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Dear Kevin

Briefing: Regulation of Houses in Multiple Occupation (HMO) Bill

Departmental officials will brief the Committee on 14 May on the proposals for a new HMO regulatory regime. This is specifically designed to introduce an improved system of regulation to include a licensing scheme with better physical and management standards.

The key aim of this new regulatory approach is to better protect tenants living in HMOs by ensuring that landlords and managing agents meet government regulations about the quality and safety of all HMO accommodation. An HMO inspection will ensure the property is not overcrowded and has suitable shared amenities and facilities for the number of people occupying it. Landlords will be required to apply for a licence to rent out the home lawfully, with licences granted subject to management conditions and conditions requiring any necessary work required to meet current amenity and/or safety standards.

The proposals put to the Executive in July 2014 seeking approval to draft a Bill were the result of a policy consultation process which indicated a number of weaknesses in the existing system and identified clear benefits in transferring the responsibility for regulating HMOs from NIHE to councils. The case for this is strong given the links between the proposed new regime and councils' new powers around planning and existing powers for building control, environmental health and regulation of the private rented sector.



The Bill is currently being finalised and it is hoped, subject to Executive approval, to introduce the Bill before the summer recess. A detailed briefing paper and a synopsis of the key points are attached for the Committee's information ahead of the oral briefing on 14 May.

The following officials will attend the briefing:

Mr Stephen Martin	DSD Housing Policy Delivery
Mr David Grimley	DSD Private Rented Branch
Mr Ronan Murphy	DSD Private Rented Branch

You will wish to bring this to the attention of the Committee members.

Yours sincerely



David Grimley

Cc: Allison Ferguson
Stewart Kennedy
Stephen Todd

Ashleigh Mitford

Richard Best

Billy Crawford

Mick Shine

Kate Jeffrey

Ellen Corry

BRIEFING FOR SOCIAL DEVELOPMENT COMMITTEE ON THE KEY PROPOSALS IN THE NEW BILL FOR REGULATING HOUSES IN MULTIPLE OCCUPATION (HMOs)

Key Features of the Bill

1. The Bill consists of 88 clauses and 7 schedules which contain a mixture of the best practices operated in Scotland, England and Wales. We have also taken into account comments received from the consultation exercise as well as from discussions and correspondence with Scottish local authorities who highlighted practices within their own system that could be improved upon.
2. The key provisions in the Bill include the following:
 - New HMO definition
 - Licensing Scheme
 - Exemptions from Licensing Scheme
 - Fit and Proper Test
 - Information Sharing
 - Enforcement
 - Other new Powers
3. At a previous Departmental briefing in April 13 Committee members raised concerns with the present regulatory system and asked that this new system would be considerably more robust than the system that presently operated in Northern Ireland.

HMO Definition

In summary:

4. Findings from the review of HMO legislation concluded that neither the definition nor the scheme of regulation was fit for purpose. The current HMO definition in Article 75 of the Housing (Northern Ireland) Order 1992 will be repealed and

replaced with a new definition in the Bill. It is proposed in the Bill that accommodation is an HMO if it is occupied by 3 or more persons who are all not members of the same family or of one or other of two families; in specific types of accommodation; with use of prescriptive basic amenities.

5. The Bill specifies:

- that only rented properties are to be included as HMOs;
- that a fundamental requirement for designation as an HMO will be shared living;
- the list of persons who will not count in the determination of an HMO and expands it to include others outside the standard family relationship, such as domestic help and some carers. “Household”, which is the term used in the English/Welsh legislation, more accurately reflects the situation we wish to capture.
- that living accommodation which ceases to operate as an HMO because the occupancy level has reduced, should continue to be treated as an HMO for the entire licensing period, for the purposes of regulatory activity.

6. Issues around owner occupied self contained flats have been raised frequently in Assembly Questions and general correspondence over the last few years. It is considered that in some cases, conversions may not be to an acceptable standard. The Department considers that the current statutory fitness standard in Article 46 of the Housing (NI) Order 1981 and the various editions of building control regulations, which apply across all dwellings, are sufficient to deal with these types of building.

