

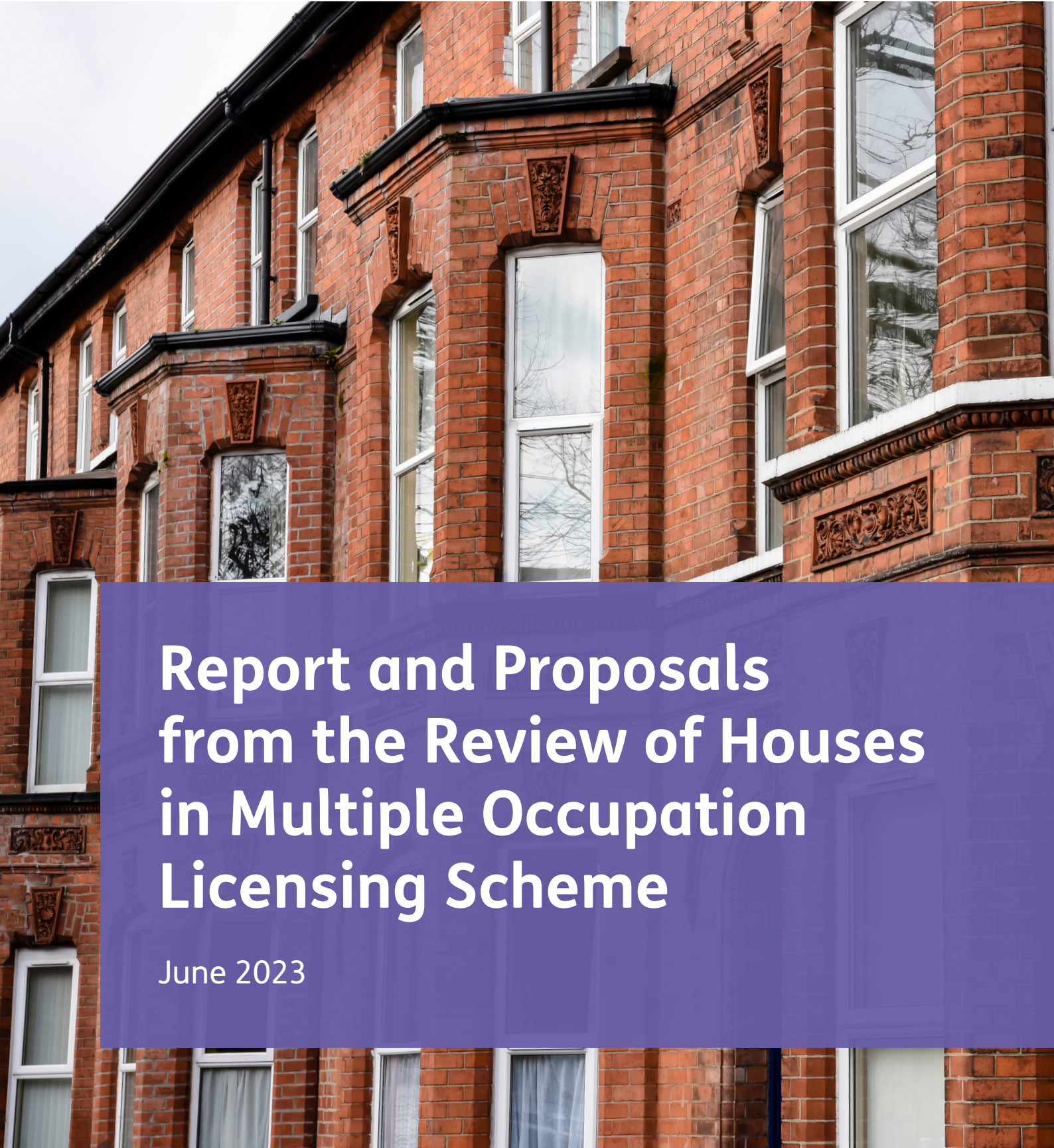


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Report and Proposals from the Review of Houses in Multiple Occupation Licensing Scheme

June 2023

1. Introduction

This report summarises the proposals from the Departmental review of the Houses in Multiple Occupation Act (NI) 2016.

The report looks at the operational issues raised in the review and the responses from the Northern Ireland Houses in Multiple Occupation Unit (NIHMO Unit) based in Belfast City Council (BCC) and the requests for changes to the legislation and the Department's proposals.

2. Purpose

The purpose of this report is to summarise the feedback received from respondents and the proposals for change, following the Department for Communities' (DfC) request for views on the operation and implementation of the Houses in Multiple Occupation Act (NI) 2016.

3. Background

Houses in Multiple Occupation (HMOs) are an important part of the private rented sector and can provide affordable housing for some of the most vulnerable and disadvantaged groups in society, or those on low incomes, students and migrant workers. Because of the higher risks of living in an HMO, they are subjected to a higher level of regulation than other rented housing.

HMOs meet the housing needs of people who are single, who have temporary employment, students, low income households and migrant workers. These people have few other housing options, so HMOs are an important part of the housing mix.

The Houses in Multiple Occupation Act (NI) 2016¹ introduced a new licensing scheme operational from April 2019 which transferred responsibility for the HMO regulatory function from the Housing Executive to councils and linked the new HMO regime with other critical local government functions, such as planning, building control and environmental health. Councils now have responsibility to properly and effectively regulate HMOs. HMO Licensing is mainly intended to improve conditions for occupiers.

HMO licensing was a new regulatory scheme for NI, a new program of work for councils and at the point of transfer the scheme was essentially a registration scheme.

The licensing scheme is managed by the NIHMO Unit based in Belfast City Council; the Unit processes applications and enforces the legislation across Northern Ireland ensuring the terms and conditions of the licences are complied with by landlords. Licences are normally issued for a 5 year duration. The decision on whether to award a licence is the responsibility of the local council in which the HMO is located.

¹ Houses in Multiple Occupation Act (Northern Ireland) 2016 (legislation.gov.uk)

- At the point of transfer there were 6,276 registered HMO properties.
- As the new scheme changed the definition of an HMO, some properties including smaller self-contained flats and university accommodation are no longer required to have a licence.
- Properties registered under the old scheme are only required to apply for a licence when the registration has expired.
- At the point of review there were 4,007 licenced HMOs.
- In the year ending 31 March 2021, 1,160 properties had been inspected and 1,051 licences were issued.
- Since the introduction of the scheme to March 2021 33 Fixed Penalty Notices (FPNs) have been issued for offences such as unlicenced HMOs and overcrowding.

