



**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) Royal Institution of Chartered Surveyors

Date: 06/10/2015

1. RICS promotes and enforces the highest professional qualifications and standards in the development and management of land, real estate, construction and infrastructure. Our name promises the consistent delivery of standards – bringing confidence to the markets we serve.
2. We accredit 118,000 professionals worldwide, and represent 4,000 members in Northern Ireland comprising of chartered surveyors, associate surveyors, trainees and students. Any individual or firm registered with RICS is subject to our quality assurance. As part of its Royal Charter, RICS has a commitment to provide impartial advice to the government of the day and has an obligation to bear in mind the public interest as well as the interests of its members. RICS is therefore in a unique position to provide a balanced, apolitical perspective on issues of importance to key sectors.
3. RICS Regulation monitors, inspects and advises Members and Regulated Firms to uphold our professional, ethical and business standards, as well as against specific schemes. RICS Regulation takes a risk-based approach to monitoring and regulation of its schemes. In line with better regulation principles, our regulatory activities are transparent, proportionate, accountable,

consistent and targeted.

4. RICS operate following regulatory framework under a proven track record –

- Minimum Entry Requirements
- Code of ethics and professional standards
- Continuous Professional Development (CPD)
- Members Adopt business and consumer protection measures
- Clients money protection (CMP)
- Complaints handling procedures (RICS Dispute Resolution Service, Requirements on RICS Regulated Firms)
- Professional indemnity insurance
- Monitoring of compliance
- Regulatory powers to investigate complaints or compliance failure
- Enforcement powers

5. RICS would recommend regulation of managing agents (as referenced in the Bill clauses) to ensure that such businesses undertake their work to agreed professional standards as outlined in relevant codes of practice thereby safeguarding the interests of their clients.

6. RICS recommends that managing agents should be required to be members of a recognised professional body.

7. Membership of a professional body, such as RICS, would help ensure managing agents have a consistent and professional approach through education received both at the start of their career through to annual Continual Professional Development. RICS members must undertake 20 hours of CPD to ensure they are aware of new best practice methods and procedures and recent legislative changes. A professional designation also typically helps individuals progress with their career and improve earnings potential.

8. Regarding the below clauses -

Fit and proper persons (Pt. 2)

“10.—(1) This section sets out the matters which are relevant for deciding whether an owner or managing agent is a fit and proper person for the purposes of this Act.”

(e) acted otherwise than in accordance with a code of practice approved under section 63.

Licence conditions (Pt.2)

14.—(1) An HMO licence may include such conditions as the council considers appropriate for regulating any or all of the following—

(f) conditions requiring the owner of the HMO or the managing agent of it (if any) to attend training courses in relation to any code of practice approved under section 63.

RICS would highlight that RICS members are already required to adhere to a code of ethics and professional standards. We would further recommend that the Code of Practice referenced under section 63 of the Bill undergoes thorough consultation to ensure it carries weight and is accepted by the sector. We are happy to work with you to support the introduction of any regime and indeed to ensure our regulatory approach is effectively integrated.

9. RICS notes that the Bill does not make reference to handling client money. Managing agents in Northern Ireland should be required to demonstrate that they have sound arrangements for protecting client money, requiring safeguarding of clients' money, and effective regulation and clients money protection insurance. Each agent should be required to operate a complaints handling procedure (CHP) that they publicise to their clients at the outset of conducting business with them. For further details on the RICS approach to regulating the protection of client money see: <http://www.rics.org/uk/regulation/regulation-uk/protecting-clients-money/>
10. The CHP should include an appropriate alternative dispute resolution mechanism appropriate to the clients with which the agent is conducting business. For business to business transactions (contractual disputes) this is likely to be a dispute resolution service such as the RICS Dispute Resolution Service. And for consumer complaints this is likely to be an Ombudsman service such as The Property Ombudsman and Ombudsman Services: Property.

11. Such an approach will give the potential for the majority of disputes that arise between managing agents and their clients to be resolved in a proportionate way without the need to involve the courts. It mirrors the requirements already placed on RICS Regulated Firms. Further details are detailed in the RICS Policy Helpsheet, Alternative Dispute (ADR) mechanisms – UK, available to download at:

[http://www.rics.org/Global/RICS%20Alternative%20Dispute%20Resolution%20\(ADR\)%20Mechanisms%20-%20UK.pdf](http://www.rics.org/Global/RICS%20Alternative%20Dispute%20Resolution%20(ADR)%20Mechanisms%20-%20UK.pdf)

12. RICS may be considered as an appropriate body to undertake the regulation of managing agents in Northern Ireland, providing the potential to have the same policy outcomes as statutory regulation but with the added benefits of reduced cost to Government and swifter implementation timescales. An example of an option to facilitate this suggestion would be as follows -

12.1 Example Option

A Director of the Managing Agent would join our AssocRICS (or higher) level of membership and register their company as a “Regulated Firm”.

In brief this would:

- 1) Sign the Director and Firm up to RICS Firms Rules, Regulated Review Visits and Client Money Protection Scheme, independent redress such as Ombudsman Services;
- 2) Provide the Director and Firm with up to date information and guidance on market issues;
- 3) Monitor the Director’s Continued Professional Development – a minimum of 20 hours a year to keep the Director up to date with new issues and changes in legislation;
- 4) Provide a local forum for discussion of new issues, networking and training;

5) Allow customers to complain to RICS if the firm or member has behaved inappropriately; and

6) Allow redress through Ombudsman services or similar mechanisms.

