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Houses in Multiple Occupation Bill

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The Houses in Multiple Occupation Bill was introduced to the Assembly by the Minister for Social Development on 7 September 2015. The purpose of the Bill is to enable better regulation of Houses in Multiple Occupation (HMOs) by introducing a new licensing system. The Bill includes a streamlined definition of an HMO; contains new provisions around the standard of housing expected of HMOs; and clarifies the law in respect of other issues such as overcrowding in HMOs. This paper provides an overview of the clauses of the Bill; the policy context behind the new regulatory framework; and explores the regulation of HMOs in other jurisdictions.

Key Points

The purpose of the HMO Bill is to enable better regulation of Houses in Multiple Occupation (HMOs) by introducing a mandatory licensing system. The Bill contains new provisions around the physical and management standards of HMOs and clarifies the law in respect of other issues such as overcrowding in HMOs.

HMO legislation and regulation in Northern Ireland has remained relatively unchanged in comparison to other jurisdictions. England, Wales and Scotland currently operate mandatory HMO licensing systems and have done so for some time. The proposed licensing framework for HMOs in Northern Ireland more closely aligns with the Scottish system.

HMOs are a source of relatively inexpensive housing for a variety of groups such as students and migrant workers. They also tend to house some of the most vulnerable groups in society who have multiple needs beyond housing (e.g. people who are homeless, people with addiction problems). HMOs are becoming a more prevalent form of accommodation due to the impact of welfare reform, particularly changes to housing benefit entitlement.

If not regulated effectively, areas with high concentrations of HMOs can be blighted with a range of problems such as lack of social cohesion, an increased level of anti-social behaviour (e.g. noise and litter), housing disrepair and pressures on parking.

If effectively implemented and sufficiently resourced, a new HMO regulatory framework for HMOs in Northern Ireland has the potential to have a positive impact on the lives of those living in HMOs, the owners of HMOs, and the residents of the communities in which HMOs are located.

The contents of the Bill

The HMO Bill [as introduced] is a substantial Bill consisting of 91 clauses and can perhaps be described as one of the most significant pieces of housing legislation scrutinised by the Committee for Social Development during the current Assembly mandate.

Written submissions to the Committee for Social Development's Call for Evidence on the Bill revealed that the vast majority of respondents were supportive of the introduction of a mandatory licensing scheme. However, the Landlords Association for Northern Ireland (LANI) has expressed concern over various aspects of the Bill.

There are certain clauses of the Bill that have been somewhat contentious e.g.:

- The definition of an HMO, particularly **the inclusion of cousins** as "members of the same family". As a result a number of properties currently designed as HMOs would

no longer be considered HMOs. There are concerns that this could compound problems relating overcrowding and safety standards.

- That **residential or commercial premises converted into multiple flats** would not be designated as HMOs. Again, issues were raised around the impact that this may have on overcrowding and safety standards.
- Providing councils with the **power to serve a notice requiring a person to provide certain information** in order, for example, to determine if a property is an HMO or if it is overcrowded. A number of written submissions questioned the impact that this could have on human rights. The impact on black and minority communities was also highlighted with language, literacy and fear of illegal eviction identified as some of the potential barriers to providing the information.
- Local government was particularly concerned about the **perceived lack of fire safety standards** in the Bill and requested clarity on the roles of both councils and the Northern Ireland Fire and Rescue Service in respect of the legislation.
- Respondents welcomed the inclusion of a **code of practice** in respect of HMO standards but some requested that this is a statutory code.
- Residents groups were concerned about the **overprovision of HMOs** in certain areas, with south Belfast mentioned in particular. They would like consideration to be given to refusing an application to renew licence in areas where there is overprovision.
- Issues were raised in regards to the perceived inadequacy of the **current fitness standards** and a number of respondents would like to see the Housing Health and Safety Rating System (HHSRS) introduced in Northern Ireland.
- With regards to the **requirement on councils to keep an HMO register**, concerns were raised around what types of information should be accessible on the public register and the implications of this for the safety of HMO owners and their families.
- Questions were raised as to what steps will be taken to ensure that there is **consistent approach to implementing and enforcing the legislation across all councils**. The provisions of the Bill relating to the facilitation of information sharing between councils, courts, government departments and other agencies was welcomed.
- There were issues around the **funding of the new licensing system**, i.e. how the fees would be calculated and whether fee and other related revenue would be adequate to cover the costs of implementing and enforcing the new system.

Review of mandatory licensing in other jurisdictions

Mandatory HMO licensing frameworks are already operational in England, Wales and Scotland. Although there are differences between the systems in terms of the types of properties that are designed as HMOs.

In terms of how well the various schemes are working in other jurisdictions a number of reviews have been published. These primarily relate to the early stages of the introduction of mandatory licensing and there may be an argument for a more systematic review of the current status of the effectiveness of these schemes to be carried out by the relevant Committee in the next Assembly mandate.

Even though the reviews are concerned with the earlier stages of implementation they are, nevertheless, a useful resource for the purpose of identifying some of the difficulties that could potentially be avoided, or addressed, in the proposed regulatory framework for Northern Ireland.

Some of the most notable issues arising from the reviews which could be applicable to the NI system include, for example, ensuring:

- That there is effective pre-introductory promotion of the scheme including engagement with both landlords, tenants and their representative groups;
- That there are mechanisms for targeting landlords that are reluctant or deliberately avoiding licensing;
- That the licensing fee is set at an appropriate rate taking into consideration the additional or “hidden” costs associated with enforcement but ensuring that the fee is not too excessive for landlords;
- That there is, where appropriate, a standardised approach to licensing implementation and enforcement across council areas;
- That there are arrangements put in place to facilitate information sharing between relevant bodies and between councils and that each body is clear about the role it has in the licensing framework; and,
- That there are clear lines of communication between councils and HMO owners, agents, HMO occupants and residents in communities with HMOs; and
- That there are arrangements put in place for the protection and support of vulnerable groups and communities living in HMOs, e.g. migrant workers, black and minority ethnic communities.

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1 Introduction

The [Houses in Multiple Occupation Bill](#) was introduced to the Assembly by the Minister for Social Development on 7 September 2015¹. The Committee for Social Development has completed a Call for Evidence on the Bill and has taken oral evidence from the Department for Social Development and a range of stakeholders.

The purpose of the Bill, as set out in the [Explanatory and Financial Memorandum](#)², is to enable better regulation of Houses in Multiple Occupation (HMOs) by introducing a **system of licensing** and includes new provisions around the **standards of housing**. The Bill also aims to streamline the definition of a House in Multiple Occupation (HMO) and **clarify the law** in respect of other issues such as overcrowding.

The new definition of a House in Multiple Occupation (HMO) proposed in the Houses in Multiple Occupation Bill is a building (or part of a building) that is:

- Living accommodation;
- Occupied by three or more people as their only or main residence;
- Those persons form more than two households; and
- Rent (or other consideration) is paid by at least one of the people living in the accommodation.

Purpose of the Bill Paper

The purpose of this RaISe Bill paper is to provide (i) an overview of the clauses of the Bill [*as introduced*]; (ii) a synopsis of the issues raised by stakeholders in their written submissions to the Committee for Social Development's Call for evidence, and (iii) experiences from HMO licensing frameworks in other jurisdictions.

Please note that this paper only reflects the clauses of the Bill as introduced and the published written submissions for the Committee for Social Development's Call for Evidence. Due to time constraints, the paper does not include commentary on the oral evidence sessions the Committee for Social Development has taken since the publication of the Bill (the minutes of evidence on the Bill are available to download [here](#)³). Nor does it examine any of the proposed amendments to the Bill. Reference to the clause by clause scrutiny of the Bill and the Committee for Social Development's Committee Report is strongly recommended.

¹ Houses in Multiple Occupation Bill - www.niassembly.gov.uk/globalassets/documents/legislation/bills/executive-bills/session-2014-2015/houses-in-multiple-occupation/hmo---as-introduced.pdf

² Houses in Multiple Occupation Bill, Explanatory and Financial Memorandum - www.niassembly.gov.uk/globalassets/documents/legislation/bills/executive-bills/session-2014-2015/houses-in-multiple-occupation/hmo---efm---as-introduced.pdf

³ See <http://aims.niassembly.gov.uk/officialreport/minutesofevidence.aspx?&cid=12>

The Structure of the Bill

The Houses in Multiple Occupation Bill [as introduced] is a substantial Bill consisting of 91 clauses and 8 Schedules. The Bill is divided into five parts:

Part 1: Meaning of “House in Multiple Occupation”. This Part consists of six clauses. It provides a legislative definition of a House in Multiple Occupation and permits the Department for Social Development to amend the definition of an HMO (by way of regulations). Clause 1 also introduces Schedule 1 of the Bill which defines the circumstances in which a property is deemed not to be an HMO (these are referred to in the Bill as “exceptions”).

Part 2: Licensing of Houses in Multiple Occupation. This Part consists of 23 clauses. It contains provisions requiring an HMO (which is not exempt) to be licensed by the council in which the HMO is located. This part of the Bill also specifies applications for HMO licences must be made by the owner of the property; outlines matters to be taken into account when the council is considering the application; and contains provisions permitting a council to refuse to grant a licence if it feels that there has been a breach in planning control.

Part 2 also introduces a “fit and proper person” test. An owner or managing agent will not be licensed if they are not deemed to be a “fit and proper person”. This Part specifies matters that the council must have regard to in deciding whether the applicant or the applicant’s agent is a “fit and proper person” including, for example, where the person has committed certain types of offences.

Part 2 of the Bill also includes clauses around the suitability of management arrangements; the prevention of the overprovision of HMOs within areas that already have large concentrations of HMOs; the suitability of living accommodation for multiple occupation; the conditions that may be contained within licences; the issuing, extension and revocation of temporary exemption notices; the duration of a HMO licence (five years); the renewal of licences; the procedures for the variation and revocation of licences; the treatment of joint licence holders; the surrender of an HMO licence; provisions requiring a new licence to be sought when an HMO transfers to a new owner; and the effect on a licence when the owner of an HMO is deceased.

Schedule 2 of the Bill sets out in further detail the content of the licensing application forms; the requirement of the owner of an HMO to display a notice of application (with certain exceptions); the effect of failure to display a notice; the information that is to be contained in such a notice; refusal of application on breach of planning control; and council hearings regarding the application.

Part 3: Enforcement of Licensing Requirements. This Part consists of 11 clauses. It provides that the owner of an HMO commits an offence if an HMO (that is required to be licensed) is not licensed and the owner does not have a reasonable excuse for this. It also contains provisions creating offences around allowing an HMO to be occupied in excess of the number of people authorised on the licence (overcrowded); making an

untrue claim that an HMO is licensed when it is not; making it an offence if an owner authorises an agent to manage an HMO but does not name the HMO on the licence; and making it an offence for a person to act as an agent in those circumstances.

Part 3 contains clauses that permit a council to issue a “rectification notice” requiring a licence holder to take action to rectify or prevent a breach of licensing conditions; it also creates an offence where a person has failed to take the specified action set out in the rectification notice. Courts are also provided with the power to revoke an HMO licence or disqualify an owner for holding a licence, or an agent from being named on a licence, where they have been convicted of offences outlined above (provision is made for an appeals mechanism). Part 3 sets out the various levels of Fixed Penalty Notices (FPN) that can be issued by councils and levels of fines that can be issued by the courts in respect of the offences.

Schedule 3 provides further detail regarding the notices (i.e. rectification notice and/or hazard notice) issued by councils that state that specified works must be carried out on the property. Schedule 3 specifies the conditions under which a council can step in and carry out the works required by a hazard or rectification notice and the recovery of such expenses from the owner of the property.

Schedule 4 sets out in further detail the procedure for the variation and revocation of HMO licenses.

Part 4: Standards of Housing. This part consists of 21 clauses. It provides a definition of overcrowding; sets out a room and space standard; and makes provision to permit a council to serve an ‘overcrowding notice’ where it believes that an HMO is, or is likely to become, overcrowded. Where an ‘overcrowding notice’ is served, Part 4 contains provisions permitting a council to issue an “information notice” requiring a person to provide the council with certain information (e.g. the names and number of individuals occupying the property and their relationship to each other) within a specified period of time.

Provision is made under Part 4 to permit a council to issue a ‘suitability notice’ if it considers the property is not reasonably fit for occupation by the number of persons occupying it. There are also provisions requiring that a person on whom a notice is served to refrain from permitting any new tenants to occupy the HMO if it will result in an HMO exceeding the maximum number of persons permitted to occupy the property.

Part 4 also provides a definition of ‘hazard’ and a council would be permitted to issue a ‘hazard notice’ (or an ‘emergency hazard notice’ if there is imminent risk of serious harm to the health or safety of occupants). A hazard notice may contain a requirement compelling the owner of the property to carry out work to the HMO in order to remove the hazard.

Part 4 further provides that offences are committed if a person contravenes a requirement in an overcrowding notice or contravenes a “general occupancy

requirement” in a suitability notice (if they do not have a reasonable excuse for doing so).

Part 5: Supplementary. This Part consists of 30 clauses. It makes provision requiring each council to keep an HMO register containing details of each application for an HMO licence; the decision made on the application; and the subsequent progress of the licence. The register is to be publically available. However, the council must exclude any information that it considers could put persons or premises at risk.

Part 5 contains a clause that would enable the Department for Social Development to make regulations approving a Code of Practice. The Code of Practice would contain standards of conduct and practice to be followed in respect of the management of HMOs (e.g. setting out standards on the repair, maintenance, cleansing and good order of kitchens, bathrooms and water closets).

Clauses are contained within Part 5 to permit councils to issue fixed penalty notices instead of initiating criminal proceedings. No criminal proceedings can be commenced against a person before the end of the period specified in fixed penalty notice. Part 5 specifies the various levels of fixed penalty notice for different offences and permits the Department for Social Development to alter the amounts of fixed penalty notices.

Provision is also made under Part 5 to allow any person on whom the council has served a notice of certain decisions (for example, a decision by the council not to grant or renew an HMO licence) to appeal against the decision to the county court within a specified period of time.

Part 5 also proposes to provide a council with the power to compel persons to provide information and documentation (for example, to enable the council to investigate whether any offence has been committed under the provisions of the legislation). It aims to protect the confidentiality of information by creating an offence in relation to the unlawful disclosure of information by an employee of the council. Where a court convicts a person of any offence under the Bill, it provides for an information gateway whereby a clerk of the court must inform the council of the conviction, sentence, revocation or disqualification orders made by the court.

Provision is also made to provide councils with a power of entry to a property (with and without warrant) within specified circumstances. It allows for action to be taken in relation to the obstruction of councils or persons authorised to work for the council in respect of such a warrant.

Where a notice is served for works to be carried out to a property and persons are required to vacate the property, the Bill proposes to ensure protection of the tenancy terms and conditions of those individuals (i.e. their tenancy must not be terminated, altered or varied) upon reoccupation.

Part 5 confers powers on the Department for Social Development to make regulations concerning the charging of fees in respect of the new licensing framework (i.e.. setting

out the amount, or maximum amount of such fees and under what circumstances they are to be refunded).

Part 5 also provides for the Department for Social Development to issue guidance to councils about the exercise of their functions under the Act.

2 Policy Context

What is a House in Multiple Occupation?

The definition of a ‘House in Multiple Occupation’ (HMO) has been somewhat contentious and the statutory definition amended several times over the years. HMOs are currently defined in [Article 75\(1\) of the Housing \(NI\) Order 1992](#) (as amended⁴) as follows:

...”house in multiple occupation” means a house occupied by more than 2 qualifying persons, being persons who are not all of the same family”

Article 3 of the [Housing \(Northern Ireland\) Order 2003](#) states that a person is a member of another’s family if they are a spouse, civil partner or living together as if they were husband and wife or civil partner or they are that person’s parent, grandparent, child, grandchild, brother or sister. A relationship by marriage or civil partnership is to be treated as a relationship by blood; a relationship by half-blood is treated as a relationship of the whole blood; and the stepchild of a person shall be treated as that person’s child. The Housing (Amendment) Act (Northern Ireland) 2010 further amended the definition of an HMO to include uncles, aunts, nephews and nieces⁵.

The meaning of “a member of another’s family” was expanded to include uncles, aunts, nephews and nieces as a result of a judicial review in 2005. In the ruling *Girvan J (Landlords Association for Northern Ireland Application for Judicial Review)* expressed concern that (at that time) the 1992 Order restricted the definition of a family as a person’s spouses or living together as husband and wife, parents, grandparents, child, grandchild, brother or sister. The judgement provided various examples of an “unrelated” person joining a family which would have the unintentional consequence of creating an HMO. The judgement stated:

“Where a family allows a non-familial student to reside with them as a lodger or indeed free of charge the house would become an HMO. When a man A co-habits with a woman B who has a child by a previous relationship ...the result would be that the house would then become an HMO. Many other situations would give rise to the apparently unintended consequence of bringing within the ambit of the legislation many houses comprising one

⁴ Article 75(1) was amended by Article 14 of the Housing (Amendment) Act (Northern Ireland) 2010.

⁵ Article 14 of the Housing (Amendment) Act (Northern Ireland) 2010.

household. The definition of a house in multiple occupation has been the subject of difficulty in relation to drafting a satisfactory definition and in England the definition has been recently radically changed by the Housing Act 2004. There the living accommodation must be occupied by persons “who do not form a single household”. Such legislation makes more practical sense than the provision contained in the 2003 Order. Bearing in mind the theoretical possibility of criminal liability arising from the breach of the Scheme [HMO Registration Scheme] conditions it is obvious that thought would need to be given to the drafting of legislation and the Scheme to bring outside the ambit of the Scheme houses where in fact parties are living in a single household. The mischief behind the legislation appears to relate to problems arising from houses in true multiple occupation and the problems appear to relate to premises which are occupied by a number of disconnected lodgers or tenants”⁶.

The Department for Social Development published a consultation document on the “Fundamental Review of the Regulation of Houses in Multiple Occupation in Northern Ireland” in 2012. It stated that that the expansion of the definition to include aunts, uncles, nephews and nieces did not “...address the fundamental concern in the judicial review that houses, which in reality acted in the same way as single households, could find themselves designated as HMOs”⁷.

The Houses in Multiple Occupation Bill thus proposes to expand the definition of “relative” to include cousins (clause 88)⁸. Clause 4 of the Bill, further proposes to permit a person providing domestic help or personal care to be included within the definition of “members of the same family” providing they occupy the same living accommodation⁹.

Profile of HMOs in Northern Ireland

HMOs are an important source of relatively inexpensive housing for a variety of groups including students, migrant workers, young professionals and people with special needs. If they are appropriately managed, HMOs make a significant contribution to the current housing market and demand for HMOs is expected to increase due to welfare reform and changes to housing benefit entitlement¹⁰.

In 2012, the Northern Ireland Housing Executive (which is currently responsible for the regulation and registration of HMOs) estimated that there were just over 9,300 HMOs

⁶ Girvan J (2005) In the Matter of an Application by the Landlords Association for Northern Ireland for Leave to Apply for Judicial Review. www.courtsni.gov.uk/en-gb/judicial%20decisions/publishedbyyear/documents/2005/2005%20niqb%2022/j_i_girc5216.htm

⁷ Department for Social Development (2012) Fundamental Review of the Regulation of Houses in Multiple Occupation in Northern Ireland: Consultation.

⁸ Clause 88 (3)(b)

⁹ Clause 4 (2) and (3)

¹⁰ Department for Social Development (2012) Fundamental Review of the Regulation of Houses in Multiple Occupation in Northern Ireland.

in Northern Ireland¹¹. Mandatory registration of HMOs began in 2007. The latest figures from the Housing Executive (provided to the Committee for Social Development) indicates that there are currently 5,225 HMOs now registered. It is estimated that there could be as many as 30,000 people in this type of accommodation¹². The delay in registering HMOs is largely due to the significant amount of work needed to ensure that a property is compliant. Thousands of inspections and hundreds of notices are served on the owners of HMOs each year¹³.

The Department for Social Development's consultation on the *'Fundamental Review of the Regulation of Houses in Multiple Occupation in Northern Ireland'* in 2012, acknowledged that locating the whereabouts of some HMOs has been problematic for a number of reasons. For example, a house can move in and out of HMO designation; some owners may avoid registration and regulatory control because of the increased costs associated with meeting the statutory requirements; and there are few statutory gateways in which information can be shared between bodies to identify those properties¹⁴. Currently HMO legislation in Northern Ireland does not provide for information to be obtained from other statutory and non-statutory bodies for the purposes of identifying and regulating HMOs. It is anticipated that provisions under clause 73 of the HMO Bill (powers to require information and documentation) will open statutory information sharing gateways with a number of government and non-government organisations and bodies¹⁵.

HMOs are not evenly distributed across Northern Ireland. Some areas such as south Belfast have particularly high concentrations of HMOs (e.g. due to a large student population). If not managed strategically by both statutory and non-statutory bodies, and responsibly by both landlords and tenants, the problems that can be associated with such high concentrations can include the following¹⁶:

- Damage to social cohesion with higher levels of transient residents and fewer longer term households and established families, leading in the long term to communities that are not balanced and self-sustaining.
- In a buoyant housing market, access to the area by owner occupiers and first time buyers becomes much more difficult due to increased house prices and competition from landlords.
- An increase in anti-social behaviour, noise, burglaries and other crimes.

¹¹ Department for Social Development (2012) Consultation on the Fundamental Review of the Regulation of Houses in Multiple Occupation.

¹² Committee for Social Development. Minutes of Evidence. Departmental Briefing on the Houses in Multiple Occupation Bill. 14 May 2015.

¹³ Department for Social Development (2012) Consultation on the Fundamental Review of the Regulation of Houses in Multiple Occupation.

¹⁴ Department for Social Development (2012) Consultation on the Fundamental Review of the Regulation of Houses in Multiple Occupation.

¹⁵ Correspondence dated 14 October 2015 from the Department for Social Development to the Committee for Social Development. www.niassembly.gov.uk/globalassets/documents/social-dev/hmo-bill/151014-letter-from-dsd-re-hmo-bill.pdf

¹⁶ Welsh Government (2015) Housing in Multiple Occupation: Review and Evidence Gathering – Report of Findings. <http://gov.wales/docs/desh/research/150505houses-in-multiple-occupation-hmo-final-report-en.pdf>

- A reduction in the quality of the local environment and street scene as a consequence of increased litter, refuse, lay tipping, increased levels of disrepair and prevalent lettings signs.
- A change of character in an area through a tendency for an increased number of takeways, discount food stores and letting agencies.
- An increased pressure on parking.
- A reduction in the provision of community facilities for families and children, particularly pressure on schools through falling pupil numbers.

A number of these points are particularly prevalent in the two south Belfast residents/regeneration associations' written responses to the Committee for Social Development's Call for Evidence on the Bill¹⁷.

