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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Summary

There are a number of Clauses on which the Northern Ireland Council for Ethnic Minorities (NICEM) wishes to submit evidence:

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.

Clause 8 – refers to the outdated fitness standard, which has been in place since 1919 and was replaced in England and Wales via Regulations arising from the Housing Act 2004.

Clause 13 – lacks clarity in its requirement that councils consider the 'type' of person likely to inhabit the accommodation when determining suitability. The use of this requirement is also inconsistent with the test utilised in England and Wales and generates the potential for unlawful assessments to be undertaken.

Clause 42 – establishes a lower standard for overcrowding than in England and Wales, by setting an age limit of 13 rather than 10 years of age.

Clauses 48 and 49 - generates potential for tenants, particularly BME tenants, to be unfairly and disproportionately punished for failing to provide information to satisfy and information notice.

Clause 50 – allows Councils to issue suitability notices even where accommodations meet the standards set out in future Regulations. This generates unnecessary uncertainty for landlords and tenants alike.

Chapter 3 – the provisions on hazards do not allow Councils to take as many actions as their counterparts in England and Wales under equivalent legislation, including remedial action to address emergency hazards.

Introduction

1.1 The Northern Ireland Council for Ethnic Minorities (NICEM) is an independent non-governmental organisation. As an umbrella organisation[1] we represent the views and interests of black and minority ethnic (BME) communities.[2] Our mission is to work to bring about social change through partnership and alliance building, and to achieve equality of outcome and full participation in society. Our vision is of a society in which equality and diversity are respected, valued and embraced, that is free from all forms of racism, sectarianism, discrimination and social exclusion, and where human rights are guaranteed.

1.2 The regulation of houses in multiple occupation (HMOs) is of particular interest to BME communities living in Northern Ireland (NI). The Department of Environment's Planning Service has highlighted the higher concentration of HMOs in areas where migrant workers and BME individuals tend to reside.[3] Additionally, the NI Housing Executive's HMO Strategy particularly targets migrant workers as HMO tenants.[4] Thus, NICEM welcomes the opportunity to provide evidence on this matter.

[1] Currently we have 27 affiliated BME groups as full members. This composition is representative of the majority of BME communities in Northern Ireland. Many of these organisations operate on an entirely voluntary basis.

[2] In this document "Black and Minority Ethnic Communities" or "Minority Ethnic Groups" or "Ethnic Minority" has an inclusive meaning to unite all minority communities. It is a political term that refers to settled ethnic minorities (including Travellers, Roma and Gypsy), settled religious minorities, migrants (EU and non-EU), asylum seekers and refugees and people of other immigration status united together against racism.

[3] The Planning Service, 'Houses in Multiple Occupation (HMOs): Subject Plan for Belfast City Council Area 2015) (2008) p.15

[4] Northern Ireland Housing Executive, 'Houses in Multiple Occupation Strategy: Northern Ireland 2009' (2009) p.13

Clause 3

2.1 Clause 3 of the Bill considers cases where a person is to be treated as occupying accommodation as their only or main residence, a requirement of falling within the remit of the proposed legislation under Clause 1(b).

2.2 It is notable 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.

2.3 As noted above, migrant workers are particularly likely to live in areas with a high concentration of HMOs and HMOs may represent their only available housing option.[5] Indeed, the number of migrant workers living in HMOs has risen on average between 2009-2013.[6]

2.4 While there is potential to address this issue through Regulations, this would leave provisions vulnerable to amendment or repeal without following the full legislative procedure. As migrant workers are such a prominent group within HMO residency, full legislative protection is justified on a par with that offered to students under the Bill.

2.5 Consequently, it is of importance that provision be made within the Bill to allow migrant and seasonal workers to fall under the protection of this proposed legislation by ensuring that legislation is consistent with that in other parts of the United Kingdom (UK).

