

Public Document Pack

**Democratic Services Section
Legal and Civic Services Department
Belfast City Council
City Hall
Belfast
BT1 5GS**

15th November, 2021

MEETING OF LICENSING COMMITTEE

Dear Alderman/Councillor,

In addition to those matters previously notified to you, the following items will also be considered at the meeting to be held at 5.00 p.m. on Wednesday, 17th November, 2021.

Yours faithfully,

SUZANNE WYLIE

Chief Executive

AGENDA:

3. Non-Delegated Matters

- (c) Department for Communities Review of Houses in Multiple Occupation Licensing Scheme (Pages 1 - 60)

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Subject:	Department for Communities Review of Houses in Multiple Occupation Licensing Scheme
Date:	17th November 2021
Reporting Officer:	Kevin Bloomfield, NIHMO Manager
Contact Officer:	Vivienne Donnelly, City Protection Manager Kevin Bloomfield, NIHMO Manager

Restricted Reports			
Is this report restricted?	Yes	<input type="checkbox"/>	No <input checked="" type="checkbox"/>
Is the decision eligible for Call-in?	Yes	<input checked="" type="checkbox"/>	No <input type="checkbox"/>

1.0	Purpose of Report/Summary of Main Issues
1.1	The Houses in Multiple Occupation Act (Northern Ireland) 2016 came into effect in April 2019 following the transfer from Northern Ireland Housing Executive's (NIHE) HMO Registration scheme to councils under a new licensing regime.
1.2	As part of the transfer arrangements, the Department for Communities (DfC) undertook to undertake a review of the implementation of the HMO licensing scheme within two years of the transfer.
1.3	The Committee, on 10th March 2021, agreed the Council's proposed response to the review.
1.4	DfC forwarded an initial feedback report on the review on 30th June and requested the NIHMO Unit to provide comments on Annex B which contains comments on the administration of the licensing scheme.
1.5	A number of themes were identified in Annex B and appendix 3 details the proposed Council response to those themes.

2.0	Recommendations
2.1	Taking into account the information presented, the Committee is asked to agree the proposed response to the initial feedback report issued by DfC in respect of its review of the HMO licensing scheme.
2.2	The Committee is also asked to agree an additional submission to DfC at paragraph 3.8 below and in Appendix 3.
3.0	Main Report
	<u>Key Issues</u>
3.1	The Houses in Multiple Occupation (HMO) Act NI 2016 was commenced on 1st April 2019 which coincided with officers from NIHE transferring to Belfast City Council to administer and deliver the new HMO Licensing Scheme function for all councils in Northern Ireland.
3.2	As part of the transfer arrangements, DfC undertook to review the implementation of the new licensing scheme within 2 years of the transfer taking place from the NIHE to councils.
3.3	On 17th February 2021, the Committee considered a paper titled 'Department for Communities On-Line Questionnaire' as part of the Review of Houses in Multiple Occupation Licensing Scheme.
3.4	At the meeting of 17th February 2021, the Committee agreed to defer consideration of the draft response until its monthly meeting in March to allow for Members to consider it in greater detail.
3.5	At the meeting on 10th March 2021 the Committee is asked to note and agree the Council's proposed response to the on-line questionnaire issued by DfC in respect of their review of the HMO licensing scheme. Committee is also asked note and agree an additional submission to DfC to be considered as part of their review highlighting legislative anomalies and omissions with suggested amendments to improve the delivery and administration of the HMO licensing scheme. (Appendix 1)
3.6	The Committee noted the report of 10th March 2021 and agreed to the Council's proposed response to the on-line questionnaire issued by DfC in respect of its review of the HMO licensing scheme.
3.7	On 30th June 2021, the Council received from DfC a copy of the "Initial feedback report on review of licensing scheme for Houses in Multiple Occupation" Annex B of the report contained comments on the administration of the licensing scheme, the department requested a response from the NIHMO Unit to these comments. A copy of the feedback report can be accessed at https://minutes.belfastcity.gov.uk/documents/s94961/Feedback%20Report.pdf
3.8	A number of themes have emerged from the responses to the DfC consultation on the Houses in Multiple Occupation Act (Northern Ireland) 2016. Those themes being <ul style="list-style-type: none"> 1. Cost 2. Guidance 3. Online application process 4. Revision to the definition 5. Environmental issues 6. Determination documentation

	<ul style="list-style-type: none"> 7. Planning 8. Over provision 9. Section 28 – change of ownership: effect on licence 10. Section 29 Death of sole licence holder: effect on licence 11. Communications 12. Council working against landlords 13. Administration 14. Out of hours contact number 15. Advert in the paper 16. Minimum room size 17. Section 63 Landlord Training 18. Fee for temporary notice
3.9	<p>Appendix 3 gives the Council's response to each of the major themes raised by the consultation.</p> <p><u>Financial and Resource Implications</u></p>
3.10	<p>None</p> <p><u>Equality or Good Relations Implications/Rural Needs Assessment</u></p>
3.11	<p>There are no issues associated with this report.</p>
	<p>Documents Attached</p>
	<p>Appendix 1 – Committee report of 20th March</p> <p>Appendix 2 – Initial feedback report on review of licensing scheme for HMOs (link in paragraph 3.7)</p> <p>Appendix 3 – Council's response to each of the major themes raised in the feedback report.</p>