Licensing Scheme

7. This revised scheme will introduce HMO licensing and will bring Northern Ireland into line with other UK jurisdictions which will complement the licensing schemes already operated by councils and prove more effective for the delivery of the scheme.
8. Officials have engaged in discussions with officials from the Department of Environment on related cross cutting issues with a view to achieving a common legislative definition of an HMO in both housing and planning law.
9. A separate clause in the Bill ensures an application for an HMO licence cannot be determined unless living accommodation occupied as an HMO has planning permission. This will reduce the possibility of overprovision of HMOs in the locality in which the HMO is situated. We have also put in place provisions where licences can be revoked, where:
 - the licence holder or relevant person commits a serious breach of a licence condition or repeated breaches of a condition;
 - where the council considers the licence holder is no longer a “fit and proper” person; or
 - where the council consider anyone involved in the management of the HMO is not a “fit and proper person”;
 - the house is no longer an HMO; or
 - Where, if the council were to be considering whether to grant a licence, it would refuse for some reason connected with the structure of the building.
10. Carrying out development without the planning permission required or failing to comply with any condition or limitation subject to which planning permission has been granted, constitutes a breach of planning control.

11. The Department has carried forward current requirements in the management regulations into the new regime which deal with areas such as utilities and certain management duties. These areas have been considered as additional requirements within licensing and the detail will be provided for in subsequent regulations. These are:

- house security;
- licensing and planning permission;
- energy efficiency;
- overcrowding;
- carbon monoxide detection;
- external decoration; and
- anti-social behaviour occupancy agreements.

12. In those instances where a landlord can clearly show that they intend to stop operating a property as an HMO, or reduce the number of occupants to below the licensable level, a Temporary Exemption Notice will be granted. In such cases the landlord must explain the steps to be taken to stop the premises from being an HMO, and the administrator must be satisfied that these steps will be successful. This can include requirements for works (and the date by which it must be completed) relating to the safety or security of the occupants, while the temporary exemption is in force.

13. It is intended to retain the duration for a licence similar to that of the current scheme at 5 years with licenses of a shorter duration being granted only in those cases where the council is satisfied that a justification for a shorter period exists. Such a justification might relate to the standards of the living accommodation e.g. where it is considered suitable for occupation as an HMO at the time the application is granted, but is unlikely to remain suitable for an extended period due to (for example) the age or state of the fixtures and fittings. In such a case, the council might wish to grant the licence for one year only, so as to provide for regular checks of the continuing suitability of the accommodation.

14. The Bill includes a clause that requires any breach or potential breach of a licence condition, or premises found to be not suitably fit for occupation to be rectified or prevented via specific HMO suitability notices. Any such notice must specify what actions are needed, the time (must be reasonable) within which the action is to be carried out and for revocation of the notice. While such a notice is in force, no new occupiers shall be permitted to move in. This clause will ensure the councils in Northern Ireland will be able to deal with any non-compliance with the licensing of HMOs at the earliest possible opportunity.

15. Fire safety measures cannot be imposed through any future HMO licensing regime by way of license conditions. The Department has met together with the NI Fire and Rescue Service and the delineation of responsibility has been agreed with responsibility for fire safety within HMOs falling to the Fire & Rescue Service.

Exemption from Licensing Scheme

16. The current definition of HMOs has been criticised in the courts for being too wide and bringing houses into HMO regulation where it is not warranted. This means, for example, that prisons come within the HMO definition and are potentially subject to HMO regulation. The Bill provides for exemptions from the licensing requirement for certain HMOs. Exemption will apply where there is some other form of statutory regulation which is acceptable to the Department, or where, because of the purpose to which the HMO is put, the risk to its occupants is reduced to a level where regulation is not needed.

17. Buildings or parts of buildings which are considered not HMOs are listed in a schedule in the Bill and include those which:

- is subject to other regulatory regimes which will be specified in regulations;
- is a student hall of residence where the university or college of further education is signed up to a specified accreditation code – the code and university or college of further education to be specified in regulations;
- is a building occupied by religious communities;
- is owner-occupied; or
- is occupied by persons who form two households.

Fit and Proper Test

18. As a result of the concerns raised during consultation we will include a “fit and proper test” similar to the one being operated in Scotland. This means the council must be satisfied that the person applying for an HMO licence is a "fit and proper person" to hold a licence. The same test applies to any person managing the premises, and any director or partner in a company or organisation which owns or manages the HMO.
19. Sharing of Information clauses will permit the council to check with the police, other government agencies, to ascertain if the applicant has any relevant convictions since the HMO operator would be in a position of trust. If the HMO is subject to any other form of regulation, the council may wish to approach the relevant regulatory authority, such as, Health and Social Care or the Environmental Health Service, for their comments. This would usually focus on the applicant's record of maintaining standards and their response if concerns are raised. Ultimately it is for the council to decide whether the applicant is a "fit and proper person" based on all the information available to it.
20. In deciding whether someone is fit and proper it is proposed the following should be taken into account:
- any previous convictions relating to violence, sexual offences, drugs and fraud;
 - whether the proposed licence holder has broken any laws relating to housing or landlord and tenant issues;
 - whether the person has been found guilty of unlawful discrimination on grounds of sex, colour, race, ethnic or national origins or disability in, or in connection with, the carrying on of any business;
 - Whether the person has previously managed HMOs that have broken any approved code of practice;

