



**Northern Ireland  
Assembly**

**COMMITTEE FOR SOCIAL DEVELOPMENT**

**Please use this form to submit written submissions in relation to the Houses in Multiple Occupation (HMO) Bill. Return to [committee.socialdevelopment@niassembly.gov.uk](mailto:committee.socialdevelopment@niassembly.gov.uk) by **Tuesday 6 October 2015**.**

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**Date:** Tuesday, October 13<sup>th</sup> 2015

**Response context**

Housing Rights was established in 1964 and is the leading provider of independent specialist housing advice services in Northern Ireland, working to achieve positive change by protecting and promoting the rights of people who are in housing need. Our policy work, and thus the evidence response below, is based on the direct experience of our client casework service.

**Response summary**

- Housing Rights welcomes the Bill as the first piece of primary legislation solely addressing HMOs, containing as it does a range of positive and progressive measures that will greatly assist in protecting life and enhancing standards.
- We broadly support the revised statutory definition of HMO and welcome the inclusion of carers and domestic help as members of the household. We have some concerns about the wide range of “public” sector properties exempted from the definition and note that in other jurisdictions properties owned by local authorities are included in their licensing schemes. Housing

Rights believes the Committee should seek reassurance that the health and safety of these occupants in these properties will be appropriately safeguarded by other regulatory means.

- We are particularly pleased to note that the current HMO registration scheme will be replaced by a licensing system extending to all properties (excluding the exceptions), and that this will be linked to a “fit and proper person” test applicable to all or any persons with responsibility for a HMO, and also to local council planning policy, regulation and control. Housing Rights appreciates it will require significant resources to facilitate practical implementation of the licensing scheme across 11 council areas and that it may therefore require a phased introduction. In these circumstances we believe a phased approach which is aligned to risk assessment should be adopted. There is, we consider, a need for Departmental recognition of the scale of the undertaking and if necessary, the provision of assistance to local councils to ensure the effective implementation, administration and enforcement of the new system.
- Notwithstanding our support for the Bill, Housing Rights is concerned that occupants could, for all intents and purposes, be rendered homeless as a consequence of a landlord’s failure to comply with the legislation (see Clauses 23, 46, 52 & 56). Whilst we fully endorse the overall intention behind the legislation in terms of minimising risk to those occupying HMO properties, due consideration must be given to all and any albeit unintentional adverse consequences for occupants. As such we believe the Department should, as a matter of priority, consult with key stakeholders to consider the level of assistance which could be provided in relation to rehousing options for those individuals unable to remain in a HMO in such circumstances.
- Housing Rights welcomes many of the provisions contained in the Bill and believes local councils are well placed to assume responsibility for enforcement of this legislation. We fully recognise however the importance of the detailed content which would be contained in the accompanying

regulations and the proposed “code of practice” to ensure uniformity between councils and effective implementation of the legislation. As such we believe it is imperative that a mandatory requirement is placed on the Department to issue regulations and to produce a robust Code of Guidance.

### **Response to all Clauses contained within the Bill**

#### **PART 1**

#### **MEANING OF “HOUSE IN MULTIPLE OCCUPATION”**

Clause 1: We welcome the revised statutory definition which in our experience will significantly simplify identification of whether or not a property is a HMO and thus be subject to legislation. We are pleased to note that the legislation in Northern Ireland will also reflect the position in England, Wales and Scotland with respect to the minimum of number of people [i.e. three] required to be living in a property before it can be designated as a HMO. We note the proposed widening of the categories of property to be exempted under the new legislation and would, as stated above, urge the Committee to seek assurance from the Department that appropriate alternative regulation is in place to ensure the standard of exempt accommodation and the health and safety of occupants of these properties is safeguarded.

Clause 2: noted

Clause 3: Housing Rights would welcome further clarification of this Clause (and its relationship to Clause 1) as in our view there is potential ambiguity regarding the position of hostels for homeless persons provided by, for example, a Housing Association but managed by a voluntary organisation. Such temporary accommodation is routinely regarded as high risk given the transient status and ‘chaotic’ lifestyles experienced by many occupants. Housing Rights is unclear, as it is currently drafted, whether or not the intention is that such properties would be exempt or included in the legislation.

Clause 4: We welcome the inclusion of carers and domestic help as recommended in our response to the DSD consultation paper of 2012.

Clause 5: noted

Clause 6: noted

## **PART 2**

### **LICENSING OF HOUSES IN MULTIPLE OCCUPATION**

#### *Requirement for and issue of licences*

Clause 7: Housing Rights strongly supports the mandatory licensing of HMOs, albeit we recognise there will be cost/resource implications associated with the practical implementation of same. We also welcome the requirement for a HMO owner, manager or agent to ensure such properties are licensed.

Clause 8: We welcome the provisions set out under this Clause and agree with the criteria which the Council will consider prior to granting a licence. Housing Rights believes however that it would be helpful for the Bill to place greater emphasis on tenancy management standards than is currently proposed in the legislation.