There has been a much greater emphasis on planning and regulating HMOs in areas with high concentrations of HMOs in Northern Ireland. Belfast City Council, in its written response to the Committee for Social Development¹⁸, highlights that it has recently published its [City Centre Regeneration and Investment Strategy](#)¹⁹. Central to the aspiration of the strategy is the aim of growing the city centre population through the development of balanced communities with an appropriate mix of housing types and tenures. In 2012, the Council published [Belfast: A Learning City – Holyland and Wider University Area Strategic Study](#)²⁰. This study provided recommendations both to make Belfast a destination of choice for students including improving the provision of fit for purpose quality student accommodation and to address the impact of large concentrations of HMOs. In 2014, the Council developed a [Framework for Student Housing and Purpose Built Managed Student Accommodation](#)²¹ and, with new planning powers transferred to councils, are considering additional mechanisms for dealing with the continued number of planning applications for Purpose Built Managed Student Accommodation in Belfast.

It is important to note that HMO properties are not uniform in nature. The Northern Ireland Housing Executive has, for operational purposes, divided HMOs into the following categories²²:

¹⁷ Committee for Social Development Call for Evidence on the Housing in Multiple Occupation Bill. Belfast Holyland Regeneration Association and Sans Souci Residents Association.

¹⁸ Committee for Social Development Call for Evidence on the Housing in Multiple Occupation Bill. Belfast City Council Submission.

¹⁹ Belfast City Council (2015) City Centre Regeneration and Investment Strategy.

www.belfastcity.gov.uk/business/developmentplans/Regenerationandinvestmentplan.aspx

²⁰ Belfast City Council (2012) Belfast: A Learning City – Holyland and Wider University Area Strategic Study.

²¹ Belfast City Council (2014) Framework for Student Housing and Purpose Built Managed Student Accommodation.

www.belfastcity.gov.uk/buildingcontrol-environment/housing/student-accommodation.aspx

²² Northern Ireland Housing Executive. Houses in Multiple Occupation Standards. www.nihe.gov.uk/hmo_standards.pdf

Category	Property Type	Description
Category A	Bedsits	Some exclusive occupation (usually bedroom/living room) and sharing of amenities (e.g. bathroom/wc). Each occupant otherwise lives independently of others
Category B	Shared houses	Each individual or household will normally have their own bedroom, although in some circumstances this may be shared. There will be a general sharing of the bathroom, wc and kitchen
Category C	Lodgings	Houses let in lodgings i.e. a resident owner/occupier catering for lodgers on a small scale but not living as part of the main household.
Category D	Hostels B&Bs Guesthouses	Accommodation for people with no other permanent place of residence. This category would include establishments used to house homeless families/individuals.
Category E	Residential homes	Provide board and personal care for persons in need of such accommodation by reason of age, disability etc.
Category F	Flats	Houses or building which by conversion contain dwellings. There would be no sharing of amenities (e.g. living room) or habitable rooms with the occupants of other units of accommodation

Why do people live in HMOs?

HMOs tend to suffer from stereotyping, typecast with providing substandard housing conditions with poor fire safety standards, overcrowding, inadequate facilities, and unscrupulous management. Yet whilst this may be true of a number of HMOs, there are many HMOs that are well managed and provide a high standard of accommodation.

HMOs can potentially be very lucrative and high yielding investments in the right housing market. But “they are by no means a quick and easy win investment”. They can be challenging for landlords for a number of reasons e.g. maintenance costs for an HMO can be higher; there is more general upkeep because there is a higher tenant turnover; and there can be an above average number of call-outs to deal with. There is also potential for difficulties to arise because there is a mixture of people living together, leading to differences of opinion and a clash of personalities. Often HMOs accommodate some of the most vulnerable people in society, e.g. families that have suffered domestic abuse; people with alcohol and/or drug addiction problems; black

and minority ethnic individuals/families; and migrant workers. Some landlords may have to cope with complex social issues that they are not equipped to deal with²³.

A recent review of HMOs published by the Welsh Government further highlights that a significant number of HMOs are occupied by young single households and they are often house transient households that occupy the property for a limited period of time. The study found that HMOs tend to provide accommodation for low income households that are either economically inactive, are full-time students or are working in low paid jobs. However, depending on the locality, HMOs may also be occupied by young professionals and recent graduates at an early stage in their career who may be unable or reluctant to buy or rent self-contained accommodation²⁴.

The Welsh Review provides a very useful account of the broad range of people who live in HMOs and as well as the reasons why people live in HMOs:

Who lives in HMOs?	Why do people live in HMOs?
<ul style="list-style-type: none"> • Students (further and higher education including overseas students) • Unemployed (singles and couples) • Those moving into the area to work (e.g. seasonal or transient/contract workers) • Residents in hostels /refuges • People with special social needs • Migrant workers • Older house sharers who cannot afford to buy or rent separately • Lodgers • People on bail/domestic abuse/refugees • Newly homeless • People being rehabilitated into the community • Local Housing Allowance (Housing Benefit) claimants under the age of 35 • Trainee and recently qualified medical staff • Young professionals and recent graduates • Young non-professionals 	<ul style="list-style-type: none"> • Affordability (low cost) • Personal development/right of passage • Short term contracts/flexibility/work • Locality/convenience • Lack of university accommodation • Cultural/peer support • Isolation/not wanting to live alone • Good transports links/travel costs • Only option – no longer welcome at home • Accommodation provided by employers to allow immediate start on a job • HMOs as a means of re-integration into the community or to receive support • Work commitments – live in HMO during the week and at home during weekends

In terms of the most vulnerable groups in society, recent research has found that nationally there is a limited understanding of the “lived experiences” of residents of large HMOs that operate at the bottom end of the private rented sector. For these residents entry into HMOs can be due to, for example²⁵:

- Homelessness following prison release or following service in the Armed Forces.

²³ Aldermore. “The Beginner Landlord’s Guide to Houses in Multiple Occupation (HMOs)”. www.aldermore.co.uk/media/2497/aldermore_beginners_landlord_guide.pdf

²⁴ Welsh Government (2015) Housing in Multiple Occupation: Review and Evidence Gathering: Report of Findings. <http://gov.wales/docs/desh/research/150505houses-in-multiple-occupation-hmo-final-report-en.pdf>

²⁵ Irving, A. (2015) Housing as a Means, Not an End: The Health and Wellbeing of HMO Residents in Newcastle-upon-Tyne. Northern Rock Foundation and Northumbria University.

- Hospital discharge.
- Relationship breakdown.
- Being new to an area and requiring temporary accommodation until employment and settled accommodation can be secured.
- Eviction from supported accommodation and social or private tenancies.

Some of these HMO residents have multiple needs. Mental health and alcohol dependency problems can be particularly prevalent and they are often engaged with a range of services including probation, health, crisis support and addiction services. The research highlighted that those in the lower end of the HMO market can experience accommodation that is noisy, lacks comfort and privacy with residents describing feelings of insecurity and lack of control over their living conditions. Residents interestingly reported that the psychological and social impact of living in low end HMOs was more detrimental to their wellbeing than the physical state of the property. Many were reluctant to complain about their living conditions because of fear of eviction²⁶.

Recent research has highlighted that good management of HMOs can lessen the potential harmful effects of living in an HMO. It suggests that poorly run properties that house numerous vulnerable people may increase the risk of poor mental health due to high levels of stress and possible risk of abuse²⁷. This clearly demonstrates that HMOs are not only an issue for landlords but go beyond an HMO regulatory framework requiring the involvement of other statutory and non-statutory support services (e.g. housing, health, probation services, addiction services etc.).

The Northern Ireland Council for Ethnic Minorities (NICEM) in its submission to the Committee for Social Development's Call for Evidence has highlighted that the regulation of HMOs in Northern Ireland is of particular significance to Black and Minority Ethnic (BME) communities and to migrant workers. NICEM argues that overcrowding in HMOs is an issue that particularly affects BME communities in Northern Ireland. It believes that this is due to factors such as the low uptake of Housing Benefit and the prevalence of low income²⁸. It is vulnerable groups such as these that effective licensing may benefit the most.

Why are HMOs playing an increasingly important role in the housing market?

The Department for Social Development's consultation on the regulation of HMOs highlighted that HMOs are a source of relatively inexpensive housing and are a popular choice for groups such as students and migrant workers. It further points out that the

²⁶ Irving, A. (2015) *Housing as a Means, Not an End: The Health and Wellbeing of HMO Residents in Newcastle-upon-Tyne*. Northern Rock Foundation and Northumbria University.

²⁷ Barratt, C.; Green, G. & Speed, E. (2015) *Mental Health and Houses in Multiple Occupation*. *Journal of Public Mental Health*, 14 (2), pp1746-5729.

²⁸ Northern Ireland Council for Ethnic Minorities (NICEM) *Written response to the Committee for Social Development's Call for Evidence on the Housing in Multiple Occupation Bill*.

demand for HMOs in Northern Ireland is likely to increase further due to the effects of welfare reform, particularly changes to Housing Benefit. For example, the raising of the age threshold for people claiming the Local Housing Allowance shared room rate for single people from age 25 to 35 may mean that for an increasing number of individuals HMOs are the most affordable housing option. When a housing market is buoyant there are inevitably rent increases and this may also lead to greater demand for HMOs amongst young professionals given that they are a more affordable form of accommodation.

What is the current regulatory framework for HMOs in Northern Ireland?

The Housing Executive is currently responsible for the regulation and mandatory registration of HMOs in Northern Ireland. However, the Houses in Multiple Occupation Bill contains provisions to facilitate transfer of responsibility for regulation and enforcement from the Housing Executive to local councils. This transfer of responsibility is a result of the Review of Public Administration (RPA). The Local Government Act (NI) 2014 provides the framework for the transfer of responsibility not only for HMOs but also housing unfitness from the Housing Executive to the 11 new councils.

HMOs in Northern Ireland are currently regulated by various Orders, Acts and Regulations. The two main pieces of legislation are the [Housing \(Northern Ireland\) Order 1992](#)²⁹ which regulates HMOs in respect of overcrowding, physical conditions, fire safety and other general safety. The [Housing \(Northern Ireland\) Order 2003](#)³⁰ makes provision for a statutory mandatory HMO registration scheme and provides additional powers to regulate occupancy levels, management standards and the adverse effects of HMO³¹. Relevant case law must also be taken into account (e.g. particularly the *Landlords Association for Northern Ireland's Application for Judicial Review*, 2005). O'Neill's (2013) book on private tenancies in Northern Ireland provides the following useful timeline of HMO legislation³²:

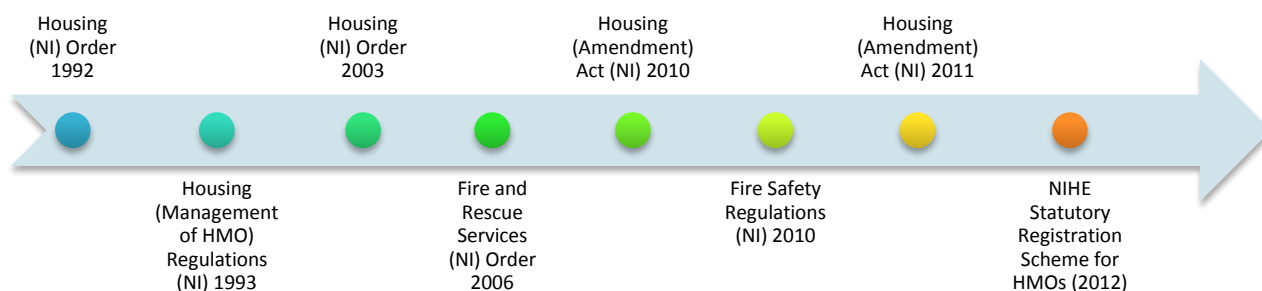
Timeline of Northern Ireland HMO legislation

²⁹ Housing (Northern Ireland) Order 1992 www.legislation.gov.uk/nisi/1992/1725/contents

³⁰ Housing (Northern Ireland) Order 2003 www.legislation.gov.uk/nisi/2003/412/contents/made

³¹ Department for Social Development (2012) Fundamental Review of the Regulation of Houses in Multiple Occupation in Northern Ireland: Consultation.

³² O'Neill, C. (2013) *The Law of Private Tenancies in Northern Ireland*, p182.



The Northern Ireland HMO Registration Scheme

The Housing (NI) Order 1992 (as amended by the Housing (NI) Order 2003) requires the Housing Executive to prepare and submit a registration scheme to the Department for Social Development for approval. The details of the Scheme are contained within the document "[The Statutory Registration Scheme for Houses in Multiple Occupation in Northern Ireland](#)" which is an amended scheme that became operative from 1 February 2012³³. Since the 1 April 2013 the HMO Registration Scheme covers all areas in Northern Ireland and all HMO properties must now be registered³⁴. However, a number of HMOs are exempt from registration. For example, properties owned by the Northern Ireland Housing Executive; certain residential homes; certain children's homes or community homes; boarding schools³⁵; and properties owned by religious communities³⁶.

The Northern Ireland Housing Executive publishes a Public Register of HMOs which is available [online](#) and is updated on a monthly basis³⁷. The online Register contains details such as the address of the property, the number of permitted occupants etc. It does not contain the property owners name or contact details. When a property is registered, the landlord will be issued with an HMO Registration Certificate which means that at the time of registration the property complied with the Fitness for Human Habitation Standard and the HMO Amenity and Fire Standards³⁸. The Housing Executive has also published a number of other documents relevant to landlords and tenants of HMOs including an HMO Strategy (2009); A Fire Safety Guide; A Good Practice Guide for Landlords; and a Guide to the Minimum Standards Required in an HMO. These documents are available to access [here](#)³⁹.

³³ Northern Ireland Housing Executive (2012) The Statutory Registration Scheme for Houses in Multiple Occupation in Northern Ireland. www.nihe.gov.uk/hmo_registration_scheme.pdf

³⁴ Information extracted from the Northern Ireland Housing Executive website www.nihe.gov.uk/index/advice/renting_privately/hmo/registration.htm

³⁵ Within the meaning of the Children (NI) Order 1995

³⁶ Providing the principle occupation is prayer, contemplation, education or the relief of suffering.

³⁷ Northern Ireland Housing Executive. HMO Register [updated 10 November 2015] www.nihe.gov.uk/hmo_public_register.pdf

³⁸ Information extracted from the Housing Executive website www.nihe.gov.uk/index/advice/renting_privately/hmo/advice_for_tenants.htm

³⁹ www.nihe.gov.uk/index/advice/renting_privately/hmo.htm

The Houses in Multiple Occupation Bill contains provisions to replace the registration scheme with a licensing scheme. Perhaps one of the more contentious aspects of the Bill is the creation of a publically available Register of licensed HMOs (clause 62). Whilst some respondents to the Committee's call for evidence welcomed a publically available register, others expressed concern about the proposed level of detail contained in the register (e.g. if it contained the name and contact details of owner of the property).

Why is the regulation of HMOs more stringent than other types of property within the private rented sector?

The Northern Ireland Houses in Multiple Occupation Strategy (published in 2009) maintains that in comparison to single family living, there is an increased risk of injury or loss of life to residents and visitors in HMO accommodation that does not comply with HMO standards. According to the National HMO Lobby, HMOs are at higher risk for a number of reasons:

“Given the distinctive characteristics...many HMOs (not all) have a tendency towards a range of internal and external problems. All are endemic, arising from the fact of multiple households, and hence a lack of cohesion, internal and external. Internally, the absence of anyone willing and able to exercise any co-ordination, can readily give rise to health and safety problems, with the result that HMOs can become dangerous to their occupants.”⁴⁰

An evaluation of HMO licensing in England also reiterated the following reasons for a greater emphasis on the regulation of HMOs in comparison to other types of accommodation in the private rented sector, i.e.:⁴¹

- Physical conditions in HMOs can be poorer.
- There is a significantly increased risk of dying or being injured in a fire. The fatality rate in HMOs of three or more storeys is around four times higher than for one or two storey HMOs.
- A range of health, safety and general welfare problems for residents can arise where structural conditions are unsuitable for the number of persons accommodated, or where conversion has been poorly undertaken.
- There can be substantial problems of management in such HMOs, especially where facilities are shared.

⁴⁰ Memorandum submitted by the National HMO Lobby to the Communities and Local Government Committee. July 2013. www.publications.parliament.uk/pa/cm201314/cmselect/cmcomloc/50/50ii56.htm

⁴¹ Department for Communities and Local Government (2010) Evaluation of the Impact of HMO Licensing and Selective Licensing. <http://webarchive.nationalarchives.gov.uk/20120919132719/http://www.communities.gov.uk/documents/housing/pdf/1446438.pdf>

- Tenants in these HMOs are often vulnerable and may not have access to other housing options.

Why is there a need for an enhanced regulatory framework for HMOs in Northern Ireland?

The Department for Social Development, in its 2012 consultation on the ‘Fundamental Review of the Regulation of HMOs in Northern Ireland’, considered a system of licensing preferable to a registration scheme. The Department believes that the current registration scheme is separate from the regulation of HMOs and that there is both disconnect and duplication between the two systems:

“The Department considers a system of licensing is preferable to registration. Other activities, where standards have to be met before permission to operate is granted, such as taxis and food establishments operate under a system of licensing; this seems more suitable to an undertaking where being able to operate legally is dependent on meeting various criteria. The Department therefore proposes that relevant HMOs should be required to obtain a licence before they can operate legally...

The Department also proposes to make the conditions an HMO must meet both before and during a licence is granted, part of the licensing system. This will end the problems caused by the current system where there are in effect, two separate schemes of control.”⁴²

There are significant differences between a mandatory registration regime and mandatory licensing regime. Registration is often viewed as a ‘lighter touch’ approach to regulating the private rented sector. As is the case with the mandatory [Landlord Registration Scheme](#) in Northern Ireland⁴³, one of the primary objectives of HMO registration is to ensure that up-to-date information is available on the location of the property, the name of the owner of the property/nominated agent and their contact details. This information can be used, for example, to initiate enforcement action or to disseminate information to landlords.

Reflecting the greater risks presented by HMOs, the current mandatory HMO registration scheme in Northern Ireland goes beyond that of the general Landlord Registration Scheme and certain conditions must be met before an HMO can be registered and a certificate to operate granted. In comparison to a registration scheme, a licensing scheme is arguably a more intensive and robust form of regulation. In order for licences to be granted, and to continue to be valid, the property and the property owner and/or manager of an HMO must meet certain standards or conditions. A licensing scheme arguably places a greater emphasis upon securing physical and

⁴² Department for Social Development (2012) Fundamental Review of the Regulation of Houses in Multiple Occupation in Northern Ireland: Consultation.

⁴³ Landlord Registration Scheme Northern Ireland www.nidirect.gov.uk/landlord-registration-scheme

property management standards. The Department for Social Development has recently published a discussion paper on the review of the private rented sector in Northern Ireland which touches upon the purpose and intent of the new HMO licensing scheme:

“The purpose of introducing HMO licensing is to improve standards by ensuring that a landlord or agent is a fit and proper person, and by checking the standards of physical accommodation as well as tenancy management standards. This provides protection to HMO tenants and their neighbours by making sure accommodation is safe, well managed and of good quality. This revised system of regulation will allow the targeting of houses in a way that is proportionate to the risk presented and will address the added risk to safety associated with living in HMOs.”⁴⁴

How are HMOs regulated in other jurisdictions?

It is evident that HMO regulation in Great Britain is somewhat more progressive than that currently in operation in Northern Ireland. HMO regulation in Northern Ireland has remained relatively unchanged with the most relevant pieces of legislation dating from 1992 (HMO housing standards) and 2003 (when a mandatory HMO registration scheme was introduced). Mandatory licensing for HMOs became operational in England and Wales in 2006. In Scotland, local authorities have had discretionary powers to introduce licensing of HMOs since 1991 and legislation was introduced in 2000 for a mandatory licensing regime⁴⁵. It is important to note that not all HMOs require to be licensed; there are different classes of HMOs that are exempt (e.g. properties owned by public bodies) in each jurisdiction.

HMO Regulation in England and Wales

HMO licensing in England and Wales was introduced by the Housing Act 2004 (licensing became operational in 2006). The Act introduces a *two tier* approach to HMO licensing⁴⁶.

- **Mandatory licensing:** HMOs that consist of three storeys or more which are occupied by five or more people in two or more households. These are considered to be ‘high risk’ HMOs on the grounds that these properties present the greatest risk to occupiers. Converted blocks of flats are not subject to mandatory licensing.
- **Discretionary licensing:** for other smaller HMOs. Local authorities are able to introduce an additional licensing scheme that may apply to non-licensable HMOs in an area or part of an area. Such schemes may apply to any categories of HMOs as the authority considers appropriate. Before a scheme is introduced the authority

⁴⁴ Department for Social Development (2015) Review of the Role and Regulation of the Private Rented Sector.

www.dsdni.gov.uk/sites/default/files/consultations/dsd/review-role-regulation-of-private-rented-sector-consultation.pdf

⁴⁵ Scottish Government. Mandatory Licensing of Houses in Multiple Occupation: Guidance for Licensing Authorities.

www.gov.scot/Publications/2004/07/19734/40900

⁴⁶ Wilson, W. (2013) Houses in Multiple Occupation (HMOs). House of Commons Library.

<http://researchbriefings.files.parliament.uk/documents/SN00708/SN00708.pdf>

must be satisfied that a significant proportion of such HMOs are being mismanaged in such a way that it gives rise, or will give rise, to particular problems (e.g. anti-social behaviour) either for those occupying the HMOs or for members of the public.

The Department for Communities and Local Government (CLG) has recently published a discussion paper (November 2015) which sets out options to *extend the mandatory licensing* of HMOs in England. The options include:

- Extending mandatory licensing to HMOs that consist of *two storeys* (currently HMOs consisting of three storeys must be licenced).
- Extending mandatory licensing to all relevant HMOs regardless of the number of storeys. Although the Department for Communities and Local Government believes that five people (in two households) should be the appropriate number of persons for the threshold to apply for smaller HMOs.
- Extending mandatory licensing to poorly converted blocks of flats (as these are not currently within the scope of the licensing scheme).

Once the options are considered and consulted upon, CLG proposes to introduce any changes in 2016. It believes that it is justified in revising the HMO regulatory framework in order to improve the living conditions of for those living in HMOs, e.g. households on benefits or those on low incomes, students and foreign nationals. It also wishes to tackle those landlords “...*who do not simply fail to manage their HMOs properly, but positively exploit their tenants and often the public purse through housing benefit, by renting sub-standard and dangerous accommodation to vulnerable tenants, sometimes in overcrowded conditions.*”⁴⁷

The Welsh Government has taken the regulation of the private rented sector a step further than in other jurisdictions. Under the [Housing \(Wales\) Act 2014](#)⁴⁸, all private sector landlords who self-manage their rental properties must register and apply for a licence⁴⁹. Landlords, who are not involved in setting up tenancies and managing their rental properties, do not require a licence. However, they must use a licensed agent and register as a landlord declaring their agent on the registration⁵⁰. Welsh Ministers have appointed ‘Rent Smart Wales’, a newly created service within Cardiff Council, as the Licensing Authority for the whole of Wales. In its role as Licensing Authority, [Rent Smart Wales](#) processes landlord registrations and grant licences to those landlords and agents who are required to comply with the Housing (Wales) Act 2014. If a property

⁴⁷ Department for Communities and Local Government (2015) Extending mandatory licensing of Houses in Multiple Occupation (HMOs) and related reforms: A technical discussion document. www.gov.uk/government/uploads/system/uploads/attachment_data/file/474408/151106_HMO_discussion_Doc_FINAL_for_publication.pdf

⁴⁸ Housing (Wales) Act 2014 www.legislation.gov.uk/anaw/2014/7/part/1/enacted

⁴⁹ This applies to any landlord who has a private rented property in Wales which is rented on an assured, assured shorthold or regulated tenancy.