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Subject:	Department for Communities On-Line Questionnaire as part of the Review of Houses in Multiple Occupation Licensing Scheme
Date:	10 th March 2021
Reporting Officer:	Vivienne Donnelly City Protection Manager
Contact Officer:	Kevin Bloomfield, HMO Unit Manager

Is this report restricted?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Is the decision eligible for Call-in?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>

1.0	Purpose of Report or Summary of main Issues
1.1	<p>The Department for Communities has commenced its review of the Houses in Multiple Occupation ('HMO') Licensing Scheme as the scheme has been in operation for almost two years having come into effect on 1st April 2019. A draft response to the Review which is being conducted via an on-line Questionnaire was previously considered by members who expressed concerns that the proposed response did not adequately address the concerns and frustrations encountered by the Council in trying to regulate the existing HMO housing stock and impacts on local communities. To facilitate a revised response, officers requested a further extension of time (previously extended by Department for Communities ('DfC') from the 5th February to the 19th February) until 11th March 2021.</p>
2.0	Recommendations
2.1	<p>Taking into account the information presented, Committee is asked to note and agree the Council's proposed response to the on-line questionnaire issued by DfC in respect of their review of the HMO licensing scheme.</p> <p>Committee is also asked note and agree an additional submission to DfC to be considered as part of their review highlighting legislative anomalies and omissions with suggested amendments to improve the delivery and administration of the HMO licensing scheme.</p>

3.0	Main report
	<u>Key Issues</u>
3.1	DfC wrote to Belfast City Council on 22 nd December 2020 to indicate that it wished to seek views in relation to the review by means of an online questionnaire on the NI Direct website on the following link https://consultations.nidirect.gov.uk/dfc-analytical-services-unit/review-of-houses-of-multiple-occupation-hmo-licenc/ . (Appendix 1)
3.2	A copy of the minutes and report in relation to February Licensing Committee is at Appendix 2.
3.3	<p>The review questionnaire poses 9 questions and the proposed answers to the questions have been provided in Appendix 3 Online Questionnaire response. The HMO Review is seeking views in the following areas;</p> <ol style="list-style-type: none"> 1. Improvements to the management of the HMOs 2. Improvements to the overall standards of HMOs 3. Improvements to the current fitness standards expected in HMOs 4. Improvements to the safety standards associated with living in an HMO 5. The value for money associated with the HMO licensing scheme 6. The effectiveness and accessibility of the HMO Guidance 7. Effective and timely communication between councils and landlords and councils and Department 8. Views on the administration and delivery of the scheme 9. Identification of respondent.
3.4	Officers have considered the views and representations of the Licensing Committee regarding the concerns and frustrations encountered by the Council in trying to regulate the existing HMO housing stock and their impacts and effects on local communities. The following views are now reflected in the proposed response to the Review of HMOs;
3.5	The Council welcomes the opportunity to contribute to the review of the HMO Licensing Scheme being undertaken by the DfC. In seeking to provide answers to the questions posed in this questionnaire, taking account of the Council's lead role in administering and delivering the scheme on behalf of all councils in Northern Ireland, the Council believes that the review also gives DfC the opportunity to review housing policy and provision through a wider lens, as the HMO licensing scheme alone does not afford the Council the opportunity to shape the city and enhance local communities.
3.6	Belfast City Council notes the DfC assertion within the letter accompanying the questionnaire (in Appendix 1) that " <i>the licensing regime sought to properly and effectively regulate Houses in Multiple Occupation to ensure the health, safety and wellbeing of occupants and at the same time to minimise any negative impacts upon the neighbourhood and surrounding area</i> ". The Council wishes to highlight that the new licensing regime has failed to achieve that aim, particularly in those areas where there is a high density of HMOs already in existence. The ongoing and live issues associated with the high density Houses in Multiple Occupation areas are well documented in terms of environmental impact and antisocial behaviour requiring significant additional resources by the Council to manage on an on-going basis.

