

From: Stephen Martin
Deputy Director of Housing Policy Delivery

Dr Kevin Pelan
Committee Clerk
Committee for Social Development
Room 284
Parliament Buildings
Ballymiscaw
Belfast
BT4 3XX

Level 1
Lighthouse
1 Cromac Place
Gasworks Business Park
Ormeau Road
BELFAST
BT7 2JB

Telephone: 028 9082 9194

E-Mail: Stephen.martin@dsdni.gov.uk

25 November 2015

Dear Kevin,

HOUSES IN MULTIPLE OCCUPATION (HMO) BILL– DEPARTMENTAL BRIEFING

Departmental officials are scheduled to provide a briefing for the Committee on 26 November 2015 to assist its consideration of the HMO Bill. The following officials will attend to brief the Committee:

Mr Stephen Martin	Deputy Director, DSD Housing Policy Delivery
Mr David Grimley	HMO Bill Team Leader, DSD Private Rented Branch
Mr Ronan Murphy	HMO Bill Team, DSD Private Rented Branch
Mrs Christine Hayes	HMO Bill Team, DSD Private Rented Branch

I enclose a briefing paper with the Department's response to the key issues raised by stakeholders. You may wish to bring this to the attention of the Committee members.

I hope that the Committee finds this information useful.

Yours sincerely

Stephen Martin

Stephen Martin

Deputy Director, Housing Policy Delivery

Part 1. Meaning of “House in Multiple Occupation”

Most respondents have welcomed the new definition while others have raised concerns as to how flats and self-contained apartments converted from old buildings will be treated in the future as they are excluded from the definition.

Department’s View

Reaching a satisfactory definition was challenging and the definition in the Bill has been the subject of considerable work which reflects best practice from other jurisdictions and the experiences of HMO regulation in Northern Ireland.

Current HMO legislation has had some unintended consequences, drawing in some types of accommodation which are not truly HMOs and for which HMO regulation was never intended. During the policy making process, the Department took account of the 2005 judicial review which criticised the definition used in the Registration Scheme for being too wide ranging and bringing houses into HMO regulation where it is not warranted.

The intention of the new definition and the associated exceptions will provide clarification and guidance on what is, or is not, to be classed as an HMO which will allow councils to better target inspections in those high risk properties and enforce the new standards expected.

Research indicates the key risks are in rented accommodation where there is no head of household. There is not the same level of risk in owner-occupied properties, and therefore, the Department considers it would not be appropriate to apply the same level of regulation.

Some stakeholders have raised issues around the exclusion of houses converted into separate self-contained flats.

Under existing legislation, the Housing Executive has encountered many challenges in regulating self-contained owner occupied flats. The Department has taken account of the potential human rights issues associated with unnecessary regulation of such properties and the considerable expenditure which could be imposed on those owner occupiers.

In future, each flat will be treated as a separate dwelling and will be counted as an HMO if the occupant numbers and relationship conditions are met.

All converted self contained apartments, regardless of whether they are HMOs, will have a requirement to have obtained planning permission under the change of use classes order and have been inspected by Building Control following construction/conversion.

For those private rented apartments which no longer meet the HMO definition, landlords will continue to have obligations under the Private Tenancies Order 2006.

Buildings which are not Houses in Multiple Occupation

Some consultees indicated they did not agree with housing association properties and universities being excluded from the HMO definition Schedule 1 Section 2 refers.

Department's View

The Bill provides for exclusions from the licensing requirement which follow those in other UK jurisdictions, where it is accepted that certain types of accommodation do not need to be regulated through the HMO route. The proposed exclusions in Northern Ireland focus on shared accommodation where there is some other form of 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.

Housing Associations

Historically the Housing Executive has concentrated their inspections on housing association properties as it is easier to gain admittance to these building types and to undertake inspections in order to meet targets allocated. According to the NIHE, the following are the number of enforcement notices served on these types of buildings over the last three years 2012-2015:

97 notices – were issued on housing association buildings for 16 landlords
42 of the **97** were on 2 buildings owned by SHAC which has since been taken over by Choice Housing.