⁵⁰ For further information on the registration and licensing process see www.rentsmart.gov.wales/en/landlord/

has an existing HMO licence, the landlord is still required to register and if required to do so, have a licensed person in place to let and manage the property⁵¹.

HMO Regulation in Scotland

The proposed HMO regulatory licensing system for Northern Ireland more closely aligns to the Scottish HMO regulatory framework. In Scotland, local authorities have had discretionary powers to introduce licensing of HMOs since 1991 and legislation was introduced in 2000 for a mandatory licensing regime. Part 5 of the [Housing \(Scotland\) Act 2006](#) moved the regulation of HMOs into the mainstream of housing regulation with the aim of ensuring that there were better strategic links with other housing policies. While aspects of the 2006 Act remain the same as in the earlier legislation for HMOs, there are notable differences such as additional enforcement powers for local authorities and increased penalties for criminal offences⁵². All HMOs in Scotland must be licensed with a number of exemptions, for example, certain care homes, armed forces accommodation, accommodation occupied by members of a religious order.

3 An Overview of the House in Multiple Occupation Bill

This section of the paper provides (i) an overview of the clauses of the Bill [as introduced] (ii) a synopsis of the issues raised by stakeholders in their written submissions to the Committee for Social Development's Call for evidence, and (iii) an overview of experiences from licensing frameworks in other jurisdictions.

This paper only reflects the clauses of the Bill *as introduced* and the *published* written submissions for the Committee for Social Development's Call for Evidence. Due to time constraints, it does not include commentary on the oral evidence sessions the Committee for Social Development has taken since the publication of the Bill (the minutes of evidence on the Bill are available to download [here](#)). The paper *does not examine any of the proposed amendments* to the Bill. Reference to the Committee for Social Development's Committee Report on the Bill is strongly recommended.

PART 1 OF THE BILL: THE MEANING OF "HOUSE IN MULTIPLE OCCUPATION"

Part 1 of the HMO Bill consists of 6 clauses covering the definition of an HMO; the definition of "living accommodation"; cases in which a person is treated as occupying the accommodation as their only or main residence; notice regarding evidence of household; and notice regarding continuation of occupation.

⁵¹ Rent Smart Wales www.rentsmart.gov.wales/en/

⁵² Scottish Government (2012). Licensing of Houses in Multiple Occupation: Statutory Guidance for Scottish Local Authorities. www.gov.scot/Resource/0038/00387514.pdf

Clause 1: Meaning of a House in Multiple Occupation and Clause 4: Persons who are members of the same household

For ease of reference, this section of the paper explores clauses 1 and 4 together given that they are interrelated.

Clause 1 of the HMO Bill proposes the following definition of an HMO:

“A building, or part of a building, is a “house in multiple occupation” if:

- *It is living accommodation (as defined in Clause 2);*
- *It is occupied by 3 or more persons as their only or main residence (as defined in Clause 3);*
- *Those persons form more than two households (as defined in Clause 4); and*
- *Rents (or other consideration) are payable in respect of the occupation by at least one of those persons in the living accommodation.”*

Clause 4 of the HMO states that persons are members of the same household only if:

- They are “members of the same family”;
- They are to be treated as being members of the same household; or
- Their circumstances are of a description set out in regulations made by the Department.

Currently, Article 3 of the [Housing \(Northern Ireland\) Order 2003](#) states that a person is a member of another’s family if they are a spouse, civil partner or living together as if they were husband and wife or civil partner or they are that person’s parent, grandparent, child, grandchild, brother or sister. A relationship by marriage or civil partnership is to be treated as a relationship by blood; a relationship by half-blood is treated as a relationship of the whole blood; and the stepchild of a person shall be treated as that person’s child. As a result of a 2005 Judicial Review, the Housing (Amendment) Act (Northern Ireland) 2010 further amended the definition of an HMO so that a person’s “family” would also include uncles, aunts, nephews and nieces⁵³. The Houses in Multiple Occupation Bill proposes to expand the definition of “relative” further to include cousins (clause 88)⁵⁴. Clause 4 of the Bill, also proposes to permit a person providing domestic help or personal care to be included within the definition of “members of the same family” providing they occupy the same living accommodation⁵⁵.

Clause 4 provides that a building or part of a building will not be deemed as an HMO (and will therefore not come under the new licensing regime) if it is listed in Schedule 1 (exceptions). The following are just some examples of buildings which are exempted from HMO licensing (further details are contained within Schedule 1):

⁵³ Article 14 of the Housing (Amendment) Act (Northern Ireland) 2010.

⁵⁴ Clause 88 (3)(b)

⁵⁵ Clause 4 (2) and (3)

- The Northern Ireland Housing Executive;
- A registered housing association;
- The Northern Ireland Policing Board;
- The Northern Ireland Fire and Rescue Service; or
- A Health and Social Care body.

The Bill contains provisions to permit the Department for Social Development to both amend (via regulations) the definition of an HMO and the types of buildings that are/are not to be designated as HMOs.

Written Submissions to the Committee for Social Development’s Call for Evidence - (comments on clauses 1 and 4 and Schedule 1)

The Bill contains the phrase **“building or part of a building”** i.e. ‘A building or part of a building’ will be defined as an HMO if it meets the conditions outlined in Part 1 of the Bill. A significant number of respondents were **concerned that houses or commercial premises that have been converted into multiple flats** would not be included within the definition of an HMO (i.e. *Chief Environmental Health Officers Group (CEHOG)*, *councils that responded to the call for evidence*, *Northern Ireland Local Government Association (NILGA)*, *ex-NIHE HMO Manager*; *Landlords Association for Northern Ireland (LANI)* and *the National Union of Students (NUS-USI)*).

The *ex-NIHE HMO manager* questioned the implications that this would have on fire safety and overcrowding in such accommodation. LANI stated that such properties would not benefit from the health and safety conditions that are currently attached to HMOs and that converted houses will impact on those existing communities that are comprised of family homes. The *National Union of Students (NUS-USI)* believes that all properties within the private rented sector, not just HMOs, should be subject to appropriate checks.

There was concern regarding the expansion of the term “relative” to include cousins. The *Chartered Institute of Housing (Northern Ireland)* felt that this could lead to the deregistration of some existing HMOs that house extended families. The *Ex-NIHE HMO Manager* felt that some unscrupulous landlords could influence tenants to claim they are members of the same household in order to circumvent regulation and that tenants may be afraid to say otherwise for fear of losing their home. He felt that this made it regulation difficult and that including cousins within the definition of household could compound this difficulty further.

There was **support for the inclusion of persons providing domestic help or personal care within the definition of members of the same household** (e.g. from the *Chief Environmental Health Officers Group (CEHOG)*, *Northern Ireland Local Government Association (NILGA)*, *councils*, and *Housing Rights*).

The *Chartered Institute of Housing (NI)* requested that the Committee for Social Development explore whether there is scope in the Bill to **allow councils to treat individual properties as if they were HMOs** if acute problems have been identified. For example, a rented property that is not currently classified as an HMO but where a large number of extended family members are residing in one household.

College Park Avenue Residents Association are concerned that the definition of an HMO **does not address the issue of overcrowding**. It states that there is significant overcrowding in some small houses in the Holylands that are not currently classified as HMOs.

There were a number of comments on the types of properties that will be **exempt** from the proposed new HMO legislation. *CEHOG, councils and NILGA* suggests that in determining the appropriateness of such exemptions consideration should be given to how many enforcement notices or other types of enforcement action have been served/taken in respect of these types of buildings.

CEHOG and the councils are concerned that **some landlords could use the exemption provisions as a 'loophole'** to avoid designation and regulation, e.g. it would be difficult to disprove that an owner lives in the property and thus is exempt from HMO regulation. They requested that enforcement officers are **provided with guidance and a methodology** in the case of houses occupied by religious communities, stating that it is often difficult to disprove that a community is living as a religious community.

The *Northern Ireland Federation of Housing Associations (NIFHA)* and *Covenanter Residential Association Ltd* **welcomed the provisions of the Bill that would exempt registered housing associations from the licensing requirements**. NIFHA states that housing associations tend to provide accommodation for people who are homeless, have learning difficulties, mental health issues and dementia and thus are already overseen by various regulatory bodies.

In contrast, an *ex-NIHE HMO manager* is **concerned with the exemption of housing associations** given that they provide the vast majority of supported living accommodation and that such properties are occupied by the most vulnerable groups in society. The ex-manager states that a number of statutory notices have been served on housing associations over the past two years.

The *Landlord Association for Northern Ireland (LANI)* are also concerned that buildings controlled by NIHE and housing associations will be exempt and that they will not benefit from independent inspection. *Supporting Communities NI* believes that hostel accommodation owned by public sector bodies (e.g. NIHE or housing associations) or religious communities should not be excluded from classification as an HMO.

LANI does not support the **exemption of university owned and controlled accommodation**. The *National Union of Students (NUS-USI)* also expressed

discontent that **accommodation owned by universities, by the NIHE and housing associations are exempt**. *NILGA* believes that Purpose Built Managed Student Accommodation run by private providers not linked to an educational establishment via a nominations agreement) should not be exempt from any licensing fee. However, *Queens University* **expressed support for the exemption** of buildings occupied by full-time students that are managed by an education establishment.

Housing Rights recommends that the Committee seeks assurance from the Department for Social Development that **appropriate alternative regulations** are put in place for buildings that are to be exempt from the legislation.

Sans Souci Residents Association believes that HMO licensing exemptions should only be provided to student accommodation providers who **demonstrate compliance** with a code of practice and exemptions should be regularly reviewed.

Clause 1: Points for Consideration

1. How will standards and safety be assured for those occupying houses or commercial premises that have been converted into multiple flats?
2. Will the inclusion of cousins compound the difficulty of regulating HMOs further? What evidence will be required to prove this familial relationship?
3. Could there be scope within the Bill to permit a council to treat a property as an HMO, even if it is not covered by the proposed definition, if a council identifies acute problems with the property (e.g. overcrowding, the property has had a significant number of enforcement notices served upon it).
4. What regulation will apply to houses that are managed by a private/voluntary body but are owned by a housing association or other body and exempted under the proposed legislation?
5. Would appropriate alternative regulation and inspection be put in place for buildings that are to be exempt from the legislation?
6. How often will the list of exemptions be reviewed?

Clause 2: Definition of Living Accommodation

Clause 2 defines “living accommodation” for the purposes of Clause 1. A building, or part of a building, will be defined as living accommodation if:

- It is capable of being occupied as a separate dwelling; or
- It forms part of any building or group of buildings in single ownership and its occupants share a toilet, personal washing facilities or facilities for the preparation or provision of cooked food.

Provision is made to prevent avoidance of the legislation by artificially dividing ownership of a property between members of a family or connected companies.

Written Submissions to the Committee for Social Development’s Call for Evidence

Whilst *CEHOG*, *NILGA* and the *councils* that responded to the call for evidence welcomed the definition of living accommodation, they were **concerned about the application to common parts of self-contained flats** in mixed tenure housing.

The *Northern Ireland Fire and Rescue Service* would like the Department for Social Development to **consider including smoke detectors** as one of the basic amenities incorporated into the minimum standards in a building or part of a building.

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

Under this section, a person will count as an occupant of an HMO if the accommodation is their only or main residence. Accommodation occupied by a full-time student during term time will be regarded as that person's only or main residence. Persons staying in accommodation provided by a voluntary organisation because of violence or mental abuse (or the threat of it) will also be treated as occupying them as their only or main residence. Provisions are made in the Bill to permit DSD to make regulations setting out other circumstances in which a person will occupying living accommodation as their only or main residence.

Written Submissions to the Committee for Social Development's Call for Evidence

CEHOG, *NILGA* and *councils* requested that **guidance is provided in relation to seasonal workers or workers on short term contracts** (e.g. working in a factory under a three month contract) in terms of whether or not they are occupying the accommodation as their only or main residence. The *Chartered Institute of Housing (NI)* make similar points in relation to *migrant workers and asylum seekers* and would like to see this **addressed in primary legislation**. The *Northern Ireland Council for Ethnic Minorities (NICEM)* also seeks clarification on the position of migrant or seasonal workers. It recommends that migrant workers are **given protection on par with full-time students in the legislation**.

Housing Rights suggests that there is **ambiguity regarding the position of hostels for homeless persons that are managed by a voluntary organisation**. It believes that clarification is important given that this type of accommodation is usually regarded as "high risk" given the transient nature of the occupancy.

The *Chartered Institute of Housing (NI)* **supports the inclusion of full time students** given that students are overrepresented in HMOs. *NUS-ISU* and *Queen's University* also welcome the inclusion and clarification in respect of full-time students. However, *NUS-ISU* would like all students, **including part-time students** in further higher education, to be covered in the legislation.

Clause 3: Points for Consideration

1. Should the Bill be amended to take account of seasonal workers, workers on short-term contracts and migrant workers?
2. Should part time students also be included under clause 3 as per the suggestion by NUS-ISI?
3. Are people living in hostels (e.g. homeless hostels) managed by a voluntary organisation adequately covered by the Bill?

Clause 5: Notice regarding evidence of household

Clause 5 of the Bill contains provisions to allow councils to serve notice upon the occupants of a property in circumstances in which the council believes there are more than three people residing in the property and that these people form more than two separate households. If insufficient evidence is provided that the house is not an HMO, it will be regarded as one. The clause “invites” the person on whom the notice is served to supply information to the council within the period of 28 days beginning with the date of service of the notice.

Clause 71 of the HMO Bill provides a council with the power to serve a notice (an “information notice”) requiring a person (licence holder, owner, occupier or agent) to disclose the relationship between themselves and any other occupiers of the premises. Also of relevance, Clause 48 of the Bill permits a council to serve a notice that requires a person to provide information in order for the council to make a determination as to whether the property is an HMO. The information may include, for example, the names of those individuals residing in a property and the number of households to which they belong.

Written Submissions to the Committee for Social Development’s Call for Evidence – comments on clauses 5 and 48

CEHOG, NILGA, and the *councils* welcome the provisions within clause 5 but state that it is imperative that the Department for Social Development issue **guidance clarifying what evidence will be acceptable proof of a familial relationship**.

Supporting Communities NI reiterated the need for guidance on acceptable proof and also stated that guidance would be needed to ensure that **there is a consistent approach to this amongst the 11 councils**. It also stated that some people may have **difficulty in obtaining proof of family relationships**.

The *Chartered Institute of Housing (NI)* and the *Northern Ireland Council for Ethnic Minorities (NICEM)* expressed concern about clause 48 (notice requiring further information) in terms of the ability of households, including Black and Minority Ethnic households, to **understand the notice they have received**. The Chartered Institute of Housing states that it is imperative that councils take into account issues such as **language, literacy and visual impairments**.

NICEM are concerned that clause 48 had the potential for BME households to be unfairly and **disproportionately “punished”** for failing to provide information to satisfy an information notice. It cited the inability of some tenants to understand the notice, or the concept of a household, or the term “occupant” as a barrier to providing the information. *NICEM* have also pointed out that some tenants may **require language/interpretation support**.

NICEM further suggested that some **BME households may be reluctant** to provide information due to fear of government authorities (because of experiences in their country of origin) or fear disclosing information on overcrowding in case this leads to eviction. *NICEM* are concerned that such fears will **not be accepted as a “reasonable excuse”** for not providing information.

The Committee for Social Development, in correspondence to the Department for Social Development, requested clarification as to **what evidence would be sufficient** in terms of providing proof that the property did not contain more than two households. The Committee further inquired whether Clause 5(2)(c) **had human rights implications** and if the powers were intrusive. The Department responded by stating that⁵⁶:

- The types of evidence required will be discussed further with councils as the guidance and regulations are developed.
- It is intended that on inspection of a potential HMO, if doubt remains regarding the make-up of the household the onus will be on the tenants to provide the evidence required.
- The Department has taken into consideration the Human Rights Act and the European Convention on Human Rights and that whilst the Bill engages a number of convention rights it does so for sound policy reasons and attempts to take a proportionate approach in each case.
- States that both the Departmental Solicitors Office and the Attorney General have confirmed that the Bill is competent and if it contravened the Human Rights Act and ECHR it would have been deemed to be outside the legislative competence of the Assembly.

Clause 5: Points for Consideration

1. Will councils be provided with guidance outlining what evidence will be acceptable as proof of a familial relationship? What steps can be taken to ensure that there is a consistent approach to this across councils?
2. What steps will be taken to ensure that a person understands the notice that they have received e.g. particularly in terms of language and literacy?
3. What steps can be taken to ensure that the outworkings of this section do not impinge about human rights?

⁵⁶ Correspondence dated 14 October 2015 from the Department for Social Development to the Committee for Social Development. www.niassembly.gov.uk/globalassets/documents/social-dev/hmo-bill/151014-letter-from-dsd-re-hmo-bill.pdf

Clause 6: Notice regarding continuation of occupation

This clause makes provision for a council to serve a notice on a property that (i) has ceased to operate as an HMO (because the number of occupants has reduced below three persons); and (ii) will likely to become an HMO again within four months of the cessation. This is to ensure, for example, that a student house can continue to be treated as an HMO during the summer months even though it may actually have fewer than three people residing in the property during those months. The notice of continuation can be served upon the owner of the property, the managing agent or occupants.

Written Submissions to the Committee for Social Development's Call for Evidence

CEHOG, NILGA and *councils* request that guidance is provided in terms of **what is "acceptable proof" of continuation of occupation.**

PART 2 OF THE BILL: LICENSING OF HOUSES IN MULTIPLE OCCUPATION

Part 2 of the Bill consists of 23 clauses covering the requirement for and issuing of licences (Clauses 7-13); licensing conditions (Clause 14); temporary exemption from licensing requirements (Clauses 15-18); duration and renewal of licences (Clauses 19-21); the variation of revocation of licences (Clauses 22-24); and other provisions such as the surrender of licences (Clauses 25-29).

Clause 7: Requirement for HMOs to be licensed

This clause requires that all HMOs (which are not exempted or under a temporary exemption notice) must be licensed. A licence will be issued by the council for the district in which the HMO is situated. The licence must specify certain information:

- The property in which it relates;
- The council which issued it;
- The number of persons who are authorised by the licence to occupy the HMO as their only or main residence;
- The owner of the HMO;
- Any managing agent of the HMO; and
- Any conditions which the council has decided to include in the licence under section 14 of the Bill (i.e. licensing conditions).

Written Submissions to the Committee for Social Development's Call for Evidence

CEHOG highlights that there is **debate within the local government** sector regarding **whether every HMO should be licensed**. It points out that this approach could be resource intensive, suggests that licensing should be a properly targeted measure and should be undertaken entirely on a risk based approach.

In contrast, *Belfast City Council* welcomes the requirement for all HMOs to be licensed. It **expressed concern that if licensing was restricted only to certain 'higher risk' HMOs** (as is the case in England and Wales) then smaller HMOs would escape the requirement to be licenced. The Council states that in its experience smaller HMOs can be particularly problematic and thus **supports the inclusion of all HMOs in the mandatory licensing scheme**.

NILGA also agreed with the proposed licensing scheme stating that **licensing all HMOs would prevent councils from having to introduce a two tier system similar** to that in England. *NILGA* argue that an enhanced licensing scheme for HMOs will require **appropriate resources** to be transferred to councils to implement the new system.

Housing Rights strongly supported the mandatory licensing of HMOs but did recognise that there would be **cost/resource implications** associated with the implementation of the new system.

The *Chartered Institute of Housing (NI)* supports in principal the inclusion of managing agents on a licence. However, it notes that landlords may change agents several times over a short period of time and is concerned that **could be bureaucratic for both landlords and councils in terms of varying the licence to reflect this**. It suggests that the formation of **accredited managing agents**, and a requirement for HMO landlords to use such an agent, may be a solution to this issue. *The Royal Institute of Chartered Surveyors (RICS)* recommends that **managing agents should be required to be members of a recognised professional body**.

LANI seeks clarification as to what would happen if a landlord needed to change or add an agent during the term of the licence.

Clause 7: Points for Consideration

1. Is it appropriate to require all HMOs to be licensed? Would a two tier approach (as the case in England) be more appropriate?
2. Will councils be provided with sufficient resources to implement the new system? Has a costings exercise been carried out?
3. Should managing agents be required to be members of a recognised professional body? Would this address the potential bureaucracy involved in requiring a licence to be varied should HMO owners change managing agents?

Clause 8: Applications for HMO licence

Under this clause an application for an HMO licence must be made by the owner of the HMO. The council may only grant the licence if it is satisfied that:

- The occupation of the living accommodation as an HMO would not constitute a breach of planning control.
- The owner of the living accommodation, and any managing agent of it, are a fit and proper person.
- The proposed management arrangements for the living accommodation are satisfactory.
- The granting of the licence would not result in the overprovision of HMOs in the locality in which the HMO is situated.
- The living accommodation is fit for human habitation and is suitable for occupation as an HMO by the number of persons specified in the licence.

The procedural requirements relating to an application are set out in further detail in Schedule 2 of the Bill. Under Schedule 2, an application for an HMO licence must be in writing and in a form in which the council specifies. The application must include:

- the address of the property.
- the owner's name and address.
- if the owner is a business then the name of the organisation, the address of its main office or place of business, and the name and address of each of its directors or partners (or others involved in its management) is required.
- the name and address of any person (other than the owner) who has a relevant interest in the HMO (a relevant interest could include, for example, a mortgage).
- If there is to be a managing agent, the agent's name and address.
- The maximum number of persons who it is proposed will occupy the accommodation as their only or main residence.
- Any other information that the Department may by regulations require to be set out in the application.

The Bill proposes that a person who makes an HMO application must display a notice, on or near to the HMO in question, in "such a manner that the notice can be conveniently read by members of the public". The notice must be displayed for 21 days beginning with the date on which the application is made. The notice must state that an application for a HMO licence for the property has been made and the notice must contain, for example, the name and address of the owner and any agent (whether it be an individual or a business) and the maximum number of proposed persons that will occupy the accommodation as their only or main residence.

Schedule 2 also contains other provisions relating to the requirement on councils to notify other statutory authorities that an application has been made; representations in response to notices; the consideration of applications; the manner in which applicants are notified of the decision in respect of the licence; and the hearing of oral representations in respect of the application.

