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22 September 2015

Dear Kevin

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

Department Officials are scheduled to provide a briefing at the Committee on 1 October 2015 to assist its consideration of the Bill in Committee Stage.

The following officials will attend to brief the Committee:

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

I enclose a copy of a briefing paper and further clarification on the key points discussed at the pre-introductory briefing. You may wish to bring this to the attention of the Committee members.

You will be aware that during periods of vacancy in Ministerial Office, officials may only provide Committees with factual information and explanation of policy positions agreed during the former Minister's period in office.

I hope that the Committee finds this information useful.

Yours sincerely

A handwritten signature in black ink, appearing to read "Eilish O'Neill". The signature is written in a cursive, flowing style.

Eilish O'Neill

Cc: Allison Ferguson  
Stewart Kennedy  
Ashleigh Mitford  
Alicia Muldoon  
Billy Crawford  
Mick Shine  
Bernie McCafferty  
Kate Jeffrey  
Ellen Corry

## **BRIEFING FOR SOCIAL DEVELOPMENT COMMITTEE ON THE HOUSES IN MULTIPLE OCCUPATION (HMOs) BILL**

The Committee for Social Development received a pre-introduction briefing by Departmental officials on our proposals for the new HMO Bill on 14 May 2015. Following this briefing the Department provided additional information in a letter dated 28 May to clarify issues raised by members during the oral briefing. I hope you found the information helpful.

Houses in Multiple Occupation (HMOs) are an important part of the housing mix and can provide affordable rented housing for a range of tenants, including students, migrant workers and single people on low incomes. Because of the higher risks of living in an HMO, they are subjected to a greater level of regulation than other rented housing.

The key aim of the Bill is to better protect tenants living in HMOs. The Bill will do this by requiring landlords to meet important standards on quality and safety before an HMO is let, to link this licensing system with the planning and building control systems to reduce the scope for gaps in oversight to be exploited and by updating important physical and management standards.

This revised system will also allow regulation to be targeted in a way that is proportionate to the risk presented. Because of the importance of linking HMO regulation with other critical local government functions, such as planning, building control and environmental health, the new system will work most effectively when responsibility for it transfers to district councils.

### Definition

The present definition in the Registration Scheme is too wide, unclear and open to interpretation. The new definition is much clearer and should address a lot of the issues which were identified during the review of HMO regulation. Under the Licensing Scheme a building or part of a building is an HMO, if it is living

accommodation occupied by 3 or more persons as their only or main residence and those persons form more than 2 households and rents are payable or other consideration is to be provided in respect of occupation by at least one of those persons.

### HMO regulation linked to Planning

When we last briefed the Committee some members were concerned that our legislation may not prevent a Holylands situation from happening again with the saturation of HMOs in one locality. Since the briefing we have liaised with our DOE colleagues and confirmed the threshold of 10% remains as noted in the DOE Planning Service's Subject Plan for Belfast with 30% threshold still in place for Holylands. It is intended that having a link to planning a potential HMO owner will have to obtain planning permission to get a licence before legally operating as an HMO which if properly implemented should prevent a Holylands situation from happening again. As we liaise with councils around the transfer of the function future work will need to be developed to take forward issues arising for how they will prevent overprovision in areas outside Belfast and if they need to adopt a threshold for HMO's in local area development plans.

### Fit and Proper Person Test

During the fundamental review of HMO regulation there was unanimous agreement that there should be a fit and proper person test for any person having responsibility for the HMO accommodation. The test is designed to identify and weed any bad landlords out of the system, give tenants extra protection and improve the standards in the private rented sector generally.

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. 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. It is envisaged these applications will be determined on their own merits and on a case by case basis.

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.

The council will take certain things into account when deciding whether or not a landlord is a fit and proper person to let out property:

- Information showing that the landlord has committed fraud, or violent or drug related offences.
- Evidence of discrimination in any business activity.
- Information showing that they have broken any other laws in relation to housing.
- Information showing that they are a bad landlord, or that they have been a bad landlord in the past.
- Antisocial behaviour problems in any properties the landlord rents out or is responsible for.
- If the landlord has an agreement with a letting agent (or anyone else who's acting on their behalf in letting the property), that the terms of that agreement are adequate.
- Anything else which is relevant.