The table below shows the distribution of HMOs by council area:

Council	Count
Antrim and Newtownabbey	143
Ards and North Down	27
Armagh City Banbridge and Craigavon	52
Belfast	3,100
Causeway Coast and Glens	342
Derry City and Strabane	269
Fermanagh and Omagh	11
Lisburn and Castlereagh	8
Mid and East Antrim	14
Mid Ulster	17
Newry Mourne and Down	24
Grand Total	4,007

Quarterly oversight meetings are held between Department for Communities, NIHMO Unit and Northern Ireland Fire and Rescue Services to monitor performance and drive improvement.

The Department’s purpose through effective policy and legislation is not to reduce the number of HMOs, which the

Department recognise present a legitimate and affordable choice for students, migrant workers, young single people etc., but to properly and effectively regulate them to ensure the health, safety and well-being of the occupants and minimise any negative impacts on the neighbourhood and surrounding area.

4. Policy and Legislative basis of the HMO Act and Licensing Scheme

The HMO licensing scheme in Northern Ireland was introduced to improve standards by ensuring that a landlord or any 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.

The licensing scheme transferred responsibility for regulating HMOs from the Northern Ireland Housing Executive to local councils, with the lead council as Belfast City Council. This was due to the links between the new regime and councils' new powers around planning and existing powers for building control, environmental health and regulation of the private rented sector.

The "fit and proper person" test was based on a similar requirement introduced in Scotland intended to improve the management of HMOS. This means the council must be satisfied that the person applying for an HMO licence is a "fit and proper person" to hold a licence.

The same test applies to any person managing the premises, and any director or partner in a company or organisation which owns or manages the HMO.

The licensing scheme amended the definition of an HMO. 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.

The licensing scheme introduced greater and more comprehensive enforcement powers to ensure that any deviation from the licensing system is penalised in a timely and proportionate manner. Fixed penalty notices, for example, avoid the need to proceed directly to court action for lesser offences.

The scheme also includes new requirements for the minimum standards of accommodation, including minimum bedroom sizes, requirements regarding overcrowding and energy performance certificates.

5. The Requirement to Review

The Department for Communities made a commitment to review the implementation of the Act when it had been in operation for two years. It should be noted that the scheme is still in its early stages and teething problems are to be expected with significant change of this type.

This review relates to the operation of the licensing of houses in multiple occupation in accordance with the Houses in Multiple Occupation Act (Northern Ireland) 2016 and the Houses in Multiple Occupation (Northern Ireland) Regulations 2019, which set out how the new licensing scheme should operate.

The review looked at the impact of the regulatory scheme on councils in terms of resources, guidance and legislation with a view to identifying any changes necessary to ensure the legislation achieves its policy intent.

It is important to note that the Covid-19 pandemic and the associated lockdowns have meant that the scheme has faced significant challenges in its two years of operation with many staff working from home and the difficulties the restrictions have caused, for example, when inspecting properties for licence applications.

The scope of this review and its Terms of Reference excludes the historical overprovision of HMOs in the South Belfast area. The overprovision rules relate to the granting of a new licence and not to the transfer of an existing licence. It was acknowledged that the policy intention is to prevent new areas being over-provided in the future. It does not have the scope to reduce over-provision in existing areas that already have a high number of HMOs.

6. Terms of Reference

The Terms of Reference (ToR) for the Review were agreed in October 2020.

An online survey for responses opened on 23 December 2020 and closed on 5 March 2021. The review was not intended to be a full public consultation as the legislation had previously been consulted on with stakeholders invited to give their views.

The ToR set out to assess that the NEW scheme is meeting its objectives, namely:

- improved standards by ensuring that a landlord or agent is a fit and proper person;
- minimum standards of physical accommodation;
- tenancy management standards to ensure accommodation is safe, well managed and of good quality;
- targeting of houses in a way that is proportionate to the risk presented;
- the provision of exemptions where there is comparable regulation that meets or exceeds the requirements of the scheme;
- addressing the added risk to safety associated with living in HMOs;
- an assessment of the current delivery model and consider if it is meeting the needs expected of the licensing scheme and providing value for money which includes a detailed assessment of the resources necessary to deliver the scheme including any gaps in resourcing;
- an assessment of the communication, guidance and assistance in place to assist landlords, managing agents and tenants understand the requirements of the HMO licensing scheme;
- an assessment of any operational/ legislative difficulties/teething issues experienced implementing the new HMO licensing scheme which may require further development to enhance and improve the workings of the scheme.

7. Initial results from Survey

The initial survey received 227 responses, the majority of which were from landlords and managing agents of HMOs:

- 189 responses from landlords/managing agents
- 4 responses from councils
- 4 responses from HMO tenants
- 16 responses from residents/residents groups
- 14 responses from others

Due to difficulties in reaching HMO tenants by the survey a further shorter survey was carried out on the Department's behalf by Housing Rights specifically targeting HMO tenants. A further 13 tenants gave their views on how the licensing scheme has affected living in an HMO. The responses to this survey showed that tenants were broadly positive regarding the changes made to HMOs by the scheme. Tenants felt that the scheme had helped to address the risk to safety and improved the living conditions in HMOs.

These areas had also been commented on favourably by a variety of respondents, including landlords and councils, in the initial survey with many feeling like the improvements to electrical and fire safety and the introduction of Energy Performance Certificates had helped to improve conditions for tenants.

It is clear from engagements with HMO tenants that many tenants are unaware of how to access information regarding HMOs, including how to check if a property is licenced, where to access information and guidance and who can help in a dispute. The Department will look at ways of communicating with tenants to ensure information on this is more accessible.

Throughout the responses from the surveys, several issues with the operational delivery of the scheme were raised, these included communication, fees, the application system, a landlord's training course and other issues as detailed below.

There were also issues raised regarding the legislation, these were mainly regarding the sale and transfer of HMOs and the effect on a licence when a sole licence holder dies, and some other issues as detailed below.

8. Further meetings

In order to fully understand the issues affecting the NIHMO Unit in Belfast City Council, landlords, and HMO tenants, the Department held a series of further engagements.

A focus group with HMO tenants was organised with the help of Housing Rights. This was attended by a number of current and previous HMO tenants.

The main concerns of tenants were safety and knowing how to access information on their rights as a tenant.

Further engagements were also held with both Belfast City Council (BCC) NIHMO unit and Landlords Association Northern Ireland (LANI), these meetings were very useful in clarifying the aspects of the legislation where change is required.