	Events such as Fresher's week, Saint Patrick's Day, end of term/tenancy clear outs provide additional pressure points and heightened impacts for residents in areas of HMO intensification as well wider resource implications for the Council and other statutory agencies such as the PSNI.
3.7	It was noted that the HMO Review questionnaire did not afford local residents the opportunity to adequately reflect their views within the structured questions posed. The Council believes it is necessary that DfC have cognisance of the views of occupants and residents when assessing and referring to improvements associated with the new licensing regime as a narrow focus will not give a full and representative view of the HMO Licensing scheme which as highlighted above aims to take account of the impact on residents and the wider community interests.
3.8	It is considered that as presently drafted, the licensing scheme does not deliver on DfC's common purpose of 'Supporting People, Building Communities, Shaping Places' for the reasons set out in this report and requires fundamental review.
3.9	One of the main concerns emerging in Belfast since the introduction of the new licensing regime has been the inability of deal with the cumulative impacts of a disproportionately high amount of HMOs in some areas due to unnecessary limitations placed upon the council by the Act. In particular the issue of over-provision of HMO properties resulting in high density clusters remains an area of concern as the new licensing regime does not address such areas already in existence. The ramifications of over provision manifests in many ways in these affected areas resulting in the on-going problems of excessive waste generation and waste management challenges, additional street cleansing resources, fly-tipping, lack of environmental management and traffic congestion. Council has previously suggested that DfC should consider the introduction of special licensing areas, which are provided for in England pursuant to the Housing Act 2004. This would require all private rented properties to be licensed within a designated area and Council reiterates its support for such an approach to be provided for within the Act.
3.10	As the Department for Communities will be aware, there are a significant number of HMO properties 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) but instead either do not have planning permission at all or have established immunity from prosecution because they have been illegally operating as a HMO for more than 5 years and can therefore avail of a Certificate of Lawful Use.
3.11	This means that owners can effectively evade the strict limits which are placed on HMO provision in certain areas and seems fundamentally unfair to the Council in circumstances where there are demonstrable problems associated with these high density clusters. It seems perverse that the Council must address its mind to a whole raft of matters which go to the fitness of an applicant but is explicitly directed to disregard the use of the premises as a HMO for a number of years without the benefit of planning permission, particularly where there may be a disproportionately high number of HMOs in an area.
3.12	It is the Council's position that the whole issue of planning permission insofar as it relates to the Act should be revisited. The legislation as drafted, i.e., by referring to 'a

	<p><i>breach of planning control</i> has created uncertainty and it is 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. Council would therefore recommend, at the very least, 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 at the time of applying regardless of whether it is a grant or renewal application.</p>
3.13	<p>Notwithstanding the Council's view in relation to the need for clarity around planning permissions for the processing of all HMO applications (both renewals and new), the Council notes with concern that the current system of granting a Certificate of Lawful Use for established HMOs circumvents the ability for the Council to assess the impact of a proposed HMO, including issues such as impact on the amenity of the area, parking issues and importantly whether the proposal breaches the thresholds placed on HMOs as part of the Subject Plan. The ability to apply for a Certificate of Lawful Use effectively prevents the ability to achieve the aim of sustainable development and balanced communities.</p>
3.14	<p>The Council accepts that the system of granting a Certificate of Lawful Use falls outside the scope of the DfC Review but wishes to highlight the issue due to the impact on Houses in Multiple Occupation intensity in certain areas in Belfast. However it is aware that DfI have issued a call for evidence for review of the Planning Act (NI) 2011 and the Council asks that DfC engages in that process to highlight the difficulties caused by immunity from enforcement in respect of HMOs and the incompatibility with this given the provisions of the HMO Subject Plan and the Council's Draft Local Development Plan which also seeks to designate Housing Management Areas in which planning permission will only be granted for HMOs and/or flats/apartments where the total number combined would not exceed 20% of all dwellings within that area (see Policy HOU10- https://www.belfastcity.gov.uk/getmedia/473f71a1-e0d2-431a-971b-def39e550934/DPS001_DPS.pdf)</p>
3.15	<p>The challenges of addressing anti-social behavioural (ASB) activity in certain areas of high density properties are well rehearsed and widely known. It is accepted that the density of HMOs are not the only factor in the level of ASB but they undoubtedly contribute. It is also accepted that ASB does not occur in every HMO. However this has to be balanced against the ability of the Council to deal with ASB which is associated with areas where there is a high number of such properties, well in excess of the limits which were considered acceptable in the HMO Subject Plan.</p>
3.16	<p>Under the existing transitional arrangements from the Northern Ireland's Housing Executive's Registration Scheme to the new HMO licensing regime, it will take five years to bring all licenses under the new standard licensing conditions which includes a condition placing responsibilities on landlords to manage anti-social behaviours of their tenants. Whilst it is acknowledged that councils have the power to vary individual deemed licences, the process is cumbersome and resource intensive. The Council is requesting as part of this review that the Department for Communities consider amending the Houses in Multiple Occupation (Commencement and Transitional Provisions) Order (NI) 2019 to apply the standard conditions around ASB to all deemed licences. This would allow much more decisive action on the part of the Council and landlords alike.</p>