Under existing legislation, housing association properties are regulated under the HMO Registration Scheme and are also overseen by various regulatory bodies including the DSD and the Regulation and Quality Improvement Authority (RQIA), where domiciliary care is also provided. The Housing Association Guide contains a comprehensive group of standards for housing association dwellings in terms of both their physical condition and tenancy management. One set of standards applies to general needs housing and another to houses where supported housing funding is in place, these standards sit outside our regime and exceed requirements under the HMO Bill. The Department's regulation and inspection teams also reports on how well associations are complying with and meeting regulatory standards which include property management and property standards. The Association Guide also details that housing associations are responsible for the fitness of their stock.

The support services provided by them or on their behalf are regulated by DHSSPS the Domiciliary Care Agencies Regulations (NI) 2007 and in the Domiciliary Care Agencies Minimum Standards Aug 2011. The Regulation and Quality Improvement Authority (RQIA) is empowered under The Health and Personal Social Services

(Quality, Improvement and Regulation) (Northern Ireland) Order 2003 to inspect domiciliary care agencies. A minimum of one inspection per year is required.

The Department also intend to bring forward a new regulatory framework for social housing that will also take account of the health and safety standards expected. As housing associations are required to operate according to the Guide/DSD regulatory framework this will further clarify standards expected to ensure they are aware of their responsibilities for these types of buildings when the new licensing scheme becomes operational.

Universities

These types of accommodation will only be excluded if they are managed and regulated to a standard equal to or greater than that in HMO regulation. Through subordinate legislation it will be specified that such regulation will be recognised in the form of accreditation (through the likes of UNIPOL etc) and the Department will have regard to the extent that such regulation conforms with any code of practice approved under Clause 63 of the Bill.

Fire and Safety in buildings that are no longer HMOs

Respondents reported some ambiguity in terms of responsibility for fire safety within the provisions of the Bill.

Department's View

The approach for fire safety under the HMO Bill will be to avoid overlapping regimes and duplication by operating a single fire safety regime. Fire safety in NI is principally dealt with through the Fire and Rescue Services (NI) Order 2006. Article 48 of the Fire and Rescue Services (NI) Order 2006 restricts the extent to which licensing regimes can deal with fire safety. As a consequence, general fire safety measures cannot be imposed through the HMO licensing regime by way of licence conditions.

However the council has a duty under the HMO Bill to take into account the condition of a living accommodation as well as the safety and security of the persons likely to occupy it. As a result councils will be expected to take into account the level of fire safety in the HMO and the extent of compliance with the Fire and Rescue Services (NI) Order 2006. In conjunction with the Northern Ireland Fire and Rescue Service (NIFRS), it may, if it sees fit, refuse to grant and remove a licence on this basis.

In practice, this means issues of fire safety can be highlighted and addressed at a local level by the HMO inspectors as these same issues relate to the health and safety of the occupants and the Bill provides the council with the powers to deal with these. The Department will provide guidance for councils which will include fire safety and means of escape. Furthermore, the Department considers a formal MOU with NIFRS should be put in place and will take this forward with councils as discussions around the operation of the scheme progress.

Currently the landlord is responsible for ensuring that electrical installations (fixed wiring, etc) are safe to use. If the landlord provides any electrical appliances as part of the tenancy (for example, cookers, kettles,, toasters, washing machines, immersion heaters, etc) the Electrical Equipment (Safety) Regulations 1994 requires the landlord to ensure the appliances are safe when first supplied. Each time the property is re-let, it will be classed as supplying to the tenant for the first time.

It is envisaged the new protocols for fire safety will mirror as far as possible the current arrangements and the Department does not envisage any increase of work for the NIFRS other than more cohesive working across authorities. The Department is setting up a stakeholder group to examine such issues with the detail to be clarified in a code of practice and guidance to assist councils to operate the scheme.

Clause 3 Persons treated as occupying accommodation as only or main residence

Concerns have been raised that Clause 3 - does not provide for cases where the person is a migrant or seasonal worker, as is covered under Regulation 5 of the Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006 and under equivalent regulations in Wales.

