



Department for
**Social
Development**
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Dear Kevin,

Re: Houses in Multiple Occupation (HMO) Bill

Thank you for inviting Departmental Officials to the Committee meeting on the 14 January to assist with Committee consideration of the Bill.

You requested that officials would provide detail on the Department's proposed amendments. **Appendix 1** provides the policy detail on why the individual changes are required and what is hoped to be achieved through the amendments. **Appendix 2** is the legislative draft of the amendments as provided by the Office of Legislative Counsel.

The Committee should also note that the Department intends to provide further detail in regulations accompanied by a Code of Practice and guidance for the licensing scheme to help councils successfully deliver the scheme and landlords meet their statutory requirements. Future monitoring arrangements for HMOs will be discussed and agreed with councils.

I hope this information is helpful.

Yours sincerely

Stephen Martin

Appendix 1

CLAUSE NUMBER	ISSUE	DESCRIPTION	ACTION AND POTENTIAL AMENDMENT	SOURCE OF AMENDMENT
Clause 3	Inclusion of seasonal/migrant workers	It was always our intent to capture these groups of people in this clause. However, when considering them we did not think they had to be directly referenced as due to their transient nature, any accommodation could reasonably be taken to be their main residence. What we hadn't considered was the possibility that they had another more permanent address elsewhere in Northern Ireland (for example, an address in Belfast separate to the one in Armagh where they are based when they pick apples during the summer/autumn months). This coupled with the strength of opinion for its inclusion has led us to propose this amendment.	Initial thoughts were that seasonal and migrant workers were covered without being specified. Clarification from OLC shows that this subsection is really only aimed at people who have some other address which might arguably be their only or main residence (i.e., another home where they would be living if they were not engaged in the seasonal work). As a result only seasonal workers are referenced in the draft received from OLC as migrants can be assumed to have only one main residence.	NICEM, NILGA, Councils, CEHOG, CIH
Clause 10	Fit and proper person (anti-social behaviour clause)	Landlords are concerned that the inclusion of the word "locality" conflicts with the findings of the 2005 Judicial Review. They point out they have no power to deal with inappropriate tenant behaviour outside of the curtilage of the HMO. Consider changing the word "occupants" at 10(6)(b) to tenants.	The draft amendments received from OLC and agreed show that the word locality remains but is specified as extending only to the building and its curtilage. OLC has also detailed why the word "occupant" is appropriate here and this detail has been passed to LANI for their consideration.	LANI
Clause 28	Change of ownership: effect on licence	Reservations as to the workability of this clause in practice. The Department understand that this clause requires greater flexibility, by building in a specified period of time for the change of licence holder, alongside the sale of a HMO or other associated change of ownership of the property.	OLC has suggested an amendment for this clause. The Department feel the amendment does not fully meet the desired policy intent and it has been resubmitted to the drafter for further work.	Department

Clause 62	HMO Register	Landlords are concerned about the volume of information held linking them and their properties, and if it will be available in its entirety to the public upon request. The Department agree that it is appropriate to make a number of minor amendments to Clause 62 to ensure that the original policy intent is achieved and that an appropriate balance is struck between the public interest in the information publicly available and the safety and security of landlords and their families.	The Department is content that, with the draft amendments, the amended clause will achieve the original policy intent. Similar arrangements for disclosure of information from the register exists for the Landlord Registration Scheme and the current HMO registration scheme.	Department
Clause 83	Possible removal of Clause 83	The Social Development Committee made it clear they were uncomfortable with this particular provision. They feel it may result in a tenant having to continue to pay rent for sub-standard accommodation. The department pointed out that if there was an issue with the property and the landlord's revenue stream was stopped it may mean he is unable to address the issue as he is relying on this rental income. Whilst the Committee accepted the Department's explanation, it did not seem entirely convinced.	In reviewing this clause, the Department referred to previous discussions with both Departmental Solicitors Office and the Attorney General. At that point DSO had advised that there was no issue with keeping it in as it matched England & Wales procedure and was applicable here. The note from the Attorney General's Office, on the other hand, noted that this provision wasn't required as it would be covered under common law in Northern Ireland. At that stage we opted to go with DSO's advice. Based on the Committee's recently stated reservations in relation to this we have requested that OLC remove this Clause as per the Attorney General's advice.	SDC
Clause 88	Removal of "cousins" from family unit	Existing legislation has resulted in many houses falling within the HMO definition that were never intended to be treated as HMOs. It was acknowledged that the existing definition was too wide and in researching a more appropriate alternative definition the Department examined best practice in other jurisdictions. Cousin was sourced from the English and Welsh HMO legislation scheme, with the conclusion that this addition would address all eventualities for a family household in the Bill.	Following questions raised by SDC 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.	SDC

