Northern Ireland Assembly

Committee for Social Development

OFFICIAL REPORT (Hansard)

Houses in Multiple Occupation Bill: Chartered Institute of Housing

12 November 2015

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Members present for all or part of the proceedings:
Mr Fra McCann (Deputy Chairperson)
Mr Jim Allister
Mr Roy Beggs
Ms Paula Bradley
Mr Sammy Douglas
Mr Adrian McQuillan

Witnesses:

Mr Justin Cartwright	Chartered Institute of Housing
Ms Nicola McCrudden	Chartered Institute of Housing

The Deputy Chairperson (Mr F McCann): I welcome Nicola McCrudden and Justin Cartwright from the Chartered Institute of Housing.

Ms Nicola McCrudden (Chartered Institute of Housing): Thank you very much, Chairman, for inviting us back to give evidence on the HMO Bill.

The Chartered Institute of Housing is very supportive of houses in multiple occupation (HMO) licensing in general. We believe that it will help to better regulate the sector and drive up standards and professionalism, particularly in the private rented sector, where, of course, most HMOs are located. We are also supportive in general of landlord licensing and the licensing of letting agents. Indeed, we surveyed members earlier this year, and over 80% were in full support of licensing private landlords and letting agents. It is right that licensing should commence in the HMO sector, where there is, of course, higher risk to the health and safety of occupants by the very nature of the accommodation. We are in agreement with the Department on the vast majority of provisions in the Bill. I will comment very briefly on the definition and then pass over to Justin, who will raise a few more points that we want to talk about.

I would like to make two points in relation to clause 1 with regard to the phrase "building or part of a building". It is important to take into account that a HMO building could be converted into flats, something that happens quite often. We want to make sure that the building will still be defined as an HMO where there are fewer than three people living in each of these flats. For example, a house could be converted into six two-bedroom flats. If there are fewer than three people in the individual flats, they would not be HMOs, but a building with six flats would still pose a risk overall. Clause 1(3) allows the Department to bring in regulations to define what is and is not an HMO building. Ideally, we would like that in the Bill, but if that cannot be done, the regulations can address it.

Secondly, clause 1(2) refers to exceptions in schedule 1. These apply to properties owned and managed by housing associations, as you are aware. If you interpret this literally, it would include accommodation owned by housing associations but managed by another provider, perhaps from the voluntary sector, as is often the case with hostels, for example. I suggest that the Committee clarify with the Department whether it is the intention to remove hostels from the definition of an HMO and, if that is the case, whether there are regulations in place to regulate hostels. If there are not, it may be that we need a clarification bringing hostels under the definition of an HMO. I will just pass over to Justin.

Mr Justin Cartwright (Chartered Institute of Housing): Just a couple of further points on the definition.

Clause 3 deals with cases where a person is treated as occupying accommodation as their only or main residence. We welcome the retention of clause 3(2) to cover accommodation occupied by students, who may not be spending all of the term in their university accommodation. We have noticed, however, that migrant and seasonal workers are absent from the definition. It may be that the seasonal worker is only living in the property for part of the year, but the same risks apply. Perhaps that is dealt with in the regulations, but we think that such properties are consistent with the definition of an HMO and would appropriately be included in the body of the Bill. We have therefore suggested some wording from the English legislation on HMO licensing.

Clause 4 covers persons who are members of the same household. Clause 88(3)(b) includes "cousin" under the definition for the purposes of defining a household, further restricting the definition of an HMO. Some HMOs that are occupied by black and minority ethnic (BME) families, which are statistically more likely to include cousins living as members of the household, could fall through the cracks. We have concerns about that.

Clause 8 deals with applications for an HMO license. We notice that there is no provision for requiring owners to appoint managing agents if they live outside the jurisdiction. If any action is required by the council, and the landlord who is the owner of the HMO resides outside the jurisdiction, there would be, as I interpret it, no mechanism for the council to pursue the landlord to rectify the issue identified. That would concern us.