9. Operational issues raised in review and Belfast City Council response

This part of the report sets out Belfast City Council's response to the operational issues raised in the review. The paragraphs below have been provided by Belfast City Council for the purposes of this report.

A number of themes have emerged from the responses to the Department for Communities (DfC) consultation on the Houses in Multiple Occupation Act (Northern Ireland) 2016. This report gives Belfast City Council's response to each of the major themes raised.

(1) Cost

A number of respondents to the DfC referred to the perceived high cost of the scheme. The Council does not accept that these costs are high in comparison to the income from operating an HMO. Furthermore, this is a different type of scheme so it is inevitable that it will cost more than the previous registration regime. The legislation requires the licensing regime to be self-financing whereas the old registration scheme was not operated on a cost recovery basis. The HMO Unit continually review and refine its processes to ensure operational effectiveness with the objective of automating as many processes as possible to reduce costs.

(2) Guidance

The Council has enhanced and restructured its online guidance to make it more user friendly. The Council's website in addition providing advice and guidance to HMO owners and managers, also details tenants' rights and responsibilities. Furthermore, the website also permits the public to view the current register of licensed HMOs and make representations on open applications. The Council is continuing to develop further enhancements to the public register to allow ease of access with an improved search function. Members of the public can also report incidents of antisocial behaviour associated with HMO properties via the website, by phone or email.

(3) Online application process

The Council recognises that the online application process has encountered some difficulties which have made the user experience frustrating in some respects. The Council has made significant improvements to the online application form to include additional functionality such as specific applications for:

- varying a managing agent
- increasing occupancy of an HMO, and
- temporary exemption notices.

The Council has produced **step-by-step video tutorials** to help a proposed licence holder with the new application form. Applicants will also find detailed guidance within each form on the NIHMO portal. When completing an application, applicants can now provide feedback,

which the Council will use to inform any future enhancements to the online application process. Feedback from applicants on the revised form has been, in the main positive with 81% of respondents indicating they are either neutral or satisfied with the revised form and 19% dissatisfied.

Comment	Percentage
Very satisfied	31
Somewhat satisfied	29
Neutral	21
Somewhat dissatisfied	16
Very dissatisfied	3
Grand total	100

The applicant form includes the question “What worked well for you with the online HMO application?” The following responses have been received during October 2021

- The officer who dealt with my application was extremely helpful and patient
- It is a very easy step by step process to follow and clear and concise
- Easy to follow
- Ease of use
- The telephone support
- Easy to upload files and follow steps

- Easy navigated
- Dropping in documents is simple
- Guidance notes
- User friendly
- Useful to have contact numbers and video guides

The Council promotes the use of the online portal to upload documentation which allows the applicant to see their paperwork has been received. This facility has been enhanced in the latest release of the online portal.

(4) Revision to the definition

A number of responses suggest changes to the definition of an HMO, this falls outside of the Council’s remit.

(5) Environmental issues

The Council takes seriously the environmental impact HMOs have on the locality they are situated in and have engaged with HMO owners to ensure corrective action is taken. During the summer of 2021 the Council undertook environmental audits in the Holylands, Stranmillis and lower Lisburn Road areas. This resulted in the HMO Unit taking action on 78 occasions, in relation to graffiti and litter, pursuant to the standard licensing conditions for HMOs in Northern Ireland. The Council has taken action a further 117 time between September 2021 and December 2022.

It should be noted that the standard licensing conditions only apply to those licences granted since April 2019. It will take a full five-year cycle before all HMO properties are transferred to the new licensing scheme’s standard conditions.

(6) Determination documentation

The Council believes the required certification is proportionate to protect the health, safety and wellbeing of HMO occupants and to comply with the legislative requirements of the 2016 Act. It is important to point out HMO landlords are already subject to statutory requirements to obtain the majority of the relevant documentation and therefore should already have most of this information in their possession.

This is set out in the table below:

Document	HMO Act	Other legislation / comments
Online application form	Para 1(1) of Schedule 2	N/A
Application fee	Para 1(1) of Schedule 2	N/A
Electrical installation condition report	Section 14(2)(d)	Previously required under the NIHE statutory registration scheme. Recommendation of BS 7671:2018 (the 18th Edition)
Fire alarm & detection system installation or servicing certificate	Section 13(5)(h). Regulation 16 “Safety Equipment” of The Houses in Multiple Occupation (Living Accommodation Standard) Regulations (Northern Ireland) 2019	Serviced and maintained in accordance with BS5839 Part 1 or Part 6

Document	HMO Act	Other legislation / comments
Emergency lighting system installation or servicing certificate (if applicable)	Section 13(5)(h). Regulation 16 “Safety Equipment” of The Houses in Multiple Occupation (Living Accommodation Standard) Regulations (Northern Ireland) 2019	Serviced and maintained in accordance with BS 5266: emergency lighting.
Current portable appliance test (PAT) certificate	Section 14(2)(d)	<p>Although PAT testing is not a legal requirement of landlords, it is crucial in avoiding a poor tenant relationship, helps to prevent hazards which could lead to lawsuits and maintains a safe environment for those living in rented accommodation.</p> <p>Fire risk assessors will always ask for a PAT test as part of any fire risk assessment they do pursuant to The Fire and Rescue Services (Northern Ireland) Order 2006 and The Fire Safety Regulations (Northern Ireland) 2010</p>
Energy performance certificate with a minimum E rating for energy efficiency.	Section 14(1)(b)	The Energy Performance of Buildings (Certificates and Inspections) Regulations (Northern Ireland) 2008 as amended – the certificate is required when letting a property, the regulations do not set a minimum rating
Gas safety certificate (if applicable)	Section 14(1)(b) & 14(2)(d)	Gas Safety (Installation and Use) Regulations (Northern Ireland) 2004
Date of CO detector installation (if applicable)	Section 14(2)(d)	BS EN50292:2013 Electrical apparatus for the detection of carbon monoxide in domestic premises, caravans and boats — Guide on the selection, installation, use and maintenance