2.6 It is recommended that Clause 3 of the Bill be amended to include a Clause 3(3a), reading:

'3(3a) A person is to be treated as occupying a building or part of a building as his only or main residence for the purposes of Section 3 of the Act if he is—

(a) a migrant worker or a seasonal worker—

(i) whose occupation of the building or part is made partly in consideration of his employment within the United Kingdom, whether or not other charges are payable in respect of that occupation; and

(ii) where the building or part is provided by, or on behalf of, his employer or an agent or employee of his employer; or

(b) an asylum seeker or a dependent of an asylum seeker who has been provided with accommodation under section 95 of the Immigration and Asylum Act 1999 and which is funded partly or

[5] ibid p.2
[6] Housing Executive Equality Unit, 'Black and Minority Ethnic and Migrant Worker Mapping Update' (2014) p.49

wholly by the National Asylum Support Service; or

(c) a failed asylum seeker or a dependent of a failed asylum seeker who has been provided with accommodation under Regulation 3 of the Immigration and Asylum (Provision of Accommodation to Failed Asylum-Seekers) Regulations 2005'

Clause 8

3.1 Clause 8(1)(e) of the Bill requires that the living accommodation in question be 'fit for human habitation' for a licence to be granted by the Council. The term 'fit for human habitation' is to be given the same meaning as under Article 46 of the Housing (Northern Ireland) Order 1981.

3.2 However, the fitness standard encapsulated within this Order has been widely criticised. The statutory fitness standard allows only a basic level of protection (for example, a plug socket can be considered 'adequate provision for heat')[7] that has remained largely unchanged since its inception in 1919[8], and is a standard that was replaced in England and Wales via Regulations arising from the Housing Act 2004.

3.3 Under the approach adopted in England and Wales, a Rating System was established to comprehensively assess the severity of any dangers present in a dwelling.[9] Thus, the fitness standard is inadequate, inconsistent with the UK approach and extremely outdated.

3.4 Furthermore, it should be noted that the Department for Social Development has committed to reviewing the fitness standard in its Strategy Action Plan for 2012-2017.[10] Consequently, attaching the current Bill to this lower standard will likely result in a need to amend it in the immediate future in order to maintain its applicability.

3.5 It is recommended that the Bill be amended to introduce a comprehensive system for assessing housing standards, consistent with practice in other parts of the UK and based upon Sections 1-10 of the Housing Act 2004.

[7] Moss, C., 'Private Tenancies Order: One Year On' (2008) 69 Social Welfare Law Quarterly 18, p.18
[8] Stewart, J., 'The Housing Health and Safety Rating System – A New Method of Assessing Housing Standards Reviewed' (2002) 1 Journal of Environmental Health Research
[9] Office of the Deputy Prime Minister, 'Housing Health and Safety Rating System: Operating Guidance' (2006), p.7
[10] Department for Social Development, 'Facing the Future: Housing Strategy for Northern Ireland Action Plan 2012-2017' (2012) p.6

Clause 13

4.1 Clause 13 establishes the standards for suitability of living accommodation for multiple occupation. Clause 13(2)(b) states that Councils must have regard to the 'type…of persons likely to occupy [the living accommodation]' in determining whether or not the living accommodation will be suitable for occupation as a HMO.

4.2 There are three main issues with this provision. Firstly, it lacks clarity; what is meant by the 'type' of person is not elaborated upon under the interpretative Clause 88 of the Bill.

4.3 Secondly, it is inconsistent with the suitability test for HMOs that is utilised in England and Wales, as under Section 65 of the Housing Act 2004. This test limits itself to considerations of the suitability of the accommodation, rather than the type of persons who may live in it.

4.4 Thirdly, there is potential for this assessment undertaken as a result of this provision to conflict with equality law due to the breadth of its construction. For example, this provision could be read as permitting the denial of a license for accommodation that is likely to be occupied by persons of a particular age group. This would conflict with provisions projected to be included under future legislation on age discrimination in the provision of goods, facilities and services.[11]

4.5 Assessments undertaken under this provision could equally conflict with anti-discrimination provisions for other protected groups; for example, where a license is denied because the Council feels that accommodation is likely to be occupied by people of a particular ethnicity. Such an assessment would contravene Articles 21 and 22 of the Race Relations Order 1997.

