. I have to lay any such annual report before the Oireachtas. Therefore, the amendment is not necessary. It would also potentially get in the way of the process whereby it is brought to the Cabinet initially and then laid before the Oireachtas.

Deputy Eoin Ó Broin: I am happy to withdraw the amendment on that basis.

Amendment, by leave, withdrawn.

Chairman: Amendments Nos. 13 and 14 are in the names of Deputies Bríd Smith, Boyd Barrett and Gino Kenny. As the Deputies are not present, the amendments cannot be moved.

Amendments Nos. 13 and 14 not moved.

Section 23 agreed to.

Sections 24 and 25 agreed to.

SECTION 26

Deputy Darragh O’Brien: I move amendment No. 15:

In page 25, after line 39, to insert the following:

“(4) Where an AHB provides ‘special needs accommodation’ for tenants with additional needs beyond an inability to provide for their housing from their own resources, “special needs accommodation” shall be defined as accommodation provided to persons who by reason of old age, physical or mental disability or other cause require special accommodation and support to enable them to live in the community.”.

The amendment has been tabled following consultation on the number of approved hous-

ing bodies to be involved. It makes sense and is self-explanatory on the provision of special needs accommodation by an AHB. I am interested in hearing the views of the Minister and the Department on what is a reasonable request. The amendment would strengthen the section by making it more descriptive of what special needs accommodation would constitute.

Deputy Eoin Ó Broin: I concur.

Deputy Eoghan Murphy: I thank the Deputies for tabling the amendment. Both the sentiment and the wording of the amendment are strong. That is generally what AHBs do and in many instances it is a big part of the reason for their establishment. Section 26, as drafted, deals with the eligibility criteria in making an application to register. It sets out the requirements a body must meet in that regard. It does not preclude it, but the view is that the section is not the appropriate place in which to insert this definition and that there might be other housing legislation in which it might be more appropriate to include it. That would require consultation with the Government bodies and agencies involved. Therefore, I ask for the amendment to be withdrawn.

Deputy Eoin Ó Broin: The door is locked.

Sitting suspended at 1.46 p.m. and resumed at 1.48 p.m.

Chairman: I welcome Deputy Boyd Barrett.

Deputy Richard Boyd Barrett: Did I miss the discussion on my amendments?

Deputy Darragh O'Brien: Not because the Deputy was locked out.

Chairman: Yes, the amendments were discussed a while ago.

Deputy Eoghan Murphy: I might have accepted them.

Deputy Richard Boyd Barrett: It is a conspiracy.

Deputy Eoghan Murphy: I have been accepting amendments all morning. I might have accepted those in the name of the Deputy if he had been here.

Deputy Eoin Ó Broin: Do not believe him.

Deputy Eoghan Murphy: Without repeating what I said, the wording of amendment No. 15 is good, but this section of the Bill is probably the wrong place to include it. Therefore, if the Deputies withdraw the amendment, we will see what is the most appropriate vehicle in which to include the definition. There is nothing in the Bill that speaks against it. Therefore, it is not necessary to include it in it, but if the Deputies want to have it included in the Bill, we will see how we can accommodate it. This is the wrong section in which to include it.

Deputy Darragh O'Brien: The Minister mentioned before the suspension that his officials would speak to stakeholders. The amendment has been brought forward by way of the request of a couple of the bodies. If it is in an inappropriate place and should be included somewhere else in the Bill, I am happy to accept that and work on the issue before Report Stage. I also want to hear what Deputy Ó Broin has to say about it. I could potentially withdraw the amendment, with a view to resubmitting it on Report Stage, but it would be better if the Minister and the Department came back to us on where in the legislation it would be more appropriate to include it and where it would make more sense to have it.

Deputy Eoin Ó Broin: I agree. I am happy to withdraw the amendment on that basis, but I ask the Minister to let us know prior to the deadline for submitting amendments on Report Stage if he will be tabling an amendment. We could then decide whether we should resubmit the amendment on Report Stage. I am happy to withdraw it on the basis of what the Minister has said.

Deputy Eoghan Murphy: Yes, absolutely.

Amendment, by leave, withdrawn.

Section 26 agreed to.

Sections 27 to 34, inclusive, agreed to.

SECTION 35

Deputy Eoghan Murphy: I move amendment No. 16:

In page 30, to delete lines 19 and 20.

This amendment relates to the discussion we had on section 11. It is the follow-on in section 35(5) whereby we will delete the ability for AHBs to be charged by the regulator in that three-year transition period.

Amendment agreed to.

Section 35, as amended, agreed to.

Sections 36 and 37 agreed to.

SECTION 38

Chairman: Amendments Nos. 17 and 18 are related and will be discussed together.

Deputy Eoin Ó Broin: I move amendment No. 17:

In page 34, to delete line 3.

We have had two relatively detailed discussions with Mr. Paul Lemass and his team on this. I am still not convinced that issues of tenancy management by AHBs, nominations to dwellings of tenants and allocations of dwellings to tenants are the function of the regulator. I am still convinced that these are matters of policy in the first instance and ensuring that Government policy via local authorities is properly adhered to by AHBs. I do not see how they fit into the function of the regulator, which, to me, is primarily about governance, financing and such. Mr. Lemass has done a good job of making the case about that. An independent regulator needs to be sure that it is not straying into areas of policy. That is what this does in both of these subsections, so I propose to remove them.