Document	HMO Act	Other legislation / comments
A declaration as to the condition of any chimneys/ flues and date they were last cleaned (if applicable)	Section 14(2)(c)	Recommendation of Building Control Northern Ireland, Standards and Performance Panel – Stoves and flues guidance
Fire risk assessment (benchmark to the “HMO Fire Safety Guide” – Recommended standard PAS79)	Section 13(5)(h). Regulation 16 “Safety Equipment” of The Houses in Multiple Occupation (Living Accommodation Standard) Regulations (Northern Ireland) 2019, state that appliances should be fitted in accordance with The Fire Safety Guidance for HMOS. The NIFRS fire safety guidance states that a risk assessment must be completed for HMO properties.	The Fire and Rescue Services (Northern Ireland) Order 2006 and The Fire Safety Regulations (Northern Ireland) 2010
Personal emergency evacuation plans (Peeps) for any disabled or vulnerable occupants	Section 13(5)(h). Regulation 16 “Safety Equipment” of The Houses in Multiple Occupation (Living Accommodation Standard) Regulations (Northern Ireland) 2019, state that appliances should be fitted in accordance with The Fire Safety Guidance for HMOS. The NIFRS fire safety guidance states that a risk assessment must be completed for HMO properties.	The Fire and Rescue Services (Northern Ireland) Order 2006 and The Fire Safety Regulations (Northern Ireland) 2010
Proof of sufficient funding arrangements	Section 11(c) – Satisfactory management arrangements	N/A
Anti-social behaviour plan	Section 14(2)(b) conditions requiring the taking of reasonable and practical steps to prevent or reduce anti-social behaviour by persons occupying or visiting the HMO.	N/A
Publication of notice of Application	The Houses in Multiple Occupation (Notice of Application) Regulations (Northern Ireland) 2019	N/A

(7) Planning

There appears to have previously been a generally held misconception that planning permission had to have been obtained before an application for renewal of a licence was submitted and if applicants were not in a position to provide confirmation of planning permission or a Certificate of Lawfulness of Existing Use and Development (CLEUD), their renewal application would be automatically refused.

While it is clear that this was never the Council's position, the Council did, however, in September 2019, revise its position in respect of renewal applications, in that a breach of planning control is no longer taken into consideration when assessing the fitness of the applicant. The Council subsequently informed LANI in this regard and in addition, updated its website and application form, to reflect its change in position.

(8) Overprovision

New Applications

Section 8 of the 2016 Act states that a Council may grant an HMO licence only if it is satisfied of certain criteria. These include in Section 8(2)(d) that the grant of the licence will not result in overprovision of HMOs in the locality in which the living accommodation is situated. Section 12 goes on to specifically deal with overprovision. It reads:

- (1) In considering whether the granting of a licence will result in overprovision in a locality for the purposes of section 8(2)(d), the Council must have regard to:

- (a) the number and capacity of licensed HMOs in the locality,
- (b) the need for housing accommodation in the locality and the extent to which HMO accommodation is required to meet that need, and
- (c) such other matters as the Department may by regulations specify.

- (2) It is for the Council to determine the localities within its district for the purposes of this section. The Council is under a mandatory obligation to have regard to the issue of overprovision when assessing new applications and it must be satisfied that the grant of the licence will not result in overprovision of HMO accommodation in the locality.

As appears from how the Council has approached this issue it has regard to all of the considerations which were raised by the consultation responses. The weight to be attached to those matters should remain a matter for the Council.

Renewal Applications

Pursuant to Section 20(4)(b) of the 2016 Act over provision cannot be taken into consideration when considering a renewal application. An application to renew the licence must be made before the licence ceases to have effect as any application received after the expiry of the licence will be treated as a "new" application.

There is absolutely nothing unusual about requiring a renewal application to be made before an extant licence expires and that failure to do so will result in the application being treated as a new application. See for example liquor licensing, amusement permits, entertainment licensing.

(9) Section 28 – Change of ownership: effect on licence

Councils are obliged to apply the provisions of Section 28 where there is a transfer of ownership. With reference to section 28(3) “Change of Ownership” the Council in its submission to the DfC suggested that it may be appropriate to introduce Regulations to specifically provide that over provision should not be considered as part of a “new licence” application in circumstances where there is a change of ownership.

LANI have previously raised concerns about what they alleged to be a policy change on the part of the Council which related to the Council taking into account overprovision when assessing such applications. This was not a policy change but rather the Council correctly applying section 28 of 2016 Act. Furthermore, Counsel’s advice was previously sought on this issue and has been subsequently clarified. It is clear that the 2016 Act requires the Council to treat such an application as a new application rather than a renewal. There has been no material change to the Council’s position in respect of the application of overprovision to transfer applications. In circumstances where an application has been received from the prospective owner before the expiry of the existing licence such licence remains in place until the prospective owner’s application has

been determined. In such cases the Council considers this to be effectively a transfer of an existing licence to another person which would not result in overprovision.

(10) Section 29 – Death of sole licence holder: effect on licence

The Council is required to comply with section 29 “Death of sole licence holder: effect on licence” of the 2016 Act when dealing with the death of the sole licensee. The Council in its submission to the DfC have suggested changes to Section 29 of the 2016 Act to make this process easier.

(11) Communications

BCC has engaged in extensive communications with customers and stakeholders including attending meetings, a media campaign and direct communications with HMO owners and managers. In addition, the NIHE wrote to all licence holders on behalf of the DfC informing them of the introduction of the 2016 Act. The issue of reminder letters was raised by a number of consultees. It is important to clarify that prior to the date of transfer, the NIHE would have written to the specified person on the HMO Registration Certificate, approximately 6 months in advance of the expiry of the registration informing them of the need to renew. Upon legal advice, in November 2018 the NIHE stopped issuing reminder letters for registrations expiring on or after the 1st April 2019 as the registration scheme ceased to have effect on that date. The Council began writing to licence holders, on the 11 April 2019, informing them of the expiry date of their licence. Clearly, the Council were placed in a situation where they

were playing “catch-up” in corresponding with those licence holders who did not receive a reminder letter as a result of the NIHE’s decision. However, the Council can confirm that the licence holders are currently given advanced notice of the expiry date of their licence and the need to renew same. During the Covid-19 Pandemic, the Council, like many other organisations, have had to adapt to new methods of working. During the initial lockdown period, some services were restricted, including inspections, which caused unfortunate delays in the processing of licence applications. Additionally, with officers having to adapt to working from home, some technical difficulties were encountered in addressing telephone enquiries. However, the Council updated its online guidance and written communications, to advise service users to use email where possible. To improve telephone services, the NIHMO Unit with the help of digital services rolled out “soft phones” which is a type of software-based phone that allows officers to make and receive phone calls over an internet connection without needing designated physical software. This roll-out significantly improved the service to our customers.

