



**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 by Tuesday 6 October.

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Organisation: (if applicable) MID ULSTER DISTRICT COUNCIL

Date: 02/11/2015

(where possible, please structure your response to the specific clauses of the Bill and, if appropriate, suggest alternative or additional wording to clauses, which may assist the Committee's consideration of the need for any amendments to the Bill)

PART 1: MEANING OF "HOUSE IN MULTIPLE OCCUPATION"

Clause 1: Meaning of "house in multiple occupation"

A House in Multiple Occupation (HMO) is defined in **Clause 1** as a building or part of a building (e.g. a flat) that is classed as living accommodation and is occupied by three or more people, who are members of more than two households. Additionally, accommodation is not an HMO unless rents are payable or other consideration is provided in respect of the accommodation. The clause also introduces Schedule 1 (exceptions) and confers a power to amend the definition of "house in multiple occupation".

The Council welcomes the definition to include 'any' building. However concern is raised that common parts may not be covered in the case of self-contained flats.

In relation to the exemption for 'Buildings Occupied by Owners', the inclusion of houses occupied by owners, may be used by some

landlords as a loophole to avoid designation. If an owner lives on the premises then they should be included in the 'head count' as they will assist in forming a different family relationship. Guidance and a methodology provided for enforcement officers in the case of houses occupied by religious communities is requested, as this is often difficult to disprove that the community is living as one.

Clause 2: Definition of living accommodation

Clause 2 defines “living accommodation” for the purposes of clause 1. A building, or part of a building, is living accommodation (i) if it is capable of being occupied as a separate dwelling or (ii) if it forms part of any building or group of building in single ownership and its occupants share a toilet, personal washing facilities or facilities for the preparation or provision of cooked food. “Single ownership” is defined in subsections (2) and (3) in a way which prevents avoidance of the legislation by artificially dividing ownership of a property between members of a family or connected companies.

The Council welcomes the definition within 2(5) pertaining to living accommodation however it is concerned about the application to common parts of self-contained flats which are in mixed tenure. The Council would welcome some clarity around this issue.

Clause 3: Cases where person is treated as occupying accommodation as only or main residence.

Clause 3 outlines the fact that people count as occupants only if the accommodation is their only or main residence. However, accommodation occupied by a student during term time is regarded as that person’s only or main residence. People staying in domestic violence refuges are to be treated as occupying them as their only or main residence.

The Council would request that further guidance is provided in relation to seasonal workers or workers brought in for a contract in a factory for example a 3 month period.

Clause 4: Persons who are members of the same household

Clause 4 specifies the meaning of “household” for the purposes of HMO licensing. This includes members of the same “family”: the definition of family includes married, unmarried and same-sex couples, and step children, as well as blood relatives. Additionally, a person who is a personal or domestic carer in a residential capacity is to be treated as a member of the household for the purposes of this Bill. There is a power for the Department to provide that other persons are treated as being in the same “household”.

The Council welcome this definition of 'same household' and would not like to see those who require carers to be included under the HMO regime.

Clause 5: Notice regarding evidence of household

Clause 5 makes provision for a council to serve a notice on the occupants of a house where the council believe there are more than three people residing in the property and these people form more than two separate households. If insufficient evidence is provided that the house is not an HMO, the house is to be regarded as being one.

The Council welcomes this provision however it is imperative that guidance is issued by the Department to help clarify as to what they deem as acceptable proof.

Clause 6: Notice regarding continuation of occupation

Clause 6 makes provision for a council to serve a notice on a property that has ceased to operate as an HMO, because its occupants have reduced below 3, but which the council believe is likely to become an HMO again within 4 months. For example a student house during the summer months can then be treated as an HMO for certain regulatory purposes, even though it may actually have fewer than 3 people residing in it during those months.

The Council welcomes this provision however it is imperative that guidance is issued by the Department to help clarify as to what they deem as acceptable proof.

PART 2: LICENSING OF HOUSES IN MULTIPLE OCCUPATION

Clause 7: Requirement for HMOs to be licensed

Clause 7 requires every house in multiple occupation that is not exempted to be licensed. A licence for an HMO authorises its holder and any agent named on the licence to allow the HMO to be occupied in accordance with the licence conditions. The clause also sets out that licences are to be issued by district councils for houses in their area, and the information which must be specified in a licence.