Clause 9: We welcome the link to planning policy, regulation and control.

Clause 10: We support and welcome this Clause, particularly the application of the “fit and proper person” provisions to owners and/or managing agents. The inclusion of subsection 3(e) which will allow further acts to be defined as relevant within the code of practice is also welcome; again we would reiterate our view that this Code should be placed on a statutory basis.

Clause 11: In our direct experience, greater awareness of the rights and responsibilities of being a tenant or landlord are key to a successful tenancy or letting. There is, we believe, a need to give further consideration as to how “competency” will be determined within the meaning of Clause 11(a). Consideration could perhaps be given to completion of specific training requirements (*this is currently the subject of a Scottish Government consultation paper on a draft statutory Letting Agent Code of Practice for persons applying to be admitted to the Letting Agent Register*).

<http://www.gov.scot/Publications/2015/08/6563/downloads>

Clause 12: noted

Clause 13: Housing Rights believes this clause would be improved if a number of the key management standards [previously listed under Art 78 of the Housing (Northern Ireland) Order 1992] were also explicitly included in this Bill as factors influencing the suitability of accommodation for multiple occupants. These are:

"..means of escape from fire and all apparatus, systems and other things provided by way of fire precautions" [Art 78 (2) ((a) (ii))] and the requirements pertaining to

" ..common staircases, corridors and passage ways [Art 78 (2) (a) (v)];

"..all means of escape from fire are kept clear of obstructions [Art 78 (2) (c)].

As the provisions of this Clause appear to be based largely on existing fitness standards, the Committee should seek assurance from the Department that any such standards will be subsequently revised to reflect the outcome of the ongoing review of fitness standards in Northern Ireland. Housing Rights is recommending the Department should in determining the new fitness standards have regard to a comprehensive risk assessment tool such as the Housing Health and Safety Rating Scheme.

( <https://www.gov.uk/government/publications/housing-health-and-safety-rating-system-guidance-for-landlords-and-property-related-professionals>]

#### *Licence conditions*

Clause 14 (2): The Committee should reassure itself that , in the drafting of this Clause, comprehensive advice has been obtained by the Department with respect to the judgement in *R (Boyle) and Others v Northern Ireland Housing Executive* [2005] NI QB 22; March 2005, High Court of Justice in Northern Ireland, Queen's Bench Division.

#### *Temporary exemption from licensing requirement*

Clauses 15- 18: noted

#### *Duration and renewal*

Clauses 19: Housing Rights asks the Committee to give consideration to reducing the

duration of a HMO licence from five to three years as is the position in Scotland, given the amount of 'wear and tear' that HMO properties experience compared with other types of accommodation. We also support the introduction of powers for the granting of licences for shorter periods where necessary at Clause 19 (2) (b).

Clauses 20 and 21: noted

#### *Variation and revocation*

Clause 22: noted

Clause 23: We fully endorse the overall intention behind the legislation in terms of minimising risk to occupants occupying HMO properties. Due consideration however must be given to all and any albeit unintentional adverse consequences for occupants (for example where a landlord or agent knowing or unwittingly causes, by act or omission, circumstances in which his/her license is revoked, those people living in the property could potentially be made homeless). As such we believe the Department should, as a matter of priority, consult with key stakeholders to consider the level of assistance which could be provided in relation to rehousing options for those individuals unable to remain in a HMO in such circumstances.

Clause 24: – noted

#### *Other provision about licenses*

Clause 25: Housing Rights supports this Clause but believes it would be helpful to consider further the mechanisms which would be necessary to ensure consistency of decisions will be achieved [and indeed how such information will be shared] in practice across all 11 councils e.g. where a landlord owns multiple properties in a number of council areas, and has been held not to be a fit and proper person in one council area.

Clauses 26 -29: noted

### **PART 3**

### **ENFORCEMENT OF LICENSING REQUIREMENTS**

## *Offences*

Clauses 30 – 33: noted

Clause 34: Notwithstanding the acknowledged difficulties in the drafting of a ‘reasonableness’ requirement Housing Rights nonetheless believes that for the purposes of clarity and consistency of application, the provisions within this Clause [i.e. with respect to “reasonable steps” and “reasonable excuse”] should be the subject of detailed guidance.

## *Rectification of breaches of condition*

Clauses 35 -37: noted

## *Orders of the court: revocation and disqualification*

Clauses 38-40: noted

## **PART 4**

### **STANDARDS OF HOUSING**

#### **CHAPTER 1 : OVERCROWDING**

##### *Definition*

Clauses 41-43: Housing Rights fully supports the revised statutory definition of overcrowding. Furthermore, we endorse the views expressed in the Rugg report [www.york.ac.uk/media/chp/documents/2008](http://www.york.ac.uk/media/chp/documents/2008) that “overcrowding can lead to public health issues”, as there would appear to be compelling evidence to show that this is one of the most significant risk factors in assessing the safety of HMOs.