Deputy Eoghan Murphy: I thank the Deputy for the amendment. We are not talking about having the regulator step into the role of the Residential Tenancies Board, RTB. The regulator and RTB will come to a memorandum of understanding on all of these issues, as the regulator will with other regulators in this sector, such as the Charities Regulator. That is common practice. It will not be about setting a new policy when it comes to matters such as standards. This is about financial standards, governance standards and performance standards. They should be reported on in such a way that people are clear that they were in line with policy or what is in the law. It will still be the role of the RTB to have that involvement and that place for the tenant

and the landlord. We are not trying to step into the role of the RTB. A letter to this effect was sent to members of the committee by the Housing Agency. I do not know if everyone saw it. It was a three or four page letter, making the point that it was not seeking to move into someone else's space, to move outside policy or to change policy. This was about financial performance, governance performance and standards performance, so that people can see that things are being done with regard to response time for repairs or bringing voids back into use. It is not about the regulator stepping in and saying that a certain type of standard for internal accommodation is appropriate and that it can ignore the RTB.

Deputy Richard Boyd Barrett: I do not have a problem with standards being set down. In fact, I want standards to be set down. This is apropos of the general subject area of the amendment rather than the specific purpose of the amendment. Could the Minister explain to me how somebody who has a difficulty with the standards, maintenance or such of an approved housing body unit is not at a disadvantage to a council tenant who would have the same problems? One of the forms of recourse that the council tenant has which the AHB tenant does not have is that he or she can go to the local elected representative and have the issue brought up at the council.

To give an example of what I mean, there are minimum standards and there are best standards. I have a group of AHB tenants who have complained about the lack of good sound insulation between units. They have looked for an independent audit of the properties, which are in an estate called Cualanor in Dún Laoghaire. It is quite a big estate. That has not been provided. They have done their own audit which basically states that the developer says the standards are fine, having taken a decibel-measuring machine around, but the residents are adamant that there is a major problem with sound between the units. If those were council tenants, a local councillor could go to the council chamber on their behalf and say they are moving a motion to say there should be an independent audit. If that motion was passed, there would be an independent audit to see whether there was a sound problem.

AHB tenants do not have that same recourse. They can go to the RTB but it will only enforce minimal legal standards. It cannot take the next step of saying it is just not happy with this and it is not good enough, even if it just about meets minimum standards. I would be interested to hear the Minister address that. To add to the complexity of it, if one takes this particular instance, these people were allocated places from the council housing list by the council. They go into these AHBs but there is also a property management company and a private developer involved. They have to deal with all these different layers, whereas if they were council tenants, there would be another form of recourse, which I have described. One-stop shop would not be quite the right word but a tenant would know that he or she could go to a person and actually get something done. I ask the Minister to comment on that because it is a problem which will become bigger. The Minister will probably not agree with me but I think the Government is overly reliant on AHBs to deliver social housing and this will become a bigger issue. We need to ensure that all social housing tenants, whatever type of social housing they are in, have the same rights and avenues for addressing problems as each other and that there is not a downgrading or dilution of the forms of recourse that they have because they happen to be in a particular AHB. I ask the Minister to comment on that.

Deputy Eoin Ó Broin: As I indicated to Mr. Lemass and his team, I am open to supporting the inclusion of these things but the case has not been made strongly enough to me yet. In his response, the Minister talked about voids being brought back into use. The issue is that these two subsections are not about property management but about tenant management. If the Minister can give me a clear explanation of what he expects the regulator to do with respect

to monitoring tenancy management or nominations or allocations of dwellings to tenants, I am open to being convinced. I am clear about how the regulator is being set up to deal with governance, finance and property management. I am just not clear what the tenancy management nominations and allocation responsibilities are.

Deputy Fergus O’Dowd: I deal with many constituents who are in AHBs. I speak as a Deputy rather than as a councillor and I appreciate the points made. Once there is the consent of the individual involved, I never have a problem making representations, having meetings or pursuing an issue to the full extent with an AHB. Deputy Boyd Barrett made the point that if there is not a statutory right, there should a statutory forum, where one would have the legal right to approach one’s elected representative, such a councillor or Deputy. Perhaps that would cover the issue.

I have found that AHBs are interested, concerned and want to ensure that people are as satisfied as possible, but there are significant differences. I am not sure that tenants of AHBs have a right ever to purchase their home and, therefore, they are at a disadvantage. A further disadvantage is that as one’s life changes, one may wish to move to a local authority housing estate, perhaps for family reasons or because it is nearer the school one’s child attends. There are certainly issues in that regard. To date in any event, I have never found an AHB that does not want to meet the requirements of the tenant, although the cases the Deputy outlined are more complex because they are part of other, privately-developed housing. I would not disagree with ensuring a right to an audience with an elected representative but the matter cannot be brought to a council because it will not be responsible, which is the difficulty. I do not know whether the regulator will want to get into the area, but the right to make a representation to one’s elected representative should be a core legal part of the relationship, even though, in my experience, that is the case in practice.

Deputy Eoghan Murphy: On Deputy Boyd Barrett’s points, we might be confusing a couple of issues. We are not talking about standards such as standards of insulation. Rather, we mean standards for financial performance, governance and others. It is not to say the regulator will have a responsibility for putting them in place but instead to ensure that AHBs will have standards for matters such as the letting of properties and communicating with tenants. It is a matter of ensuring that standards will be in place but not of setting them.

We hear different views from our constituents. One might hear from people living in AHB homes that because a management company is in place, they feel they get a better service than one might hear from people living in local authority homes. The reverse is also the case, however, and one might hear from people in local authority dwellings, depending on where they are, about the kind of service and support they receive from local authority staff. This is not about AHBs versus local authorities and how they manage their homes. It is about putting in place a statutory regulator for AHBs, which, to date, had been only voluntary. The voluntary regulator has such standards in place for governance, financial arrangements and these types of policies. This will ensure that the regulator, on a statutory footing, will also the role of ensuring that AHBs have those standards in place. It will not step in the way of the RTB, it has nothing to do with local authorities, and it is not about the types of standards to which Deputy Boyd Barrett referred.