3.17	In relation to environmental management associated with HMO properties, there has not been a noted improvement in how such properties are managed by their owners with the Council receiving on-going complaints about litter, graffiti, garden maintenance etc. resulting in the need to engage with owners. This highlights that the need to ensure that owners and agents discharge their responsibilities more effectively and will require an additional resource to continue to ensure compliance with the standard licensing conditions in this regard.
3.18	The costs associated with the delivery and administration of the HMO Licensing scheme are addressed as part of the review in question 5 and whilst it is acknowledged that the wider costs such as policing, waste management, enforcement and engagement fall outside the scope of the review, these costs are nonetheless significant in high density HMO areas. The Council would welcome further consideration by DfC to explore ways in which existing areas of high density HMOs can re-coup these costs.
3.19	In light of the concerns expressed by members in relation the HMO licensing regime, the Council have agreed that it would be beneficial for Department for Communities representatives and other relevant statutory bodies to attend a workshop to allow for further collaboration and engagement in relation to the review of the HMO Licensing scheme.
3.20	During the first two years of the implementation of the new HMO licensing scheme, officers have identified a range of legislative omissions and anomalies which would benefit from a review and revision, so that there is better clarity to assist the Council to regulate and administer the scheme more effectively. Officers have compiled a table detailing the relevant sections of the HMO Act 2016 that have been identified for consideration as part is the review. These are listed at Appendix 4.
3.21	In conclusion, the new HMO licensing scheme has not delivered the anticipated benefits for communities and neighbourhoods where there are existing high density clusters of HMOs which in turn adversely impact on neighbourhoods and their residents resulting in environmental deterioration and anti-social behavioural activity.
3.22	A wider programme of multi-agency commitment and intervention such as the recently designated Special Action Area under the Councils community planning for The Wider University and The Lower Ormeau area and ongoing work through the Belfast Agenda may provide the platform to bring about transformational change through neighbourhood re-generation and tailored solutions at a local level but that should be in conjunction with a fit for purpose Act regulating the HMO Sector incorporating the changes recommended in this report and the table of suggested legislative changes in Appendix 4 as an immediate priority through this review.
3.23	<p><u>Financial and Resource Implications</u></p> <p>There are additional costs that have been borne by BCC in the administration, support and governance of the new regime that have impacted on budgets and resources. Therefore as part of this review Council is urgently calling for DfC to undertake a review of the financial and resource elements as highlighted in the response.</p>

3.24	<p><u>Equality and Good Relations Implications</u></p> <p>There are no equality or good relations issues associated with this report.</p>
4.0	<p>Appendices:</p> <p>Appendix 1– DfC correspondence dated 22nd December 2020</p> <p>Appendix 2– A copy of the minutes and report in relation to February 2021 Licensing Committee</p> <p>Appendix 3 Proposed response to DfC Review of HMO Licensing Scheme dated 11th March 2021</p> <p>Appendix 4 – List of suggested legislative amendments to the HMO Act (NI) 2016</p>

Appendix 1

Private Rented Branch
Level 3
Causeway Exchange
1-7 Bedford Street
Belfast
BT2 7EG

22 December 2020

Dear All

As you are aware the Houses in Multiple Occupation Act (Northern Ireland) 2016 came into effect in April 2019. The purpose of bringing forward this new HMO licencing regime was to properly and effectively regulate HMOs to ensure the health, safety and well-being of the occupants and at the same time minimise any negative impacts on the neighbourhood and surrounding area. While aspects remain similar to the previous regime, there are notable differences such as additional enforcement powers for Councils and increased penalties for criminal offences.

We are now commencing a review of the implementation of the licencing scheme and would be grateful for any views you or your organisation may have. Please see the link to the survey below:

<https://consultations.nidirect.gov.uk/dfc-analytical-services-unit/review-of-houses-of-multiple-occupation-hmo-licenc>

Your response by 5 February 2021 would be much appreciated.

Yours sincerely,

Private Rented Branch

LICENSING COMMITTEE REPORT



Belfast
City Council

APPENDIX 2A

Subject:	Department for Communities On-Line Questionnaire as part of the Review of Houses in Multiple Occupation Licensing Scheme
Date:	17 th February 2021
Reporting Officer:	Vivienne Donnelly
Contact Officer:	Kevin Bloomfield, HMO Unit Manager, Ext. 5910

Is this report restricted?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Is the decision eligible for Call-in?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>

1.0	Purpose of Report or Summary of main Issues
1.1	<p>The Houses in Multiple Occupation Act (Northern Ireland) 2016 came into effect in April 2019 following the transfer from Northern Ireland Housing Executive's (NIHE) HMO Registration scheme to Councils under a new licensing regime. The purpose of bringing forward this new HMO licencing regime was to properly and effectively regulate HMOs to ensure the health, safety and well-being of the occupants and at the same time minimising any negative impacts on the neighbourhood and surrounding area. As part of the transfer arrangements, the Department for Communities (DFC) undertook to undertake a review of the implementation of the HMO licensing scheme within two years of the transfer. DFC wrote to the Council on the 22nd December 2020 to seek views from the Council via an online questionnaire as part of their review with a response deadline of the 5th February 2021. The Council sought an extension of time from DFC to provide a response and DFC have agreed to an extension of two weeks until 19th February 2021. (Appendix 1)</p>
2.0	Recommendations
2.1	