Clause 28 deals with the effect of a change of ownership on a licence. We think that ceasing the licence from the date of transfer of ownership is too strict. Where a third party is buying a HMO from its owner, there should be a reasonable grace period to allow for the transfer of the licence. Otherwise, tenants would be indirectly affected, as I understand that tenancies will not be affected by the ceasing of a license. Where the tenancy ends about the same time as the transfer of ownership takes place, and the new landlord is happy to keep the tenants on, he might have to evict them in order to comply with the legislation. We do not feel that this is in the spirit of the legislation.

Clauses 48 and 49 cover notice requiring further information and supplementary provisions. Councils are given the ability to ascertain information on overcrowding. They can then serve overcrowding notices on the occupants of the HMO as well as the landlord. While we do not wish to stop that flow of information, we think that it is inappropriate to make the occupant's failure to provide information an offence. The intention of the legislation is the licensing of the landlord and of the property. We are not arguing with the ability of the council to request information from the household, but is it right that the occupant would be committing an offence for not providing the information?

Clause 50(4)(b), "Suitability notice", says that the council:

> *"may decide that the HMO is not suitable for occupation"*

by a given number even if it meets the minimum standards. Our argument around that would be that landlords and investors always like to have certainty in a risk-based enterprise, but at the very least you do not want unnecessary ambiguity. Furthermore, I would suggest that councils do not want to be put in a position where they are given scope to depart from the minimum standards. Their argument would be that the minimum standards are the driver. The minimum standards say that a given property is certifiable to be occupied by a given number; perhaps then in that context it is unnecessary for the council to play around with that number if an investor has taken a decision to purchase an HMO that, by the space standards, for instance, would house a given number of people.

Clause 62 is "HMO register". This has been discussed a bit this morning, but this is another case of information sharing. When we gave evidence on the Housing (Amendment) Bill, we were quite clear

that information sharing should be for a relevant purpose and not just sharing information for sharing's sake. While we welcome clause 62(6), which allows a council to exclude information that is likely to put persons in jeopardy, we question the need for a public register. Is it appropriate to have a register available for anyone to view or should it be for stakeholders who can demonstrate a relevant purpose for accessing that information, such as tenants, local residents and public bodies and that kind of thing?

Clause 84 is "Fees". We really cannot stress enough the importance of resources in making sure that this system is successful. Colleagues in the other UK countries have told us that resources would probably be the biggest issue in HMO licensing in the other jurisdictions. That has a multi-pronged effect; on one hand, there are landlords who are paying a licence fee to be licensed, but there is not effective enforcement and they see rogue landlords on the fringe of the market getting away with it when they are doing the right thing in paying the fees. There is that side of it; but if people have responsibilities under this legislation, be it councils or the Fire Service, there needs to be relevant resources for them. We would suggest that there should be enough resources for councils to do proactive spot checks of properties and not just responding to complaints. That would also aid in getting a better picture of what standards in the HMO sector are like. If you are always responding to complaints, then the sector is going to look worse than it actually is, because they are the only properties that are being flagged to your attention. We would suggest an impact assessment to look at setting the fees at a level that is not putting landlords out and is proportionate to the profitability of HMO management, but at the same time allows councils the resources to do the work. Those are our primary comments on the Bill as it stands.

Mr Allister: I have a couple of questions. Just so that we are clear, are you happy that the definition in clause 1 can be amplified in regulations to include flats? I was not sure whether you were saying that you wanted that in the Bill.

Ms McCrudden: Ideally, that is what we would like. It is about whether it can be drafted. The regulations are there to specify those particular circumstances but it is really important that we do not exclude those. Given the significance of it, it should be in the Bill.

Mr Allister: Why do you think that that could not happen?

Ms McCrudden: I am not a draftsperson with a legal mind, but I am sure that the departmental solicitor would be able to draft something.

Mr Allister: Are you happy for regulations to deal with the issue of hostels?