Costs would be charged for membership, and Regulated Review Visits where arrangements for Client Money protection is reviewed.

Specific review of high risk issues could also be undertaken through a desk-based review or as part of the Regulated Review Visits should there be issues deemed to be of sufficient importance.

Benefits:

- Facilitates professionalism in the market through initial and continued education;
- Provision of relevant standards and ongoing guidance;
- “Arms length” regulation reporting to an independent board holding the professional and firm to account;
- Risk-based monitoring and proactive regulation of important issues such as the need for Client Money separation helping to educate all firms on what is needed, raise the standard of service and provide reasonable protection to consumers;
- Allows recourse through complaints to RICS and alternative affordable dispute resolution through Ombudsman Services; and
- Better individual career path through recognised designation.

13. Regarding the below clauses –

HMO register(Pt. 5)

62.—(1) Every council must keep a register containing the information required by subsections (2) to (4).

(2) The register must contain details of each application for an HMO licence made to the council, including—

- (a) the name of the applicant,*
- (b) the address of the living accommodation in question,*
- (c) the name of any managing agent specified in the application,*
- (d) the date on which the application was made.*

(6) The council must exclude from its register any information which it would otherwise enter in the register, if the council considers that entering the information is likely to jeopardise—

- (a) the safety or welfare of any person, or*
- (b) the security of any premises.*

(7) The council must make its register available for public inspection—

- (a) at its head office at all reasonable times, and*
- (b) in such other manner as the council considers appropriate.*

Applications For HMO Licences: Requirements And Procedure (Schedule 2, Section 8.)

Content Of Application

1.—(1) An application for an HMO licence must be in writing and in such form as the council may specify by general notice.

(2) The application must include the following information—

- (a) the address of the living accommodation in question,*
- (b) if the owner is an individual, the owner's name and address,*
- (c) if the owner is a body, the information set out in sub-paragraph (3),*
- (d) if there is to be a managing agent of the HMO—*
 - (i) if the agent is an individual, the agent's name and address, or*
 - (ii) if the agent is a body, the information set out in sub-paragraph (3),*
- (e) the name and address of any person (other than the owner) who has a relevant interest in the HMO (see sub-paragraph (4)),*
- (f) the maximum number of persons who it is proposed will occupy the accommodation as their only or main residence at any one time,*
- (g) any other information which the Department may by regulations require to*

be set out in such applications, and

(h) any other information which the council may specify by general notice.

(3) The information referred to in sub-paragraph (2)(c) and (d)(ii) is—

(a) the name of the body,

(b) the address of its main office or place of business,

(c) the name and address of each of its directors or partners, or other persons involved in its management.

Publication Of Application (Schedule 2, Section 8.)

Applicant to display notice of application

2.—(1) A person who makes an HMO application must cause notice of the application to be displayed, on or near to the HMO in question, in such a manner that the notice can be conveniently read by members of the public.

Exceptions from requirement to display notice

3.—(3) *The second condition is that complying with paragraph 2(1) to (3) is likely to jeopardise—*

(a) the safety or welfare of any persons, or

(b) the security of any premises.

RICS would urge that further consideration is given to the increased threat to personal security of a publicly accessible register and publically displayed application which may provide personal details of both landlord and managing agent. RICS would seek that while personal information (address etc.) would be provided to the local authority it would not be on an openly public database/display. Additionally administrative consideration should also be given to any objections to proposals for an HMO to be directed to the appropriate statutory body, rather than direct to the applicant to ensure a streamlined application process.

14. In regard to clauses (Part 2) 28: *Change of ownership: effect on licence and 29: Death of sole licence holder: effect on licence*, RICS would have concern that the proposal for the license to

cease to have effect on the date of transfer may be unfeasible in practice. During market transactions, a purchaser will require some certainty of continuity of the HMO status. RICS would suggest that that the proposal requires the new owner to provide his/her details within 14 days of the date of transfer and the certificate amended accordingly if found to be satisfactory. This maintains the license and status of the HMO, including the original renewal date and timeline of checks to be carried out.

15. In regard to the clause specified below –

Extension of temporary exemption notice (Pt.2)

16.- (3) Only one such extension may be granted.

RICS would encourage the consideration of a discretionary provision to be included for councils to allow for a further extension. For instance in practicable extenuating circumstances outside of a landlord's control, he/she should be able to apply for a further extension if required; the Council will retain refusal rights if reasons for the delay are not considered justified.

16. RICS would suggest that the references made within the below clauses which *'invites the person on whom the notice is served'* to respond within 7 days *'beginning with the date of service of the notice'* is replaced with *'beginning with the date of recorded notification'*.

Articles 44(3), 44(3c), 48(4b),65(1a),68(2)

Schedule2 -13 (4)

Schedule3 –Part 2, 3(b)

Schedule 3 - 7(5)

Schedule4 - 3(4)

17. RICS appreciates the opportunity to provide written evidence on the Houses in Multiple Occupation (HMO) Bill.

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