Housing Rights would draw attention to the apparent inconsistency regarding the treatment of children of opposite sexes occupying sleeping accommodation in the same room from the existing room standard contained in Art 76 of the Housing (Northern Ireland) Order 1992. This specifies “.... over the age of 12”, whereas the Bill as currently drafted at Clause 42 (1) and (1) (a) refers to “... any person aged 13 or over”. Housing Rights would not support this change. We also believe there is merit in considering harmonisation with respect to the room standard given in other

sectoral guidance such as, for example, the NIHE Housing Selection Scheme or Housing Benefit regulations all of which appear to apply different criteria.

### *Overcrowding notices*

Clause 44: Housing Rights welcomes the serving of notice with respect to the sections and subsections within this Clause on persons appearing in a council's opinion to be the owner or managing agent of a HMO.

Clause 45: noted

Clause 46: As with Clause 23, Housing Rights fully endorses the overall intention behind the legislation in terms of minimising risk to occupants occupying HMO properties. Due consideration however must be given to all and any albeit unintentional adverse consequences for occupants [For example where a landlord or agent is required to reduce overcrowding, those people living in the property could potentially be made homeless.] As such we believe the Department should, as a matter of priority, consult with key stakeholders to consider the level of assistance which could be provided in relation to rehousing options for those individuals unable to remain in their home in such circumstances.

Clauses 47 – 49: noted

## **CHAPTER 2: SUITABILITY FOR NUMBERS IN OCCUPATION**

Clauses 50 and 51: noted.

Clause 52: As with Clause 23 & 46 above whilst we fully endorse the overall intention behind the legislation in terms of minimising risk to occupants where the property is not suitable for the number of persons occupying it, due consideration must be given to all and any albeit unintentional adverse consequences for the occupants if the landlord is required to reduce the numbers. As such we believe the Department should, as a matter of priority, consult with key stakeholders to consider the level of assistance which could be provided in relation to rehousing options for those individuals unable to remain in their home in such circumstances.

Clauses 53: noted



### **CHAPTER 3: HAZARDS**

Cluses 54 to 59: As with Clause 23, 46 & 52 above, Housing Rights supports this proposal but believes additional consideration should be given to the action which could be taken to ensure individuals, who may be affected by a prohibition notice issued under Clause 56, are provided with the level of assistance necessary to assist them with securing alternative housing.

### **CHAPTER 4: FURTHER PROVISION ABOUT NOTICES UNDER THIS PART**

Clause 60: noted

Clause 61: noted

### **PART 5**

#### **SUPPLEMENTARY**

*HMO register*

Clause 62: We welcome the transfer of responsibility for enforcement of legislation in relation to Houses in Multiple Occupation to councils. We believe however it is imperative that robust regulations and codes of guidance are drawn up prior to enactment to ensure uniformity of application between council areas and to assist in correct and effective implementation of the legislation. Housing Rights believes the Committee should seek clarification as to whether or not the intention is that “every council” will maintain individual and distinct registers or if such information will be shared and if so, the arrangements for doing so. There are clear advantages for all parties, including the public, in operating a system which allows for ease of access and smooth transfer of relevant information.

*Code of Practice*

Clause 63: Housing Rights believes that in order to achieve effective, consistent implementation of the legislation there should be a mandatory requirement on the Department to produce the identified regulations and a robust code of guidance, authorised by statute. This would require a change in wording from “may” to “shall” issue regulations and also insertion of an amendment to place the proposed code of practice on a statutory footing.

*Fixed penalty as alternative to prosecution*

Clauses 64 -66: Housing Rights is supportive of the concept of fixed penalty notices, but notes these can only be of meaningful deterrent value if robustly and uniformly enforced across all 11 council areas.

*Appeals*

Clause 67: noted

Clauses 68 and 69: We welcome both these Clauses as once enacted they will enshrine obligations to ensure transparency of decision making in primary legislation.

*Information*

Clauses 70 -76: Notwithstanding Clauses 67-69 above we anticipate that the Committee should assure itself, by way of Departmental advice, that all and any information to be obtained and thereafter shared will accord and comply with, inter alia, Human Rights, Data Protection and Northern Ireland Equality legislation.

*Powers of entry*

Clauses 77-79: noted

*Other supplementary provision*

Clauses 80-83: noted.

*Final provisions*

Clause 84: noted

Clause 85 (1): As noted at Clause 63 above, Housing Rights believes the wording should be changed from the Department “may” to “will” issue Guidance to the councils with respect to the exercise of their functions. Housing Rights welcomes the commitment to consult with councils and other appropriate stakeholders prior to issuing this Guidance and would hope this would include occupiers and organisations who act as their representatives.

Clauses 86 and 87: noted. Again the commitment contained in Clause 86 to consult with stakeholders including landlords, occupiers and representatives is welcome.

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