(12) Council working against landlords

The Council refutes the suggestion that “HMO licence rules appear to have been changed to remove HMO licences in an underhand way” and administers the licensing scheme in accordance with the expressed provisions and spirit of the 2016 Act. As this was a transition from a registration to licensing regime there were always going to be challenges and the Council has had to try to strike the right

balance in working with landlords but also working with the wider communities within which they are located and some of the issues which those communities feel are associated with the overprovision of HMOs. The Council has developed clear processes around the licensing and enforcement of HMOs and those guidelines are applied without bias or favour to all licence applicants/holders.

(13) Administration

The transfer of the HMO Licensing function to Councils was complex, involving the transfer of staff from the NIHE to Belfast City Council, the implementation of a new licensing scheme underpinned by a new legislative regime and the procurement of a new IT system to manage the application process and the administration of the scheme. This has brought challenges for Council officers in delivering this service. The Council notes the comments in this regard. The HMO officers have worked with the IT provider to develop improvements to the system and staff have received training on both the system updates as well as the legislative requirements to ensure that the Council administer the licensing process as efficiently as possible.

(14) Out of hours contact number and dealing with Anti-Social behaviour

It is intended to ensure that the Council and licence holders can work together to address anti-social behaviour in a way that is efficient, effective and proportionate. It is not intended to place any undue burden on landlords: they will be contacted at their number in only exceptional circumstances. A landlord or managing agent will not generally

be expected to attend the property, and nor will they be expected to manage anti-social behaviour, which is not occurring directly on, or in connection with, their premises. The purpose of having the contact number is to ensure that landlords can be apprised of anti-social behaviour contemporaneously so that they might take whatever steps they deem appropriate to deal with the problem. The requirement for an out of hours telephone number was the subject of judicial review proceedings brought by LANI. The Court upheld the Council's requirement for an "out of hours contact number" to be provided by landlords to support the management of anti-social behaviour at their properties.

(15) Advert in the paper

The Council is required to ensure compliance with the provisions of The Houses in Multiple Occupation (Notice of Application) Regulations (Northern Ireland) 2019 and the associated costs are outside of its control.

(16) Minimum room size

In determining whether to grant an application for the grant or renewal of an HMO licence, the Council must be satisfied that the accommodation is suitable for occupation by a specified maximum number of persons. That requires the Council to calculate the permitted number of persons in each room in the HMO which is available as sleeping accommodation. In making that calculation, the Council takes into consideration the following: -

- I. Part 4 of the Houses in Multiple Occupation Act (Northern Ireland) 2016 (section 43);

- II. The Houses in Multiple Occupation (Space Standard) Regulations (Northern Ireland) 2019;
- III. Guide to the Licensing of Houses in Multiple Occupation in Northern Ireland: Guidance for Local Government"

It is important to note here that in addition to the express provisions of the 2016 Act, the clear intention of the legislation, amongst other considerations, is to ensure high standards in terms of the safety, suitability and quality of accommodation for occupiers. In view of same, the Council is satisfied that its approach to calculating minimum room sizes is correct. Council would also take issue with the suggestion that just because smaller rooms have historically been acceptable in HMOs that they should remain acceptable ad infinitum. That is contrary to the aims of the various legislative requirements in relation to the private rented sector, which seek to improve those standards. Furthermore, Council would point out that by the nature of its description guidance is just that and whilst Council must have regard to said guidance it is not bound by it.

(17) Section 63 Landlord Training

The Council is currently developing an online training module for landlords in relation to the "Code of practice for the Management of Houses in Multiple Occupation" approved under section 63 of the Houses in Multiple Occupation Act (Northern Ireland) 2016. The training will be rolled out before the end of the financial year. Officers have invited LANI to engage with the process of developing the training module and take account of any feedback.

(18) Fee for temporary exemption notice

Section 84 – Fee of the HMO Act confers power on the Department to make regulations concerning fees, including the maximum amounts to be charged, how fees are to be calculated, and circumstances in which no fee is to be payable or in which fees are to be refunded. However, there is no provision in the Act to allow the Council to charge a fee for a Temporary Exemption Notice (TEN) in accordance with Section 15.

Section 15 allows a Council to issue a temporary exemption notice if the owner of an unlicensed HMO applies for one.

The owner must explain the steps to be taken to stop the premises from being an HMO, and the Council must be satisfied that these steps will be successful. The HMO does not need a licence during the term of the notice, which is three months unless extended in exceptional circumstances. A copy of the TEN decision must be sent to owners and the occupants of the HMO. The cost of determining a TEN application ranges from £112 to £187 depending on whether follow-up inspections are required. To date the NIHMO Unit has received 207 TEN applications and must absorb the cost of this additional administration burden.

10. Legislative issues raised in review and Departmental response

This part of the report sets out the Department's response to the legislative issues raised in the review.

A number of issues regarding the legislation were raised as part of the review. Below are the main areas where councils and landlords felt there were difficulties which affect the effective delivery of the HMO scheme by section of the HMO Act.

Issue Raised: Section 1 Meaning of a House in Multiple Occupation

Regulations should be laid pursuant to paragraph 9(c) to restrict the number of other persons who can share accommodation with the owner or any member of the owner's household without it being licensed. This will ensure that loopholes, which allow the owners of properties to live in the house and negate the need for the house to be subject to HMO licensing, are closed.

Departmental Response:

The Department has considered the request by Belfast City Council to amend the definition to include properties where the owner of the property is occupying the property. The Department's policy intention focused on those buildings identified as having the greatest risk and as such the Department took a risk based approach in the new regulatory regime.

Our thinking considered that this would allow councils to better target inspections on those high risk properties and enforce the new standards expected. Our research indicated the key risks were in rented accommodation, where there is no head of household, and as there is not the same risk in owner-occupied properties, it would not be appropriate to apply the same level of regulation. It was also evident if not granting an exception from the definition the Department would have been interfering in an owner-occupiers right to the peaceful enjoyment of their property.

Proposal:

No change in the definition of a House in Multiple Occupation.

Issue Raised: Section 2 Definition of living accommodation

Belfast City Council would welcome the insertion of provisions in Section 2(4)(c) to deal with circumstances in which meals are provided (when no other kitchen facilities are available). Under the existing definition, the Council is concerned that a number of properties that would previously have been subject to the licensing regime may fall out of the definition resulting in no regulation for such properties where communal catering arrangements are provided e.g. for temporary shelters for homelessness or displaced persons.