4.6 Perhaps the sole benefit from Clause 13(2)(b) would be ensuring that HMOs are adequately equipped where the occupiers are likely to have particular disabilities, however this could equally be covered by the provision under Clause 13(2)(c) that requires Council to consider the safety and security of the persons likely to occupy the accommodation.

4.7 Ultimately, including a provision that requires Councils to have regard to the characteristics of potential occupants generates the risk of questionable and potentially unlawful assessments occurring, with no

[11] Office of the First Minister and Deputy First Minister, 'Proposals to Extend Age Discrimination Legislation (Goods, Facilities and Services)' (2015), para.7.2

discernible positive impact from the provision to justify this risk.

4.8 It is recommended that Clause 13(2)(b) be amended to read:

'(b) the number of persons likely to occupy it'.

Clause 42

5.1 Clause 42 contains provision to prevent overcrowding within licensed HMOs by adherence to the 'room standard'. Under Clause 42(1)(a) and (b), premises will be deemed to be overcrowded where:

'any person aged 13 or over must sleep in the same room as

(a) any person of the opposite sex who is also aged 13 or over, or
(b) a couple (within the meaning given by section 88(3)(a))'.

5.2 This establishes a lower standard for overcrowding than that provided for in England and Wales under Section 325 of the Housing Act 1985, which refers to children over the age of ten.

5.3 It is notable that overcrowding is an issue that particularly affects BME communities within Northern Ireland, due to factors such as low uptake of housing benefit, the prevalence of low income amongst BME communities and the overrepresentation of BME groups in the private rented sector.[12]

5.4 Consequently, it is of importance that a high standard be established, in order to ameliorate the disproportionate impact of overcrowding upon BME communities in Northern Ireland and to establish a level of protection that is consistent with other parts of the UK.

5.5 It is recommended that Clause 42(1) be amended to read:

'42(1) The room standard is contravened when the number of persons who sleep in the HMO and the number of rooms available as sleeping accommodation are such that any person aged 10 or over must sleep in the same room as:

(a) any person of the opposite sex who is also aged 10 or over, or
(b) a couple (within the meaning given by section 88(3)(a))'.

Clauses 48 and 49

6.1 Clause 48 of the Bill makes provision for an 'information notice' to be served upon the occupants of the property (under Clause 48(3)(b)), which requires these persons to provide information on the number of individuals using the accommodation, the names of the individuals, the number of

[12] Wallace, A. et al, 'Poverty and Ethnicity in Northern Ireland: An Evidence Review' (2013) pp.31, 35 and 49

households to which the individuals belong, the relationship between the individuals and the rooms used by the individuals and households (under Clause 48(2)(a)-(e)).

6.2 Clause 49 of the Bill makes it an offence for the occupants to fail to provide this information without a 'reasonable excuse', which would render them liable to a fine.

6.3 While it is accepted that requiring information from the owner or managing agent of the property (under Clause 48(3)(a)) is a necessary and appropriate measure for implementing overcrowding provisions and that a requirement that occupants be requested to provide this information would be useful, the levying of fines to occupants under Clause 49(1) has the potential to create a number of unjust scenarios.

6.4 There are many reasons why occupants, particularly BME occupants, may be reluctant or unable to provide the information under Clause 48(2)(a)-(e). For example, the NIHE has expressed that there is high demand amongst its tenants for the use of interpretations services and it has prioritised the development of a comprehensive language support system.[13] [14]

6.5 This suggests that there may be an equally high demand that is going unacknowledged and unmet within the private rented sector, where most BME tenants are situated.[15] Thus, it is foreseeable that some tenants may be unable to understand an information notice or be unable to provide the complex data it requests (which relies on understanding the terminology of households, occupants et cetera).

6.6 A further issue that may prevent some BME occupants from supplying this information upon request is a fear of Government authorities, potentially acquired in their home countries. There is evidence to suggest that some BME individuals are afraid of interacting with authorities in the UK, even where they are not committing any offences.[16] [17]

6.7 Consequently, some tenants may be fearful of providing identifying information about themselves and their living conditions in case this results in punitive actions being taken against them by Government authorities.