The Council is concerned with the use of the word 'every'. Not only would this approach be resource intensive for councils, but would place N.I out of touch with England and Wales where, licensing only applies to the highest risk of HMO's. 'The licensing of Houses in Multiple Occupation (Prescribed Descriptions) (England) Order 2006', have identified highest risk as, those of 3 storey or more and occupied by 5 or

more persons (who together form 2 or more households). The threshold was set at this level because the risks of fire and escaping from fire are greatest in buildings of 3 or more stories. In 1997 the Entec report 'Fire Risk in HMO's' concluded: 'the number of occupants influences the risk.

The Council would suggest that licensing should be a properly targeted measure, used only where it is necessary to improve standards in this sector. Mandatory licensing is needed for certain situations and certain types of HMO to ensure a properly targeted approach, it therefore should be undertaken entirely on a risk based approach.

For those properties that are currently authorised they could then be transferred across to the new scheme.

Clause 8: Applications for HMO licence

Clause 8 outlines that applications must be made by the owner of the HMO. It also sets out the matters that are to be taken into account when a council is considering an application for an HMO licence. The details of the procedural requirements, in relation to an application for an HMO licence, are contained within Schedule 2.

The Council welcomes the provisions within this clause; however the set licence fee should be on a cost recovery basis.

Within clause 8(e) the term "Fit for Human habitation" is used. This is a general term unless it is referenced to the Housing Order 1981, as amended by The Housing Order 1992. As a general term it will be open to various interpretations. This should be changed to "the living accommodation should meet the statutory minimum standard for housing".

The "Fitness Standard" as set out in the Housing Order 1981, as amended by The Housing Order 1992 as the statutory minimum standard of housing is currently being reviewed by the DSD so it would not be appropriate to use the term "fit for human habitation". Using the term meets the "statutory minimum standard for housing" will make the Bill 'future proof' and would not necessitate change should the review result in changing the standard.

The Council advocate the adoption of the Housing Health and Safety rating system (HHSRS) as a tool to regulate the entire privately rented sector. This system assesses the property using a risk based approach and looks at 29 separate risks to health and safety of the occupant.

All tenures of housing should be required to meet the same statutory minimum standard for housing with additional protection for HMO due to their higher risks.

Clause 10: Fit and proper persons

Clause 10 specifies matters to which the council shall have regard (in addition to other things it may consider) when deciding whether an applicant or an applicant's agent is a fit and proper person. The material specified is: whether the person has committed certain types of offence, practiced unlawful discrimination or contravened housing law or landlord and tenant law; actions or failures to act in relation to antisocial behaviour affecting a house let by the applicant or for which the applicant was an agent; and other material considered by the local authority to be relevant.

The Council welcomes the provisions within this clause. However there is concern regarding the language used where some-one has committed an offence rather than having been convicted of committing an offence. Further clarity should be provided around jurisdictions, spent convictions, putting the onus on the applicant to provide any necessary information specified.

Additional guidance is required on the provision under 10(5) relating to 'any associate or former associate' has engaged in any of the conduct mentioned.

Clause 11: Satisfactory management arrangements

Clause 11 outlines the considerations that a council may take into account when deciding whether suitable management arrangements are in place at application stage.

The Council would require that guidance to be provided as to the assessment of following:

- ***A 'sufficient level of competence'.***
- ***Suitable 'management structures'***

Clause 16: Extension of temporary exemption notice

Clause 16 allows for the extension of temporary exemption notice if the council are satisfied that special circumstances exist. A notice may be extended only once, and only for up to 3 months.

The Council envisages there may in certain circumstances be a need to issue a temporary exemption notice in line with any existing tenancy agreement, i.e. where the HMO was in an area of high housing need and where remaining in the property there was no risk to health. Council officers should be allowed to exercise discretion in such exceptional circumstances. However the Council would not envisage any such notice should be valid for a period longer than 12 months in total, i.e. inclusive of any extension as per clause 16.

The Council notes the need for protection that the required works will be carried out in full.

Clause 19: Duration of HMO licence

Clause 19 states that an HMO licence lasts for five years, or a shorter period specified in the licence which cannot be less than six months. It starts on the date when notice of the decision to grant the licence is served on the owner, or another date specified in the licence. In the case of a licence granted because the council did not come to a decision within the period required, the licence will last for one year from the end of that period.