Department's view

The Department agrees to an amendment which will include reference to seasonal and migrant workers who will be treated as occupying the accommodation as their only and main residence for their duration of the work placement and this type of accommodation will be treated the same as general HMOs. The Gangmasters Licensing Authority has also confirmed that they will check if the HMO is licensed as accommodation should adhere to HMO standards.

Clauses 4 and 88 - cousin included as a member of the same household.

We note the comments made by respondents in relation clause 4 and the inclusion of cousin in relation to members who for the purposes of the Bill are members of the same household.

Department's view

Existing legislation has resulted in many houses being potentially HMOs. As a result the Department researched best practice in other jurisdictions and included cousin from the English and Welsh HMO legislation schemes with the conclusion that this addition would address all eventualities for a family household in the Bill. The Department has re-examined this clause and now proposes an amendment to exclude cousin from Clause 88 (3) (b) to be treated as a relative in the household makeup as cousins living together may have the same risks as 3 unrelated students sharing. This will reduce the risk of some student HMOs being inappropriately excluded from regulation.

In respect of Clause 13 (2) (b) "type" of person

The committee has previously questioned the wording and the Department has already provided a response. Some respondents have sought further clarification in their responses.

Department's view

The Department thought it useful for councils to be aware and take account of the "type" of people likely to be occupying the property e.g students, older persons. This is particularly relevant to ascertain any special facilities that might be required and whether the accommodation is appropriate to the proposed occupiers' needs. Taking account of the concerns raised, the Department can consider changing wording to, for example, nature or kind of person and the drafter has advised us that there is no material difference between the words 'type', 'nature' or 'kind' in this context.. It is worth noting that this wording has been adopted from current HMO legislation operating in Scotland.

Change of Ownership

Clause 28 refers that a HMO licence may not be transferred to another person and at the date of sale the licence associated with it becomes null and void. This leaves the new owner with no time whatsoever to obtain a new licence and, in the case of sitting tenants, may create a situation whereby the property is operating as an HMO without a licence for a period of time. This could mean that the new owner, through no fault of their own, is committing an offence and may face associated enforcement action.

Department's view

The Department has noted the issue raised by various stakeholders and agrees an amendment is required to allow a reasonable timescale for the new owner to obtain a licence alongside what could be a complex and drawn out purchase of the property. We feel this is reasonable as certain assumptions can be made about the suitability and fitness of the property as it will have successfully operated within the licensing scheme under the previous owner.

Transitional provisions

There is also the concern that, upon any change of ownership, a prospective HMO landlord's application may be turned down on the basis of overprovision (Clause 8 and 12 refers). The Landlords Association (LANI) has indicated that if this was the case, it would have serious financial repercussions for HMO landlords as the properties would be significantly devalued.

Department's view

We can confirm that the Bill, as drafted, would not allow a licence application on change of ownership for an existing HMO to be rejected on the grounds of overprovision.

The policy intention of this clause is to prevent new areas becoming overprovided with HMOs in future. It does not have the scope to reduce overprovision in existing areas, such as the Holylands, with an already high number of HMOs.

During the policy making process, the potential to remove properties from HMO use through this Bill was considered at length but ultimately dismissed. If the legislation was able to be used to force an HMO owner to re-classify their property from HMO to normal domestic family use when selling the property, there would be a significant risk of legal challenge using the Human Rights Act. It could be argued that by requiring a HMO landlord to sell a property on for normal domestic use, thereby potentially de-valuing it significantly, we may be breaching their enjoyment of their possessions.

Clause 8(2)(d) states that a licence may be granted providing "it will not result in overprovision of HMO's in the locality." For an existing HMO, any overprovision was pre-existing and not an issue caused by the granting of this licence. In practice this means that the overprovision clause is aimed at new HMOs applying for licences rather than those long established HMOs that are either renewing or changing ownership.

The Department considers that on and after the introduction of the licensing scheme, any properties pending or already registered under the Northern Ireland Housing Executive's Registration Scheme will be automatically passported to licensing without payment of further fees for the residue of the registration period. The Department intend to clarify further in regulations and guidance.