A criminal conviction doesn't necessarily mean that a landlord won't pass the test. The council will have to look at every case individually and weigh up all the circumstances when making a decision. For example, the council will have to think about:

- what the conviction was for

- how long ago it was
- whether or not it will affect the person's ability to be a good landlord
- the risk of the same thing happening again and whether that would affect the person's duties as a landlord.

The council may decide to speak to the landlord when making this decision. It can also gather other evidence if necessary. It won't be straightforward in every case but it's up to the council to make the decision at the end of the day.

If the council decides that a landlord or letting agency is not suitable to let out property, their application for registration will be refused. This means that the landlord or agency cannot lawfully rent out the property. Renting out property without being registered with the council is a criminal offence and landlords can be fined up to £20,000 if found guilty.

In addition, the Department also proposed to update the Committee with an example of how the fit and proper person test was working well in Scotland. 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.

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.

### Safety and Security of Persons likely to occupy the Accommodation

The safety and security of occupiers is of the utmost importance in assessing whether the accommodation is suitable for occupation as an HMO. The Department proposes that the current requirements in the management regulations should be

carried forward into the new regime. These deal with areas such as utilities and certain management duties. We have included areas that might be considered as additional requirements within licensing. These are:

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

The introduction of the new Bill, with the amended definition, will not fundamentally change how overcrowding is dealt with. The key aim 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 the 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 and specify the maximum number of occupants who can reasonably live there based on the standards expected for the HMO to be licensed.

### **Buildings or parts of buildings not considered as Houses in multiple occupation**

The Bill provides for exclusions from the licensing requirement which follow those in other jurisdictions, where it is accepted that certain shared houses do not need to be regulated. Those not considered as HMOs 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 associated risk to its occupants is reduced

to a level where regulation is not needed, for example, because the owner lives in the property.

Buildings or parts of buildings which are considered not HMOs are listed in Schedule 1 in the Bill.

## **Enforcement**

The current regime relies on criminal offences with the maximum fine being £20,000. Under the present Registration Scheme for 2014/15 the Housing Executive prosecuted 95 landlords, with the average fine being £226. 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.

At our previous briefing to Committee the use of fixed penalty notices were still at the drafting stage and since officials have been liaising with Department of Justice officials to agree the new method of enforcement. We can now confirm that fixed penalties up to £5000 for non-compliance with the licensing scheme will apply, allowing Councils to enforce speedily, appropriately and cost-effectively, avoiding the cost of court cases while providing an effective penalty. Introducing fines will provide a more cost effective and less time consuming means of enforcing HMO legislation with benefits for both councils and occupiers. Officials in other jurisdictions have indicated that this is a model they would be keen to copy.

## **Fees**

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. The scheme requires the payment of a fee for a five year registration period when the house is first registered as an HMO, and half the fee upon renewal. Each house is registered for occupation by a maximum number of occupants and the registration fee reflects this. The fee level presently equates to £25 per occupant per year up to a maximum of 10.

## **Information Sharing**

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.

You may wish to note one main difference between the Bill now and that outlined by officials to the Committee in May, being the removal of the reference to the Secretary of State in a sharing provision clause. We will now seek to achieve this via a non statutory route, using informal arrangements based on the Secretary of State's common law powers as an alternative.

## **Other amendments to the Bill**

At the meeting on the 14 May Committee asked whether the fit and proper person test would take account of a situation where a person had committed an offence associated with people smuggling. Whilst it was argued that some of the other wider offences in this clause, such as fraud or dishonesty, would cover such a transgression it was felt, for the sake of clarity, that this offence should be stated in

its own right. The offence of human trafficking has therefore been added to the Bill, as introduced on 7 September, at Clause 10 (4) (a) (iv).

One other minor amendment has taken place under advisement from the Attorney General and the Department of Justice. The power to make any future amendments to the level of fixed penalty fines has moved from the Department of Justice to the Department for Social Development.

### **Way forward**

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.