Deputy Richard Boyd Barrett: I take the point that there are different levels of regulation, such as for governance, how AHBs keep their finances and accounts, and so on. Bluntly, my point is that it is more complicated than dealing with a council, from a tenant’s point of view. Even though having recourse to the RTB is better than nothing, it is not the same as having

recourse to a councillor, who can table a motion at an area committee to state an issue has been examined and it has been decided there is a problem, and that the problem will be addressed in a particular way. The RTB cannot do that. All it can do is comply with the law. Sometimes one will discover that the law does not reach such complexities. Similarly, whatever governance standards, rules or regulations may be set down might not meet those requirements, which is why we have democracy, because we constantly re-evaluate such matters and try to refine them. We learn from people contacting us about problems that may not be covered by all the rules and bodies.

Deputy Eoghan Murphy: I take the Deputy's points but the subsections and the amendments do not speak to the issues he raised.

Deputy Eoin Ó Broin: I do not wish to prolong the discussion but I have reviewed the Housing Agency note. Part of my concern is that the performance standards were devised and published by the non-statutory regulator, as it currently exists. There is talk about the standards and about the local authorities being involved, and there is an overlap with the National Oversight and Audit Commission, NOAC. If we approve the inclusion of the two subsections, what exactly do we expect the regulator to do? That is my concern. I do not believe that the information is included in the Housing Agency note as clearly as I would like. What does the Department intend to happen by including tenancy management of nominations and allocations?

Deputy Eoghan Murphy: The performance standards, which the voluntary regulator has set, will ensure that AHBs have an allocations policy, and a fair and transparent procedure that provides a consistent approach to letting properties. It will ensure that procedures are in place for communicating current and potential vacant properties to local authorities, as well as documented tenancy and housing management procedures, a proactive engagement with the local authority, registration of tenancies with the RTB and so on-----

Deputy Eoin Ó Broin: Who will set those standards?

Deputy Eoghan Murphy: The memorandum of understanding will then delineate the space a bit more clearly between the regulator and either the RTB or NOAC. In respect of the standards to which each AHB would adhere, as far as I am aware, it is AHBs' standards, but the regulator will have to have oversight of that and ensure they will be published and communicated appropriately. Unlike the position with local authority housing, every AHB is different. Some AHBs' tenants have specific needs. If there is a vacancy in an AHB home that has been purpose-built for a particular condition, its vacancy timelines will be different, as will the nominating rights. The process is different. We are not trying to be too prescriptive but we want the regulator to be able to ensure that every housing body will have a standard in place, be transparent in respect of the standard, have a procedure in place with the local authority, register the tenancy with the RTB and so on. The section goes into more detail in respect of matters such as financial management and governance.

Deputy Eoin Ó Broin: I am a little more convinced than I was after the previous meeting and, therefore, I am happy to withdraw the amendment, although I may return to it later.

Amendment, by leave, withdrawn.

Deputy Eoin Ó Broin: I move amendment No. 18:

In page 34, to delete lines 35 and 36.

I will withdraw the amendment on the same basis that I withdrew amendment No. 17.

Deputy Richard Boyd Barrett: I move amendment No. 19:

In page 35, line 6, after “AHB” to insert the following:

“, including the number of such units providing social housing and specifically allocated to the local authority waiting list and the numbers of units provided in other categories”.

This amendment speaks for itself. We want to know how many of the units of any AHB will be allocated to the housing list and how many will be allocated to other categories. There are a number of reasons for seeking that information but some of us have a concern that the financialisation of AHBs could ultimately lead them in certain directions. The matter relates to the amendment whose debate, unfortunately, I missed earlier. In order that we can return to it on Report Stage, I raise the issue of rents and differences in rents that may exist between AHBs and councils.

We must know this information and the facts so when these reports are produced we can examine them and see what is happening and the direction being taken in terms of social housing being delivered by approved housing bodies. The logic of it is to ensure we have all the relevant information so we can assess where things are heading over time.

Chairman: I thank the Deputy. In the context of Report Stage, it has been noted that he spoke to his other amendment. I call Deputy Ó Broin.

Deputy Eoin Ó Broin: In some senses, this amendment requires the report to do what the NOAC report does with respect to local authority housing, which is to document the additions to the stock annually. If it is good enough for NOAC and the local authorities, I do not see why it should not be in this Bill.

Deputy Fergus O’Dowd: I agree with Deputy Boyd Barrett in some respects. Sometimes houses become vacant. People who might have significant serious medical issues might not have the time on the list so they might lose out in terms of the final allocation. There are other issues. There can be significant and adverse behavioural issues, such as where somebody has been targeted as a result of drug abuse or their family has been involved with drugs in some way and they need to make a fresh start, but they cannot get out. There are issues like that which are quite complex.

The other point is that I understand that local authorities dictate to the approved housing body who does and does not get the house. There is no discretion there. I would not have a problem with discretion for people who are *in extremis* and have major family problems, such as anti-social behaviour problems of an unusual and special character. I am aware of those in my constituency. There might be room for more flexibility when those houses are allocated. This does not happen often, but it does happen and it would recognise the right of approved housing bodies to take those issues into consideration. It is important that this benchmark should be there. They should have some flexibility, but limited and only in special circumstances.

Deputy Eoghan Murphy: I am trying to find the previous amendment from Deputy Boyd Barrett to see if it was one of the amendments I intended to accept. As I said earlier, we are all approaching this with a common purpose. I believe this amendment is covered in the section and subsections. This is exactly the type of information that will be reported. That is why it is there. We have what should be covered, at least, and even in that list it will allow for this to

be reported. I do not have a problem with the amendment but it is superfluous to the existing provision.

Deputy Richard Boyd Barrett: I will consider what the Minister said. I will flag the issue now and if it needs to be spelt out explicitly, I will resubmit the amendment on Report Stage.

Amendment, by leave, withdrawn.

Deputy Eoin Ó Broin: I move amendment No. 20:

In page 35, line 19, after “Minister” to insert the following:

“, following consultation with the Joint Oireachtas Committee on Housing, Planning and Local Government,”.