	Taking into account the information presented, Committee is asked to note the Council's response to the survey issued by the Department for Communities (DFC) who are commencing a review of the implementation of the Houses in Multiple Occupation (HMO) licensing scheme, together with an additional submission highlighting legislative anomalies and omissions with suggested amendments to improve the delivery and administration of the HMO licensing scheme.
3.0	Main report
	<u>Key Issues</u>
3.1	The Houses in Multiple Occupation (HMO) Act NI 2016 was commenced on 1 st April 2019 which coincided with officers from the Northern Ireland Housing Executive (NIHE) transferring to Belfast City Council to administer and deliver the new HMO Licensing Scheme function for all councils in Northern Ireland.
3.2	As part of the transfer arrangements, DFC undertook to review the implementation of the new licensing scheme within 2 years of the transfer taking place from the NIHE to Belfast City Council.
3.3	DFC have written to the Councils on 22 nd December 2020 to indicate that it wished to seek views in relation the review by means of an online survey on the NI Direct website on the following link https://consultations.nidirect.gov.uk/dfc-analytical-services-unit/review-of-houses-of-multiple-occupation-hmo-licenc/ which is publically available. The survey poses 9 questions and the answers to the questions have been provided in Appendix 2 Cover Report and Appendix 3 Online Survey response, however they are summarised as follows;
3.4	<p>Q1 Has the HMO licensing scheme improved the management of Houses in Multiple occupation?</p> <p>Belfast City Council agrees that the new HMO licensing scheme has improved the management of HMOs by ensuring that owners and managing agents have a broader range of responsibilities and arrangements in place as part of their undertaking in respect of managing HMO properties. This includes enhanced measures to address fire safety, energy performance, prioritised repairs schedule and anti-social behaviour management. Since the 1st April 2019, the HMO Service has engaged with 241 landlords/managing agents in relation to antisocial issues within the curtilage of their properties following receipt of complaints resulting in a more cohesive approach to dealing with anti-social issues associated with HMO properties and their occupiers.</p>
3.5	<p>2.Has the HMO licensing scheme improved the overall standards of this type of accommodation?</p> <p>The standards imposed by the new licensing scheme are to a large part a replication former NIHE HMO Registration scheme, although it is acknowledged that there are some improvements in relation to fire safety, bedroom sizes and energy performance/ thermal comfort.</p>
3.6	<p>Q3 Has the HMO licensing scheme improved the current fitness standards expected in HMOs?</p> <p>It is noted that the current fitness standard for the private rented sector including HMOs is over forty years old and therefore the standard licensing conditions under the HMO</p>

	<p>licensing regime offer a higher standard of fitness than is afforded to other private rented sector properties.</p> <p>The current fitness standard is in urgent need of review and should be replaced by a comprehensive fitness standard which assesses the suitability of the dwelling for the occupant in line with modern day living standards such as the Housing Health and Safety Rating System used in England and Wales or a similar equivalent model.</p>
3.7	<p>Q4 Do you agree the HMO licensing scheme addresses the risk to safety associated with living in an HMO?</p> <p>Belfast City Council agrees that the HMO licensing scheme addresses safety associated with a HMO through a range of management responsibilities and the addition of the hazard enforcement powers.</p>
3.8	<p>Q5 Do you agree the HMO licensing scheme provides value for money?</p> <p>The current level of fee payable per occupant is set at £37 per person per year with the full fee payable on renewal and it was estimated that this rate would ensure full cost recovery based on the deferred income from the NIHE and proposed income figures at the time of the transfer from the NIHE to Councils. It was considered that setting a maximum amount at £45 in the regulations gave Councils scope to increase the fee if required to ensure full cost recovery without requiring an amendment to the subordinate regulations.</p> <p>The impact of the Covid-19 pandemic and a reduction in the number of HMO properties, particularly the smaller three bedroom properties as a result of the changes in the legislation including the new HMO definition along with the operating model and additional support provided by BCC has had a financial impact on the revenues estimated at the outset of this transfer. Belfast City Council will seek to engage with DFC on this matter to ensure the scheme continues to operate on a cost neutral basis as stated below in para 3.13 and 3.14. Therefore as part of this review BCC is calling for DFC to set up an urgent work stream on the resource and financial model potentially entailing increasing the fee threshold currently set at a maximum amount of £45 in the regulations to future proof the fee structure and reduce the burden on the rate payers as a consequence of the transfer of this function.</p>
3.9	<p>Q6 Do you agree the HMO licensing scheme guidance and assistance is easy to access and understand?</p> <p>Belfast City Council would welcome the opportunity to work with DFC to review aspects of the DFC Guidance to Councils with the aim of obtaining some further clarity on a number of particular points, when administering the new HMO licensing scheme. An example which the Council would wish to highlight in particular is the guidance in relation to room sizes which the Council believes may not reflect the legislative stance in some aspects.</p> <p>The Council is currently reviewing the information and guidance on its website and plans to include "A Frequently Asked Questions" section to assist owners of HMO properties with the application process.</p> <p>The Council is also reviewing the online HMO application form to make it more intuitive for users.</p>

3.10

Q7 Do you agree the communication between councils and landlords and councils and Department for Communities effective and timely?

Belfast City Council has regular and on-going communication with agents, landlords and LANI since the transfer of the HMO Licensing function to Councils. Following feedback from a LANI meeting in March 2020, the on-line HMO application form and the website is currently being re-designed to assist users through the application process.

The need for on-going communication is recognised and accept that the messaging between landlords and the Council can be improved.

Communication between Belfast City Council/ lead cluster Councils and the Department of Communities is maintained on a regular basis through quarterly review meetings with ongoing contact maintained between Council officers and DFC officers as and when issues arise.

3.11

Q8 Please provide your views on the administration and delivery of the scheme:

Belfast City Council is the lead Council for the delivery of the HMO Licensing scheme and delivers this service on behalf of all Councils operating a cluster model with two lead Councils Causeway Coast & Glen and Derry & Strabane District Council. Belfast City hosts 2953 licensed HMOs which represents 76% of the total number of HMOs in Northern Ireland, Cluster 2 has 561 licensed HMOs (14%) and cluster 3 has 388 licensed HMO (10%).