Departmental Response:

Prior to the HMO Act 2016 the previous definition of HMOs was criticised in the courts (Judicial Review 2005) for being too wide and bringing houses into HMO regulation where it was not warranted. In an attempt to better target regulation the Department brought forward a definition that is prescriptive of what an HMO is and in the process provided for various exemptions. It was also accepted if the Department were to subject every such dwelling to the full force of HMO licensing landlords and the regulatory authority would face enormous costs and complexity, which would jeopardise the supply of cheap shared accommodation. Schedule 1 provides for exemptions from the licensing requirement for certain HMOs. Exemptions apply where there is some other form of statutory regulation which is acceptable to the Department, or where, because of the purpose to which the HMO is put, the risk to its occupants is reduced to a level where regulation is not needed.

Proposal:

No change to the definition of living accommodation.

Issue Raised:

Section 5 Notice regarding evidence of household

This section applies if the council believes, “on reasonable grounds”..., Belfast City Council recognises the need for reasonable grounds, however such a threshold is very hard to achieve when the co-operation of the owner / manager / occupants isn’t forthcoming. The Council would welcome some discussion about how this can be improved with the Department, to include a general power of obstruction where a person intentionally obstructs an officer in the exercise of powers under the Act.

Departmental Response:

The Department provided comprehensive guidance to councils to assist them in the exercise of their functions under HMO licensing. Councils must have regard to it in the exercise of their functions. Section 81 of the Act makes such provision on obstruction.

Proposal:

No change to notice regarding evidence of household.

Issue Raised: **Section 6 Notice regarding continuation of occupation**

Belfast City Council would request that the 4 month period referred to in Section 6(1) (b) & 6(4) is extended to 6 months, as large numbers of students leave in the first week of May and don't in some cases return to the beginning of October.

Departmental Response:

Further engagement on this issue will be required as the Department would need to have strong evidence to justify the need for this requirement as such an amendment may be opposed by landlords/managing agents.

Proposal:

Further engagement to look at an increase in the period to up to 6 months.

Issue Raised: **Section 8 Applications for HMO Licence**

Belfast City Council believes that Section 8 2(a) should be amended. As the Department will be aware, there are a significant number of HMO premises which have not been assessed through the planning permission process (which assesses applications against The Houses in Multiple Occupation (HMOs) Subject Plan for Belfast City Council Area 2015 and do not have the benefit of a Certificate of Lawful Use. This provision has created uncertainty and it is respectfully

submitted that the only reasonable basis upon which it can be determined that the operation of the premises would not be a breach of planning control is through the determination of a formal application for a Certificate of Lawful Use by Planning Service.

Belfast City Council would therefore recommend that this provision should be amended to state that the Council must be satisfied that the property has planning permission or a Certificate of Lawful Use. It is also recommended that this amended test must apply to both new and renewal applications.

Departmental Response:

Section 9 of the Act already provides for any breach of planning control. Councils have used the Certificate of Lawfulness of Existing Use and Development (CLEUD) to satisfy the requirement that a property is not in breach of planning control for HMOs in operation before the necessity for planning permission came in effect. It is not felt that any changes to this are required at present.

At present the CLUED is required for new licence applications for properties that were previously licensed or registered as an HMO. An estimate provided by Belfast City Council NIHMO Unit is that approximately 25% of HMOs now have CLEUDS.

Proposal:

No change to Section 8 or 9 of HMO Act.

Issue Raised: **Section 12 Overprovision**

Under this section, the council is under a mandatory obligation to have regard to the issue of overprovision when assessing “new” applications. Moreover it must be satisfied that the grant of the licence will not result in overprovision of HMO accommodation in the locality. The wording of this particular provision should be reviewed by DfC to provide greater clarity for those seeking to purchase existing licensed HMO properties. This would also impact on Section 29(5)(b)

Departmental Response:

This review is unable to deal with the historical overprovision of HMOs in areas such as South Belfast. There is demonstrable requirement for this type of accommodation in the South Belfast area, the Department’s policy intent is that any accommodation licensed as an HMO should be able to continue as a licensed HMO (providing all other licensing conditions are met) to meet the housing need in this area. Further work is ongoing to explore how to achieve a better balance of housing mix in this area.

Proposal:

No change to Section 12 at this point, further work ongoing.

Issue Raised: **Section 15 Temporary exemption notice**

Belfast City Council have requested the ability to charge for a temporary exemption notice – see Section 84. This is currently a free service and charging should be allowed under this provision to bring it into line with the other notices under the scheme for which there is a charge to cover the administrative costs associated with issuing such notices.

The 3 month minimum period specified in Section 15(7)(a) should be increased to 6 months to take in account extended notice periods for tenants to vacate the accommodation as provided for under Coronavirus regulations and any future plans the Department may have for increased tenant protection. BCC feel there should be powers to compel the owner to provide contact details for the occupants of the accommodation in order that the Council can comply more effectively with subsection 5.

Departmental Response:

Further engagement on this issue will be carried out in the light of the revised notice to quit periods after passage of the Private Tenancies Bill. The request for the ability to charge a fee for a temporary exemption notice has been noted and the Department will engage with councils to determine an appropriate amount.

Proposal:

Extension to temporary exemption certificate periods will be reviewed with stakeholders and the Department will work with councils to determine an appropriate fee.

Issue Raised - Section 16 Extension of temporary exemption notice

Belfast City Council would wish to charge a fee to cover an extension of a temporary exemption notice.

Departmental Response:

As noted above.

Issue Raised - Section 19 Duration of licence

As above under renewals, the Council believe that a renewed licence should be backdated to the day after the previous licence expired.

Departmental Response:

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

Proposal:

No change, as with all licences the period of validity runs from the date the licence is granted.

Issue Raised - Section 20 Renewal of Licence

LANI believe that there are problems with renewal applications as below:

- (a) There has been some confusion around whether a licence renewal is to be treated as a new licence or a new application (planning/overprovision considerations come into play with new applications).
- (b) On change of ownership if the application for a licence is treated as new application the new owner has no certainty that a licence will be issued and even if it is will it be on the same terms as before (occupancy numbers etc.).
- (c) Even on normal renewals of a licence the Belfast City Council have proposed on occasions to apply rigidly the room size requirements under the new Act when the discretion offered by the previous scheme had been enjoyed before. The room size requirements under the new Act are too prescriptive (no floor area counted where the ceiling height is less than 1.5m) and perfectly adequate rooms are being excluded from occupancy. Court case pending. Belfast City Council have stated their opposition to any change in the legislation re room size.
- (d) HMO landlords feel that they are currently operating in an unstable environment due to ever changing rules. Council need to provide a robust narrative re the operational issues landlords have raised.