Under this subsection the Minister may give a direction to the regulator to amend draft standards. That is quite a significant shift. Obviously, the Minister would do that on foot of legislation or policy developments in his or her Department, but there is no requirement for any level of consultation. The Joint Committee on Housing, Planning and Local Government should be consulted, which is why I propose inserting this phrase. Again, I am only making a consultative request.

Deputy Eoghan Murphy: This falls back on the idea of trying to make the committee a statutory consultee on these issues. Where it is sought to amend a standard it would be made public and I would be accountable to the Deputy for my decision. That is how it should be maintained. It goes back to the previous conversation about the independence of the regulator and not making the committee a statutory consultee. I cannot accept the amendment.

Deputy Darragh O’Brien: I take a slightly different view because we also received a request. The rationale for this was to do with the regulatory independence. The Minister can direct the regulator about draft standards and changing them, with no reference to the committee. Does the Minister not see that in providing that the Minister of the day may direct the regulator to amend draft standards it is, effectively, the Minister telling an independent regulator what to do? This is a genuine query.

Deputy Eoghan Murphy: No. Policy might change in the future, in which case the regulatory environment would change. As a result, the regulator would have to be directed in that instance to regulate for the new reality. I cannot foresee why I would want to change a standard at present, but it could be the case that the policy on housing bodies might change in the future. That would change the position for the regulator. I would not be interfering with the independence of the operation of the regulator, but the regulator would have to change to keep up with policy if it is changed in such a way that would require a change in one of the standards relating to, for example, governance. Hypothetically, and perhaps I should not say it because it might bother some of the AHBs, one might feel it is necessary to have more than the current number of directors and one might wish to change that standard for whatever reason. I will not speculate because that is not helpful. That would require the Minister to direct the regulator to change the standards.

Deputy Eoin Ó Broin: I agree with the Minister having the ability to do that because legislation and policy change and the regulator must operate within the democratically agreed policy, legislative and budgetary framework set out by the Oireachtas. My problem is that there are some instances where, for example, with respect to certain planning regulations, the Minister consults with this committee. We do not get a veto on the matter or make a decision. The

regulation is then put to the House by way of a motion. However, we are consulted and there is a value in that. There have been a few instances where the Minister's interaction with this committee on some draft planning matters has influenced the final shape of them for the better. That is why the Minister should consider some mechanism to give this committee a consultative role when those changes are made. If they are being made in line with democratically agreed legislative, budgetary or policy decisions, I have no problem with that. The difficulty is that the provision as it stands would also allow a Minister to direct the regulator beyond that. I am not saying the Minister would do that or that it is the intention of the drafters, as I do not believe it is, but it makes it possible. I can press the amendment, but perhaps the Minister would give a commitment to examine this and see if there is some way, in those instances, of having a role for the Oireachtas. I would be willing to withdraw it and wait to see if he comes back with something on Report Stage.

Deputy Darragh O'Brien: Specifically on this and subsection (5), to provide that the Minister would consult with the joint committee would be important because, based on what I said earlier, it gives a Minister a free hand. Even though the Minister cannot see an instance where he would come forward with amended standards and direct the regulator to implement them, this section gives a future Minister a free hand to direct the regulator to change draft standards without any reference to the committee. I was considering tabling an amendment to delete subsection (5) so what Deputy Ó Broin has put forward is a compromise. It does not remove the Minister's powers, but requires the Minister to come to the committee and explain why he or she believes the standards must be varied or amended. If we leave it as it stands, there is no recourse to the committee. What Deputy Ó Broin has put forward is better than a deletion. I had been considering proposing the deletion of subsection (5) entirely. Perhaps I have it wrong.

Deputy Eoghan Murphy: I thank the Deputies for their contributions. I understand what they are saying. What I do not want to do, though, is undermine executive decision-making. I do not want a future Minister to be in a situation in which the policy has changed but an Oireachtas committee then tries to hamstring the implementation of that policy by interfering with the setting of new standards for the regulator such that it could regulate the new environment in accordance with the new policy. That is the risk with the statutory consultee aspect of this. Where the committee found itself unhappy with the direction or wanting to quiz or question it, it could haul in the Minister and have that engagement at that point. I see a risk, however, that the executive decision-making powers of the Minister and Government would be undermined - intentionally or otherwise - by an Oireachtas committee having a statutory role here before the new standards were set.

Deputy Eoin Ó Broin: That would only be the case if we had a vote on the matter. I do not propose that. All I am saying is that this is essentially a transparency measure in that if the current Minister or one of his successors intended to use this function, there would be a level of transparency in that he or she would have a consultation. Ultimately, my amendment does not prevent the Minister from doing what he or she wants on such an occasion but it does force the Minister to come in to discuss the matter with us and hear our views before deciding to proceed. It would therefore be very difficult for the committee to frustrate the executive functions of Government, unless we just refused to schedule the committee meeting, but we could do that with legislation. That is-----

Deputy Eoghan Murphy: That is a great reason for definitely not accepting the amendment.

Chairman: Is the amendment being pressed?

Deputy Eoin Ó Broin: Is the Minister willing at least to look at this between now and Report Stage or is he just saying “No”?

Deputy Eoghan Murphy: I will look at it but-----

Deputy Eoin Ó Broin: I saw his smile. He is saying “No”. I will press the amendment.

Deputy Darragh O’Brien: We honestly need to look at this. We are talking about standards for AHBs. I understand what the Minister is saying. This is not about frustrating or trying to impinge on ministerial powers or executive order; it is a matter of the committee having an input, even if it is just seeing what is coming down the line. We do not know what is coming down the line. The AHBs are playing a much greater role in housing and the provision thereof, so the standards they set are important. This is why I think we all want a regulator here. This amendment seeks to marry an independent regulator and the Minister with interaction with this committee. It is a reasonable amendment that should be genuinely looked at.