The transfer of the HMO Licensing function to Councils was a complex, logistical exercise, involving the transfer of staff from the Northern Ireland Housing Executive to Belfast City Council, the implementation of a new licensing scheme underpinned by a new complex legislative regime, the procurement of a new IT system to manage the application process and to enable the administration of the scheme. The combination of managing, interpreting and enforcing complex new legislation and the use of a new IT system has brought many challenges for Council officers in delivering this service.

Since April 2019, the following table highlights the work that has been undertaken by the NIHMO team

Activity 1 st April 2019 up until 25 January 2021	Belfast	Cluster 1 – Causeway Coast & Glens lead	Cluster 2 – Derry & Strabane lead
HMO Licences issued	1135	Causeway = 96 Lisburn & Castlereagh = 1	Derry & Strabane = 47 ABC = 11

3.12			Mid & East Antrim = 1 Antrim & Newtownabbey = 12 Ards & North Down = 2 Total = 112	Fermanagh & Omagh = 2 Mid Ulster = 3 Newry, Mourne & Down = 2 Total = 65
	Inspections (Initial & management)	2034	235	204
	FPN issued	23	1	0
	Prosecutions	1	0	0
		(2 pending)		
<p>In summary, the Council acknowledges that the new HMO licensing scheme has improved the overall management responsibilities of the owners of such properties resulting in better standards for tenants, however, there has been a number of emerging issues arising from the transfer of the function from the NIHE to Councils and the implementation of new legislation namely:</p> <ul style="list-style-type: none"> • Belfast City Council has had an increased number of complaints/ legal challenges from landlords that are challenging decisions and interpretations of the legislation. • Significant legal support is required on an on-going basis to deal with complex cases. • There is significantly increased administration associated with the HMO licensing process and requires more resources to administer than the previous registration scheme which was not apparent during the appraisal of the transfer of this function. • The re-development of the new IT system to manage the HMO licensing process, requires on-going resources to re-design and configure to ensure that the system is fit for purpose. • The new licensing process requires Belfast City Council to work in partnership with a range of staff across all 11 Councils and in addition, a number of different 				

3.13	<p>agencies, which results in increased administration and can lead to delays in processing applications.</p> <ul style="list-style-type: none"> • The Covid-19 pandemic has resulted in a back log of cases and is more difficult to administer when staff are operating under a working from home business model. Technical officers are also working under controlled operating models to protect their health and safety which can result in delays to inspections. • The number of HMO properties has reduced due to a variety of reasons since the economic appraisal was undertaken prior to the transfer of this function to Councils and will require the fee currently set at £37 per person per year to be kept under review to ensure that the delivery of scheme remains cost neutral to Councils. <p>At the start of the transfer of this function, it would have been difficult to foresee these emerging issues and Belfast City Council would welcome recognition of these factors when considered in the current review undertaken by DFC. Furthermore, Belfast City Council would welcome a separate urgent review to be commissioned by DFC as a priority work stream to examine the adequacy of the resource transfer from NIHE to deal with the new licensing regime for Councils in NI to support the effective governance, oversight and the financial strategy that underpins the delivery model ensuring that it is a quality fit for purpose function that meets stakeholder needs including the expectations of DFC.</p> <p>In addition to the questions that have been tabled by DFC as part of the review, Officers believe that the review also affords the Council the opportunity to raise some of the issues that have come to light as a result of implementing the HMO licensing scheme in terms of legislative omissions and areas where clarity is required to assist the Council to regulate and administer the scheme more effectively. Officers have compiled a table detailing the relevant sections of the HMO Act 2016 that have been identified for consideration as part of the review. These are listed at Appendix 4.</p> <p><u>Financial and Resource Implications</u></p> <p>There are additional costs that have been borne by BCC in the administration, support and governance of the new regime that have impacted on budgets and resources. Therefore as part of this review BCC is urgently calling for DFC to undertake a review of the financial and resource elements as highlighted in the response.</p> <p><u>Equality and Good Relations Implications</u></p> <p>There are no equality or good relations issues associated with this report.</p>
4.0	<p>Appendices:</p> <p>Appendix One – DfC correspondence dated 22nd December 2020</p> <p>Appendix Two – Cover report</p>

	<p>Appendix Three – On Line response to DFC Review of Houses in Multiple Occupation dated 11th February 2021</p> <p>Appendix Four – List of suggested legislative amendments to the HMO Act (NI)2016</p>
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Licensing Committee

Wednesday, 17th February, 2021

MEETING OF LICENSING COMMITTEE HELD REMOTELY VIA MICROSOFT TEAMS

- Members present: Councillor Donnelly (Chairperson);
Aldermen Copeland and Sandford; and
Councillors Bradley, Bunting, Hussey,
Hutchinson, M. Kelly, T. Kelly, Magee,
Magennis, McAteer, McCabe, McCullough,
McKeown, Nicholl and Smyth.
- Also attended: Councillor Gormley.
- In attendance: Mr. S. Hewitt, Building Control Manager;
Mr. K. Bloomfield, HMO Unit Manager;
Mr. V. Donnelly, City Protection Manager;
Ms. N. Largey, Divisional Solicitor; and
Mr. H. Downey, Democratic Services Officer.