Ms McCrudden: Again, it perhaps should be specified in the Bill. In a sense, a lot of them do not come under RQIA assessments, where care and support homes would, so they fall between two stools. The fact that they are not referred to means that we need to make sure that they do not slip through the net. I would be happier saying that they should be in regulations if it was specified.

Mr Allister: What about seasonal workers?

Ms McCrudden: Justin will say something about seasonal workers.

Mr Cartwright: If it is covered in the regulations and the effective outcomes, that will be fine. I would err on the side of caution and prefer to have it in the Bill. The definition of an HMO is pretty fundamental.

Mr Allister: Apart from drawing attention to the fact that the definition of family is very wide in clause 88 and includes cousins, which takes you into first cousins and second cousins — where do you end? — are you saying that that definition should be revised to exclude cousins?

Mr Cartwright: Yes.

Mr Allister: You are quite clear about that.

Ms McCrudden: Yes.

Mr Allister: You drew attention to something that I had not noticed and that intrigues me. Clause 50(4) states:

> *"In having regard to the minimum standards referred to in subsection (3)(a), the council— ...cannot be satisfied that the HMO is suitable if the council considers that it fails to meet the standards".*

That is what you would expect. The subsection continues:

> *"but ... may decide that the HMO is not suitable for occupation by that number even if it does meet the standards."*

What is your perception of the purpose of the latter part of that clause?

Mr Cartwright: It is a well-meaning clause that attempts to give councils space in operation. We would suggest that the people in councils to whom I have spoken do not want that kind of ambiguity.

Mr Allister: It is speaking out of both sides of its mouth, is it not? It says that it has to fail to meet the standards and then says that councils can still decide that it is not suitable even if it does meet the standards. That speaks more to the inadequacy of the standards that anything, does it not?

Mr Cartwright: I believe so. The standards should be the driver.

Mr Allister: As you say, you need certainty. The landlord, whatever his faults, is entitled to certainty. If a list of standards is published that must be met, and a landlord meets those standards, he would have the right to have grievance if, despite meeting the standards, a council can still say, never mind that, it is not suitable. Surely it is the standards that determine whether it is suitable.

Mr Cartwright: Absolutely.

Mr Allister: We will look to the Department to explain that conundrum to us. Thank you.

The Deputy Chairperson (Mr F McCann): Owners who live outside the jurisdiction need to be advised or forced into having an agent whom people here can get in touch with. Do you have any idea how that would operate? Would it go the same way as the register for private landlords? Would there be strong enforcement legislation if it does not happen?

Mr Cartwright: If you have a requirement for owners who live abroad to appoint a local managing agent, the question arises of what would happen if they do not do that. In that circumstance, you could look at a system that allows councils to appoint a managing agent on behalf of a landlord. That is just an idea. It throws up a lot of questions about how that would work operationally, but that would be one mechanism to deal with it.

Ms McCrudden: It is pretty fundamental. If a landlord is living abroad in a different jurisdiction, how can he or she be managing that property? It should be a requirement for landlords who are abroad to appoint someone, but it is maybe outside the scope of this legislation to do that. It may, again, come into the regulation of the private rented sector. You might want to consider that.

Mr Beggs: Seasonal workers were mentioned. I am trying to get a feel for how many people would be involved in that. Do you have any indication of how many people in Northern Ireland are involved in seasonal working who require accommodation?

Mr Cartwright: I do not have those figures off the top of my head. I would imagine that it probably increased during the 2000s, given the proportionally higher migration of EU migrants and higher net migration. That is now quite low.

Mr Beggs: I am trying to think of the types of industries that might be involved. Is it things like apple picking?

Ms McCrudden: Yes, it is mostly farming.

Mr Cartwright: Yes — agricultural workers.

Ms McCrudden: When we looked at similar legalisation in other jurisdictions, we saw that it was missing from other UK law. We cannot quantify the numbers, but we know that there are seasonal workers. To make sure that all aspects are covered, it would be better to have that in.

Mr Beggs: OK. Thank you.

The Deputy Chairperson (Mr F McCann): There are no other questions. Thanks very much, Nicola and Justin.