Deputy Eoghan Murphy: I was not being flippant at all-----

Deputy Darragh O’Brien: I am not saying that.

Deputy Eoghan Murphy: -----when I said I would look at it. It was in jest. I remain to be convinced on this amendment. Perhaps in this instance the Deputies could either come forward with a different version of the amendment or just come forward again on Report Stage, depending on how this vote goes.

Deputy Darragh O’Brien: That is fine.

Deputy Eoghan Murphy: Again, I believe there is plenty of consultation here in that the committee may call in the regulator, the CEO, the Minister, etc. It is not that I am against that.

Chairman: Is the amendment being pressed?

Deputy Eoin Ó Broin: Yes.

Amendment put and declared lost.

Section 38 agreed to.

Sections 39 to 42, inclusive, agreed to.

SECTION 43

Chairman: Amendments Nos. 21 and 22 are related and may be discussed together.

Deputy Eoghan Murphy: I move amendment No. 21:

In page 39, line 29, after “*subsection (4)*” to insert “within the period specified in the notice”.

Amendments Nos. 21 and 22 are technical amendments to provide consistency with the time period within which an AHB may make representations to the regulator. The amendments are straightforward.

Amendment agreed to.

Deputy Eoghan Murphy: I move amendment No. 22:

In page 39, lines 30 and 31, to delete “not later than 14 days from the date on which the notice is given” and substitute “within the period specified in the advance notice”.

Amendment agreed to.

Section 43, as amended, agreed to.

Sections 44 to 46, inclusive, agreed to.

SECTION 47

Chairman: Amendments Nos. 23 to 25, inclusive, are related and may be discussed together.

Deputy Eoin Ó Broin: I move amendment No. 23:

In page 41, lines 34 and 35, to delete “considers it is necessary to do so for the purposes of the performance of any of its functions” and substitute the following:

“has reasonable suspicion that an AHB may not be fulfilling its responsibilities as set out in this Act and in particular the standards set out in *section 38*”.

While it is grouped with amendments Nos. 24 and 25, this amendment is different in nature. We had a discussion at an earlier stage as to where the bar is set when the regulator is to instigate an investigation. I am very firmly in favour of the regulator having this power - it is a key part of the Bill - so I do not want my amendment to be in any way construed as trying to weaken that power, but there must also be due process. I am not satisfied that the wording “where the Regulator considers it is necessary” sets that bar at an appropriate level. My amendment, which is pretty self-explanatory, proposes the wording “has reasonable suspicion that an AHB may not be fulfilling its responsibilities as set out in this Act and in particular the standards set out in *section 38*”. This means that the regulator cannot just get up one day and decide that he or she thinks this is necessary. He or she must have some basis on which to act or some suspicion from either his or her own information or information presented to the regulator by a third party. If my wording is not appropriate but the Minister thinks there might be a discussion to be had before Report Stage on my wording and his, I will be happy to withdraw the amendment. Otherwise, I will press it.

Deputy Eoghan Murphy: I am of the opposite view on the wording. I think “considering it necessary” is actually a higher bar or threshold and that “has reasonable suspicion” does allow for the regulator to wake up one morning and decide that something seems off. What we want is, after a rigorous process, for the regulator to come to the conclusion that he or she cannot do his or her job as regulator without now appointing an investigator. We believe, therefore, that “considering it necessary” is a higher threshold because that is a more serious position, that for it to be necessary for the regulator to be able to continue as a regulator, he or she must take this course of action. I believe that is stronger than just a suspicion because it means the regulator has come to the conclusion that he or she can no longer regulate this entity effectively without putting in place an investigator and an investigation. It is a higher bar to have to jump. I think our wording meets the concerns of some who felt that the threshold might be too low, a concern Deputy Ó Broin has also expressed. We think our wording is a higher threshold for the regulator to pass before going down the very serious process of an investigation.

Deputy Eoin Ó Broin: In some senses what the Minister has done is add a second part of the sentence after “necessary” to define the word as meaning necessary for the fulfilment of the

regulator's functions. If it said that in the Bill, I would agree with him, but it does not. If that is the meaning of "necessary", why not spell it out in the Bill? If he did, that would be a more than reasonable resolution of the issue. The difficulty is that the Bill does not define "necessary".

Deputy Eoghan Murphy: I suppose the reason it is not spelled out is that the thinking was that this was not self-evident. Considering the whole process that must be put in place prior to appointing an investigator, it could not be done on spurious grounds. That necessarily meant that the regulator deemed that it was needed for him or her to be able to continue to regulate. I can now understand, in the context of this conversation, the reason Deputy Ó Broin would ask why I did not spell that out, but at the time it was seen to be implicit in the wording used. We are both trying to achieve the same end.

Deputy Eoin Ó Broin: On that basis, I am happy to withdraw the amendment, but I ask the Minister to consider clarifying the matter in an amendment on Report Stage.

Deputy Eoghan Murphy: I will.

Deputy Eoin Ó Broin: Otherwise, I may submit a similar amendment.

Amendment, by leave, withdrawn.

Section 47 agreed to.

SECTION 48

Deputy Darragh O'Brien: I move amendment No. 24:

In page 42, line 21, to delete "(b) on" and substitute the following:

"(b) on request, furnish a copy of a completed investigation report to—".

I may resubmit this amendment. I will reconsider the matter but I propose to withdraw the amendment.

Deputy Eoin Ó Broin: These are important amendments. Again, this is a matter of due process. The investigations and reports, interim and final, are really important parts of the Bill and I fully support them. However, copies should be made available to the approved housing bodies or the individuals in those bodies, as appropriate. I have a concern about the publication of an interim report, particularly in the absence of it being provided to the organisation. These are very significant powers. They are welcome and robust but due process has to be afforded to those on the other side of the investigations and the report. I am interested in hearing the Minister's response and how he intends to proceed.