Apologies

An apology was reported on behalf of Councillor Howard.

Minutes

The minutes of the meeting of 20th January were taken as read and signed as correct. It was reported that those minutes had been adopted by the Council at its meeting on 1st February, subject to the omission of those matters in respect of which the Council had delegated its powers to the Committee.

Declarations of Interest

No declarations of interest were reported.

Delegated Matters

THE COMMITTEE DEALT WITH THE FOLLOWING ITEMS IN PURSUANCE OF THE POWERS DELEGATED TO IT UNDER STANDING ORDER 37(d)

Licences Issued Under Delegated Authority

The Committee noted a list of licences and permits which had been issued under the Council's Scheme of Delegation.

Houses in Multiple Occupation (HMO) Licenses Issued Under Delegated Authority

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The Committee noted a list of licences for Houses in Multiple Occupation which had been issued under the Council's Scheme of Delegation.

Non-Delegated Matters

**Department for Communities Online Survey - Review
of Houses in Multiple Occupation Licensing Scheme**

The Committee was reminded that the Houses in Multiple Occupation Act (Northern Ireland) 2016 had come into effect on 1st April, 2019, following the transfer of the Houses in Multiple Occupation registration scheme from the Northern Ireland Housing Executive to councils, under a new licensing regime.

The City Protection Manager reported that the Department for Communities (DFC) had, as part of the transfer arrangements, undertaken to review the licensing regime within two years of its implementation. The Department had on 22nd December, written to the Council seeking its views via an online questionnaire and had acceded to a request from officers to extend the deadline for the submission of a response from 5th till 19th February. Accordingly, she submitted for the Committee's approval a draft response to the nine questions posed within the questionnaire.

Councillor Gormley thanked the Committee for the opportunity to comment upon the draft response. He referred to the Department for Communities' assertion within the letter accompanying the questionnaire that the licensing regime sought to properly and effectively regulate Houses in Multiple Occupation in order to ensure the health, safety and wellbeing of occupants and to minimise any negative impacts upon the neighbourhood and surrounding area. In his view, the regime failed to achieve that aim, particularly in those areas where there was a high density of Houses in Multiple Occupation.

He suggested that the response be amended/strengthened to reflect the views of occupants of Houses in Multiple Occupation and local residents when referring to any improvements on the previous licensing regime and to highlight the need to ensure that owners and agents discharged their responsibilities more effectively. The wider costs associated with policing, council enforcement and cleansing in high density Houses in Multiple Occupation areas should also be reflected in the Council response. He stressed the need to remove the loophole allowing those in possession of a Certificate of Lawful Use to circumvent the limits placed on Houses in Multiple Occupation in certain areas and for the requirement to have an anti-social behaviour plan attached to the Standard Licensing Conditions to be extended to include those Houses in Multiple Occupation which had been licensed before 1st April, 2019. He also endorsed the Department for Communities' plan to adopt a collaborative approach to the review and supported the proposal that a workshop be held to explore all issues surrounding the management, resourcing and operation of the new licensing regime.

Several Members emphasised the fact that the review of the licensing regime presented an ideal opportunity for the Council to raise longstanding and well-documented issues around Houses in Multiple Occupation. It was noted that the Department for

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Communities' questionnaire did not afford residents who are living in areas impacted by Houses in Multiple Occupation the opportunity to reflect their views. The issue of over-provision of Houses in Multiple Occupation resulting in high density clusters was raised and concern expressed that the current licensing regime does not address such areas already operating as Houses in Multiple Occupation. It was suggested that Members be afforded additional time to consider the questionnaire and the draft response in greater detail. It was accepted that that course of action would require Council officers to seek a further extension from the Department for Communities.

In contrast, it was pointed out that the draft response addressed the main issues referred to within the questionnaire and that it should be forwarded to the Department for Communities within the required timeframe, with provision being made for additional comments to be submitted thereafter.

After discussion, it was

Moved by Councillor McCabe,
Seconded by Councillor McAteer,

That the Committee agrees to defer consideration of the draft response until its monthly meeting in March to allow for Members to consider it in greater detail.

On a vote, fifteen Members voted for the proposal and one against and it was declared carried.

The Committee granted approval for Council officers to organise the aforementioned workshop and to make arrangements for the Department for Communities and other relevant statutory organisations to attend.

Chairperson

11th March 2021

Review of Houses of Multiple Occupation (HMO) Licencing Scheme Questionnaire

The HMO Act 2016 introduced a new licensing scheme operational from April 2019 which transferred responsibility for the HMO regulatory function from the Northern Ireland Housing Executive to Councils and linked the new HMO regime with other critical local government functions, such as planning, building control and environmental health. This questionnaire is part of the review of the transfer of responsibility and the change from a registration scheme to a licencing scheme.

Please give your responses to the questions below, and the reasons for your response.