- It may also be beneficial to verify ownership of a property. It is the owner who should apply for licensing, but where the landlord has a criminal record or would likely be considered not to be a 'fit and proper' person, they may seek to conceal themselves behind another applicant.

Information Sharing

21. HMO legislation does not currently provide for information to be obtained from other statutory and non-statutory bodies for the purpose of HMO identification. A clause in the Bill will open statutory information sharing gateways with a number of government and non-government organisations and bodies. The gateways will provide for relevant information to be sent from appropriate sources to assist in the identification and regulation of HMOs. Having a more robust method of identification will provide a firmer basis for effective regulation of HMOs.

Enforcement

22. The current regime relies on criminal offences with the maximum fine being £20,000. Under the present Registration Scheme for 2012/13 the Housing Executive prosecuted 97 landlords, with the average fine being £292. Whilst in many cases the dangers posed to occupants of HMOs by non-compliance with regulatory requirements, means the application of a criminal offence is appropriate, punishments under the criminal regime are inflexible with court action the only sanction. However, it may be considered unacceptable that the fines imposed by courts appear not to serve either as a deterrent or an incentive to HMO owners to comply with regulatory requirements. The lack of other options leaves a deficit in the options to deal with many non-compliance situations. Additionally the time and effort involved in taking court action is not justified by the penalties awarded at the conclusion of the court action with many fines being less than the initial registration fee.

23. The Bill has added the power for councils to use civil penalties (fixed penalty notices) which will run alongside criminal offences and sanctions. Councils can issue fixed fines for smoking, littering, waste disposal etc and the possibility of adding HMOs will be attractive. Introducing fines is a practical alternative which will provide a more cost effective and less time consuming means of enforcing legislation with benefits for both councils and occupiers. Discussions are ongoing with the Department of Justice to bring this forward.

Other New Powers

24. The new Bill will create a power to issue a prohibition notice on a property if the council deems that there is an imminent threat to the health and safety of the occupants. This will mean that the occupants are re-housed and the property cannot be occupied until such times as works have been carried out to address the issues listed within the prohibition notice.

25. Councils will also be given powers to obtain information from various specified persons in the house. It can require any occupier to disclose the nature of their relationship with any other occupier, where that information is required to determine whether the accommodation is an HMO that requires to be licensed.

General Issues

26. In principle, we agree that fees from landlords should meet the cost of the licensing scheme. However, it is important that the requirements imposed on HMO owners are not so onerous as to endanger the supply of houses. As this is primarily an operational matter for the councils, we intend to leave the fees in its current format and consider this matter further with councils as the operation of the new regime progresses.

27. The current HMO regulations were introduced through the Housing (NI) Order 1992 and, Government policy on HMOs since then has focused on improving the standard of accommodation and the way in which this is managed. To date, the Housing Executive has been responsible for regulating HMOs, including the

management of a mandatory registration scheme which requires all appropriate HMOs in Northern Ireland to be registered. When determining the suitability of a property the Housing Executive is responsible for ensuring that HMOs meet a number of requirements in relation to the overall condition of the dwelling, and the number of people living in the dwelling.

28. The new regulatory scheme will transfer this responsibility for regulating HMOs to councils. As the new provisions in the Bill will include a new definition, a mandatory licensing scheme and updated physical and management standards. Council environmental health departments already lead on all other aspects of regulation of the private rented sector, this transfer will sit neatly with those functions.

29. As HMOs tend to be concentrated in areas with large numbers of students and migrant workers, some councils will have a more significant role than others. Councils can, if they wish, work in partnership with one another in the regulation of HMOs, using powers available to them under the Local Government (Northern Ireland) Act 1972. This may be a particularly attractive option for those councils with lower numbers of HMO properties.