Chairman: Is it proposed to withdraw amendments Nos. 24 and 25?

Deputy Eoin Ó Broin: I have not withdrawn them.

Deputy Darragh O'Brien: I propose to withdraw them but I reserve the right to table them on Report Stage, based on what the Minister says.

Deputy Eoghan Murphy: It is important to be able to produce an interim report and consult other bodies, not just the approved housing body in question, because there may be phases to an investigation, depending on how the work is structured. Also, the investigator might want to consult other bodies, such as the Charities Regulator, based on the interim findings before producing a final report that would be published and made public. It is an integral part of the

investigator being able to do its work. If we were to limit the sharing of interim or initial findings to the housing body in respect of an interim report, it could prevent the investigator from being able to carry out a more full investigation into the matter at hand.

Deputy Eoin Ó Broin: What about the second amendment, No. 25?

Deputy Eoghan Murphy: What is the amendment about specifically?

Deputy Eoin Ó Broin: I hear what the Minister is saying about making the interim report available to other bodies. He has made a convincing case in that respect. The issue, however, is the publication of the interim report. What would be the value of allowing that?

Deputy Eoghan Murphy: The Bill allows the regulator to determine that certain parts that might be sensitive or still to be worked out would not be published. The value in allowing the publication of an interim report is that it might be in the public interest to understand that certain aspects have been addressed satisfactorily, for example, if the investigation has been phased. The public could determine whether the issues have been resolved and that the investigator is moving to phase two. It might actually help a housing body, if it feels it is under the yoke of suspicion on an issue, to be able to move on regarding a certain consideration without having to wait another 12 months for a final report, for example.

Deputy Eoin Ó Broin: Does, or could, the Minister envisage circumstances in which an interim report would be published without the approved housing body having had sight of it beforehand?

Deputy Eoghan Murphy: I do not believe it is allowed for in the legislation. Due process would not allow for it.

Deputy Eoin Ó Broin: That is the nub of the question.

Deputy Eoghan Murphy: The Supreme Court established a new procedure in regard to due process in the Alan Shatter case. He was not consulted prior to publication.

Deputy Eoin Ó Broin: On the basis of what the Minister is saying, I will be happy to withdraw both amendments on a similar basis to Deputy Darragh O'Brien. If the officials were able to give us a note to say that, on the basis of the court case, it is not possible to publish an interim report without its having been provided to the approved housing body previously, I would certainly be satisfied to withdraw the amendments fully.

Deputy Eoghan Murphy: I will make sure I am correct on that before Report Stage.

Deputy Fergus O'Dowd: I am involved in another committee that has a report coming before it. Part of the issue arising concerns the transparency of findings. The view is that they should be presented to those concerned before they are published, particularly if there are adverse findings but even if there are not. If those concerned do not have sight of them, one cannot say there has been due diligence in taking views they might have into account, particularly where there are adverse findings.

Deputy Eoghan Murphy: It falls under natural justice and the right to reply, which has been recently upheld in a finding.

Amendment, by leave, withdrawn.

Amendment No. 25 not moved.

Section 48 agreed to.

Sections 49 to 53, inclusive, agreed to.

SECTION 54

Deputy Eoghan Murphy: I move amendment No. 26:

In page 47, line 8, after “provided” to insert “for the purpose specified in *section 26(2)(b)(i)*”.

The purpose of the amendment is to clarify that only dwellings provided with assistance given by a housing authority under section 6 of the Housing Act 1992 can be transferred under section 54, which is the section that deals with transfer by consent. Concerns were raised about this. The section seeks to meet those concerns so the regulator cannot force the movement of property that was never funded in the first instance through the various funding streams for housing bodies.

Amendment agreed to.

Deputy Eoghan Murphy: I move amendment No. 27:

In page 47, line 11, after “dwellings,” to insert the following: “together with any common areas, structures, works and services and communal facilities and amenities that are in the ownership or under the control of that person,”.

Amendment agreed to.

Deputy Eoghan Murphy: I move amendment No. 28:

In page 47, to delete lines 13 to 21 and substitute the following:

“(3) A notice under *subsection (2)* shall set out—

(a) the reasons why the Regulator considers it necessary that the transfer required under *subsection (2)* be made,

(b) details, including their location, of the dwellings and any common areas, structures, works and services and communal facilities and amenities that are required to be transferred under *subsection (2)*,

(c) the name of the AHB or person to whom it is proposed that the transfer required under *subsection (2)* be made, and

(d) the period within which the AHB or any other person (other than the tenants of the dwellings concerned) who has any right or interest in the dwellings or any common areas, structures, works and services or communal facilities and amenities that are required to be transferred under *subsection (2)* may object, in writing, to such transfer.”.

Amendment agreed to.

Deputy Eoghan Murphy: I move amendment No. 29:

In page 47, to delete lines 22 to 27 and substitute the following:

“(4) Where a notice under *subsection (2)* is given to a person to whom this section applies, the person shall give a copy of the notice as soon as practicable to—

(a) the housing authority in whose functional area the dwellings that are required to be transferred under *subsection (2)* are situated, and

(b) any other person (other than the tenants of the dwellings concerned) who has any right or interest in the dwellings or any common areas, structures, works and services or communal facilities and amenities that are required to be transferred under *subsection (2)*, including any mortgagee or any other person who is the owner of any security or charge affecting those dwellings or any such common areas, structures, works and services or communal facilities and amenities.”.

Amendment agreed to.

Deputy Eoin Ó Broin: I move amendment No. 30:

In page 47, between lines 31 and 32, to insert the following:

“(6) Within six months of the passing of this Act, the Minister shall commission a report, following engagement with all relevant stakeholders, on the establishment of an AHB resolution scheme dealing with all issues involved in stock transfer including the legal, financial and consultative issues involved.”.