[13] Northern Ireland Housing Executive, 'Race Relations Policy' (2006), p.23
[14] Northern Ireland Housing Executive, 'Next Generation of Equality Schemes: Audit of Inequalities' (2012), pp.41-42
[15] op cit n 12 p.5
[16] House of Commongs London Regional Committee, 'London's Population and the 2011 Census: First Report of Session 2009-10' (2010), p.115
[17] Forbes, A. and de Almeida, L., 'BME and Refugee Partners Against Poverty and Unemployment in Islington: Submission of Evidence and Recommendations for Islington Employment Commission' (2014), p.19

6.8 Finally, there is potential for tenants to fear eviction as a result of overcrowding or as a consequence of pressure exerted by their landlord. Individuals who have recently arrived in the country and are unfamiliar with its systems, those who are isolated by poor English language skills and rely on their word of their landlord and those who are dependent on the low rent offered by exploitative landlords may be particularly vulnerable to this type of influence.

6.9 While Clause 49(1)(b) suggests that tenants may be exonerated where they provide a 'reasonable excuse', some of the scenarios outlined above are clearly problematic, even unjust, but may not qualify as giving a 'reasonable' excuse to fail to provide information, particularly where they are based on the tenants' own fears.

6.10 For example, it is may not be deemed a 'reasonable excuse' for a migrant family who are dependent on their current accommodation for shelter to fail to provide information on potential overcrowding due to self-interest. Nevertheless, it would seem unjust and excessive to punish individuals in this situation for failing to provide this information, particularly when this information may equally be provided by landlords themselves.

6.11 It is recommended that Clause 49(1) be amended to read 'a person identified under Clause 48(3)(a) commits an offence if the person –'.

Clause 50

7.1 Clause 50 of the Bill asserts that Councils may issue a suitability notice where they find, or believe, that a HMO is not suitable for occupation by the number of persons that are currently occupying it.

7.2 Under Clause 50(3)(a), councils must have regard in deciding to issue such a notice to the minimum standards established elsewhere in the Bill. However, Clause 50(4)(b) allows that Councils may determine that a HMO is not suitable for occupation regardless of whether or not the minimum standards are met.

7.3 This provision has the potential to generate a great deal of uncertainty in terms of what standards landlords must adhere to in maintaining their property. In turn, this places tenants in a vulnerable position where accommodation is unexpectedly subjected to a suitability notice.

7.4 While it is acknowledged that some flexibility may be required in assessing the suitability of accommodation, this could equally be achieved through the development and revision of comprehensive regulations under Clause 13(3).

7.5 It is recommended that Clause 50(4)(b) be omitted.

Chapter 3

8.1 Chapter 3 of the Bill contains provisions that would allow Councils to make notices where there are hazards present on a HMO property. These notices may prohibit the use of premises (Clause 56), require the property owner to conduct works to remove the hazard (Clause 58) and can be issued with immediate effect in the case of emergencies (Clause 55(3)).

8.2 This system for addressing hazards in HMOs is less comprehensive than that provided for in England and Wales, under Sections 11, 20, 29, 40, and 43 of the Housing Act 2004. Notably, there is no power envisioned within the current Bill for Councils themselves to take emergency remedial action where a hazard presents an imminent risk of serious harm, as is provided for in England and Wales under Section 40 of the Housing Act 2004.

8.3 Ensuring that there are robust provisions in place to address hazards is of particular importance in Northern Ireland, as a significant proportion of dwellings in this locale are unfit for habitation (4.6% of dwellings in 2011, or 35,300 dwellings). Indeed, the number of unfit dwellings in Northern Ireland has more than doubled since 2009.[18]

8.4 It is recommended that the Bill be amended to allow Councils to take emergency remedial action to address hazards that present an 'imminent risk of serious harm to the health or safety' of the occupiers, as is provided for in England and Wales under Section 40 of the Housing Act 2004.

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[18] Northern Ireland Housing Executive, 'Northern Ireland House Condition Survey 2011: Main Report' (2011), p.48