Written Submissions to the Committee for Social Development's Call for Evidence

This clause requires that an application for a licence should be made by the owner of the property. The *Chartered Institute of Housing (NI)* are concerned that this could give rise to **logistical issues if the owner resides outside of Northern Ireland** and has not appointed a local managing agent. It recommends that in such circumstances owners should be **required to appoint a local managing agent** or permit the council to appoint one on their behalf. *NILGA* are also keen to ensure that owners of HMOs living outside Northern Ireland are held accountable for non-compliant properties.

The Chartered Institute of Housing (NI) expressed concern with Schedule 2 of the Bill and questioned the **appropriateness of displaying the HMO owner's personal address** on the publication of an application on or near an HMO. It felt it would be more appropriate to display the notice inside the HMO, thus ensuring that tenants have access to this information and other interested parties could contact the council directly for this information.

LANI raised issues around the **displaying of notices**, the information that must be contained therein and the potential publication of notices in the press. *LANI* is concerned that if applicants' names and addresses are attached to such notices this could **comprise the safety and welfare of landlords and their agents**.

CEHOG, *NILGA* and the *councils* suggests than in addition to planning approval, **building control approval** should also be obtained prior to an application being made. They also suggest that the reference to **'fit for human habitation'** within the clause **could be open to interpretation** and recommends that this be replaced with "living accommodation should meet the statutory minimum standard for housing". They advocate the **adoption of the Housing Health and Safety Rating System (HHSRS)** (which applies to England) as a tool to regulate standards in the entire private rented sector.

NICEM also raise the issue of the **fitness standard** and recommends that the Bill is amended to introduce housing standards that are consist with practice in other parts of the UK.

The *Northern Ireland Federation of Housing Associations (NIFHA)* requests clarification as to how the new legislation will affect the **Housing Association Guide's Supported Housing Design Standards** (which include standards for HMOs). It requests that housing associations are consulted should any changes be made to the guide in relation to these standards.

Clause 8: Points for Consideration

1. What steps can be taken to ensure that owners of HMOs residing in other jurisdictions apply for a licence? Should they be compelled appoint a local managing agent to manage the property on their behalf? How can owners residing

outside Northern Ireland be held accountable for non-compliance with the licensing requirements?

2. Is it appropriate to require the owner to display their name and personal address on the application notice? Would it be more appropriate for the information notice to be displayed inside the property?
3. Should the Housing Health and Safety Rating System (HHSRS) be adopted as a tool to regulate standards in HMOs?
4. Will the new legislation affect the Housing Association Guide's Supported Housing Design Standards?

Clause 9: Breach of Planning Control

This clause provides that application for an HMO licence will be refused if the council feels that there has been a breach in planning control. Breach of planning control is defined in section 131 of the [Planning Act \(Northern Ireland\) 2011](#) as (a) carrying out development work without the required planning permission; or (b) failing to comply with any condition or limitation subject to which planning permission has been granted⁵⁷. The Bill's Explanatory and Financial Memorandum states that refusal for an HMO licence on this ground is treated slightly differently to refusal on other grounds. For example, the refusal must be made within 28 days of application and there is no appeal to the county court. However, if the applicant can demonstrate that there has been no breach of planning control, they may make a renewed application for no additional fee.

Written Submissions to the Committee for Social Development's Call for Evidence

CEHOG, NILGA, the councils and Housing Rights welcomed the link to planning control.

Belfast City Council believes that there should be Building Control approval granted prior to an application being made.

Clause 10: Fit and Proper Person Test

Under this clause, an owner of an HMO or an agent acting on their behalf, will not be granted an HMO licence if they fail to pass a "fit and proper person" test. The fit and proper person test is not unique to the proposed HMO regulatory framework for Northern Ireland; it is also used in the English, Scottish and Welsh HMO licensing schemes.

Clause 10 sets out matters which councils must have regard to in deciding whether an owner or a managing agent is a 'fit and proper person'. That is, whether the person has:

⁵⁷ Planning Act (Northern Ireland) 2011 www.legislation.gov.uk/nia/2011/25/section/131

- Committed any offence involving fraud or other dishonesty; violence; drugs; human trafficking; or a firearm⁵⁸.
- Committed an offence listed in Schedule 3 to the Sexual Offences Act 2003) (offences attracting notification requirements).
- Practiced unlawful discrimination in, or in connection with, the carrying on of any business.
- Contravened any provision of the law relating to housing, landlord or tenant law.
- Acted otherwise than in accordance with a code of practice approved under clause 63 (under clause 63 the Department for Social Development may make regulations for a code of practice that will set standards of conduct and practice to be followed with regard to the management of HMOs).

Additionally, the council can consider whether any associate or former associate of the owner or the agent has engaged in some of the conduct mentioned above if it appears to the council that this conduct is relevant as to whether a person is a fit and proper person.

In deciding whether a person is a fit and proper person the council must also have regard to:

- Any anti-social behaviour engaged in by that person; and
- That person's conduct with regards to any anti-social behaviour (i) engaged in by the occupants of any living accommodation of which that person is or was the owner or managing agent or (ii) adversely affected the occupants of any such accommodation⁵⁹.

If an owner or managing agent is a body (e.g. a company), the body will not be deemed as fit and proper if any of the following is not a fit and proper person – a director of the body; a partner of it; or any other person concerned in the management of the body.

A person that is subject to a disqualification notice (as set out in clause 38 of the Bill) is not a fit and proper person and will not therefore be granted an HMO licence. This clause provides a court with power 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.

In determining whether an applicant or their managing agent is a fit and proper person, Clause 10 enables the council to *“have regard to....any other matter which the councils considers to be relevant”*. The Department for Social Development states that in operating this provision councils will be required to provide a rationale for any decision and that these decisions need to be clearly documented for future audit purposes. The

⁵⁸ Within the meaning of Article 2(2) of the Firearms (Northern Ireland) Order 2004

⁵⁹ Anti-social behaviour is defined as (a) acting or threatening to act in a manner causing or likely to cause a nuisance or annoyance to a person residing in, visiting or otherwise engaging in a lawful activity in residential premises or in the locality of such premises; or (b) using or threatening to use residential premises for immoral or illegal purposes.

Department states that it intends to monitor the operation of the licensing system, including the fit and proper person test⁶⁰.

Written Submissions to the Committee for Social Development's Call for Evidence

CEHOG, *NILGA* and *councils* expressed support for this clause. However, they had some concerns **regarding the term "committed" an offence** rather than having been "convicted" of committing an offence. They requested clarity around spent convictions. They felt that the onus should be on the applicant to provide any necessary information specified. They further suggested that additional guidance is required relating to "any associate or former associate" engaging in the conduct highlighted in the clause.

LANI expressed **concern regarding the anti-social behaviour aspects of the clause**. It thought that the clause appeared to hold the landlord responsible for the anti-social behaviour of their tenants or other occupants in the property. It sought to draw the Committee's attention to a 2005 Judicial Review which *LANI* states concluded that a landlord can only be responsible for the conduct of the tenant's named on the tenancy agreement within the curtilage of the landlord's property.

NUS-USI felt that the fit and proper person test was an "**extremely important**" aspect of the Bill.

Housing Rights expressed support for the clause and welcomed its application to both owners and managing agents of HMOs. Believes that the inclusion of subsection 3(e) will allow **further acts to be defined as relevant within the code of practice** (i.e. that in deciding whether a person is fit and proper a council must have regard to whether that person has failed to act in accordance with the code of practice). It believes that that this code should be a statutory code.

The *Royal Institute of Chartered Surveyors (RICS)* recommends that the **code of practice** (as cited in clause 10 and 63) is **subject to consultation** to ensure that it is accepted by the sector. It emphasises that the clause does not contain a reference to **handling clients' money** and believes that managing agents should be required to demonstrate that they have sound arrangements in place for protecting clients' money including protection insurance. It suggests that *RICS* could be considered as an appropriate body to undertake the regulation of managing agents in Northern Ireland, suggesting that this arrangement would have the same benefits as statutory regulation.

Supporting Communities NI also supported the use of an appropriate fit and proper person test and suggests that **appropriate guidance and training**, if necessary, should be provided to ensure consistency of approach across all councils.

⁶⁰ Correspondence dated 14 October 2015 from the Department for Social Development to the Committee for Social Development.

With regards to the fit and proper person test, the Department for Social Development has stated that:

*“The registration scheme presently being administered by the NIHE does not provide any statutory mechanism for making sure that private landlords are good landlords. The introduction of a fit and proper person test means that private landlords will have to meet a certain standard before they can legally rent out property. It is envisaged the test will weed any bad landlords out of the system and improve the standards in HMOs and provide the tenant with extra protection”.*⁶¹

The Committee for Social Development expressed some concern that the legislation as drafted would only require councils to “have regard to” a number of issues when considering whether the person meets the fit and proper person test and that this determination would be made at the discretion of the council. In response, the Department stated that it considered that creating prescriptive lists of the types of offence would restrict a council from applying its discretion and carrying out a reasonable test. The Department further noted that the phrase “have regard to” is replicated in similar legislation in other jurisdictions⁶².

The use of ‘fit and proper person’ test in other contexts

The Department has highlighted that the application of a “fit and proper person” test is not unique to HMO licensing and is used in other forms of regulation. For example,

Waste Management Licences (DOE): The aim of the Waste Management Framework Directive is to ensure that waste is managed in a way that prevents harm to the environment and human health. There are provisions that allow DOE to determine if the person controlling the waste is a “fit and proper person” to do so. The fit and proper person test is comprised of three areas, i.e. that the person managing the waste must (1) not have been convicted of a prescribed offence; (2) that they must be technically competent; and (3) that the licensee must have adequate financial provision to discharge the obligations arising from the licence.

Taxi Operator’s Licence (DOE): In order to be licensed as a taxi operator, a person must be a “fit and proper person”. If a company or partnership applies for a licence they must prove that all individuals who make up that firm are fit and proper. In assessing an application for a licence the Driver and Vehicle Agency has a set of guidelines. The guidelines are not exhaustive or definitive and each application is considered on its merits.

Clause 10: Points for Consideration

⁶¹ Correspondence dated 14 October 2015 from the Department for Social Development to the Committee for Social Development.

⁶² Correspondence dated 14 October 2015 from the Department for Social Development to the Committee for Social Development.

1. What impact does the 2005 Judicial Review have on the anti-social behaviour provisions of the clause?
2. Should the Code of Practice be a statutory code?
3. Should there be provision in the clause to covering the handling of clients' money?
4. Will councils be provided with training and guidance on the use of the fit and proper person test?

Clause 11: Satisfactory management arrangements

This clause sets out factors that a council must have regard to when deciding whether management arrangements for the HMO are satisfactory. That is, whether any person proposed to be involved in the management of the HMO has (i) a sufficient level of competence; (ii) is a fit and proper person; and (iii) whether any proposed management structures and funding arrangements are suitable.

Written Submissions to the Committee for Social Development's Call for Evidence

CEHOG, NILGA and the *councils* recommend that **guidance is provided in relation to the assessment of a "sufficient level of competence"**. Similarly, *Housing Rights* felt that there was a need to give further consideration as to **how competency will be determined**.

Belfast Holyland Regeneration Association felt that Clause 11 stops short of securing **landlords' responsibility for addressing anti-social behaviour** and for **ensuring fair tenancy terms**. It proposes that as part of the test for satisfactory management arrangements there should be a review of tenancy agreement, i.e. on provisions of those agreements relating to unfair terms and anti-social behaviour.

College Park Avenue Residents Association similarly believes that clause 11 needs to **secure landlords responsibility for addressing the anti-social behaviour** of their tenants. It states that anti-social behaviour in HMOs is a **major issue for communities and for community cohesion**. It also recommends that anti-breaches of tenure (e.g. anti-social behaviour) must be processed against the manager of the property in cases where owner of the property lives outside the jurisdiction.

Both Associations felt that tenancy agreements for HMOs should be on a **similar footing to social housing agreements** which include provisions relating to security of tenure and managing anti-social behaviour.

Housing Rights suggests that consideration be given to the **completion of specific management training requirements**. It further noted that the Scottish Government are currently consulting on a statutory Letting Agent Code of Practice that must be adhered to before being admitted to a Letting Agent Register.

Clause 11: Points for Consideration

1. How will competency be determined? Will guidance be produced on this issue?

2. Should provision be made within the Bill to ensure that HMO tenancy agreements contain similar terms that social housing tenancy agreements in terms of security of tenure and managing anti-social behaviour?
3. Should there be a requirement for owners and agents to complete specific management training requirements?

Clause 12: Overprovision

The problems associated with HMOs are particularly acute in areas where there are high concentrations of HMOs, such as south Belfast. Under clause 12 it is proposed that councils, in considering whether the granting of a licence will result in the overprovision of HMOs in a locality, must have regard to the following:

- The number and capacity of licensed HMOs in the locality;
- The need for housing accommodation in the locality and the extent to which HMO accommodation is required to meet that need; and
- Such other matters that the Department may specify (by way of regulations).

It is for councils to determine the localities within its district for the purposes of this section.

A first time application for an HMO licence can be refused on the grounds of overprovision, an application to renew a licence cannot be refused on the grounds of overprovision.

Written Submissions to the Committee for Social Development's Call for Evidence

Belfast Holyland Regeneration Association recommends that there should be a **refusal to renew a licence in streets that comprise of over 30% of HMOs.**

Sans Souci Residents Association states that **overprovision is a major issue in south Belfast.** It is concerned that renewal licences are excluded refusal on the grounds of overprovision. It highlights that proposals for the creation of thousands of student bedspaces around Belfast City Centre will change the housing need profile in certain areas and therefore renewal licences should be considered.

CEHOG, NILGA and the *councils* recognise the need to control the number of HMOs in a given area and therefore welcome this clause. They seek to ensure that the provisions under this section run in parallel with **councils' new planning and community planning roles.** They are concerned that there may be **inconsistency in the application** of this section across council areas and wish to see **guidance that promotes a consistent approach.**

LANI state that there is already an HMO Subject Plan in place that restricts the number of HMOs in each street. It is concerned that this clause will permit councils to *override the Subject Plan.*

The Committee for Social Development felt that there was already an incomplete picture of existing HMO provision in Northern Ireland and expressed concern that this would make effective further planning difficult. The Committee sought a response from the Department as to how the proposed threshold limits prevent overprovision when there may not be a reliable starting point. In response, the Department stated that under the new regulatory arrangements, landlords must have a licence before they can legally operate. This may provide an improved means by which the number and location of HMOs can be determined. The Department also confirmed that it will liaise with councils on the detail of how HMO overprovision can be prevented and suggests that the most straightforward ways of addressing overprovision may be to include the introduction thresholds similar to those in operation in the HMO Subject Plan for Belfast⁶³.

Clause 12: Points for Consideration

1. Should licences be refused in streets that comprise of over 30% of HMOs?
2. Given that the development of student bedspaces around Belfast City Council may change the housing profile of areas with high concentrations of HMOs, should there be an option of refusing a renewal licence on the grounds of overprovision?
3. Is there potential, as suggested by LANI, for the provisions under this section to permit councils to override a Subject Plan?

Clause 13: Suitability of living accommodation for multiple occupation

In determining whether or not (for the purposes of Clause 8(2)(e)) living accommodation is (or can be made) suitable for occupation as an HMO for the specified maximum number of persons, the council must have regard to:

- The accommodation's location;
- The type and number of persons likely to occupy it;
- The safety and security of persons like to occupy it;
- The possibility of undue public nuisance;
- The minimum standards which must be met, which the Department by set by way of regulations (e.g. concerning issues such as ventilation, personal washing facilities, installations for the supply of water, gas, electricity etc.)

The Clause further states that councils may decide that the accommodation is not suitable for occupation (by the specified number of persons) even if the accommodation meets the standards⁶⁴.

⁶³ Correspondence dated 14 October 2015 from the Department for Social Development to the Committee for Social Development.

⁶⁴ The specified maximum number of persons means (a) the number of persons specified in the application as the proposed maximum for the accommodation; or (b) if the council decides to specify a lower number in the licence, that lower number.

Written Submissions to the Committee for Social Development's Call for Evidence

CEHOG, NILGA and the councils welcomed this provision but requested **clarity around some of the terms** used in the clause such as “undue public nuisance”, “type of persons” and “interior and exterior decoration”.

CEHOG, NILGA and the councils were concerned that there was an absence of **fire safety and means of escape** within the clause. They felt that the licensing of HMOs was an ideal opportunity to have a formal **Memorandum of Understanding on a regional basis with the Northern Ireland Fire and Rescue Service (NIFRS)**. This point was reiterated by *Belfast City Council* who requested that the Bill and any future guidance/regulations allow councils and the NIFRS to agree regional/local arrangements and protocols on the regulation and enforcement of fire safety in HMOs.

Sans Souci Residents Association states that there is a need to ensure that HMOs have **adequate basic amenities** and that if these standards were not adhered to then residents in the area experience problems such as the accumulation of waste in back alleys, bins stored outside front doors on footpaths. They felt that clause 13 was geared towards “cramming” the maximum number of people into an HMO.

Supporting Communities NI felt that the **standards of fitness had not been address in the Bill**. It believes that the current fitness standards used in Northern Ireland are outdated and recommends the **introduction of a Health and Safety Rating System (HHSRS)**, similar to that in operation in other jurisdictions.

Clause 13(2)(b) states that in determining whether living accommodation is, or can be made, suitable as an HMO, the council can take into consideration matters such as the “type and number of persons likely to occupy it”. The Committee for Social Development has queried the appropriateness of using the phrase “type” of person likely to occupy the HMO. In response, the Department for Social Development states that in order for a council to make a fully informed decision on the granting of an HMO licence a full picture of the potential of an HMO is needed including who the landlord intends to rent the property to e.g. students, older people, vulnerable adults etc.

The Committee for Social Development also questioned how “undue public nuisance” is defined. In response, the Department stated that the word “undue” before “public nuisance” is an indication that there are degrees of public nuisance, noting that HMOs are capable of creating some level of public nuisance but that not every such case ought to result in a licence being refused⁶⁵.

Clause 13: Points for Consideration

1. Will consideration be given to developing a Memorandum of Understanding between councils and the Northern Ireland Fire and Rescue Service which will set out

⁶⁵ Correspondence dated 14 October 2015 from the Department for Social Development to the Committee for Social Development.

regional/local agreements and protocols on the regulation and enforcement of fire safety in HMOs?

Clause 14: Licence conditions

Under this clause an HMO licence may include certain conditions (as a council considers appropriate) for regulating the management, use and occupation of the HMO; and its condition and contents. The conditions may include, for example, imposing restrictions or prohibitions on the use or occupation of particular parts of an HMO; taking reasonable and practical steps to prevent or reduce anti-social behaviour by persons occupying or visiting the HMO; conditions requiring certain facilities and equipment to be repaired and maintained; or conditions requiring work to be carried out to the property.

Conditions can also be imposed requiring the owner of an HMO or managing agent to attend training courses in relation to any code of practice approved under section 63 (Code of Practice). Provision is also made under this clause to permit the Department to specify in regulations conditions which must be included.

Written Submissions to the Committee for Social Development's Call for Evidence

Belfast City Council welcomes the inclusion of conditions that would require reasonable and practical steps to **prevent or reduce anti-social behaviour** by persons occupying or visiting the HMO. *Housing Rights* recommends that the Committee for Social Development reassure itself that with regard to anti-social behaviour provisions of the clause, **comprehensive advice** has been obtained by DSD with respect to the **Judgement** in *R (Boyle and Others) v Northern Ireland Housing Executive* [2005].

CEHOG, NILGA and the *councils* states that **standardised conditions will aid a consistent approach across councils**. *Belfast City Council* requested that **councils be given the flexibility to add conditions** to address specific concerns with an individual property or area.

Sans Souci Residents Association believes that the licensing conditions should also include **respect for neighbours and community** and that landlords should be required to provide tenants with **anti-social behaviour guidelines**. It also expressed concern that clause 14(5) and (6) could constitute a loophole⁶⁶.

⁶⁶ 14(5) states: " But an HMO licence may include a condition imposing a restriction or obligation on a person named in it (other than the owner or managing agent) only if that person has consented to the imposition of the restriction or obligation. 14(6) states : "An HMO licence may not include conditions requiring, or intended to secure, any alteration in the terms of any tenancy or other occupancy arrangement under which any person occupies the HMO."

Supporting Communities NI supports the conditions of the licence as outlined in the Bill and believes that the **application of sanctions where licensing conditions are breached should be suitably robust.**

The Committee for Social Development questioned the practicality of 14(2)(b) i.e. conditions requiring the taking of reasonable and practical steps to prevent or reduce anti-social behaviour by persons occupying or visiting the HMO. In response, the Department stated that this provision is in line with long-standing policy around tackling anti-social behaviour in housing. Illustrating this point, the Department stated that the Housing (NI) Order 1983 empowers social landlords to seek possession of a secure tenancy where “the tenant or a person residing in or visiting the dwelling house has been guilty of conduct causing or likely to cause a nuisance or annoyance to a person residing, visiting or otherwise engaging in a lawful activity in the locality”. The Department states that one of the most straightforward means for a landlord to achieve this would be to ensure that the statement of tenancy terms provided to tenants, covers expectations around the behaviour of tenants and visitors. Breaches of the statement can be used as grounds for a landlord to seek an order for possession through the courts⁶⁷.

Clause 14: Points for Consideration

1. Will councils be given the flexibility to add conditions to a licence if they feel it is necessary in order to address specific concerns with an individual property or area?
2. Should landlords be required to provide tenants with anti-social behaviour guidelines? How is, or can, respect for neighbours and communities be incorporated with the licensing conditions?

Clause 15: Temporary Exemption Notice

Under this clause a council is permitted to issue a temporary exemption notice if the owner of an *unlicensed* HMO applies for one. The owner must specify the steps to be taken to prevent the premises from being an HMO and the council must be satisfied that the owner intends to take these steps. If the council is satisfied that these steps have been taken then a “temporary exemption notice” will be issued for the HMO. An HMO is not required to be licensed during the term of the notice which is three months unless extended in exceptional circumstances.

Written Submission to the Committee for Social Development’s Call for Evidence

CEHOG, NILGA and the councils recommend that the notice **should not be valid for a period longer than 12 months in total**, i.e. inclusive of any extension (as per clause 16).

⁶⁷ Correspondence dated 14 October 2015 from the Department for Social Development to the Committee for Social Development.

Clause 16: Extension of temporary exemption notice

This clause makes provision to permit councils to extend a temporary exemption notice if it is satisfied that special circumstances exist. A notice can only be extended once, and only for up to three months.

Clause 17: Safety and security requirements

This clause specifies that a temporary exemption notice may require the HMO owner of HMO to carry out certain work in, or to, the HMO as the council considers appropriate for the purpose of improving the safety or security of the HMO's occupants during the period for which the notice has effect. If the council deems that works should be carried out, the notice must specify the nature of the work to be carried out and a date by which the work must be completed.