BCC have stated that any new owner must apply for a new licence, this would not be treated as a renewal and so the conditions for a new licence would have to be taken into account.

An application for a new licence after a change of ownership will not be refused on the grounds of overprovision provided there is no breach of planning permission, this can be through the use of a Certificate of Lawfulness of Existing Use or Development (CLEUD).

HMOs in existence before 2004 would not have required planning permission, however in these cases provided it can be proved that a property has been used continuously as a HMO for 5 years then there should be no issue obtaining a CLEUD.

Belfast City Council have suggested that anyone wishing to sell an HMO should obtain a CLEUD before selling as this should make the application for a new licence for the new owner more straightforward providing the other requirements for licensing are met.

Departmental Response:

The Department does not agree that any changes are required to Section 20 of the HMO Act. As previously discussed a new application after the sale or transfer of a property must be treated as a new application and not as a renewal.

The current legislation clearly states that on a renewal application, provided that application to renew is made before the existing licence ceases to have effect, then the licence cannot be refused on the grounds of overprovision.

Proposal:

No change in how renewal applications are treated.

Issue Raised: Section 22 Variation of licences

Belfast City Council believe the process as specified in the legislation in Schedule 4, is overly complex in relation to applications to vary the licence by the owner or by someone named on the licence, when the Council is in agreement with the proposal. Belfast City Council would welcome a more streamlined process under this provision to reduce administrative time and to enable the Council to provide a swifter response to applicants who wish to vary their licences for straightforward matters such as a change of managing agent who is previously known and assessed to be a fit and proper person by the Council.

Departmental Response:

The Department will work with councils to explore how this process can be simplified for straightforward cases like for example, changing a managing agent.

Proposal:

Department to engage with councils to streamline variation of licence process.

Issue Raised: Section 28 Change of Ownership

LANI believe that there are numerous problems with the current legislation -

- (a) The current process outlined in Article 28 is cumbersome and the requirement for the proposed new owner to apply (and pay a substantial fee) before completion seems unnatural and will be innocently missed in some cases.
- (b) If the process is mishandled the result can be the catastrophic loss of the licence and HMO status, possibly for ever.
- (c) The potential resultant loss in value if the correct process is not followed has eroded confidence in the HMO sector and financial institutions may adopt a policy to refuse to lend in respect of HMOs.

LANI's proposed solutions to this were the current licence should be allowed to 'travel with the property' and the new owner required to apply for a variation of the licence within 28 days of completion. Failure to do this should result in a fine or fixed penalty, rather than loss of the licence.

However, Belfast City Council's view on this was that the property would still require an inspection to ensure that the standard and safety of the property would be suitable for an HMO licence as some time may have passed since the previous inspection and changes may have been made to the property, and the landlord/agent would still have to pass a 'fit and proper' person test. BCC felt that due to the resources required for this it would be better for this to remain as is, i.e. a new licence application should be made by the new owner.

Departmental Response:

Following the discussions with landlords and NIHMO Unit the Department does not agree that any changes are required to this section of the legislation. A licence cannot transfer with the property as the council must still be satisfied that the new owner meets the "fit and proper person" test.

As above, any change of ownership on the sale or transfer of an HMO property will result in the existing licence ceasing to have effect and a new application for a licence must be made.

Proposal:

No change to how an application is treated on sale or transfer of HMO property.

Issue Raised: **Section 29 Death of a sole licence holder**

Both Belfast City Council and LANI agree that 3 months is not long enough for personal representatives of a deceased license to apply for the transfer of an HMO licence.

Departmental Response:

The Department agrees that the current 3 month limit for a new licence holder to be processed after the death of a sole licence holder is too short to allow for various difficulties which may be encountered with the deceased's estate. The Department proposes extending this limit to one year.

Proposal:

The time limit in Section 29 to change from 3 months to one year.

Issue Raised: **Section 43 Space standard**

Room size is currently an issue with both BCC and LANI, LANI believe that where an existing HMO has operated for many years with a bedroom size just under the minimum required then an element of discretion should be applied to allow the use to continue. BCC have stated their response to this issue above.

Departmental Response:

The main policy intent of the HMO licensing scheme was to improve conditions for occupants. As such a minimum standard of bedroom size has been set at 6.5 square metres.

Proposal:

No change to the space standards set out in Section 43 and the associated Regulations. The Department will review the HMO guidance for councils to ensure this corresponds with the legislative requirements.

Issue Raised: Section 62 HMO register

Belfast City Council is of the view that the restrictions on public access to the Register should be removed. These restrictions are at odds with the licensing regime which at its heart requires better management of HMOs and a more proactive resolution of issues or anti-social behaviour. A publically accessible register would allow for resolution of issues at a community level at an early stage before they are escalated to councils. These restrictions also seem at odds with the requirement to publically advertise notice of applications and the requirement for councils to properly assess the fitness of an applicant. Belfast City Council notes that HMO Registers must be publically available in England and Wales by virtue of Section 231 of the Housing Act 2004 and also that the name of landlords is published within same (Section 11 of The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006 and Section 11 of The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (Wales) Regulations 2006).

Departmental Response:

The Department's original intention in the first draft of the HMO Bill was that the register would have public access with no restrictions. However LANI voiced their concerns and urged that further consideration is given to the increased threat to personal security of a publically accessible register and publically displayed application which may provide personal details of both landlord and managing agent.

Following this Clause 62 was amended to ensure that an appropriate balance was struck between the public interest in the information publically available and the safety and security of landlords and their families. Similar arrangements for disclosure of information from the register exists for the Landlord Registration Scheme.

Proposal:

No change to publishing of HMO Register.

Issue Raised - Schedule 2

Paragraph 3 – Notice to statutory authorities. BCC have requested that this paragraph be amended to provide a statutory basis upon which other authorities can disclose information in relation to any information they hold in relation to the “fit and proper” person status of the proposed licensee or managing agent. This would assuage concerns on their part regarding potential breach of data protection legislation. Currently, the council is required to notify the statutory authorities concerning all HMO applications, however there is no requirement for statutory agencies to provide any information they hold in respect of the owner or managing agent under the fit and proper definition.

Departmental Response:

The Department intend to remove the requirement for statutory agencies to be notified of all HMO applications. Under the current legislation the police, fire service, NIHE and the Department all get notified of applications and it is not required. The Department do not have the power to compel statutory agencies to share information regarding the “fit and proper person” test.