The Council would suggest that a standardised duration period is specified. Clarity on the rationale for a non-specified period would be welcomed.

Guidance pertaining to specifics in dealing with the commencement of the 3 months period within which the council must make a determination on an application is required. The Council is of the opinion that this 3 month period should only commence once council have received a full application, all required supporting documents and appropriate fee. Formalisation of a process where an application is deemed as being duly made would also be welcomed.

Pertaining to this clause, within Schedule 2, 15(6) clarity is required on the deemed licence, i.e. is another application fee required after the specified one year period

Clause 22: Variation of licences

Clause 22 sets out the procedure for varying a licence, which a council may do for its own reasons or at the request of the licence holder. If the council proposes the variation, it must give its reasons.

The Council welcomes the provision that a licence can be varied on either an application or on councils own initiative. The Council believe that there should be a fee payable on the application to cover costs incurred by the Council. Further that a fit and proper person test should apply in terms of any proposed changes to management agent.

Clause 27: Surrender of HMO licence

Clause 27 specifies that the holder of an HMO licence may surrender the licence by giving notice to the council, in the specified form, to that effect.

The Council notes the provisions within this clause, however is of the opinion there must be a mechanism to prohibit a management company walking away from their obligations.

PART 3: ENFORCEMENT OF LICENSING REQUIREMENTS

Clause 30: Unlicensed HMO

This clause creates a number of criminal offences relating to HMO licensing. An owner of a licensable HMO without a licence is committing an offence (unless the owner has a reasonable excuse). A person who acts as an agent for an HMO which is not licensed also commits an offence. And where the owner of an unlicensed HMO instructs an agent to act in relation to that house, the owner commits an offence.

The Council notes the provisions within this clause and welcome the inclusion of agent responsibility. Council need for guidance on terms within the clause to include 'reasonable excuse' subject to clause 34 and the information required as proof.

Clause 31: Exceeding licensed occupancy or breach of licence conditions

This clause creates the offence of allowing an HMO to be occupied in excess of the number of persons authorised on the licence. It also creates offences related to breaching conditions in a licence. An owner, agent or other person named in the licence commits an offence if they breach a condition included in a licence. And an owner or agent commits an offence if any other licence condition is breached and they do not take reasonable measures to prevent it.

The Council notes the provisions within this clause. Council need for guidance on terms within the clause to include 'reasonable excuse' subject to clause 34 and the information required as proof.

Clause 38: Revocation orders and disqualification orders

This clause gives a court powers to revoke an HMO licence and disqualify an owner from holding a licence, or an agent from being named on a licence, for a period not exceeding five years. These powers can be used on conviction of an offence under various provisions of the Bill.

The Council notes the provisions within this clause. Further consideration is required for specified template for disqualification orders and revocation orders and whether there is a need to prescribe these. If not, then there need to be a mechanism for liaison with the courts service upon the detail required within such orders.

PART 4: STANDARDS OF HOUSING

CHAPTER 1: OVERCROWDING

Clause 42: The room standard

This clause outlines the circumstances which are designated as a contravention of the room standard. These are circumstances in which persons aged 13 or over must share with another person of that age or with a couple.

***The Council would question the rationale behind the increase in age from 12 (as per the Housing Act Room Standard) to 13 years of age
There are differences in various standards for overcrowding***

- ***The original statutory definition of overcrowding in England referring to room and space standards can be found in Part X of the Housing Act 1985 but has an age threshold for children over 10 both room and space standards.***
- ***The Bedroom Standard has been used from the 1960's to measure overcrowding in the UK also uses 10 as a threshold.***
- ***The NIHE Housing Selection Scheme Rules use age 7 as a threshold age.***
- ***The European Commission Eurostat Housing Statistics for overcrowding uses 12 as the threshold age.***

CHAPTER 3: HAZARDS

Clause 54: Definition of a hazard

Clause 54 defines that a hazard in an HMO is something that constitutes a risk of harm to the health or safety of an actual or potential occupier. The risk may arise from a deficiency in the accommodation forming the HMO, any building or land the accommodation forms part of, or any building or land in the vicinity of that accommodation.