Written Submissions to the Committee for Social Development's Call for Evidence

NUS-USI states that there should be provisions in the Bill that make it mandatory for landlords to ensure that **electrical checks are carried out by a qualified electrician on an annual basis**. It suggests that the Committee should seek information from Electrical Safety First. *NUS-USI* further states that the Bill should place an emphasis on the need for the highest health and safety standards and that a strong message must be sent out that landlords will face significant legal recourse if they do not adhere to these standards. It recommends that the legislation makes it **mandatory for all HMOs to have adequate provision of smoke and carbon monoxide alarms**.

Clause 17: Points for Consideration

Should the Bill include provisions to require that HMOs must (i) have annual electrical safety check and (ii) have adequate provision of smoke and carbon monoxide alarms?

Clause 18: Revocation of temporary exemption notice

The clause provides that a council can revoke a temporary exemption notice if it is satisfied that the owner of an HMO has failed to comply with any requirement included in the notice.

There were no comments to the Committee's call for evidence on this clause.

Clause 19: Duration of HMO licence

Under this clause an HMO licence has effect for 5 years or a shorter period specified in the licence (which cannot be less than six months). The notice has effect from the date on which notice of the decision to grant the licence is served 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.

Written Submissions to the Committee for Social Development's Call for Evidence

Housing Rights requests that the Committee considers **reducing the duration of an HMO licence from five years to three years**, as is the position in Scotland. It feels that this is justified given the amount of 'wear and tear' that HMOs experience in comparison with other types of accommodation.

CEHOG, NILGA and the councils:

- Seek clarity on the **rationale for including a non-specified period**.
- Believe that there is a **requirement for guidance** on dealing with the commencement of the three month period within which the council must make a determination on an application. They suggest that this three month period should only commence once a council has received a full application including all supporting documents and the appropriate fee.
- Would welcome **formalisation of a process** where an application is deemed as being duly made.
- Seek clarity as to **whether another application fee would be required after the specified one year period** (i.e. in the case of a licence granted because the council did not come to a decision within the period required).

Clause 19: Points for Consideration

Should consideration be given to reducing the duration of an HMO licence to three years (as is the position in Scotland)?

Clause 20: Renewal of licence

This clause provides for the renewal of an existing licence. This must be made before the current licence ceases to have effect. The overprovision of HMOs in an area is not a ground for refusing the renewal of a licence.

Written Submissions to the Committee for Social Development's Call for Evidence

Belfast Holyland Regeneration Association states that overprovision of HMOs is a **major issue for areas such as south Belfast and objects to the exclusion of the overprovision test when renewing HMO licences**. Both the *Holyland Regeneration* and *College Park Avenue Residents Association* suggests that with the proposals for significant numbers of student bedspaces, the housing profile in areas with high concentrations of HMOs may change and therefore overprovision should be looked at when renewing licences.

Queen's University had no concerns with this clause in principle. However, it raises the issue of the potential **impact on, and protection afforded to, a tenant with a current tenancy agreement** should an HMO be sold or a licence not renewed.

Clause 20: Points for Consideration

1. Given that the development of student bedspaces around Belfast City Council may change the housing profile of areas with high concentrations of HMOs, should there be an option of refusing a renewal licence on the grounds of overprovision?
2. Has consideration been given to the impact on, and measures which could be taken, to protect a tenant with a tenancy agreement if an HMO licence is not renewed?

Clause 21: Application to renew – effect on existing licence

This clause specifies that where an application to renew a licence is made, the existing licence has effect until the date the new licence has been granted or (if the renewal application is refused) the date the current licence ceases to have effect. Slightly different rules apply if the refusal is on the grounds of a breach of planning control.

There were no comments to the Committee's call for evidence on this clause.

Clause 22: Variation of licences

Under this clause it is proposed to provide councils with the power to vary a licence in any of the following ways:

- Varying the number of persons who are authorised by the licence to occupy the HMO;
- Remove, add, or substitute the managing agent of the HMO; and/or
- Remove, add or vary any conditions included in the licence.

The council can vary a licence for its own reasons or at the request of the licence holder.

Written Submissions to the Committee for Social Development's Call for Evidence

CEHOG, NILGA and the councils welcome this provision but suggest that there should be a **fee payable on the application to vary a licence** to cover the costs incurred by councils. They further recommend that a "fit and proper person" test be applied in terms of any proposed changes to the management agent.

Clause 22: Points for Consideration

1. Will there be a fee payable on the application to vary a licence?

Clause 23: Revocation of licences

This section would provide councils with the power to revoke an HMO licence if it is satisfied that:

- The owner of the HMO, or any management agent of the HMO (whether or not named on the licence) is not a fit and proper person (as set out in clause 10).
- The management arrangements for the HMO are not satisfactory (as set out in clause 11);
- The HMO is not fit for human habitation;
- The HMO is not suitable for occupation (as set out in clause 13) by any number of persons and cannot be made suitable by varying the licence to include conditions (as set out in clause 14);
- The owner or managing agent of the HMO (or any other person named on the licence as a person on whom a restriction of obligation is imposed) has committed a serious breach of a condition of the licence; or
- There has been more than one breach of the conditions of the licence.

This clause also specifies that it does not matter if the council has taken any other action or criminal proceedings have been commenced, the licence shall be revoked.

Written submissions to the Committee for Social Development's Call for Evidence

CEHOG, NILGA and the councils welcome this provision but request that **guidance is provided**. They also recommend the development of a mechanism for **bringing to the attention of councils any relevant matters that may necessitate a revocation** e.g. anti-social behaviour, or a change in licensing conditions.

Housing Rights recommends that **due consideration be given to any unintentional consequences for occupants** resulting from a revocation of an HMO licence (e.g. occupants could potentially be made homeless). It recommends that DSD should, as a matter of priority, consult with stakeholders to consider the level of assistance that could be provided in relation to rehousing options for those unable to remain in an HMO in such circumstances.

The *Northern Ireland Human Rights Commission* also highlights the **potential for the eviction of tenants** resulting from the revocation of a licence. It draws the Committee for Social Development's attention to the Committee on Economic, Social and Cultural Rights (CESCR) ICESCR General Comment that "[a]ppropriate procedural protection and due process are essential aspects of all human rights but are especially pertinent in relation to a matter such as forced evictions." In addition, ICESCR General Comment 7 on the right to adequate housing, the CESCR advises "[w]omen, children, youth, older persons, indigenous people, ethnic and other minorities, and other vulnerable individuals and groups all suffer disproportionality from the practice of forced eviction".

The Committee for Social Development raised two issues with the Department in relation to this clause:

- If an owner of or a managing agent has their licence revoked, would a determination also be made at that point that they are not a fit and proper person? And
- If so, could this lead to their licences being revoked for other HMOs they own or manage now and/or in the future.

In response, the Department for Social Development states that an owner deemed no longer a fit and proper person may result in all licences being revoked. It further states that it is possible for an owner of an HMO who has their licence revoked to employ a property manager (who will be the person named on the licence) to manage the HMO on their behalf.

Clause 23: Points for Consideration

1. By what mechanism will councils communicate with one another with regards to matters that are relevant to revocations? For example, if an owner who owns multiple HMOs across different council areas and has one of those licences revoked, by what means will councils share this information with one another?
2. What assistance will be put in place for tenants who become homeless as a result of a licence being revoked?

Clause 24: Variation and revocation – procedure

This clause introduces *Schedule 4*, this schedule sets out the procedure for varying or revoking a licence.

Written Submissions to the Committee for Social Development’s Call for Evidence

CEHOG, NILGA and the councils welcome this provision but request that **guidance be provided to inform procedure on the variation and revocation of a licence** in line with Schedule 4.

Clause 25: Restriction on applications

Clause 25 contains provisions to prevent a council from considering certain applications. For example:

- If an application was refused on the grounds that a person was not a fit and proper person, the council may not consider an application from that person (for any accommodation) within a year of the refusal.
- If an application was refused on a ground relating to the accommodation (where the granting of a licence would create a situation of overprovision or where the accommodation is not habitable or suitable for use as an HMO), the council may not consider an application (from anyone) in relation to the accommodation, within the

same period. This restriction does not apply if the council is satisfied that there has been a material change of circumstances, e.g. if a physical feature which made the property unsuitable for licensing has been altered.

Written Submissions to the Committee for Social Development's Call for Evidence

Housing Rights expressed support for this clause but believes it would be helpful to consider further mechanisms that would be necessary to ensure that **consistency of decisions will be achieved in relation to restrictions on applications**. It also recommends that consideration is given to **developing information sharing arrangements across all 11 councils**, e.g. where a landlord owns multiple properties in a number of council areas and has been held as a not a fit and proper person in one council area.

Clause 25: Points for Consideration

Where an landlord owns multiple properties across a number of council areas, what information sharing arrangements will be put in place to ensure that, where necessary, information on restrictions on applications is shared across council areas?

Clause 26: Joint licence holders

Under this clause an application for a licence may be made by one owner or jointly by more than one. Any joint licence holders can request to be removed from the licence at any time provided one owner continues to hold the licence. Where a licence is varied to reflect the removal of one or more of the joint licensees, the council must serve a copy of the licence as varied on each joint licensee and on each person who was a joint licensee before the variation.

There were no comments from with written submissions on this clause.

Clause 27: Surrender of HMO licence

Under this clause the holder of an HMO licence may surrender the licence by giving notice to the council. This notice is to be in such a form as the council may specify.

Written Submissions to the Committee for Social Development's Call for Evidence

CEHOG, NILGA and the councils would like to see the development of a **mechanism to prohibit a management agent/company from walking away from their obligations**.

Clause 28: Change of ownership – effect on licence

Under this clause a licence cannot be transferred to another person. Where there is a transfer of ownership of a licensed HMO and as a result of the transfer there is a new owner (or more than one owner) the licence ceases to have effect on the date of the transfer.

Written Submissions to the Committee for Social Development's Call for Evidence

A number of respondents **questioned whether terminating a licence on the date of transfer to new ownership was too inflexible** and were concerned about the potential impact this could have on landlords and tenants.

The *Chartered Institute of Housing (NI)* suggests that licences should **cease to have effect a reasonable period of time after the date of transfer** to allow a new owner time to apply for a licence. It also suggests that the licencing requirement could be **flagged up at the conveyancing stage** to ensure a quicker licensing turnaround time.

The *Royal Institute of Chartered Surveyors (RICS)* felt that this clause was **"unfeasible"** and that during market transactions a purchaser usually requires some certainty of continuity of the HMO status. It suggests that an alternative would be for the new owner to provide their details within 14 days of the date of transfer and that the existing licence be amended if found to be satisfactory.

LANI feels that this clause is "unworkable" and suggests **a bridging period of around six months** for the new owner to obtain a licence. It believes that there is no reason why the new owner could not be registered immediately on the existing licence subject to the fit and proper person test.

CEHOG, NILGA and the councils recommends that **a new application must be subject to the appropriate licensing fee.**

LANI questioned whether councils would retain the unexpired portion of the licence fee upon transfer. An *ex-NIHE HMO manager* recommends that when the licence ceases to have effect the **unexpired portion of the licence fee should be refunded.**

Queen's University questions the **impact on, or protection afforded to, tenants (particularly students) with a current tenancy agreement** should an HMO be sold and/or a licence not renewed.

The Committee for Social Development raised a number of issues with the Department regarding this clause. The Committee requested clarification as to the status of the property during the application period (assuming the new owner intended to apply for an HMO licence). In response the Department stated that if the new owner submitted a licencing application the onus would be on councils to arrange for an immediate inspection.

The Committee further questioned whether the property would be regarded as an unlicensed HMO and requested clarification as to whether the new owner would be subject to enforcement proceedings. The Department stated that where the change of ownership involved a vacant HMO there would be no issue as the purchaser would need to obtain a licence before they could legally operate as an HMO. However, the Department acknowledges that where the sale or change of ownership involved sitting tenants the issue becomes more complex.

In terms of a transition period to facilitate the application process, the Department states that⁶⁸:

“As the sellers’ licence ceases to have effect upon them relinquishing the property, the purchaser will be required to make arrangements to ensure that their new HMO licence comes into effect on the same day (i.e. date of completion of the sale of the house). Whilst this may seem an onerous obligation to place upon the purchaser, the time frame of a three month turnaround for an application to be processed by the council ties in with the timescale for the sale of a house. This will require the purchaser to start the application far enough in advance to allow them to be licensed upon completion of the sale. Therefore if all parties comply with the licensing protocols there should be no cross-over or transitional period where the property is tenanted but not licensed. If the purchaser does not obtain a licence in time, and takes steps to operate the HMO in the absence of one, they will be in breach of operating an HMO without a licence and will face the associated enforcement action. Once again guidance will be provided to councils on the operation of this aspect of the Bill.”

Clause 28: Points for Consideration

1. Could flexibility be provided in the Bill to allow a longer bridging period to allow the new owner additional time to apply for a licence?
2. If a property transfers to a new owner, will the unexpired portion of the licensing fee be refunded to the former owner of the property?
3. What measures can be put in place to protect or assist sitting tenants should a licence not be granted upon change of ownership?

Clause 29: Death of sole licence holder – effect on licence

Under this clause, where a sole licensee dies, the HMO licence is to be treated as being held, from the date of death, by the licensee’s “personal representatives” (the Bill’s Explanatory Memorandum identifies the personal representative as the person’s executor). However, the licence will cease to have effect three months after that date. The council can, upon application of the personal representatives, extend this period if

⁶⁸ Correspondence dated 14 October 2015 from the Department for Social Development to the Committee for Social Development.

the council considers that it is reasonable to do so for the purpose of winding up licensee's estate.

Written Submissions to the Committee for Social Development's Call for Evidence

CEHOG, NILGA and the councils welcomes the **flexibility to extend the licence** as the council deems reasonable.

An *ex-NIHE HMO Manager* recommends that the **fees linked to the unexpired portion of the licence is refunded** to the beneficiary of the licence holder's estate.

LANI feel the clause is "unworkable" stating that probate often takes longer than three months. It suggests that it would be more appropriate if the **time period was three months after the granting of probate**.

Clause 29: Points for Consideration

Will the unexpired portion of the licensing fee be refunded to beneficiary of the licence holder's estate?

PART 3 OF THE BILL – ENFORCEMENT OF LICENSING REQUIREMENTS

Part 3 of the Bill is comprised of 11 clauses and deals with the enforcement of licensing requirements. It includes the creation of a number of criminal offences and fixed penalty notices. For example, in respect of operating an HMO without a licence; acting as an agent for an HMO which is not licensed; allowing an HMO to be occupied in excess of the number of persons authorised on the licence; breaching a condition of a licence; or representing an HMO as licensed when it is not.

Clause 30 – Unlicensed HMO

This clause creates a number of criminal offences and has implications for both owners and managing agents of HMOs:

- The *owner* of an HMO commits an offence if (i) the HMO is required to be licensed (as per section 7 of the Bill); and (ii) the owner does not have a "reasonable excuse" for not having a licence. This issue of "reasonable excuse" is covered in *clause 34* of the Bill.
- An *agent* commits an offence if an HMO that requires a licence is not licensed and that agent permits or facilitates the occupation of the HMO and the agent does not have a "reasonable excuse" for doing so.
- The *owner* of an HMO commits an offence if the HMO is required to be licensed and is not licensed and they instruct an agent to act in relation to the property.

This clause sets out the fines that a person guilty of an offence may be liable (on summary conviction). In addition to the criminal penalty, an owner who does not have a licence (when required to do so) or a person who acts as an agent for an HMO which is unlicensed (when it is required to be) may also be subject to a further fine of up to £50 for every day or part of a day after conviction on which the HMO is required to be licensed but is not licensed. There are no daily fines applicable if an owner authorises an agent to act on their behalf.

Offence	Location in Bill	Criminal Penalty (subject on summary conviction)	Daily Fine
Unlicensed HMO: Owner	Clause 30 (1)	A fine of up to £20,000	Daily fine of £50
Unlicensed HMO: Agent	Clause 30 (2)	A fine of up to £20,000	Daily fine of £50
Unlicensed HMO: Owner authorising a person to act on their behalf	Clause 30 (3)	A fine of up to £10,000	N/A

Written Submissions to the Committee for Social Development Call for Evidence

Belfast Holyland Regeneration Association seeks **effective enforcement** of the licensing requirements including the licensing conditions. It believes that the penalties proposed under clause 30 (and also clauses 31-33) **may be disproportionate to the level of mismanagement and non-compliance** given that some HMOs can be particularly hazardous, potentially resulting in injury or death.

CEHOG, NILGA and the councils welcome the **inclusion of agent responsibility** but seeks guidance on certain terms within the clause such as “reasonable excuse” and guidance on the types of information that would be required as proof of non-compliance.

NUS-USI states that this is **one of the most important aspects of the Bill** in terms of putting in place a strong deterrent to unlicensed HMOs. It would like to see **significant resources allocated to verifying that properties are appropriately licensed** and that they meet the appropriate standards. It also states that sufficient resources must also be dedicated to the enforcement of the legislation.

Clause 30: Points for Consideration

1. Are the penalties proportionate to the offence?
2. Will sufficient resources be dedicated to enforcing the legislation and sanctioning non-compliance? Will the licensing fee cover the costs associated with enforcement?

Clause 31: Exceeding licensed occupancy or breach of licence conditions

This clause provides that the owner or agent commits an offence if the number of persons occupying a licensed HMO exceeds the number authorised by the licence and (i) the owner or managing agent has permitted or facilitated the excessive occupation; or (ii) the owner or agent either knows, or ought to “reasonably” know, that the HMO is overoccupied and has failed to take reasonable steps ensure that the property is not overoccupied.

An owner, agent or any other person who is named in the licence will also commit an offence if they breach a licensing condition and do not have a “reasonable excuse” for breaching the condition.

The owner or agent commits an offence if any person (e.g. those not named in the licence) breaches a condition and they (i) either permit the breach or did not take reasonable steps to secure that the condition was not breached; and (ii) the owner or agent does not have a “reasonable excuse” to for the breach.

The following penalties and fines (subject to summary conviction) are applicable under this clause:

Offence	Location in Bill	Criminal Penalty (subject on summary conviction)	Daily Fine
Breach of occupancy specified in licence	Clause 31 (1)	Up to £20,000	£50
Breach of licensing conditions: owner/agent	Clause 31 (2)	Up to £10,000	N/A
Breach of licence: person not named on licence (owner or agent liable)	Clause 31 (3)	Up to £10,000	N/A

Clause 32: Untrue claims that an HMO is licensed

Under this clause, an owner or agent of an HMO commits an offence if the person (i) claims that an HMO is licensed at a time when it is not licensed; and (ii) does not have a reasonable excuse for making that claim.

The following penalty (subject to summary conviction) is applicable in these circumstances:

Offence	Location in Bill	Criminal Penalty (subject on summary conviction)	Daily Fine
Person representing an HMO as licensed when it is not	Clause 32	Up to £10,000	N/A

Written Submissions to the Committee for Social Development's Call for Evidence

Respondents highlighted the importance of **adequate resources to ensure the verification of licensed HMOs and for enforcement** when non-compliance has been identified.

Residents groups are keen to **ensure that penalties reflect the seriousness of the breaches** of the legislation.

NUS-USI felt that this clause was particularly important as people living in HMOs may **be led to believe that their accommodation is licensed** and meets all the appropriate standards when in reality it may be unlicensed and does not meet those standards.

Clause 30: Points for Consideration

3. Are the penalties proportionate to the offence?
4. Will sufficient resources be dedicated to enforcing the legislation and sanctioning non-compliance? Will the licensing fee cover the costs associated with enforcement?
5. What steps could be taken to encourage, or assist tenants, in checking whether a property is legitimately licensed?

Clause 33: Agents not named in licence

This clause makes it an offence for an owner of a licensed HMO to authorise an agent to act in relation to an HMO if that agent is not named in the licence.

It also makes it an offence for a person to act as an agent in these circumstances (if they do not have a reasonable excuse for doing so).

The following penalties (subject to summary conviction) are applicable in these circumstances):

Offence	Location in Bill	Criminal Penalty (subject on summary conviction)	Daily Fine
Agent operating but not named on licence (owner liable)	Clause 33 (1)	Up to £10,000	N/A
Agent operating but not named on licence (agent liable)	Clause 33 (2)	Up to £10,000	N/A

Written Submissions to the Committee for Social Development's Call for Evidence

LANI suggests that this clause presents a problem in a case where a landlord wishes to change agents or appoints an agent where there was none previously appointed. It seeks clarification on the **procedure for changing to a new agent**, if there will be **costs attached to this**, and **how long it will take**. It feels that this clause is “wholly unworkable”.

Clause 34: Reasonable Excuse

This clause sets out examples of circumstances in which the owner of an HMO has a “reasonable excuse” for not actioning a number of requirements outlined in the legislation (e.g. for failing to have an HMO licence when required to do so). Although it sets out a number of circumstances in which a reasonable excuse may apply, there is flexibility within this clause for other circumstances to be considered.

In terms of a failure to obtain a licence, the owner will have a “reasonable excuse” for not doing so if:

- An HMO licence held by the owner in respect of the HMO has been revoked; and
- The owner has taken reasonable steps to secure that the living accommodation ceases to be an HMO which requires to be licensed; but
- Despite having taken those steps, the owner is unable to prevent the property from being an HMO without breaching the terms of tenancy or other occupancy arrangements.

In terms of breaching a licensing condition, the owner will have a “reasonable excuse” for non-compliance if:

- They have taken reasonable steps to ensure that the condition is not breached; and
- Despite having taken those steps, the owner cannot secure compliance with the conditions without breaching the terms of a tenancy or other occupancy arrangement.

Written Submissions to the Committee for Social Development’s Call for Evidence

Housing Rights acknowledges the difficulty in the drafting of the term “reasonableness”. However, *Housing Rights*, *CEHOG*, *NILGA* and *the councils* identified the **need for guidance on this issue**.

Clause 35: Power to require rectification of breach of conditions

Where a council is satisfied a condition in an HMO licence has been breached and the breach is ongoing or has not been rectified, or where a council feels that a condition in an HMO licence is likely to be breached, this clause permits a council to serve the

owner of an HMO with a “rectification notice”. A rectification notice will require the owner to take action to rectify the breach or prevent it from happening in the first place. The rectification notice may specify that particular works to the property are carried out.

The rectification notice must specify a date by which action must be taken and different dates may be specified for different actions. The council must also send a copy of the rectification notice to the occupants of the HMO.

Written Submissions to the Committee for Social Development’s Call for Evidence

The *Northern Ireland Fire and Rescue Service* seek clarification as to whether a council can issue a **rectification notice that relates to fire safety measures**.

Clause 36: Revocation of rectification notice

Under this clause a council must revoke a rectification notice if it is satisfied that the owner has complied with the requirements in the notice. The notice can either be revoked upon application by the owner of the property or on the council’s own initiative. If the owner applies for the notice to be revoked but the council refuses this request, they must inform the owner of the refusal.

There were no comments in the written submissions in relation to this clause.