I do not expect the Minister to support the amendment but I just wish to make the case again. I understand that the legislation is framed to move the regulatory framework to the next step, the statutory footing, and that, at a later stage, other issues, such as a resolution process and fund, may be addressed. Over the next decade, small voluntary-sector and in many cases rural approved housing bodies with very small numbers of units, set up by voluntary boards, will have board members retiring, passing away or moving on. We could end up with stock that starts to become the subject of resolution and transfer to larger bodies or bodies that are more competent. There are major issues involved in this and I am not saying it is in any way easy. Considerable issues arise over the condition of the stock, the mechanism by which stock is transferred, who makes the decision and with whose consent, the source of the funding, and whether there are sinking funds or structural issues. I accept this is not the Bill in which to deal with all these matters. That case has been made convincingly, and I have been convinced. I have moved the amendment, however, because I still believe it deals with work that needs to be examined over the coming years by the Department. This is the only mechanism I can put on the table to allow me to make this important point.

The Minister was not here when I last raised the issue of a very considerable stock transfer of very newly built units in my constituency. It is a matter of public record. Cara Housing Association had to transfer some of the units from Méile an Rí drive back to the local authority. They were the subject of a very significant controversy over a company called Gama. It was widely documented in the press at the time. The building quality was of such a poor standard that the approved housing body could no longer finance the maintenance of the stock. There was a very public transfer. That was not necessarily the happiest of transfers. I am not saying the local authority commented on it publicly but it had to take on significant additional liability.

Resolution will become an issue whether we like it or not. The decision-making process and financing will become issues.

The Minister is going to explain why he cannot accept the amendment but I would like him to at least accept the spirit in which I am raising this issue. We will all have to return to it in the medium term.

Deputy Eoghan Murphy: I like this amendment. I believe we can insert it in section 4, concerning the review of the Act. We might change “six months” to “one year” to give the regulator some time to get things up and running. It is an important point. I was looking at it last night and believe it makes sense. If the Deputy could resubmit the amendment under section 4, concerning the review of the Act, and extend the period of six months to one year, it would be good.

Deputy Eoin Ó Broin: The Minister constantly surprises me.

Deputy Eoghan Murphy: In a good a way.

Amendment, by leave, withdrawn.

Section 54, as amended, agreed to.

SECTION 55

Deputy Eoghan Murphy: I move amendment No. 31:

In page 48, lines 31 to 33, to delete all words from and including “(including” in line 31 down to and including “dwellings)” in line 33 and substitute the following:

“(including any tenant of a dwelling to which the order applies and any mortgagee or other person who is the owner of any security or charge affecting any such dwelling or any common areas, structures, works and services or communal facilities and amenities to which the order applies)”.

Amendment agreed to.

Section 55, as amended, agreed to.

SECTION 56

Deputy Eoin Ó Broin: I move amendment No. 32:

In page 50, to delete lines 7 and 8.

This seems to be an unnecessary and onerous requirement placed on the Residential Tenancies Board. The Minister is going to accept the amendment.

Deputy Eoghan Murphy: I am trying to help.

Deputy Eoin Ó Broin: The Minister might let me practise my wonderful rhetoric. If he is willing to accept the amendment, I will not waste the committee’s time.

Chairman: Does Deputy Darragh O’Brien have anything to add?

Deputy Darragh O’Brien: It is fine. I have nothing to add if the Minister is going to accept the amendment.

Amendment agreed to.

Section 56, as amended, agreed to.

Sections 57 to 61, inclusive, agreed to.

SECTION 62

Chairman: Amendments Nos. 33 and 34 are related and will be discussed together.

Deputy Eoin Ó Broin: Were these amendments not grouped with an earlier amendment on the use of the Public Appointment Service?

Chairman: They were not; they are being grouped together.

Deputy Darragh O'Brien: I move amendment No. 33:

In page 57, to delete line 9 and substitute the following:

“10 people, from among persons in respect of whom a recommendation for the purposes of this section have been made by the Public Appointments Service, who have experience or expertise in matters”.

We have discussed this amendment previously at the committee. It has been forward strongly as a means of ensuring we will have the right mix of people on the appeals panel. We were prescriptive about who the people should be. The concern was that the Minister would simply select and appoint his or her ten members. I wanted to ensure a recommendation for the purposes of the section would be made by the Public Appointments Service in order that it would not just be the Minister who would choose the ten people he or she wanted. As part of this discussion, we talked about advocates in the disability sector and particularly used as an example ensuring there would be housing stock available for people with disabilities and that they would be represented in that regard. I am sure it is probably the intention to do so, but we felt it would be better to be more prescriptive in that regard. Hence the amendments have been tabled. I am interested in hearing the Minister's thoughts on them.

Deputy Eoin Ó Broin: I concur with Deputy Darragh O'Brien.

Deputy Eoghan Murphy: I thank the Deputies for the proposed amendments. The Office of the Parliamentary Counsel states the amendment is not necessary in primary legislation because I am bound by certain duties in the Government code of practice. I know that there is a fear that the Minister might just go and appoint ten people whom he or she had hand-picked. I have never done that and it is actually very rare for someone to go outside the PAS in making appointments. When they are brought to the Cabinet, a Minister has to state if a person has not been appointed through the PAS and explain why. It is quite rare to go outside the PAS. I can think of an example in which I would potentially need to go outside the PAS in this instance. In the case of the voluntary regulator, we had a tenant representative as a member, a tenancy advocate and it was difficult to find a replacement for that person. The public appointments system is great and only from time to time is there a need to step outside it. I am trying to think of a time when I might have stepped outside it. I have probably done so once, but it is rare. I would not want to have something in legislation that was not deemed to be required to get in my way in needing to appoint a disability advocate, or a tenant advocate, or another type of advocate we cannot think of today because the issue has not yet presented, or because of the way that things and culture change. I do not think the amendment is necessary. The practice being followed at Government level is a good one.

