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CLERK TO COMMITTEE FOR SOCIAL DEVELOPMENT

Dr Kevin Pelan
Room 412
Parliament Buildings
BELFAST
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Dear *Kevin*

Re: Houses in Multiple Occupation (HMO) Bill

Thank you for your letter of 15th May seeking additional information following the Department's oral briefing on the new HMO Bill. The information you have requested is summarised below.

Court Cases

1. The Committee has requested a breakdown of figures in relation to court cases under the current arrangements as regards to the number of new cases per year, average duration of cases, the range of fines imposed as well as the average fine imposed;

The Housing Executive has supplied the following figures:

Year	New Cases	Average Fines	Range of Fines	Average Time to Complete legal Proceedings
2012/13	100	£223.74	£75 - £2000	160 days
2013/14	100	£170.92	£75 - £1500	176 days
2014/15	95	£226.42	£75 - £500	188 days

Licenses Granted for less than 5 years

2. The Committee notes the potential benefit of councils having the flexibility to grant licenses for a shorter period than the proposed standard 5 year period. It did however express concern that this would not seem appropriate in the case of concerns over build quality and would welcome the Department's thoughts on this;

The Bill makes provision for a licence to be granted for a maximum period of 5 years and for no less than six months. It is suggested that general practice should be for a 5 year period, with licences of a shorter duration being granted as an exception where the council is satisfied that a justification for a shorter period exists.

Such justification might include planned regeneration of an area that may alter its structure and accommodation needs or cases where the student population has increased but may be offset by the introduction of accredited student accommodation in the near future.

The primary intention of this provision is not to address issues of build quality. However, there may be some limited circumstances where a council may wish to grant a shorter licence on the basis of the age of key fixtures or fittings. For example, if, at the time of initial inspection, a piece of safety equipment or a key appliance, such as a smoke alarm or a boiler, while perfectly safe, is less than five years away from the end of its normal lifespan, then it might be appropriate to grant a shorter licence.

Unlawful Discrimination in relation to sexual orientation

3. The Committee would be grateful if the Department could clarify why this area of discrimination law is not included in the Bill.

In the briefing provided to the committee we included some examples of discrimination, however, the examples used were not exhaustive. The Bill makes provision to include all acts of discrimination including Sexual orientation. It states the following:

“The Council must have regard to whether P has committed any offence, involving practised unlawful discrimination in or in connection with the carrying on of any business.”

The Department has been advised against prescribing a definitive list and consider this clause will ensure that all acts of discrimination are captured.

Fit and Proper Person

4. The Committee notes that the Department proposed to give further consideration to the ‘have regard to’ approach to this element of the Bill, in the context of a licensee being deemed a Fit and Proper Person. In addition, the Committee welcomes the Department’s proposal to provide it with examples of how this approach works well in Scotland.

When considering the fit and proper person provisions in the HMO Bill, the Department were mindful of the successful practices in operation in the other jurisdictions and these were used to form the template for our provision. The phrase “have regard to” is replicated

in Section 85 of the Antisocial Behaviour etc (Scotland) Act 2004 and Section 66 of the Housing Act 2004. The Department has been advised that there would be no material difference if this phrase were changed to “have due regard” or “give consideration” as these phrases have the same meaning in this context.

Evidence from Scotland indicates that few people have failed the test. For example, figures provided by Inverclyde Council show they have received applications from over 1800 landlords for the registration of 3385 properties between 2006 and 2012. Of those applications only 3 landlords had their registration refused or removed as a result of the application of the fit and proper person test. In the 3 cases referenced, appeals were never lodged. The flexibility offered by these provisions works well in the other jurisdictions and it is our intention to present case studies showing further examples of this success at Committee stage.

The Department intend to provide guidance for the operation of the fit and proper person test and to ensure consistency will suggest that councils nominate specific trained members of staff, similar to the system operated in Scotland, who will be in a position to make a determination as to whether a person is fit and proper.

5. The Committee would also be grateful if the Department could set out more fully the information in paragraph 20 of its briefing. In particular, the Committee seeks to understand the extent to which having a criminal record could preclude someone from becoming a licensee. Is it the intention of the Bill that councils will be able to consider this on a case by case basis for all types of convictions, both spent and unspent?

The purpose of the fit and proper person test is to identify, at an early stage, those landlords whose previous actions indicate that they may pose a risk to the occupants of an HMO. The fit and proper person provisions in the Bill allow a council to take into account previous convictions when making a decision on the licence application. The Department considers that creating a provision that is prescriptive and lists the type of offences would restrict a council from applying discretion and carrying out a reasonable test.

Under the Rehabilitation of Offenders Act 1974 criminal convictions can become spent or ignored after a rehabilitation period. The rehabilitation period varies depending on the sentence or order imposed by the Court – not the nature of the offence. Custodial sentences of more than two and a half years never become spent.

It is the intention of the Bill that councils will be able to consider those applications where a previous criminal conviction, whether spent or unspent, becomes known. The Department considers these applications will be determined on their own merits on a case by case basis.

Overcrowding

6. The Committee notes that the HMO legislation would not safeguard against overcrowding in certain cases for example, when a house is owner occupied and/or is occupied by persons who form two households. The Committee would be grateful if the Department could advise it as to what legislation does safeguard against such overcrowding.

The introduction of the new Bill, and amended HMO definition, will not fundamentally change how overcrowding is dealt with.

The key aim of the Bill is to better protect tenants living in HMOs. The new definition will allow regulation to be targeted in a way that is proportionate to the risk presented.

Overcrowding will continue to be a key regulatory concern for HMOs. For example, a property with 4 people in it is likely to present fewer risks than one in which 20 people occupy. A schedule in the Bill specifies that the application for a HMO licence includes the number of persons who it is proposed to occupy the accommodation and a subsequent inspection will confirm the maximum number of occupants who can reasonably live there based on the standards expected for the HMO to be licensed.

Available data, including the 2011 census and the Housing Executive's House Conditions Survey, indicate that overcrowding is not a significant problem in Northern Ireland.

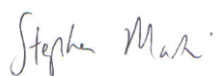
However, where overcrowding (outside the HMO regime) is causing a nuisance or danger, other agencies have powers to act.

Under the Clean Neighbourhood and Environments Act (NI) 2011 councils have the power to deal with a range of public health nuisances and anti-social behaviour resulting from overcrowding. In addition the Northern Ireland Fire and Rescue Service (NIFRS) have the power to place prohibitions on properties where they have reason to believe that there may be a problem affecting relevant persons' escape from relevant premises in the event of fire. One such problem could be that the means of escape in the event of a fire are not adequate to support the number of people occupying the building. The NIFRS could then impose restrictions on the property or even a total prohibition if this was deemed necessary.

Moving forward the Department will continue to monitor the situation to assess if there is a need for further overcrowding provisions in Northern Ireland.

I hope the Committee will find this information useful; if you require further clarification or additional information, do not hesitate to contact me.

Yours sincerely

A handwritten signature in cursive script that reads "Stephen Martin".

STEPHEN MARTIN