Clause 88	Change to interpretation of managing agent	Current interpretation of managing agents makes reference to "receives rent or other payments from persons who occupy the accommodation". It has been brought to our attention that letting agents collect the first month's rent, which would inadvertently change them into managing agents and require them to be named on the licence.	The Department has re-examined this clause and now proposes an amendment to ensure letting agents are excluded from this interpretation. The request had been issued to OLC who is working on a possible amendment.	LANI
Schedule 1	Buildings controlled or managed by public sector bodies	In relation to a Housing Association and Housing Executive properties they would be excluded from being considered as HMOs under the current provisions if they are managed or controlled by the HA/NIHE. While the Committee was content that the current system of DSD regulation means that those properties managed <u>and</u> controlled by social landlords are sufficiently regulated already, this would not necessarily be the case for HA/NIHE properties managed by a voluntary body (such as a hostel or women's refuge) because the HA/NIHE does not have the same level of day-to-day control over them and they house some of the most vulnerable people in society.	The Committee feel as these types or properties hold some of the most vulnerable members of society they would benefit from being covered by the new HMO regulatory regime. In order to bring refuges and hostels, which are not both managed <u>and</u> controlled by HAs or the NIHE, back within the HMO definition, a slight amendment has been drafted to Schedule 1 whereby the control aspect is removed and only those managed directly by HA/NIHE are excluded from the HMO definition.	SDC
Schedule 2	Possible removal of Schedule 2 to be replaced with power for detail to be included in regulations	In re-examining Schedule 2 in light of the proposed changes to Clause 62 (HMO Register) we realise there has been a divergence between the two. The Schedule currently requires the name and home address of the landlord to be publicly displayed which may offer a threat to the safety and security of landlords.	In further examination of this Schedule the Department identified a number of issues which will have to be taken forward with councils. As it stands, in the Schedule planning notices will single out HMOs to the public and this may have implications for the safety of vulnerable people. In order to ensure we get these provisions right, further detailed work is needed with councils. Given time constraints, the most appropriate way of dealing with this would be to remove this schedule, with all its technical detail, from the Bill and replace it with a delegated power. This detail, following further policy consideration, could then be replicated in subordinate legislation.	Department

Houses in Multiple Occupation Bill
Proposed amendments
to be moved at Consideration Stage

Clause 3, Page 2, Line 35

After ‘residence’ insert ‘there’

Clause 3, Page 2, Line 36

At end insert –

‘() A person who occupies living accommodation for the purpose of engaging in seasonal work is to be treated, at all times during that person’s residence there, as occupying that accommodation as the person’s only or main residence.’

Clause 10, Page 7, Line 34

Leave out from ‘living’ to end of line 35 and insert ‘relevant living accommodation whilst in the accommodation or within its curtilage, or’

Clause 10, Page 7, Line 37

Leave out subsection (7) and insert –

‘(7) In subsection (6)—

“anti-social behaviour” means—

- (i) acting or threatening to act in a manner causing or likely to cause a nuisance or annoyance to a person residing in, visiting or otherwise engaging in a lawful activity in residential premises or in the locality of such premises, or
- (ii) using or threatening to use residential premises for immoral or illegal purposes;

“relevant living accommodation” means living accommodation of which P is or was the owner or managing agent.’

Clause 26, Page 15, Line 28, leave out from first ‘in’ to end of line 32 and insert –

- ‘(a) there is a transfer of ownership of a licensed HMO,
- (b) as a result of the transfer one or more joint licensees (but not all of them) ceases to be an owner of the HMO,’

Clause 26, Page 15, Line 35, leave out subsection (5) and insert-

‘(5) Where—

- (a) there is a transfer of ownership of a licensed HMO,
- (b) as a result of the transfer there is a new owner (or more than one), and
- (c) at least one person who was a licensee before the transfer continues to be an owner after it,

the new owner (or any of them) may apply to the council to be added as a joint licensee.

(5A) The council must—

- (a) treat an application under subsection (5) as an application to renew the licence made jointly by the existing licensee and the new owner, and
- (b) if it decides to grant the application, vary the licence accordingly.’

Clause 26, Page 15, Line 41, after ‘subsection’ insert ‘(5A) or’

Clause 26, Page 15, Line 43, at end insert-

‘(8) In this section—

“transfer of ownership” includes the creation of a new estate;

“new owner” means a person who is an owner after the transfer but was not an owner before it.’

Clause 28, Page 16, Line 7, leave out subsections (1) and (2) and insert –

‘**28.**—(1) A licence may be transferred to another person only in accordance with this section.