Proposal:

Remove the requirement to notify statutory agencies of all HMO licence applications. Change of wording from “must” to “may”.

Paragraph 12 – Belfast City Council have stated that the current time limit for processing an application for an HMO licence is 3 months from the date that it is deemed a “valid” application. The current 3 months limit is overly difficult to achieve given a number of factors to be considered for example allowing the owner sufficient time to undertake remedial works and accommodating the management of Committee agendas where representations are received. It is considered that the licensing regime is complicated and cumbersome. The time limit only creates more difficulties and has no practical benefit for councils and landlords alike. Given the requirements of the licensing scheme, particularly the fact that there is a requirement to assess the fitness of an applicant, it is not appropriate to have deemed licences in any event. Furthermore, the Council is incurring significant expenditure in respect of applications made to the magistrates’ court for an extension of time to consider a licence application, with the court service also querying the number of applications received in this regard. It is the Council’s view that this is the result of the overly onerous 3 month time period for determining applications. If the Department are not prepared to remove this provision in its entirety, the Council would request that this time limit is extended to 6 months.

- For example – Application received on day 1 with all documentations and fee, therefore a valid application
- Notice of application received on day 8, representations from day 9 to 37.

- Inspection to be scheduled, property assessed and if necessary works completed before the licence would be granted. (The council acknowledges that it can include work as a condition of licence, however it would be very reluctant to grant a new licence without all necessary works being completed). Also being mindful that the council could not include fire safety works as a condition of licence.
- If representations are received these needed to be considered and if they relate to the fitness of the applicant additional enquiries may need to be made.
- Proposed decision needs to be issued for a minimum of 14 days.
- Representations in relation to the proposed decision needs to be considered.
- Notice of hearing needs to be issued – minimum of 7 days before the hearing (bearing in mind council committees only sit monthly and the number of items already on the committee agenda needs to be considered).

Departmental Response:

It is acknowledged that the timescales for processing an application are difficult. The Department will look at extending this timescale in light of the recent case brought forward in a County Court appeal.

Proposal:

The Department will consider extending the time limit for licence decisions.

Paragraph 12 should clearly indicate that the time limit starts from the date the application is valid (this is currently only in guidance).

Departmental Response:

The Department agrees that there should be clarity on this issue and agrees that the application is only valid when all the relevant information has been provided.

Proposal:

Paragraph 12 should be amended to clearly state that the 3 month time limit begins when a valid application is received.

Paragraph 13 – BCC have asked for a review of the need to serve a notice of determination on all statutory authorities should be undertaken. This is administratively burdensome, and the Council would suggest that it may be more appropriate to regularly update the statutory authorities with the HMO register.

Departmental Response:

This is the same as the issue raised at Schedule 2 Paragraph 3.

Issue Raised – Schedule 4

Paragraph 1(2)(c) – Notice to statutory authorities, this paragraph should be reviewed to ensure that statutory authorities are obliged to reply with any information they hold in relation to the fit and proper person status of the proposed licensee or managing agent.

Departmental Response:

As above the Department does not have the power to compel statutory authorities to disclose information.

Paragraph 5 (1)(c) – Compels councils to serve notice of any determination on an HMO licence to the statutory authorities. As above, this should be removed as it has no practical benefit. If another agency wishes to obtain information in relation to a HMO they can do so under the provisions relating to access to the Register or through FOI legislation.

Departmental Response:

The Department will consider the effects removing this paragraph will have.

Issue Raised - Schedule 5

BBC believe there should be powers to compel the owner of an HMO to provide contact details for the occupants of the accommodation in order that the council can comply more effectively with paragraph 1(2)

Departmental Response:

The Department agrees that it would be useful for the council to have contact details for the occupants of the licensed property, however this will need to be explored as it is unclear what could happen if an occupant did not want to have their details held by the council.

Issue Raised – Maximum Fee chargeable for Licence Application

The Department is aware that when the ‘forecast’ number of occupants/licences used to calculate the original licence charge are compared with the actuals now in the system, it was found that some of the assumptions made in the original calculations have not come to fruition as a number of property types were subsequently excluded from the scheme. In order to keep the scheme cost neutral the amount of £45 per occupant per year as the upper limit for a licence application may need to be raised.

Departmental Response:

The Department will work with the councils and NIHMO Unit to determine the upper limit for a licence fee. While the Department acknowledges the need to keep the scheme cost-neutral it is also aware that any increase in the licence fee is likely to be passed on to tenants.

11. Conclusion and next steps

A number of proposed changes to the Houses in Multiple Occupation Act (Northern Ireland) 2016 have been looked at as part of this review. The sections and proposals are set out below:

Section	Proposal
Section 1 – Meaning of “house in multiple occupation”	No change
Section 2 – Definition of living accommodation	No change
Section 6 – Notice regarding continuation of occupation	Department to carry out further engagement on this with possibility of increasing time limit to 6 months
Section 8 - Applications for HMO licence	No change
Section 9 – Breach of planning control	No change
Section 12 – Overprovision	No change at this point, work ongoing to explore possible ways of achieving balanced housing mix in areas with high levels of overprovision
Section 15 – Temporary exemption notice and Section 16 – Extension to temporary exemption notice	Further engagement with councils to determine if period should be extended and a suitable fee for application for temporary exemption notice
Section 19 – Duration of HMO licence	No change
Section 20 – Renewal of licence	No change
Section 28 – Change of ownership: effect on licence	No change
Section 29 – Death of sole licence holder: effect on licence	Increase time limit from 3 months to one year
Section 62 – HMO register	No change
Schedule 2, paragraph 3	The Department will look at changes to this paragraph – suggested change of the word “must” to “may”
Schedule 2, paragraph 12	The Department will look at extending the 3 month time frame for applications to be decided.
Schedule 2, paragraph 13	As above at paragraph 3

Section	Proposal
Schedule 4, paragraph 1	No change
Schedule 4, paragraph 5	The Department will look at the effects of removing this paragraph
Schedule 5, paragraph 1	The Department will explore if the BCC's request is possible in line with General Data Protection Regulation.
The Houses in Multiple Occupation (Fees) Regulations (Northern Ireland) 2019	The Department will work with councils to determine a new maximum limit in order to keep the scheme operating on a cost neutral basis.

The Department would like to thank everyone who contributed their views to this review.

The proposals included in this document will need further consideration and development.

The Department will need to put the proposals forward for the consideration of a Minister before work can progress in making the legislative changes required.

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