30. The Department's purpose through effective policy and legislation is not to reduce the number of HMOs, which we recognise present a legitimate and affordable choice for students, migrant workers, young single people etc, but to properly and effectively regulate them to ensure the health, safety and well being of the occupants and minimise any negative impacts on the neighbourhood and surrounding area.

31. Latest figures provided by the Housing Executive show that there are 5,225 HMOs registered, leaving approx 500 currently not registered. Many of these are in the Holylands and in the Coleraine University area. It is not known how many people live in this tenure- however, it could be as many as 30,000.

Way forward

32. The new provisions are designed to be straight forward with the intention of making the complex and technical subject as clear and informative as possible whilst also allowing the system to be easily administered and operated by the councils. The Department will publish guidance for the licensing scheme for councils and landlords to help them meet the requirements of the regulations. With the enabling powers established in the Bill, the detailed administration of the new arrangements will be set out in regulations with the Assembly having the opportunity to consider the issues.
33. Officials will continue to progress the new legislation with a view that, subject to Executive approval, this will be introduced, in the Assembly before the summer recess.

SYNOPSIS KEY POINTS ON NEW HMO BILL

- The consultation on the Fundamental review of Houses in Multiple Occupations was undertaken in late 2012 and officials reported the outcome of that exercise to the Social Development Committee on 25 April 2013. This concluded that there are a number of weaknesses in the existing regulatory system. For example, one major downfall being the difficulty in identifying houses in multiple occupation (HMOs).
- HMOs are an important part of the private rented sector and can provide affordable housing for some of the most vulnerable and disadvantaged groups in society, or those on low incomes, students and migrant workers. Because of the higher risks of living in an HMO, they are subjected to a higher level of regulation than other rented housing. Standards of physical accommodation and management in HMOs are also issues of concern. This is why the Department is bringing forward new stronger legislation.
- The new regulatory scheme will transfer this responsibility for regulating HMOs to councils. As the new provisions in the Bill will include a new definition, a mandatory licensing scheme and updated physical and management standards. Council environmental health departments already lead on all other aspects of regulation of the private rented sector, this transfer will sit neatly with those functions.
- The new Bill includes a power to open statutory information sharing gateways with a number of government and non government organisations and bodies. These gateways will provide for relevant information to be sent from appropriate sources to assist in the identification and regulation of HMOs.
- This revised system of regulation will allow the targeting of houses in a way that is proportionate to the risk presented and will address the added risk to safety associated with living in HMOs.

- Latest figures provided by the Housing Executive shows there are 5,225 HMOs registered, leaving approx 500 currently not registered. Many of these are in the Holylands and in the Coleraine University area. The number of people living in this tenure could be as many as 30,000.
- The purpose of introducing HMO licensing in Northern Ireland is to improve standards by ensuring that a landlord or any agent is a fit and proper person, and by checking the standards of physical accommodation as well as tenancy management standards. This provides protection to HMO tenants and their neighbours by making sure accommodation is safe, well managed and of good quality.
- New proposals to address the weaknesses identified in the current HMO legislation will introduce:

HMO Definition - the introduction of a new HMO definition and associated exemptions will provide clarification and guidance on what is or is not to be classed as an HMO.

Licensing Scheme – the introduction of mandatory licensing of HMOs will ensure higher physical and management standards are adopted before an HMO can be classed as licensed. This will in turn lead to a more professional provision of such accommodation making it more attractive to prospective tenants.

Fit and Proper Person Test – the introduction of a fit and proper person test, similar to that being successfully operated in Scotland, will ensure that those people who are unsuitable to hold a licence and operate an HMO are identified at the earliest opportunity and prevented from doing so.

Enforcement – the introduction of greater and more comprehensive enforcement powers will ensure that any deviation from the licensing system is penalised in a timely and proportionate manner. Fixed penalty notices for example will avoid the need to proceed directly to court action for lesser offences. Previously, the need to

take all offenses to court meant that any potential penalty may have been delayed for months, due to the protracted nature of court action, exacerbating the tenant's situation by allowing the breach to continue until the court action was concluded.

Other New Powers – The new Bill will also create a power to issue a prohibition notice on a property if the council deems there to be an imminent risk to the health and safety of the occupants. In addition the new Bill will also create a power to open statutory information sharing gateways to assist in the identification and regulation of HMOs.

It is our intention to publish guidance for the licensing scheme for councils and landlords to help them meet the requirements of the regulations. Officials will continue to progress the new legislation with a view that this will be introduced in the Assembly before the summer recess.