Appointment of a managing agent

The Committee may wish to note that an application for an HMO Licence must specify the details of the managing agent. Additionally as part of the licence conditions, which will be specified in regulations, where a landlord does not reside in the jurisdiction there will be a requirement for them to appoint a managing agent, operating and based in the jurisdiction, to act on their behalf.

Department's view

Where an owner wishes to appoint an agent to act in a management capacity for them in relation to a HMO they must be included on the licence as they will have to undergo the fit and proper person test. Any agent acting in a non management capacity (i.e. a letting agent etc) is not required to be registered on the licence. The detail as to the procedure to change or appoint a new agent, how much will it cost and how long it will take are operational matters and will be discussed and agreed with councils.

Fit and Proper Person

Further concerns were raised by landlords in relation to Clause 10 subsections (6) and (7) as it would appear to hold the landlord responsible for the anti-social behaviour of their tenants and other occupants in the property and indeed in the locality. LANI has referred to Girvan J's judgement 14/03/05 Ref GIRC 5216 LANI v. DSD & NIHE when the definition of a landlord's responsibilities was defined in the judgement and did not include the locality. A landlord can only be responsible for the conduct of the tenants named on the tenancy agreement within the curtilage of the Landlord's property.

Department's view

The Department acknowledge this point with regard to the antisocial behaviour aspect of the fit and proper person test, particularly with respect to the outcome of the 2005 Judicial Review. To be compliant with this case, the Department agrees that this clause should be amended to remove the word "locality".

Landlords have also indicated that they are limited in how they can deal with anti-social behaviour from visitors to the HMO. The Department will consider whether there is merit in changing the word in Clause 10 (6) (i) and (ii) from "occupants" to "tenants" as the Department to reflect this.

The Department will expect landlords to adopt good practice and agree a tenancy agreement with each tenant which will provide clarity on the expected behaviour of both tenants and visitors. The written agreement should also provide the tenants with other useful information including information on how anti-social behaviour in and around the building will be dealt with. This would help set out the parameters and boundaries for behaviour at the outset and it would make it possible for a manager to consider eviction on grounds of breach of tenancy agreement should problem behaviour arise. The manager should have regard to liaising with affected neighbours, universities, PSNI, environmental health and other bodies

The Department will ensure guidance is provided for landlords to abide by management standards and councils will be expected to make occupiers aware of the process of HMO licensing and offer a contact point for them to raise any concerns. The Department's ongoing Private Sector Review will also explore issues around anti-social behaviour in the wider private rented sector.

Clause 62 HMO Register

LANI is concerned that landlords' names, addresses and contact numbers will appear on a public register available in full to any person on the payment of a small fee. LANI indicated the strongly held belief that their names and their property

addresses will also appear on the internet within weeks of this bill becoming law. They strongly believe that the safety and security of landlords, managing agents and their families will be compromised and they will be possible victims of extortion by organised crime, vigilante groups and disaffected tenants.

Department's view

The Department acknowledges both the wider public interest in transparency and the availability of information and the points made by LANI on the importance of the safety and security of landlords and their families.

In drafting this Clause the Department were mindful of Judge Girvan's words in the 2005 Judicial Review where he stated that "a fair balance must be struck between the general interest and the needs of the individuals." The policy intention of this clause was to maintain that balance.

The current registration scheme regulations in relation to the register are not much different to the new provisions included in the Bill. The Housing Executive are required to make individual entries in the register available for public inspection and although the registration scheme has landlord name and address details these are not available for public inspection. Clause 62 of the Bill also allows the council to exclude from its register any information that may jeopardise safety of persons or security of property which will allow us to mirror the present register.

However, in light of the concerns raised, the Department agrees that the legislative parlance used in drafting the clause may be somewhat ambiguous. To clarify the original policy intent, the Department is considering a number of minor amendments along the lines of the following:

- a) The reference to an individual receiving a copy of the register is removed leaving only access to an extract from the register. Statutory bodies would still have access to the register in its entirety.

b) That the person making the request must have a genuine interest in the property. We would achieve this by adopting wording similar to that in the current HMO Scheme which state “at the request of a person who appears to it to have an interest or a prospective interest in a house, to be resident therein, or to be otherwise sufficiently concerned therewith, disclose to him any entry in the register relating to that house.”