The Council welcomes the inclusion of common parts within this definition. The Council notes that the use of the term 'hazard' does not align particularly well with terminology used in the 'Fitness Standard' and more applicable to the 'HHSRS'. Council would suggest that consideration is given to this matter when drafting regulations.

Clause 57: Contents of hazard notice: other matters

A hazard notice must specify in relation to each hazard: the nature of the hazard; the HMO in which it exists; the deficiency giving rise to the hazard; and the date on which the notice is made.

The Council would think that there is a need the same level of detail in clause 57 as per 56. It is the view of council that it is most likely that repairs are required in the common parts rather than prohibitions, thus covering owner occupiers also, however the same level of detail is absent from clause 57.

Clause 58: Works requirement

A hazard notice may also contain a works requirement. Clause 58 sets out that a works requirement is that an owner carries out work in order to remove the hazard. The work must be specified in the notice and can be anything which the council regards as appropriate for removing the hazard. If the work is done, the hazard notice must be lifted.

The Council would welcome clarity as to the absence of fire safety measures again, The Council welcomes the option of carrying out works in default as stated in Schedule 3 but Management Orders would be a better solution to situations where the landlord is not in a position to carry out urgent works to a HMO. These orders could be delivered by the NIHE or Housing Associations.

PART 5: SUPPLEMENTARY

Clause 62: HMO Register

Clause 62 requires each council to keep an HMO register containing details of each application for an HMO licence, the decision made on the application and subsequent progress of the licence. The register is to be publicly available, but the council must exclude any information that it considers could put any person or premises at risk.

The Council has a view that having 2 registers in the private rented sector is confusing for both the public and landlords. One single register should cover both sectors and would reduce bureaucracy and administrative costs. The Council would also prefer a nominated office instead of Head Office.

Clause 64: Fixed penalty: service of notice

Clauses 64 to 66 provide for fixed penalty notices to be issued, instead of criminal proceedings. Clause 64 allows an authorised officer of the council, who has reason to believe that an offence has been committed, to serve a fixed penalty notice. The notice must set out the offence which is alleged to have been committed, and state the amount of the fixed penalty.

The Council welcomes the provision to issue a FPN, however where non-payment of FPN and courts issue a lower fine than FPN, particularly where FPN sum can be high. Note there is an ability to provide discounted period and clarification should be provided. Experience shows discounted increases likelihood of payment.

Clause 77: Powers of entry: without warrant

This clause applies where a council considers that an examination of any living accommodation is required to allow them to establish: whether it is an HMO; whether to grant, vary or revoke a licence or whether any other function under this Bill should be exercised. A person, authorised in writing by the council, may carry out the examination at a reasonable time and must give at least 24 hours notice to the owner and occupiers of the accommodation if practicable. The person may not use force in the exercise of the power conferred by this Clause.

The Council would highlight that under 77(3) specified 24 hours' notice at the initial application, it is not practical to give 24 hours notice where there is reasonable grounds to suspect non-compliance ;there should be power of entry at reasonable times.

Clause 78: Powers of entry: with warrant

A lay magistrate may issue a warrant under this clause authorising a person named in the warrant to enter and search the premises specified in the warrant. The warrant may only be issued if two conditions are satisfied:

- 1) A person acting on behalf of the council, reasonably requires to enter or search the premises to establish whether an offence has been committed, a requirement imposed by a notice has been or is being complied with or any of the matters mention in Clause 77(1) (a), (b) & (c) (that is, whether living accommodation is an HMO, whether to grant, vary or revoke a licence, or whether to exercise any function under the Bill).
- 2) The premises are unoccupied or temporarily vacant, or applying to the owners or occupiers for entry would defeat the purpose of the entry or the search, or entry has already been sought under Clause 77 but has been refused.

The clause sets out a number of safeguards governing the issue and execution of warrants.

The Council would highlight that in: 78 (1) lay magistrate and 78 (2) magistrate are mentioned. Is this an intentional difference and if so clarity would be required.

Also the Council would like to highlight that a warrant under these provisions has only 1 month validation, whereas it is 3 months in other Council functions.

Clause 84: Fees

This clause confers power to make regulations concerning fees, including the maximum amounts to be charged, how fees are to be calculated, and circumstances in which no fee is to be payable or in which fees are to be refunded.

The Council notes the making of regulations. It is councils view fee must be on a cost recovery basis as stipulated in 84 (3).

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