Clause 37: Failure to comply with a rectification notice

This clause provides that the owner of the HMO will commit an offence if they fail to take the action required in the rectification notice by the date specified in the notice.

The following penalty (subject to summary conviction) is applicable for non-compliance:

Offence	Location in Bill	Criminal Penalty (subject on summary conviction)	Daily Fine
Failure to comply with a rectification notice	Clause 37 (1)	Up to £10,000	N/A

Written Submissions to the Committee for Social Development’s Call for Evidence

NUS-USI welcomes this clause but states that is crucial that any owner that fails to comply with a rectification notice **there should be significant penalties**.

Clause 38: Revocation orders and disqualification orders

This clause provides a court with the power to (i) revoke an HMO licence; (ii) disqualify a convicted owner from holding an HMO licence; and (iii) disqualify a convicted

managing agent from being able to act as a managing agent in relation to any HMO. If the conviction relates to a body, the court may disqualify any director, partner or other person concerned in the management of the body from holding an HMO licence or managing an HMO.

Written Submissions to the Committee for Social Development's Call for Evidence

CEHOG, NILGA and the councils would like consideration to be given to **developing a template for disqualification and revocation orders** and a **mechanism to liaise with the courts** regarding the detail required in such orders.

Clause 39: Revocations and disqualifications – appeals

This clause provides that a person can appeal against a revocation or disqualification order. The court which made the order may suspend it pending appeal.

Written Submissions to the Committee for Social Development's Call for Evidence

CEHOG, NILGA and the councils request that clarity is provided as to **whether temporary exemption matters apply while an appeal is ongoing**.

Clause 40: Discharge of disqualification orders

This clause specifies that the court which made a disqualification order may discharge the order with effect from a date as the court may specify. A discharge is to be made on application of the person disqualified. No application can be made during the first year for which a disqualification order has effect. A discharge will not be made unless the court is satisfied that there has been a change in circumstances which justifies the discharge.

There were no comments from the written submissions on this clause.

PART 4 OF THE BILL: STANDARDS OF HOUSING

Part 4 of the Bill consists of 21 clauses. It covers, amongst other issues, the definition of overcrowding; sets a room and space standard for HMOs; and makes provision to permit councils to serve an "overcrowding notice" where a council believes that an HMO is, or is likely to become, overcrowded.

Clause 41: Definition of overcrowding

Under this clause an HMO is defined as overcrowded when the number of persons who sleep in the property contravene either the “room standard” (clause 42) or the “space standard” (clause 43).

Written Submissions to the Committee for Social Development’s Call for Evidence

College Park Avenue Residents Association states that there is currently overcrowding, often in small houses, particularly those that house families from new communities. It also claims that many landlords who rent to such families are **not on the landlord register**.

An *ex-NIHE HMO manager* expressed concern about the **status of properties that have been converted into flats** and that the definition of overcrowding would enable more unscrupulous landlords to take advantage of this situation (particularly in relation to ethnic minority families) in order to maximise profits. He expresses concern that removing such properties from regulation could potentially have an adverse impact on local communities.

Housing Rights supports the revised statutory definition of overcrowding drawing attention to the Rugg Review of the Private Rented Sector which highlighted that overcrowding is related **to public health issues** and one of the **most significant risk factors in HMO safety was overcrowding**.

The Committee for Social Development, in correspondence with the Department for Social Development, highlighted that overcrowding is also an issue outside the HMO (i.e. in other housing tenures). It asked whether the Department is content that there is “no gap that could be bridged through this legislation”. The Department responded by stating that environmental health legislation already deals with the impact of overcrowding across all housing tenures. It points out that overcrowding which is prejudicial to health or causes a nuisance is defined as a “statutory nuisance” and that councils have a number of powers and duties under the legislation for dealing with statutory nuisances⁶⁹.

Clause 42: The room standard

This clause provides that the room standard will be contravened when the number of people who sleep in the HMO and the number of rooms available as sleeping accommodation are such that any person aged 13 or over must sleep in the same room as:

- Any person of the opposite sex who is also aged 13 or over; or

⁶⁹ Correspondence dated 14 October 2015 from the Department for Social Development to the Committee for Social Development.

- A couple (e.g. two person who are married to each other or in a civil partnership or living together in an equivalent relationship).

A room is defined as sleeping accommodation if it is of a type normally used either as a bedroom or as a living room.

Written Submissions to the Committee for Social Development's Call for Evidence

Belfast City Council requests that consideration be given to **extending the room standard across the entire private rented sector**.

A number of respondents **questioned the rationale behind age limit of age 13 and over**. *Housing Rights* pointed out that currently Article 76 of the Housing (NI) Order 1992 specifies a limit as over the age of 12. *Housing Rights* does not support this change in age limit. Other respondents stated that in England the age threshold is over the age of 10.

Housing Rights suggests that there is merit in **harmonising the room standard set out in other sectoral guidance** e.g. the Housing Selection Scheme and Housing Benefit regulations each applies different criteria with regards to the age limit for sharing.

The *Northern Ireland Council for Ethnic Minorities (NICEM)* highlights that overcrowding is an issue that **particularly affects the BME community** due to factors such as the low uptake in housing benefit; the prevalence of low income amongst the BME communities; and the overrepresentation of BME groups in the private rented sector.

Clause 42: Points for Consideration

1. What is the rationale behind placing the room sharing threshold at 13 years old and above when in other jurisdictions the age threshold is lower than that proposed for Northern Ireland?
2. What steps will be taken to monitor the impact of the room standard on the Black and Minority Ethnic community?

Clause 43: The space standard

The space standard will be contravened if the number of people who sleep in the HMO exceeds the permitted number for that HMO. The space standard is quite technical and relates to the amount of floor space for each person sleeping in the property; the age of the person and the type of room (e.g. bedroom, living room, kitchen).

The Committee for Social Development expressed some concern about the level of detail provided in clause 43 (for example, this clause contain a number of tables detailing the floor area of various rooms and the permitted number in that room). The Committee inquired as to whether regulations were a more appropriate place for such

level of detail suggesting that moving such detail into regulations would help “future proof” the legislation. In response the Department stated that there is no provision in the Bill to have the detail provided in Clause 43 put into regulations. The Department also stated that it had previously received criticism from the Social Development Committee that not enough detail was included in primary legislation. It stated that the policy intent when drafting the Bill was to make it as clear and comprehensive as possible. Expanding on this issue the Department stated that:

“In bringing forward the space standards from the current NIHE regime, we examined where would be the most appropriate place to locate the detail. The space standards are currently contained within non-statutory guidance within the NIHE HMO registration scheme, meaning they are not legally enforceable and instead act as more of a general guide. To ensure the space standards were enforceable under the new licensing scheme, DSD felt it was vitally important that they were contained somewhere within the legislation. In having the detail within the primary legislation DSD states that it ensures transparency and clarity with this important aspect of the scheme. Precedent for this has already been set in Scotland where the same level of detail, in relation to the space standards, is located in the primary legislation (Section 137 of the Housing (Scotland) Act 1987”⁷⁰.

Clause 44: Overcrowding notices

Where the council believes that the HMO is overcrowded or is likely to become overcrowded this clause provides that councils can issue an “overcrowding notice”. At least seven days before issuing an overcrowding notice the council must notify the owner or the managing agent of the HMO that it believes the property is or is likely to become overcrowded along with the grounds for that belief. The council must invite the person to whom this notice is served to make representations about the proposal to issue an overcrowding notice.

The overcrowding notice will be served on the owner of the property and the managing agent; the council must also send a copy of the notice to the occupants of the HMO.

There were no comments from respondents specifically relating to this clause.

Clause 45: Contents of overcrowding notice

Under this clause, an overcrowding notice must state, for each room in the house (i) the permitted number of persons for that room (ii) or that the room is unsuitable for occupation as sleeping accommodation. The notice must also contain information on

⁷⁰ Correspondence dated 14 October 2015 from the Department for Social Development to the Committee for Social Development.

the requirements to overcrowding generally (as set out in clause 46) or the requirement not to permit new residents (as set out in clause 47).

There were no comments from respondents specifically relating to this clause.

Clause 46: Requirement as to overcrowding generally

Clause 46 requires that the terms of the overcrowding notice must not be breached by allowing an unsuitable room to be occupied as sleeping accommodation and that the room standard must not be contravened.

The Bill's explanatory memorandum states that a notice including this requirement can have the effect of requiring the owner of an HMO to reduce the occupancy of the house immediately, for example, by terminating a tenancy.

Written Submissions to the Committee for Social Development's Call for Evidence

Housing Rights believes that due consideration should be given to the **unintentional adverse consequences this could have for tenants, i.e. people could potentially become homeless**. It recommends that DSD, as a matter of priority, consults with stakeholders to **consider the level of assistance** which could be provided in relation to rehousing options for those unable to remain in the property.

Clause 46: Points for Consideration

What measures should be taken to assist tenants who could potentially become homeless as a result of an overcrowding notice?

Clause 47: Requirement not to permit new residents

Clause 47 is very similar in its effect to clause 46, except that it covers occupation by new residents i.e. anyone not resident in the HMO when the notice was served. This allows the existing situation to continue, even if the house is "overcrowded".

Clause 48: Notice requiring further information

This clause is one of the more contentious aspects of the Houses in Multiple Occupation Bill. This clause permits a council that has issued an overcrowding notice to also issue an "information notice". An information notice is a notice that requires the person on whom it is served to supply the council with a statement giving all or any of the following information:

- The number of individuals who are (on a date specified in the notice) occupying any part of the HMO as sleeping accommodation.
- The names of those individuals.
- The number of households to which the individuals belong.
- The relationships between the individuals and the household to which each individual belongs.
- The rooms used by the individuals and households respectively.

The statement must be provided in writing and within seven days of the date of the notice or a longer period if the council specifies this in the notice. The information notice may be combined with, or issued after, the overcrowding notice.

According to the Bill's Explanatory Memorandum this information may be used to determine whether an overcrowding notice has been breached, but may not be used in criminal proceedings against the person providing the information.

Written Submissions to the Committee for Social Development's Call for Evidence

The *Chartered Institute of Housing (CIH)*, whilst acknowledging that tenants are a vital source of information in establishing whether a property is overcrowded, has some concerns regarding the implications of this clause. It recommends that councils ensure that the **notice is received and understood** by HMO occupants taking into consideration issues such as **language, literacy and visual impairment**. CIH (NI) believes that it is inappropriate for an occupants' failure to provide information to constitute a criminal offence.

The *Northern Ireland Council for Ethnic Minorities (NICEM)*, commenting on both clauses 48 and 49 suggests that there is potential for tenants, particularly **BME tenants, to be unfairly and disproportionately punished for failing to provide information**. It identifies a number of reasons by **BME occupants may be reluctant or unable to provide the information** requested, i.e. some occupants:

- May be unable to understand an information notice or unable to provide complex information and may require language support.
- May not understand the concepts of households or occupants.
- May fear government authorities (a fear potentially acquired in their home countries) which may prevent them from providing information.
- May fear providing information on their identity or living conditions in case this results in punitive action being taken by statutory authorities.
- May fear eviction or be reliant on an exploitative landlord because of their poor language skills and lack of knowledge of the UK housing system.

NICEM are concerned that some of the reasons why BME occupants may be unable to provide information will not be accepted as a “reasonable excuse” particularly if they are based on occupants’ fears.

Clause 48: Points for Consideration

1. What steps will be taken to ensure that the person on whom the notice is served understands that notice (i.e. taking into consideration issues such as literacy, language, disability)?
2. NICEM has stated that BME occupants may be particularly reluctant or find it particularly difficult to provide the information requested. What steps will be taken to support BME communities with regards to the provision of information?

Clause 49: Information notice – supplementary information

This clause provides that a person will commit an offence if they refuse or fail to provide information as requested by an information notice and do not have a reasonable excuse for doing so.

A person will also commit an offence if they provide information in response to an information notice and that information is false or misleading.

The penalty for this offence (on summary conviction) is as follows:

Offence	Location in Bill	Criminal Penalty (subject on summary conviction)	Daily Fine
Failure to comply with an information notice	Clause 48	Up to £500	N/A

Written Submissions to the Committee for Social Development’s Call for Evidence

CEHOG, NILGA and the councils requests guidance on the term “misleading” in this clause.

Clause 50: Suitability Notice

This section applies where a council determines that an HMO is not suitable for occupation by the number of people whom the council knows, or believes, to be occupying the property. In this instance the council may issue a “suitability notice”.

This section also states that a council may decide that an HMO is not suitable for occupation by a specified number even if it does meet the standards.

Written Submissions to the Committee for Social Development’s Call for Evidence

The *Chartered Institute of Housing* (NI) and the *Northern Ireland Council for Ethnic Minorities* (NICEM) both had an issue with section (4)(b). This section of the clause states that a council may decide that an HMO is not suitable for occupation by a certain number of occupants even if it does meet the standard. CIH (NI) and NICEM would like to see this provision removed from the Bill as both bodies believe it **creates uncertainty for HMO owners and investors** and **presents ambiguity for councils**. NICEM believes this provision places tenants in a vulnerable position.

CEHOG, NILGA and the councils request that **guidance is provided on clause (50)(3)(b)** i.e. which refers to councils deciding that a property is not suitable for occupation by the number of people residing in the property because the HMO falls short of building regulations.

CEHOG, NILGA and the councils also request that **guidance is provided on the circumstances in which councils would revoke a suitability notice**, i.e. where there have been changes to a property after the licence was issued.

Clause 50: Points for Consideration

What is the rationale for the provision that a property may be deemed not suitable for occupation even if it meets the required standards?

Clause 51: Contents of a suitability notice

The suitability notice must specify what the council considers to be the maximum number of people that the HMO can be occupied by. The notice must contain the “general occupancy requirement” or the “new residents’ occupancy requirement” (as set out in clause 52). The notice may also contain a statement of remedial work that must be carried out (as set out in clause 53).

If a licensed HMO has more occupants that the council identifies as suitable for the property, the suitability notice must state that the council proposes to vary the licence accordingly.

Written Submissions to the Committee for Social Development’s Call for Evidence

CEHOG, NILGA and the councils request that **guidance is produced** on this section.

Clause 52: Occupancy requirements

Under the “general occupancy requirement” the person on whom a suitability notice is served must refrain from permitting more than the maximum number of people to occupy the HMO. Under the “new residents’ occupancy requirement” the person on whom a suitability notice is served must not permit any new resident to occupy the HMO if that person’s occupation would result in the HMO being occupied by the

maximum number of people permissible. A “new resident” is defined in the clause as a person who was not an occupier of the HMO immediately before the notice was served.

Written Submissions to the Committee for Social Development’s Call for Evidence

Housing Rights recommends that full consideration is given to the **unintentional adverse consequences of the occupancy requirements** for occupants of an HMO, i.e. could potentially be made homeless. It suggests that DSD must, as a matter of priority consider the level of assistance and rehousing options for those unable to remain in the property.

Clause 53: Statement of remedial work

A “statement of remedial work” is work which a council considers would, if carried out on the HMO, make it suitable for occupation (i) by the number of people whom the council knows (or believes) occupies the property; or, (ii) a smaller number of people as specified in the statement. A statement of remedial work must state that if the work is carried out by a specified date, a suitability notice will be revoked.

A statement of remedial work may specify the particular steps that the council requires to be carried out but is may not specify any fire safety measures within the meaning of the Fire and Rescue Services (Northern Ireland) Order 2006.

Written Submissions to the Committee for Social Development’s Call for Evidence

CEHOG, NILGA and the councils seeks clarity as to the rationale **that a notice may not specify fire safety measures**.

Clause 54: Definition of hazard

Under this clause, there is a “hazard” in an HMO if there is a risk of harm to the health or safety of an occupier (or potential occupier) of the HMO; and the risk arises from a deficiency in the accommodation or any building or land which forms part of the HMO or in the vicinity of the HMO. The risk of harm will be “prescribed” in regulations made by the Department for Social Development.

Written Submissions to the Committee for Social Development’s Call for Evidence

CEHOG, NILGA and the councils **welcomes the inclusion of “common parts”** within the definition of a hazard.

In reference to all the clauses of the Bill relating to hazards, the *Northern Ireland Council for Ethnic Minorities (NICEM)* suggests that the provisions Bill **do not allow councils here to take as much action in relation to hazards as their English and Welsh counterparts**. NICEM believes that there is no provision in the Bill to allow councils themselves to take emergency remedial action where a hazard presents an imminent risk of harm.

The *Northern Ireland Fire and Rescue Service (NIFRS)*, commenting on the hazard provisions, believes that there is significant **potential for all aspects of fire safety enforcement to be removed from the NIHE and moved to the NIFRS** without any fire safety enforcement being picked up at local council level. It states that it would value an early discussion about the capacity of the NIFRS to take on what it perceives to be extra workload.

Clause 54: Points for Consideration

Would the provisions of this clause have the potential to increase the workload of the Fire and Rescue Service?

Is existing legislation adequate in terms of allowing a council to intervene and carry out remedial works itself were it deems there is an imminent risk of harm?

Clause 55: Hazard notice

If a council is satisfied that a hazard exists they may issue a “hazard notice”. The notice may relate to more than one hazard in the same HMO or in the same building containing one or more flats. If the council believes the hazard involves an imminent risk of serious harm to the health or safety of the occupiers of the HMO or any other living accommodation the notice may state that it is an “emergency hazard notice” and that the notice will come into operation immediately. In comparison to other notices, under Schedule 5 of the Bill the council must serve an emergency hazard notice on the occupants of the HMO.

Written Submissions to the Committee for Social Development’s Call for Evidence

CEHOG, NILGA and the councils welcomes the inclusion of “common parts” within the definition of a hazard.

In reference to all the clauses on hazards, the *Northern Ireland Council for Ethnic Minorities (NICEM)* reiterates its opinion that the provisions in the Northern Ireland HMO Bill do not allow councils here to take as much action in relation to hazards as their English and Welsh counterparts. NICEM believes that there inadequate provision in the Bill to allow councils themselves to take emergency remedial action where a hazard presents an imminent risk of harm.

Clause 56: Contents of a hazard notice – prohibitions

Under this clause, a hazard notice can impose prohibitions on the use of any premises the council considers appropriate in view of the hazard(s) to which the notice relates. The notice must specify each prohibition and the premises that each prohibition is imposed upon.

The hazard notice may impose a prohibition on the use of the premises as follows:

- If the hazard is an HMO which is not a flat, the notice may impose a prohibition on the use of the HMO;
- If the hazard is in a flat or flats, the notice may impose a prohibition on the use of the flat or flats, or on the use of the building containing the flat(s) or any part of that building or any external common parts.

A hazard notice cannot prohibit the use of any part of the building or its common parts that is not included within the HMO in which the hazard exists, unless the council is satisfied that the hazard is situated in that area and that it is necessary for such use to be prohibited to protect the health or safety of occupiers of one or more of the flats.

Written Submissions to the Committee for Social Development's Call for Evidence

CEHOG, NILGA and the councils would welcome **guidance on the use and content of these prohibitions.**

Housing Rights supports the proposals in relation to hazards but believes additional consideration should be given to **ensure that any occupants affected by a prohibition notice are provide with assistance to secure alternative housing if necessary.**

Clause 56: Points for Consideration

What assistant will be provided to HMO occupants who require alternative accommodation as a result of a hazard notice?

Clause 57: Contents of hazard notices – other matters

Under this clause, a hazard notice must specify in relation to each hazard, the nature of the hazard; the HMO in which it exists; and the deficiency giving rise to the hazard. The hazard notice may identify works that are required to be carried out and must specific the date in which the hazard notice is made.

Written Submissions to the Committee for Social Development's Call for Evidence

CEHOG, NILGA and the councils state that it is most likely that **repairs are required in the common parts** thus the **clause should also cover owner occupiers**. It would like to see the same level of detailed in Clause 57 that exists in clause 56 with regards to this issue.

Clause 58: Works requirement

This clause provides that the owner must carry out work in or to the HMO or other premises for the purpose of removing the hazard. The hazard notice must specify what work is to be carried out and the date by which the work must be completed. The notice must also state that if the work requirement is carried out by the specified date the hazard notice will be revoked.

A hazard notice may not require the owner to take any fire safety measures within the meaning of the Fire and Rescue (Northern Ireland) Order 2006.

Written Submissions to the Committee for Social Development's Call for Evidence

CEHOG, NILGA and the councils seek **clarity on the absence of fire safety measures within the clause**. They welcome the option of carrying out works in default but felt that **Management Orders**⁷¹ would be a better solution where the landlord is not in a position to carry out urgent works to an HMO. They suggest that these orders could be delivered by the Housing Executive or Housing Associations.

Clause 58: Points for Consideration

What is the rationale for not permitting a hazard notice to require the owner of the HMO to take fire safety measures?

Has consideration been given to permitting councils to operate management orders (as is the case in England and Wales)?

Clause 59: Approvals as to use of premises

This clause states that approval of the council with regards to a prohibition placed on a property must not be unreasonably withheld and that the owner may appeal to a magistrates' court against a refusal to give approval.

There were no specific comments in the written submissions on this clause.

⁷¹ For example, Interim Management Orders are operational in England and Wales and permit a local authority to step in and manage a property instead of the landlord or managing agent. These orders allow the local authority to carry out repairs, collect rent etc.

Clause 60: Offences

This section of the Bill sets out the key criminal offences regarding the notices under Part 4 of the Bill (i.e. overcrowding notice; information notice; suitability notice; and hazard notice).

The clause states that a person commits an offence if they do not have a reasonable excuse for:

- Contravening a requirement in an overcrowding notice.
- Contravening a general occupancy requirement or a new residents' occupancy requirement in a suitability notice.
- Knowing that a hazard notice has become operative in relation to specific premises and continues to use the premises, or permit the use of the premises, in contravention of the notice.
- Failing to carry out work specified in a work requirement contained in a hazard notice by the date specified in the notice.

The penalties which can be imposed for non-compliance is as follows:

Offence	Location in Bill	Criminal Penalty (subject on summary conviction)	Daily Fine
Contravention of an overcrowding notice	Clause 60(1)	Up to £20,000	Daily fine of £50
Contravention of occupancy requirement of suitability notice	Clause 60(2)	Up to £20,000	Daily fine of £50
Uses or permits the use of an HMO that is subject to a hazard notice	Clause 60(4)	Up to £20,000	Daily fine of £50
Owner fails to complete works specified in hazard notice	Clause 60(6)	Up to £1,000	N/A

Clause 61: Further provision

This clause introduces Schedule 5 of the Bill, which makes further provisions about these notices.

PART 5 OF THE BILL: SUPPLEMENTARY

Part five of the Bill consists of 30 clauses. It sets out the requirement for each council to keep an HMO register containing details of each application for an HMO licence; creates a power for the Department for Social Development to make regulations approving a Code of Practice that will lay down standards of conduct and practice to be

followed in respect of the management of HMOs; and permits councils to issue fixed penalty notices instead of initiating criminal proceedings. There are also provisions within Part 5 to allow any person on whom the council has served a notice of certain decisions (for example, a decision by the council not to grant or renew an HMO licence) to appeal against the decision; and facilitates the provision of information to councils to, for example, to investigate whether any offence has been committed under the Bill). It also aims to protect the confidentiality of information by creating an offence in relation to the unlawful disclosure of information by an employee of the council.