Deputy Darragh O'Brien: I take the Minister's point because sometimes it can be difficult to have the proper cross-section of representation required. One of the things at which we looked previously was the need to be more prescriptive in outlining the sectors, not the individuals, to be covered by the ten individuals. The response was that we could not really do it in primary legislation either. I can see why the Minister would need flexibility, now that he has mentioned it, because it might be a case of trying to find someone who had not come forward through the PAS. I will consider that issue and potentially look at withdrawing the amendment. We could discuss it between now and Report Stage to see can anything be done. I will have to think about it further. The Minister understands why we are putting the amendment forward. I do not want a situation whereby a Minister can come forward and appoint his or her ten people to the panel. We may not see that as something that could happen in the future but we must try to satisfy ourselves that it will not and that was why I was looking to put it into the legislation.

Deputy Eoghan Murphy: I completely get where the Deputy is coming from but the difficulty is trying to do it through primary legislation in a manner that would not hinder a Minister in the future. If we said that, of the ten, a minimum number must come from, say, a tenancy advocacy organisation, there could still be difficulties in finding such people and then, from a legislative point of view, the board as constituted is illegal. It is a risk that would be there if we made this change.

Deputy Darragh O'Brien: I will withdraw the amendment.

Deputy Eoin Ó Broin: What is the current composition of the voluntary board? I am not asking for people's names but what are the expertise or skill sets that they bring?

Deputy Eoghan Murphy: The chair is a lecturer, author and former principal officer in my Department. There is a senior lecturer from the school of law in UCD, the chief executive of the Scottish housing regulator, a banking analyst from the Department of Finance, a CEO from the Irish Council for Social Housing, an assistant secretary from my own Department and a director of services from one of the county councils.

Deputy Eoin Ó Broin: Was there a tenants' representative previously?

Deputy Eoghan Murphy: There was a tenants' representative and it has not been possible to replace that person.

Deputy Eoin Ó Broin: There is a broad range of skill sets on the board. Is it the Minister's hope that the same range of skill sets will be replicated on that statutory board?

Deputy Eoghan Murphy: I think so. There are a few other positions that I have been working out in my head and would be good, including a disability representative. That is what I would look for. I would go to PAS and say that we are looking for people with particular skill sets or backgrounds to be appointed to a certain position. PAS would then bring forward people who meet that criteria.

Deputy Eoin Ó Broin: I appreciate the difficulty with tenants' representatives. The one AHB that has a good track record in this is Co-operative Housing Ireland, formerly the National Association of Building Co-operatives, NABCo, because it is part of the culture. It might be worth engaging with Co-operative Housing Ireland in the process if we are to replicate a similar process. I am not saying that the Minister takes someone from the tenant cohort of Co-operative Housing Ireland but it has a mechanism and a long history of active tenant participation at senior board level. That might be worth exploring.

Deputy Eoghan Murphy: I thank the Deputy.

Deputy Eoin Ó Broin: I am happy to withdraw the amendment.

Amendment, by leave, withdrawn.

Section 62 agreed to.

Sections 63 to 70, inclusive, agreed to.

Amendment No. 34 not moved.

Schedule agreed to.

TITLE

Deputy Eugene Murphy: I move amendment No. 35:

In page 7, lines 7 and 8, to delete “*An tÚdarás Rialála na gComhlachtaí Tithíochta Faomhaithe*” and substitute “*An tÚdarás Rialála Comhlachtaí Tithíochta Ceadaithe*”.

Amendment agreed to.

Title, as amended, agreed to.

Bill reported with amendments.

Deputy Eoghan Murphy: This is an important Bill, and I appreciate the spirit in which everyone has addressed, the time Deputies have put into it, and their amendments. It would be fantastic if we could get it through Report Stage before the end of the year. I do not know how that might be arranged with the committee, but I will push it as a priority with the Chief Whip’s office.

Deputy Darragh O’Brien: I was going to ask about scheduling as well. It is a priority for us all that we get this Bill through before the end of the year. I do not believe that there would be any amendment on Report Stage that would hold it up.

Chairman: I am advised that the committee has nothing more to do with this and that it is now a scheduling matter for the Dáil.

Deputy Eoin Ó Broin: The Minister is appealing to us not to submit too many amendments. If he did get Dáil time, it would then go through quickly. We understand.

Deputy Eoghan Murphy: I do not want to speak about a Deputy who is not here, but if Deputies miss out on tabling their Committee Stage amendments, sometimes Report Stage can become something of Second Stage again.

Deputy Darragh O’Brien: The picture the Minister should have from the committee is that he can revert to his Cabinet colleagues now, assuming it is the Cabinet that will schedule when Report and Final Stages will be taken, and tell them that we will present no impediment to it passing as speedily as possible.

Deputy Eoghan Murphy: I appreciate that. Normally towards the end of the year, a large queue builds up and people try to have Bills addressed. We can schedule less time for Report Stage on this Bill than normal, seeing as how we are almost there.

Deputy Darragh O'Brien: I have no issue with that.

Deputy Eoin Ó Broin: There are a small number of issues that Deputy O'Brien and I have indicated we may revert on, but they are minor. It has not been my practice to resubmit all of my Committee Stage amendments to fight them again on Report Stage. We will just consider a small number.

Deputy Eoghan Murphy: Okay.

Deputy Eoin Ó Broin: Obviously, we cannot speak for people who are neither here nor members of the committee.

Chairman: I thank Deputies O'Dowd, Ó Broin and O'Brien. I thank the Minister and his officials for attending.

Message to Dáil

Chairman: In according with Standing Order 90, the following message will be sent to the Clerk of the Dáil:

The Select Committee on Housing, Planning and Local Government has completed its consideration of the Housing (Regulation of Approved Housing Bodies) Bill 2019 and has made amendments thereto.

The select committee adjourned at 2.55 p.m. *sine die*.