(2) Accordingly, except as set out in subsection (2A), where—

- (a) there is a transfer of ownership of a licensed HMO,
- (b) as a result of the transfer there is a new owner (or more than one), and
- (c) no person who was a licensee before the transfer continues to be an owner after it,

the licence ceases to have effect on the date of the transfer.

(2A) If—

- (a) there is a transfer of ownership of a licensed HMO, and
- (b) before the date of the transfer, the new owner (or any of them) applies for a licence in respect of the HMO (a “new licence”),

the licence which is already in effect in respect of the HMO (“the existing licence”) is to be treated as being held, from the date of the transfer, by the person or persons who made the application for the new licence (“the transferee”).

(2B) Subsection (2A) ceases to have effect in relation to the existing licence on the date mentioned in subsection (2C) (and, accordingly, that licence ceases to have effect on that date).

(2C) That date is—

- (a) if the transferee's application is granted, the date from which the new licence has effect (determined in accordance with section 19(1) or (4)(a));
- (b) if the council refuses the transferee's application solely because it is not satisfied as mentioned in section 8(2)(a) (planning control)—
 - (i) the date 3 months after the date of the transfer, or
 - (ii) such later date, not later than 6 months after the date of the transfer, as the council may specify as being reasonable in the circumstances;
- (c) if the council refuses the transferee's application on any other ground—
 - (i) [one month after] the last date on which the decision to refuse the transferee's application may be appealed under section 67, or
 - (ii) if such an appeal is made, [one month after] the date on which the appeal is finally determined.

(2D) If the council decide to specify a date under subsection (2C)(b)(ii), the council must serve notice of that decision (including the date specified) on—

- (a) the transferee, and
- (b) the statutory authorities.

(2E) Subsection (2B) and (2C) are subject—

- (a) to sections 23 (revocation) and 27 (surrender), which provide for a licence in certain circumstances to cease to have effect earlier than as provided by this section, and
- (b) if the transferee dies, to section 29, which provides for a licence in certain circumstances to cease to have effect earlier than, or later than, as provided by this section.'

Clause 28, Page 16, Line 12, leave out 'subsection (2)' and insert 'this section'

Clause 29, Page 16, Line 28, leave out subsection (5) and insert—

'(5) Subsections (1)(b) and (2) are subject—

- (a) to sections 23 (revocation) and 27 (surrender), which provide for a licence in certain circumstances to cease to have effect earlier than as provided by this section, and
 - (b) if the personal representatives of the licensee transfer ownership of the HMO, to section 28, which provides for a licence in certain circumstances to cease to have effect earlier than, or later than, as provided by this section.'
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Clause 62, Page 32, Line 32, leave out ‘its register available for public inspection’ and insert ‘any entry relating to an HMO available for inspection, by any person who falls within subsection (8A) in relation to that entry,’

Clause 62, Page 32, Line 35, leave out ‘a register, or of an extract from it, to any person who’ and insert ‘an entry relating to an HMO to any person who falls within subsection (8A) in relation to that entry and’

Clause 62, Page 32, Line 36, at end insert-

‘(8A) A person falls within this section in relation to an entry if the person appears to the council—

- (a) to have an interest or prospective interest in the HMO,
- (b) to be a resident of the HMO, or
- (c) to be otherwise sufficiently concerned with the information contained in the entry.

(8B) In subsection (8A), an “interest” is—

- (a) a freehold or leasehold estate;
- (b) a mortgage, charge or lien.

(8C) The council must, on the request of any statutory authority [*or district council*]—

- (a) make its register available for inspection by the authority [*or council*];
- (b) supply a certified copy of its register, or of an extract from it, to the authority [*or council*].’

Clause 62, Page 32, Line 38, after ‘(8)’ insert ‘or (8C)’

Clause 62, Page 32, Line 39, after ‘an’ insert ‘entry in or other’

Clause 70, Page 37, Line 38, after ‘73’ insert ‘(1)’

Clause 73, Page 40, Line 26, leave out ‘this section’ and insert ‘subsection (1)’

Clause 73, Page 40, Line 32, leave out ‘this section’ and insert ‘subsection (1)’

Clause 73, Page 40, Line 43, at end insert –

‘(8A) A council may provide to any other council any information held by the council in connection with its functions under this Act.

(8B) Information may be provided under subsection (8A) only on the request of the other council; and may be used by that council only in connection with its functions under this Act.’

Clause 74, Page 41, Line 16, at end insert ‘a notice or request under section’

Clause 88, Page 49, Line 5, leave out ‘, niece or cousin’ and insert ‘or niece’

Schedule 1, Page 50, leave out lines 12 to 14

Schedule 1, Page 50, Line 18, at end insert –

‘(2) A building where the person managing it is—

(a) the Northern Ireland Housing Executive, or

(b) a housing association registered under Part 2 of the Housing (Northern Ireland) Order 1992.’