Clause 62: HMO Register

This clause is one of the more contentious aspects of the Houses in Multiple Occupation Bill and attracted considerable comment from organisations that responded to the Committee for Social Development's Call for Evidence.

Under this clause there is a requirement for every council to keep a register containing the following information (for each application for an HMO licence in its area):

- The name of the applicant;
- The address of the living accommodation in question;
- The name of any managing agent specified in the application; and
- The date on which the application was made.

The register must contain information on the council's decision on each application, including in the case of a decision to grant a licence:

- The name of the licence holder;
- The number of persons authorised to occupy the HMO;
- Any conditions included in the licence;
- Any variation, revocation or surrender of the licence;
- Any revocation or disqualification order made in relation to the HMO, its owner or managing agent; and
- Any notices that have been issued (e.g. an overcrowding notice, hazard notice etc.).

The register may contain any other information that the council considers appropriate. However, the council must exclude information from the register that it considers would jeopardise the safety or welfare of any person or the security of any premises.

The council must make the register available for public inspection at its head office at reasonable times and in such a manner that the council considers appropriate. The council must supply a certified copy of the register, or an extract of it, to any person who requests such a copy. The council is provided with the ability to charge a reasonable fee for supplying a copy.

Written Submissions to the Committee for Social Development's Call for Evidence

The *Chartered Institute of Housing (NI)* supports the **exclusion of information from the publicly available register that would jeopardise the safety or welfare of any person**. It **questions the value of making the register available for the general public** to view but suggested that certain people should have the right to inspect the register e.g. tenants and relevant public bodies.

In contrast, *College Park Avenue Residents Association* states that currently, NIHE can provide them with the location of HMOs but not the name of the landlord. The Association believes that this **prevents them from contacting the landlord** with requests e.g. to clean up their garden, secure the property etc. The Association feels that it is imperative that **landlords' names and contact details are available to the neighbours** of HMO properties.

CEHOG, NILGA and the councils feel that having **two registers in the private rented sector** (i.e. the landlord register for the private rented sector and the HMO register) will **be confusing for both the public and landlords**. They suggest that a **single register** should cover both thus reducing bureaucracy and administration costs. Would also prefer if the clause stipulated that the public register would be available in a 'nominated office' rather than 'head office'.

Housing Rights seeks clarification as to whether or not the intention of the legislation is that **every council will maintain individual/district registers** or if information will be shared and if so, the arrangements for doing so.

LANI states that **landlords will consider this clause to be the most important and contentious**. It feels that there is no purpose in this provision other than to "lay the Landlord [sic] and his agent naked to the public examination and possible intimidation". It is **concerned that the safety and security of landlords, agents and their families** will be comprised and potentially be victims of extortion by organised crime, vigilante groups and disaffected tenants.

LANI states that it would **reluctantly accept limited access to extracts of the register** but only to persons affected by the HMO in question and who must present themselves to council officials and have proof of their interest.

Another respondent, Mr Pdraig Walsh points out the **accessibility of HMO registers in the rest of the UK**. He states that these registers are downloadable for each local authority with the information clearly displayed including the name of the owner and manager of the HMO. He feels the **current HMO register for Northern Ireland is difficult to read** and renders it "virtually useless as a public resource". Mr Walsh feels that there is **no valid reason for the identities of HMO landlords to be protected** and that the register must contain the name of the individual or company owning or managing the HMO.

The *Royal Institute of Chartered Surveyors* commenting on this clause and Schedule 2 (which states that an application for an HMO licence must display a notice of the application in or near an HMO) should be given **further consideration in terms of any increased threat to personal security**. It would like personal information is provided (i.e. landlord's address) the local authority but not be publically accessible. *RICS* recommends that any objections to an HMO should be directed to the appropriate statutory authority rather than directly to the applicant in order to ensure a more streamlined application process.

Clause 62: Points for Consideration

1. Should certain aspects of the register only be available for tenants and relevant public bodies to view (e.g. the property owners name and contact number)?
2. Would the safety of landlords, agents and their families be comprised by making landlords details (i.e. address) available in a publicly accessible register?
3. Are there valid reasons for restricting the public's access to the register?
4. By what means can residents associations and neighbours contact HMO owners if a problem arises (e.g. inadequate refuse arrangements, untidy gardens etc.)?
5. How will the HMO register interface with the Northern Ireland Landlord Registration Scheme?

Clause 63: Code of Practice

This clause provides that the Department for Social Development may make regulations approving a code of practice which will lay down standards of conduct and practice on the management of HMOs. The standards laid down in the code may relate to:

- The repair, maintenance, cleansing and good order of all means of water supply and drainage in the property; fire escape and all apparatus; systems provided for fire precaution; kitchens, bathrooms and water closets; sinks and wash basins; staircases, corridors and passageways; and outbuildings, yards and gardens.
- The making of satisfactory arrangements for the disposal of refuse and litter from the house.
- The making of satisfactory arrangements to ensure that all means of escape from fire are kept clear of obstructions.

The code may impose a duty on the person managing to ensure that a copy of the code is displayed in a suitable position in the house.

This clause provides that the Department may, by way of regulations, approve a modification of the code of practice. Before approving a code of practice or a modification of such code, the Department must consult with e.g. persons involved in the management of HMOs and persons occupying HMOs or persons representing them.

A failure to comply with a code of practice does not itself make a person liable to civil or criminal proceedings. However, non-compliance may be taken into account as a relevant matter in deciding whether or not a person is a “fit and proper person”.

Written Submissions to the Committee for Social Development’s Call for Evidence

CEHOG, NILGA and the councils welcome the provision of a code of practice. NILGA believes that councils should be involved in the development of the code as well as other documents that are associated with the Bill.

*Housing Rights suggests that in order to be effective and to ensure consistent implementation of the legislation, there should be a **mandatory requirement for DSD to produce the code of practice regulations** (a change in the word “may” to “shall” in the Bill. It felt that the **code of practice should be statutory**.*

Clause 63: Points for Consideration Should the code of practice be a statutory code of practice?

Clause 64: Fixed Penalty – service of notice

This clause provides that where an authorised officer of a council believes that a person has committed an offence under a number of provisions in the Bill, the officer can offer the person the opportunity to discharge any liability to conviction by the payment of a fixed penalty.

The fixed penalty associated with each offence (with comparative criminal penalty) is as follows⁷²:

Offence	Clause	Fixed Penalty Notice (FPN)	Criminal Penalty (subject on summary conviction)	Daily Fine
Operating an unlicensed HMO: Agent	30(1)	£5,000	Up to £20,000	Daily fine of £50
Operating an unlicensed HMO: Owner	30(2)	£5,000	Up to £20,000	Daily fine of £50
Breach of occupancy specified in licence	31(1)	£5,000	Up to £20,000	Daily fine of £50
Contravention of an overcrowding notice	60(1)	£5,000	Up to £20,000	Daily fine of £50
Contravention of occupancy requirement in suitability notice	60(2)	£5,000	Up to £20,000	Daily fine of £50

⁷² Information extracted from correspondence dated 14 October 2015 from the Department for Social Development to the Committee for Social Development.

Uses or permits use of HMO that is subject to a hazard notice	60(4)	£5,000	Up to £20,000	Daily fine of £50
Unlicensed HMO: Owner authorises a person to act on his behalf	30(3)	£2,500	Up to £10,000	N/A
Breach of licencing conditions: owner/agent	31(2)	£2,500	Up to £10,000	N/A
Breach of licencing conditions: person not named on licence	31(3)	£2,500	Up to £10,000	N/A
Person representing HMO as licensed when it is not	32	£2,500	Up to £10,000	N/A
Agent operating the HMO but not named on licence - other	33(1)	£2,500	Up to £10,000	N/A
Agent operating the HMO but not named on licence: owner	33(2)	£2,500	Up to £10,000	N/A
Failure to comply with a rectification notice	37(1)	£2,500	Up to £10,000	N/A
Unlawful occupation	Paragraph 8 of Schedule 3	£500	Up to £1,000	N/A
Owner fails to complete works specified in hazard notice	60(6)	£500	Up to £1,000	N/A
Obstruction of a relevant person	79(5)	£500	Up to £1,000	N/A
Obstruction of worked needed under notices	81(4)	£500	Up to £1,000	N/A
Failure to comply with information notice	49	£200	Up to £500	N/A
Refusal to provide information under clauses 68 and 70	74	£200	Up to £500	N/A
Providing false or misleading information	Paragraph 17 of Schedule 2	£200	Up to £500	N/A

Written Submissions to the Committee for Social Development's Call for Evidence

CEHOG, NILGA and the councils welcome the use of fixed penalty notices. However, they expressed **concern that the fines currently being issued by the courts are at levels significantly lower than fixed penalty levels.** They believe that this matter needs to be addressed in order to assist councils in discharging their enforcement duties.

Belfast City Council notes that there is an ability to provide a **discounted period** and requested clarification if this can be provided. It states that discounts can increase the likelihood of payment.

Housing Rights supports of the concept of fixed penalty notices but feels that these **can only be a meaningful deterrent if they are robustly and uniformly enforced across all 11 council areas**. It recommends that the Committee seeks information from DSD as to **whether or not persistent offenders who pay fixed penalty notices (and therefore avoid conviction) can continue to be licensed**.

The Landlords Association of Northern Ireland (LANI) believes that the level of fines under **fixed penalty notices are too high** (particularly those under clause 60). LANI **is not in favour of fixed penalty notices** and believes that they have consequences under the “fit and proper person” test which may cause landlords and agents to lose their livelihood. It further states that there must be an opportunity to have matters contested in a court of law.

The Committee for Social Development has required whether fixed penalty notices (FPNs) will be the default position in terms of enforcement, i.e. FPNs used in the first instance rather than criminal penalties. The Department for Social Development has stated that fixed penalty notices will not be the default position but will be the first option considered for non-compliance. The serious of the offence, or repetition of an offence, may determine that it is more appropriate that the case progresses to court for legal action. Each case should be determined on its own merits. Further guidance on the use and operation of FPNs is to be produced which will cover their use and management; on what basis they should be issued and when it is not appropriate to issue FPNs; and how the non-payment of FPNs should be monitored and managed⁷³.

Clause 64: Points for Consideration

1. What action, if any, can be taken to ensure that fines currently issued by the courts are not set at a level that is significantly lower than the fixed penalty notice?
2. In order to increase the likelihood of payment, is there scope within the Bill to permit councils to set a discounted period?
3. What steps can be taken to ensure that fixed penalty notices are uniformly and robustly enforced across council areas?
4. Will persistent offenders who pay fixed penalty notices (rather than going to court) continue to be licensed?
5. Are the levels of fixed penalty notices proportionate to the offence?

Clause 65: Fixed Penalty – Effect of notice

This clause provides that a person may not be convicted of an offence if the person pays the fixed penalty notice within a specified period of time. A council may only use

⁷³ Correspondence dated 14 October 2015 from the Department for Social Development to the Committee for Social Development.

the money derived from FPNs only for the purposes of its functions under the Act or other functions as may be specified in regulations made by the Department.

Written Submissions to the Committee for Social Development's Call for Evidence

CEHOG, NILGA and the councils welcome the ring-fencing of fixed penalty notice income.

Clause 66: Fixed penalty – power to alter amounts

This clause allows for the Department for Social Development to alter the amounts of fixed penalty notices.

There were no specific comments on this clause in the written submissions although LANI expressed option to the use of Fixed Penalty Notices in general.

Clause 67: Appeals

This clause lists the range of decisions against which an appeal can be made. For example, the decision to refuse to renew or revoke an HMO licence, or the decision to issue a rectification notice. Any person to whom the council is required to serve such notice of a decision has the right to appeal against the decision to the county court. However, they must do so within 28 days (or within seven days of receiving the notice of the decision, if later) although the county court may decide to hear a late appeal if there are special circumstances.

There were no specific comments on this clause in the written submissions.

Clause 68: Council's statement of reasons for decisions which may be appealed

This clause provides that in the case of a decision on which an appeal can be made (as set out in clause 67), the notice must include or be accompanied by (i) a statement informing the person that they may request a statement of the council's reasons for the decision; and (ii) that they have a right to appeal and the period in which an appeal must be made. Where a statement of reason is requested, a council must supply the statement in time of the person to be able to appeal the decision. The right to a separate statement of reasons does not appeal where the reasons for the decision are included in the original notice of decision.

Written Submissions to the Committee for Social Development's Call for Evidence

CEHOG, NILGA and the councils would welcome guidance particularly in relation to a template of responses.

Housing Rights expressed support for both clause 68 and 69 but suggests that once enacted there must be an **obligation to ensure transparency of decision making**.

Clause 69: Power of court on appeal

This clause provides that an appeal under clause 67 is to be by way of re-hearing. It may take into account matters of which the council were not originally aware. The county court may confirm, reverse, or vary the decision of a council.

There were no specific comments on this clause in the written submissions.

Clause 70: Powers to require information and documents – introductory

Clauses 70 to 74 provide councils with the power to require persons to provide information and documents for the purposes of carrying out its functions or determining whether an offence has been committed.

Clause 70 provides that the powers conferred by sections 71, 72 and 73 are exercisable by the council for the purposes of (i) enabling or assisting the council to exercise any function conferred on it by the Act in relation to any premises and (ii) investigating whether any offence has been committed under the Act in relation to any premises.

Written Submissions to the Committee for Social Development’s Call for Evidence

Housing Rights, commenting on clauses 70-76, recommends that the Committee seeks advice from the Department for Social Development in order to assure itself that all or any of the **information obtained and shared with comply with Human Rights, Data Protection and Northern Ireland equality legislation**.

Clause 71: Power to obtain information from persons connected to premises

Under this clause a council may serve a notice on a relevant person requiring them to provide the following information in writing to the council:

- The nature of the person’s estate (if any) in the premises.
- The name and address of any other person known to that person as having an estate in the premises.

- Any other information about the premises that the council may reasonably request and which is in the person's custody or control.

A "relevant person" includes licence holders, agents, owners and occupants of the property.

The notice may also require the person to disclose the relationship (if any) between them and any other occupants. The notice must specify a date (not less than 21 days after the date on which the notice is served) by which the information must be provided; it must specify who must provide the information; and include information on the potential consequences of not complying with the notice.

Written Submissions to the Committee for Social Development's Call for Evidence

CEHOG, NILGA and the councils suggests that **information may be required before the specified 21 days** and would welcome an additional provision in the Bill to reflect this.

Clause 72: Power to require persons connected to premises to produce documents

This clause provides that a council may service a notice on a "relevant person" requiring that person to produce documents which the council requires and believes are in the person's custody or control.

Clause 73: Power to obtain information from other persons

The clause provides that a council may serve a notice on a "relevant person" requiring that person to provide to the council, in writing, any "relevant information" which is in the person's custody or control. "Relevant person" is defined as any of the following:

- The Department of Finance and Personnel;
- The Northern Ireland Housing Executive;
- A scheme administrator of a tenancy deposit scheme (under regulations relating to Article 5A of the Private Tenancies (NI) Order 2006);
- A registrar of landlords (appointed under regulations relating to Article 6A of the Private Tenancies (NI) Order 2006);
- Any person acting as a gangmaster in relation to work in Northern Ireland;
- A utilities undertaker;
- An institution of further or higher education;
- Any persons conducting estate or letting agency work.

The clause also sets out what is considered relevant information e.g. rating information held by the Department of Finance and Personnel and housing benefit information held by the Northern Ireland Housing Executive.

The notice must specify a date (not less than 21 days after the date on which the notice is served) by which the information must be provided; it must specify who must provide the information; and include information on the potential consequences of not complying with the notice.

Written Submissions to the Committee for Social Development's Call for Evidence

CEHOG, NILGA and the councils request the **inclusion of the PSNI, the Northern Ireland Fire and Rescue Service and Health and Social Care Trusts** as a "relevant person".

The Committee for Social Development inquired as to what advice the Department for Social Development had taken in relation to the human rights and data protection issues associated with the clauses covering the sharing of information. In response, the Department for Social Development stated that departmental officials have taken into account advice from both the Office of Legislative Council and the Departmental Solicitors on compliance with both the Data Protection Act and on potential human rights issues. It states that the Bill has also been copied to the Northern Ireland Human Rights Commission and that there were no issues raised (at the date in which the Department wrote to the Committee for Social Development on this issue)⁷⁴.

The Department further stated that clause 73 will open statutory information sharing gateways with a number of statutory and non-statutory organisations and bodies and that this will encourage a more robust method of identifying and regulatory HMOs⁷⁵.

The Committee for Social Development requested that the Department for Social Development provide information as to how it will ensure that sufficient support is given to local councils to deliver a joined-up approach between planning, building and environmental health. The Department has stated that in drafting the legislation it has engaged with the relevant policy areas within other government departments to ensure that effective linkages between related policy areas are identified. It further stated that,

"Operational responsibility for planning, building control and environmental health all now rests with councils and DSD will work with these functions within councils to assist them with the new requirements. This work will be

⁷⁴ Correspondence dated 14 October 2015 from the Department for Social Development to the Committee for Social Development.

⁷⁵ Correspondence dated 14 October 2015 from the Department for Social Development to the Committee for Social Development.

*supported through a published Code of Practice and guidance for the licensing scheme”.*⁷⁶

Clause 73: Points for Consideration

1. Should the PSNI, the Northern Ireland Fire and Rescue Service and Health and Social Care Trusts be included in the list of “relevant person”?

Clause 74: Failure to comply with notice under section 71, 72 or 73

This clause provides that a person commits an offence if they refuse or fail to provide (without a reasonable excuse) the information required under clause 71 or 73 and or to provide the documentation a required under clause 72. A person will also commit an offence if that person knowingly provides false or misleading information in response to an information requirement (as outlined in clauses 71 and 73). A person will commit an offence if they intentionally alter, suppress or destroy any document that they have been required to provide under clause 72. The penalty for an offence under this section is a fine (liable on summary conviction) of up to £500.

Clause 75: Unauthorised disclosure of information obtained under section 73

This clause provides that an employee of a council will commit an offence if they disclose without lawful authority any information (i) that they acquire in the course of their employment; (ii) which is, or is derived from, information provided to the council under clause 73; and (iii) which relates to particularly living accommodation or a particular person.

The following penalties apply under this offence:

Offence	Clause	Fixed Penalty Notice (FPN)	Criminal Penalty (subject on summary conviction)
Unauthorised disclosure of information obtained under section 73	75(1)	N/A	Up to £20,000 and/or on conviction or indictment, to imprisonment for a term not exceeding two years.

⁷⁶ Correspondence dated 14 October 2015 from the Department for Social Development to the Committee for Social Development.

There were no specific comments on this clause in the written submissions to the Committee's Call for Evidence.

Clause 76: Court to inform council of convictions

This clause provides that where a court convicts a person of any offence under the Act (other than an offence under clause 75) the court must, within six days of convicting the person, send the council notice of the conviction and sentence (if any) and a note of any revocation or disqualification order made by the court as a consequence of the conviction.

There were no specific comments on this clause in the written submissions to the Committee's Call for Evidence.

Clause 77: Power of entry – without warrant

This clause provides that a person authorised in writing by the council may at a "reasonable time" enter living accommodation for the purposes of surveying or examining the accommodation. The council may consider this necessary to enable or assist it in (i) determining whether the living accommodation is an HMO; (ii) deciding whether to grant, vary or revoke an HMO licence; or (iii) determining whether or how any other function under the Act should be exercised in relation to the living accommodation.

The authorised person must provide the owner and occupiers of the accommodation at least 24 hours' notice of the intention to enter the property. The person cannot use force in the exercise of the power of entry under this clause. If requested to do so, the person must produce the written authorisation for inspection if requested to do so.

Written Submissions to the Committee for Social Development's Call for Evidence

CEHOG, NILGA and the councils suggest that it **may not be practical to provide up to 24 hours' notice** where there is reasonable grounds to suspect non-compliance. They believe that there should be a power of entry at "reasonable times".

Clause 78: Powers of entry – with warrant

This clause provides that a lay magistrate may issue a warrant authorising a person named in the warrant to enter and search the premises specified in the warrant. This warrant can only be issued if two conditions are met, i.e. if:

- An officer of the council (or a person acting on behalf of the council) reasonably requires to enter or search the premises for the purposes of enabling it to decide

whether any offence under the Act has been committed or whether an requirement imposed by a notice under the Act is or has been complied with.

- Applying to the owner or occupier for entry would defeat the purpose of the entry or search or if entry to the premises has previously been sought under section 77 but has been refused.

A warrant under this section may authorise the use of force. Entry must be at a reasonable hour unless it appears to the person executing the warrant that the purpose of the entry or search may be defeated if the entry is at a reasonable hour.

A person executing a warrant under this section may (i) search for and inspect any document or other item, (ii) take copies of any document; and (iii) require any person to provide information or other assistance as the person executing the warrant requires for the purpose of the entry or search.

The person executing the warrant must produce the warrant for inspection if requested to do so by the owner or occupier or any other person acting on their behalf. The warrant is valid for one month only, beginning with the date on which it is issued.

Written Submissions to the Committee for Social Development's Call for Evidence

CEHOG, NILGA and the councils state that in comparison to the one month validation for a warrant under this clause, a **warrant is valid for three months** for other council functions.

Clause 79: Powers of entry – supplementary provisions

This clause provides that a person entering a premises under sections 77 and 78 may be accompanied by such other persons as they consider necessary. If a property is unoccupied or temporarily vacant, the person entry the property under warrant must leave them as effectively secured against trespassers as the person found it.

Where a property is damaged in the exercise of powers under sections 77 or 78, the council must provide compensation to the person who sustained the damage unless it is attributable to the fault of that person. Dispute compensation will be determined by the Lands Tribunal.

This clause also provides that if a person unreasonably obstructs a relevant person in the exercise of the warrants or anything the authorised person is required to do under sections 77 and 78 may be subject to the following penalty:

Offence	Clause	Fixed Penalty Notice (FPN)	Criminal Penalty (subject on summary conviction)
Obstruction of a relevant person	79(5)	£500	Up to £1,000

There were no specific comments on this clause in the written submissions to the Committee's Call for Evidence.

Clause 80: Application by owner where consent is withheld

This clause provides for a court of summary jurisdiction to grant the necessary consent to take action where that consent has been unreasonably withheld by a person involved with the property.

There were no specific comments on this clause in the written submissions to the Committee's Call for Evidence.

Clause 81: Obstructions etc.

This clause provides for where any person required, authorised or entitled to carry out work for or on behalf of the council is obstructed in carrying out that work (e.g. involving a temporary exemption or rectification notice). A court of summary jurisdiction may, upon application, order an individual to allow the authorised person to carry out the action required.

A person may be deemed guilty of an offence under this order may be subject to the following penalties:

Offence	Clause	Fixed Penalty Notice (FPN)	Criminal Penalty (subject on summary conviction)
Obstruction of works needed under Part 4, temporary exemption notices and rectification notices	81(4)	£500	Up to £1,000

There were no specific comments on this clause in the written submissions to the Committee's Call for Evidence.

Clause 82: Effect of moving from accommodation for works to be carried out

This clause provides that where a person vacates a premises for the purposes of allowing works to be carried out as required by a notice under the Bill (i.e. a temporary exemption, rectification or hazard notice) or a statement of remedial work, their tenancy or other occupancy arrangements is unaffected and is not to be taken as to have been terminated, altered or varied.

There were no specific comments on this clause in the written submissions to the Committee's Call for Evidence.

Clause 83: HMOs occupied in breach of the Act

This clause confirms that a tenancy or licence in respect of an HMO will be enforceable (in terms of the payment or rent or other provision of a tenancy or occupancy arrangement) even if the landlord is required to obtain a licence but has failed to do so or if the HMO is occupied in breach of the Act or a notice issued under the Act.

Written Submissions to the Committee for Social Development's Call for Evidence

CEHOG, NILGA and the councils seek clarification on the intention of the clause in relation to the **payment of rents**.

An ex-NIHE HMO manager was in general agreement with the clause but suggests that consideration be given to the **voiding of tenancies by the occupants of the property if the property is deemed unsafe** (e.g. inadequate means of escape from fire or inadequate fire alarm and detection systems).

Clause 84: Fees

This clause provides that the Department for Social Development may, by regulations make provision regarding the charging of fees. The regulations may specify the maximum amount to be charged; how the fees are to be calculated; circumstances in which no fees are payable; and circumstances in which fees are to be refunded.

When fixing fees, the council may (subject to regulations) taken into account all costs occurred by it in carrying out its functions under the Act.

Written Submissions to the Committee for Social Development's Call for Evidence

CEHOG, NILGA and the councils believe that **fees must be on a cost recovery basis** as stipulated in clause 84(3). They request that a **working group** be established comprising of representatives from NIHE, DSD and councils to oversee the transfer of HMO registration to councils. They recommend that one of the group's functions should be to **consider the resources required and future licensing fees**. *NILGA* disagrees that there should be a delay in reviewing fees until the new regime starts.

Belfast Holyland Regeneration Association suggests an increase in HMO registration fees on an **exponential scale calculated according to the percentage of HMOs in the street** (greater than 30%).

The Chartered Institute of Housing (NI) states that colleagues in Scotland have communicated that whilst the Scottish licensing system is intended to be self-financing, the **administration and enforcement of the scheme may be under-resourced**. CIH (NI) stresses that in order to be effective a licensing system but be sufficiently funded,

the fees must be reasonably proportional and recommends that an impact assessment be carried out in order to establish this. It also suggests that resources should be available to allow councils to carry out small random HMO sample checks as opposed to inspections carried out as a result of complaints.

Queen's University seeks clarification on the **refunding of licence fees on current licensed properties which no longer require to be licensed** if the Bill is enacted. The University states that it has recently renewed the HMO licences for all its relevant properties for the next five years at a considerable cost and considers that a pro-rata refund would be appropriate.

The Committee for Social Development has sought clarification on the timescales involved and resources to be allocated (over and above fee revenue) to enable councils to effectively deliver the new system. In response, the Department for Social Development indicated that discussions have begun with councils around the issue of costs and timescales, stating:

“As a starting point, NIHE resources currently dedicated to HMO regulation will be transferred to councils. However, licensing is a different proposition and in advance of commencing the Bill, a clear understanding of costs will need to be agreed and a business case for an appropriate level of resources developed with councils.”⁷⁷

Clause 85: Points for Consideration

1. Aside from the fee revenue, will additional resources be provided to facilitate the transfer of the HMO function to councils?
2. Is there merit in linking the fee to the percentage of HMOs in a street?
3. Will a proportion of the fees be funded for properties that have paid the fee and no longer require licensing under the new legislation (e.g. universities)?

Clause 85: Guidance

This clause provides that the Department for Social Development may issue guidance to councils about the exercise of their functions under the Act. Before issuing any guidance under this section the Department must consult councils and such other persons as the Department considers appropriate. Any guidance must be issued in writing and published in a manner the Department considers appropriate for the purpose of bringing it to the attention of councils. The Department would be provided with the power to vary or revoke the guidance as it sees fit.

Written Submissions to the Committee for Social Development's Call for Evidence

⁷⁷ Correspondence dated 14 October 2015 from the Department for Social Development to the Committee for Social Development

CEHOG, NILGA and the councils **welcome the provision of comprehensive guidance.**

Housing Rights recommends that the wording of the clause should be changed from the Department “may” issue guidance to **“will” issue guidance.** It further welcomes the commitment to consult with councils and other appropriate stakeholders prior to issuing the guidance but hopes that consultation would also **include occupiers and organisations that act as their representatives.**

Clause 86: Regulations and orders

This clause confers a power to make consequential and supplementary provision by regulations. It lists the regulations contained within the Bill that would be subject to draft affirmative resolution. Regulations that are not listed in this clause are subject to negative resolution. The clause also lists those that the Department must consult when making curtailed specified regulations (i.e. councils, persons who appear to the Department to be representative of landlords and occupiers of houses, other persons the Department considers appropriate which may include landlords or occupiers of houses).

Written Submissions to the Committee for Social Development’s Call for Evidence

Housing Rights welcomes the **commitment to consult with stakeholders** including landlords, occupiers and organisations who act as their representatives.

Clause 87: General notices

This clause directs that “general notices” issued by a council under the Bill must be given in writing and published in such a manner as the councils considers appropriate. A council may vary or revoke any such notice.

There were no specific comments on this clause in the written submissions to the Committee’s Call for Evidence.

Clauses 88, 89, 90 and 91

These clauses cover the interpretation, consequential amendments and repeals, the commencement and short title of the Bill.

Written Submissions to the Committee for Social Development’s Call for Evidence

Under the interpretation clause (clause 88), “relative” is defined as “parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew, niece or cousin.

Housing Rights does not support the addition of cousin under this definition. It feels that this would broaden the definition of “members of the same household” and could result in the de-registration of some existing HMOs that house extended families (e.g. particularly those that house families from BME communities).

4 Review of the operation of mandatory licensing in other jurisdictions

As previously stated, HMO regulation in Northern Ireland has remained relatively unchanged in comparison with other jurisdictions. Mandatory licensing (albeit on a two tier system) has been operating in England and Wales since around 2006. In Scotland, local authorities have had discretionary powers to introduce the licensing of HMOs since the early 1990s with further legislation introduced in 2000 making it mandatory for all local authorities to introduce an HMO licensing scheme⁷⁸. Part 5 of the [Housing \(Scotland\) Act 2006](#) moved the regulation of HMOs into the mainstream of housing regulation with the aim of ensuring that there were better strategic links with other housing policies.

The proposed new mandatory licensing scheme for Northern Ireland is more closely aligned with the Scottish system and undoubtedly important lessons can, or will, be gained from the outworkings of the Scotland model. However, it is also important to note that policy and practice in relation to HMOs and HMO licencing is currently being re-evaluated in England and Wales. For example, Department for Communities and Local Government (CLG) has recently published a discussion paper (November 2015) which sets out options to *extend the mandatory licensing* of HMOs in England⁷⁹. The Welsh Government has taken the regulation of the private rented sector a step further than in other jurisdictions. Under the [Housing \(Wales\) Act 2014](#)⁸⁰, all private sector landlords who self-manage their rental properties must register and apply for a licence⁸¹. Valuable examples of best practice may also be gained from looking at policy developments in England and Wales.

In terms of assessing how well mandatory licensing schemes are operating in other jurisdictions a number of reviews have been carried out. In Scotland and England, these primarily relate to the earlier stages of the introduction of mandatory licensing. Although they are somewhat outdated they still provide a valuable insight into some of the issues and difficulties that can arise during the initial stages of implementing a new regulatory framework from HMOs. The Welsh Government has recently (in 2015)

⁷⁸ Scottish Government. Mandatory Licensing of Houses in Multiple Occupation: Guidance for Licensing Authorities. www.gov.scot/Publications/2004/07/19734/40900

⁷⁹ Department for Communities and Local Government (2015) Extending mandatory licensing of Houses in Multiple Occupation (HMOs) and related reforms: A technical discussion document. www.gov.uk/government/uploads/system/uploads/attachment_data/file/474408/151106_HMO_discussion_Doc_FINAL_for_publication.pdf

⁸⁰ Housing (Wales) Act 2014 www.legislation.gov.uk/anaw/2014/7/part/1/enacted

⁸¹ This applies to any landlord who has a private rented property in Wales which is rented on an assured, assured shorthold or regulated tenancy.

published a Review of HMOs in Wales which looks at potential changes to improve the management and control of HMOs.

Key Findings from the ‘Review of the First Year of the Mandatory Licensing of Houses in Multiple Occupation in Scotland’

This [review](#) was commissioned by the then Scottish Executive and was published in 2002⁸². It was a result of the commitment of the then Minister for Communities to undertake a review of the effect of the mandatory licensing scheme after its first year of operation. A research study was subsequently commissioned to consider the progress of the scheme. Given the short period of time the scheme had been in operation it focused on larger HMOs. It is important to re-emphasise that report *only reflects the early experiences of the introduction of mandatory licensing*. It is nevertheless useful in terms of being mindful of some the initial difficulties that could potentially be avoided in the HMO regulatory framework for Northern Ireland. A review of the operation of the Scottish mandatory licensing scheme, as it currently operates, would be useful for comparative purposes and for identifying areas of best practice. This, however, would involve some primarily research such as study visits and discussions with local councils and Scottish officials involved in housing policy.

Some of the key findings of the Scottish scheme are outlined in the table below along with some issues for consideration with regards to the proposed HMO licensing scheme for Northern Ireland:

Issue	Key Findings from the Scottish First Year Review	Points for consideration in respect of the proposed Northern Ireland licensing scheme
Ensuring compliance with the requirement to licence	One of the main problems in the first year was achieving comprehensive licensing coverage as a significant number of HMO owners failed to apply for a licence . Just over half of the larger HMOs that should have been licensed by the end of the year were licensed. Those that complied with the requirement to be licensed were primarily good landlords that were committed to the business of renting and also not-for-profit owners of HMOs.	How can the Department/Councils target or engage those landlords that are slow or reluctant to be licensed in these early stages?
Publicity and information	Local authorities had produced leaflets and publicity material and held public meetings about the introduction of the scheme. General consensus was that (with a number of exceptions) pre-scheme promotion, publicity and information was poor and poorly planned . Publicity material was targeted almost exclusively at HMO owners rather than tenants.	How can the Department/Councils avoid a similar situation with pre-scheme publicity? Can best practice be drawn from the introduction of the Northern Ireland Landlord Registration and Tenancy Deposit schemes? Are there plans to ensure that tenants are provided with material that explains the licensing scheme?

⁸² Currie, H. (2002) A Review of the First Year of the Mandatory Licensing of Houses in Multiple Occupation in Scotland. Scottish Executive & Scottish Executive Social Research. Note the report states that the views expressed in the report were those of the external researchers and did not necessary represent the views of Scottish Ministers.

Pre-introductory promotion	There were a number of reasons given for the poor introductory promotion of the licensing scheme, i.e. (i) the inability of local authorities to give licensing sufficient priorities and resources (ii) guidance was published very close to the commencement of mandatory licensing (iii) there was disputes between local authorities and fire brigades about HMO standards and where the professional leadership of the licensing scheme should rest.	Will sufficient resources be provided enable councils to publicise, implement and enforce mandatory licensing? Will guidance be published in a timely manner in advance of the introduction of licensing? Will there be a memorandum of understanding or similar arrangement to enable councils and the Northern Ireland Fire and Rescue Service to identify their respective roles with regards to licensing?
Reaction of owners of HMOs to licensing	Most private sector HMO owners supported the principle of licensing and saw it as legitimate for government to seek to ensure good standards and safety. However, they were critical of the scheme's implementation for a number of reasons, i.e. they (i) felt the standards imposed were too onerous (ii) were dissatisfied that too many other HMO owners had failed to apply for a licence (iii) felt the scheme had not delivered any tangible benefits for those landlords that had a licence.	How can, or is it possible for, the Department/Councils to address the concerns of HMO owners during the early stages of implementation?
Slow licensing approval process	A very low proportion of HMO licence applications were approved in the first year although this has improved in subsequent years. Some local authorities had approved no applications during the first year. The low application approval process was attributed to several factors e.g. (i) owners non-compliance with HMO standards (ii) applicants were not sufficiently prepared (e.g. didn't have the required documentation ready).	Is there an expectation that licensing approvals will be low in the first year of operation? What steps could be taken to make the approval process more efficient?
Responsibility for HMOs within local authorities	The lead for licensing was commonly taken by environmental health professionals or licensing administrators within local authorities. In some local authorities the responsibility was split between different departments which led to a loss of unified control of the processing and decision making on applications . The split of responsibility for the technical and administrative aspects of the licensing process was found to result in delayed decision making and poor exchange of information between key participants.	Will councils be provided with advice and guidance on optimal arrangements for the administration and processing of licensing in order to avoid the problems experienced in the early years of the Scottish model?
Joint working with the fire service	Over half of local authorities had a positive working relationship with their regional fire brigade (please note that the structure of the fire service in Scotland is different to that in NI). But a number of problems were identified in some of the working relationships e.g. co-ordinating joint inspections , some fire brigades requesting that they be paid a fee , differences of opinion on the fire safety standards that should be applied to HMOs , who had primary responsibility for fire safety standards (building control officers or fire officers?).	How can similar problems between the NIFRS and councils be avoided?
Prosecutions	Some local authorities seeking to prosecute an owner for licensing evasion found that the standard of evidence required was very demanding and was considered a significant obstacle to achieving a successful prosecution.	How will councils be sufficiently resourced in order to bring prosecutions? What will be the standard of evidence and can lessons be learnt from other

		jurisdictions as to how the process can be streamlined?
Costs of administering the scheme	Generally across local authorities, it did not appear that a solid framework was in place to accurately identify the costs of operating a mandatory licensing scheme. The vast majority of licensing authorities that responded to the survey reported a deficit in the first year.	Will a framework be put in place to assist local authorities in identifying the costs of operating their licensing scheme? Will councils be provided with adequate resources to ensure that they do not acquire significant deficits in the first year of operation?

Evaluation of the impact of HMO licensing in England

The Department for Communities and Local Government published a [report](#) in 2010 evaluating the early years of the implementation of HMO licensing (and also selective licensing) in England⁸³. Although this report only reflects the initial stages of implementation, like the Scottish evaluation, it also provides a useful insight into some of the issue that may arise, or which may be avoided or addressed, in the Northern Ireland scheme.

The table below sets out a summary of some of findings of the review of the English licensing framework and outlines some issues to consider in relation to the proposed licensing scheme for Northern Ireland.

Issue	Key Findings from the Scottish First Year Review	Points for consideration in respect of the proposed Northern Ireland licensing scheme
Publicity and Awareness raising	The Government had funded a national advertising campaign to promote the scheme but both landlords and local authorities felt that this campaign had led to confusion. Local authorities spoke of the difficulty engaging with private sector tenants due to the high tenant turnover in HMOs and the absence of residents' forums and associations. This impacted on the success of tenant consultation on licensing. Low expectations of tenants in HMOs and the high concentration of vulnerable tenants were also cited as engagement barriers.	Does the Department intend to run a regional advertising campaign along the lines of the Landlord Registration and Tenant Deposit scheme? Will the Department/Council have appropriate mechanisms in place to consult HMO tenants?
Application forms	Each local authority devised their own licensing application form and the lack of standardised application form created inconsistencies. Landlords complained about the depth of information they had to provide about themselves and tenants (e.g. their tenants nationality). There were problems over the number of incomplete forms received which was resource intensive to chase up.	Are there merits in using a standardised application form? What guidance/assistance will be provided to landlords to help assist them with the process? What steps can be taken to ensure that a large volume of landlords do not submit incomplete forms?

⁸³ Department for Communities and Local Government (2010) Evaluation of the Impact of HMO Licensing and Selective Licensing.

<http://webarchive.nationalarchives.gov.uk/20120919132719/http://www.communities.gov.uk/documents/housing/pdf/1446438.pdf>

	There was a need identified for guidance to be issued to help landlords fill out their forms with some local authorities holding surgeries for landlords to help them with the process.	
Fees	Many local authorities highlighted the difficulty in calculating the HMO fee . In the early stages of implementation, authorities had calculated the fee based on the work they expected to carry out per licence. Years on from this, local authorities became aware that much more work was involved in licensing than originally anticipated. Key items were not costed e.g. the costs of varying licences including administration costs.	What steps will be taken to ensure all relevant factors are costed and that councils will be protected from acquiring significant deficits in the first year?
Licensing conditions and standards	Some HMO owners lost confidence in the licensing scheme as they perceived local authorities as adding discretionary conditions that were unnecessary, onerous or unreasonable. The report felt that there had been a “preoccupation and concern with standards relating to fire” and that this caused local authorities to add conditions that were beyond the scope of the legislation e.g. requiring owners to arrange for the fire service to visit the property for a fire safety check. The study noted that there were some good examples of the use of additional discretionary conditions e.g. one local authority used this flexibility to improve standards by requiring landlords to attend a training course provided by an accreditation scheme.	The report found that adding unnecessary discretionary conditions can make HMO owners lose confidence in the system and can dilute the message that licensing is important. What steps can be taken to avoid this?
Management standards	The survey found that some landlords had changed their management arrangements as a result of licensing. Tenants still reported that their landlord or managing agent was difficult to contact. One criticism of the licensing scheme was that many local authorities placed greater onus on the physical standards of the property and few had turned their attention to management standards. The report noted that accreditation alongside licensing may help improve management standards further.	What steps can be taken to ensure that an emphasis is also placed on compliance with management standards? Would an accreditation scheme improve management standards in HMOs in Northern Ireland?
Enforcement	Whilst some local authorities had dedicated staff to tackle the issue of unlicensed landlords many complained that they did not have adequate resources for this . Many local authorities were slow to prosecute landlords due to resource issues. Large scale local authorities with large numbers of licensable HMOs spent much of the time since the introduction of licensing on managing the process, getting to grips with the legislation, establishing what properties needed to be licensed and carrying out inspections. They felt that this needed to be done before they could dedicate resources to proactive enforcement measures. Absentee landlords from abroad and also offshore companies were difficult to licence and prosecute for offences.	What support financial or otherwise should be provided to assist councils in bringing forward prosecutions when necessary? What additional steps can be taken to ensure owners living outside Northern Ireland comply with the licensing requirements?
BME communities and migrants	Local authorities with large migrant and black and minority ethnic populations tended to take a more co-ordinated approach to HMOs. One local authority in particular had set up a community cohesion department to deal with tensions between the host community and migrant	What steps will be taken to provide specialist advice to BME and migrants living in HMOs about the new licensing scheme and its requirements?

	workers. Many local authorities worked in co-ordination with BME representative groups to provide advice on HMOs.	What additional steps can be taken to encourage community cohesion in areas large migrant and BME populations?
Support for HMO owners	<p>Over half of the local authorities surveyed had landlord accreditation schemes in place, members of such schemes received e.g. training; workshops on legal and financial matters; guides and toolkits; and free advertising for their properties including choice based lettings schemes; access to a dedicated housing benefit advice line; discounts on licensing fees; membership of a group repair scheme; grants.</p> <p>Many local authorities had landlord forums to disseminate information and listen to landlords views.</p> <p>There were problems engaging with certain groups on landlords, i.e. absentee landlords, “accidental landlords”, “hidden” landlords who were engaging in serious exploitation including overcrowding houses with migrant workers.</p> <p>There were difficulties maintaining dialogue with good landlords as they felt they gained little additional knowledge with the ongoing training and engagement offered.</p> <p>Some HMOs reported that landlords were frightened of licensing and that some had reduced their occupancy level rather than become involved in licensing despite it not making economic sense for them to do so. There was concern that this could lead to legal evictions. Some landlords were prepared to avoid licensing by evicting tenants and leaving the property empty.</p>	<p>What additional support for landlords, similar to that offered by accreditation schemes, can be offered to HMO landlords in Northern Ireland?</p> <p>What means will councils/department use to engage with hard to reach landlords?</p> <p>How good dialogue be maintained with those landlords are professional and experienced to prevent them from becoming disengaged?</p> <p>What steps will be taken to assist tenants that have, or will be, evicted?</p>

In summary, the report concluded that since the introduction of licensing in England, over half of local authorities surveyed had noticed improvements to the physical condition of the properties, improvement in management practices and improvements to the quality of the accommodation. Just under half of local authorities had noticed an improvement in the relationship between local authorities and landlords. However, the majority of local authorities reported that there had been no change to, the behaviour of tenants; tenancy agreements; supply and choice of property; or the affordability of rent. There was also a noted improvement to fire safety in HMOs as a result of licensing. However, housing conditions of HMOs at the lower end of the spectrum had mostly shown no improvement.

5 Conclusion

It is important to reiterate that both the Scottish and English evaluations of the HMO licensing schemes are early evaluations of implementation. It is useful to look back retrospectively at the early experiences of other jurisdictions, lessons can be learned, pitfalls can potentially be avoided, and best practice can be adapted to suit the proposed HMO licensing framework for Northern Ireland. However, it is equally important to look at how effectively the regulatory schemes are *currently* operating in other jurisdictions. There does not appear to be any similar (published) recent comprehensive evaluations of these models. Should a new HMO licensing framework

be introduced in Northern Ireland, then it may be prudent for the relevant Committee charged with scrutinising housing policy to seek further and first-hand experience of how well the different models are presently working.

What is clear is that the way in which local authorities in Northern Ireland implement licensing will ultimately determine the extent of its effectiveness. The English study highlights that for a minority of local authorities licensing was a paper exercise, they did not conduct any proactive compliance checks to ensure that HMO owners had met the required standards and there was little focus on improving the management practices of some landlords and management agents. This is something to be avoided in the Northern Ireland licensing scheme. As highlighted by a significant number of written submissions to the Committee for Social Development's Call for Evidence, there are a number of important factors relevant to the success of a good licensing scheme. Firstly, meaningful engagement and information sharing with HMO owners, managing agents and tenants. Secondly, effective communication and information sharing between the relevant statutory and non-statutory bodies and also within and between local councils. Most importantly, a licensing scheme cannot reach its full potential without sufficient resources. This was a point raised in a significant number of written submissions. Resources will be needed for promoting and advertising the licensing scheme, for training those who will implement it, for conducting inspections and of equal importance, for enforcement action where this is deemed necessary. If adequately resourced and implemented in a way that matches the policy intention of the Bill, then the new HMO regulatory framework has the potential to have a positive impact on the lives of those living in HMOs and the residents of the communities in which they are located.