1. Has the HMO licencing scheme improved the management of Houses in Multiple occupation?

☐ significantly improved ☒ somewhat improved ☐ has not improved

Please give the reasons for your answer

The Council welcomes the opportunity to contribute to the review of the HMO Licensing Scheme being undertaken by the DfC. In seeking to provide answers to the questions posed in this questionnaire, taking account of the Council's lead role in administering and delivering the scheme on behalf of all councils in Northern Ireland, the Council believes that the review also gives DfC the opportunity to review housing policy and provision through a wider lens, as the HMO licensing scheme alone does not afford the Council the opportunity to shape the city and enhance local communities.

Belfast City Council notes the DfC assertion within the letter accompanying the questionnaire that "*the licensing regime sought to properly and effectively regulate Houses in Multiple Occupation to ensure the health, safety and wellbeing of occupants and at the same time to minimise any negative impacts upon the neighbourhood and surrounding area*". The Council wishes to highlight that the new licensing regime has failed to achieve that aim, particularly in those areas where there is a high density of

HMOs already in existence. The ongoing and live issues associated with the high density Houses in Multiple Occupation areas are well documented in terms of environmental impact and antisocial behaviour requiring significant additional resources by the Council to manage on an on-going basis. Events such as Fresher's week, Saint Patrick's Day, end of term/tenancy clear outs provide additional pressure points and heightened impacts for residents in areas of HMO intensification as well as wider resource implications for the Council and other statutory agencies such as the PSNI.

It was noted that the HMO Review questionnaire did not afford local residents the opportunity to adequately reflect their views within the structured questions posed. The Council believes it is necessary that DfC have cognisance of the views of occupants and residents when assessing and referring to improvements associated with the new licensing regime as a narrow focus will not give a full and representative view of the HMO Licensing scheme which as highlighted above aims to take account of the impact on residents and the wider community interests.

It is considered that as presently drafted, the licensing scheme does not deliver on DfC's common purpose of 'Supporting People, Building Communities, Shaping Places' for the reasons set out in this report and requires fundamental review.

One of the main concerns emerging in Belfast since the introduction of the new licensing regime has been the inability to deal with the cumulative impacts of a disproportionately high amount of HMOs in some areas due to unnecessary limitations placed upon the council by the Act. In particular the issue of over-provision of HMO properties resulting in high density clusters remains an area of concern as the new licensing regime does not address such areas already in existence. The ramifications of over provision manifests in many ways in these affected areas resulting in the ongoing problems of excessive waste generation and waste management challenges, additional street cleansing resources, fly-tipping, lack of environmental management and traffic congestion. Council has previously suggested that DfC should consider the introduction of special licensing areas, which are provided for in England pursuant to the Housing Act 2004. This would require all private rented properties to be licensed within a designated area and Council reiterates its support for such an approach to be provided for within the Act.

As the Department for Communities will be aware, there are a significant number of HMO properties 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) but instead either do not have planning permission at all or have established immunity from prosecution because they have been illegally operating as a HMO for more than 5 years and can therefore avail of a Certificate of Lawful Use.

This means that owners can effectively evade the strict limits which are placed on HMO provision in certain areas and seems fundamentally unfair to the Council in circumstances where there are demonstrable problems associated with these high density clusters. It seems perverse that the Council must address its mind to a whole raft of matters which go to the fitness of an applicant but is explicitly directed to

disregard the use of the premises as a HMO for a number of years without the benefit of planning permission, particularly where there may be a disproportionately high number of HMOs in an area.

It is the Council's position that the whole issue of planning permission insofar as it relates to the Act should be revisited. The legislation as drafted, i.e., by referring to 'a breach of planning control' has created uncertainty and it is 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. Council would therefore recommend, at the very least, 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 at the time of applying regardless of whether it is a grant or renewal application.

Notwithstanding the Council's view in relation to the need for clarity around planning permissions for the processing of all HMO applications (both renewals and new), the Council notes with concern that the current system of granting a Certificate of Lawful Use for established HMOs circumvents the ability for the Council to assess the impact of a proposed HMO, including issues such as impact on the amenity of the area, parking issues and importantly whether the proposal breaches the thresholds placed on HMOs as part of the Subject Plan. The ability to apply for a Certificate of Lawful Use effectively prevents the ability to achieve the aim of sustainable development and balanced communities.

The Council accepts that the system of granting a Certificate of Lawful Use falls outside the scope of the DfC Review but wishes to highlight the issue due to the impact on Houses in Multiple Occupation intensity in certain areas in Belfast. However it is aware that DfI have issued a call for evidence for review of the Planning Act (NI) 2011 and the Council asks that DfC engages in that process to highlight the difficulties caused by immunity from enforcement in respect of HMOs and the incompatibility with this given the provisions of the HMO Subject Plan and the Council's Draft Local Development Plan which also seeks to designate Housing Management Areas in which planning permission will only be granted for HMOs and/or flats/apartments where the total number combined would not exceed 20% of all dwellings within that area (see Policy HOU10- https://www.belfastcity.gov.uk/getmedia/473f71a1-e0d2-431a-971b-def39e550934/DPS001_DPS.pdf)

The challenges of addressing anti-social behavioural (ASB) activity in certain areas of high density properties are well rehearsed and widely known. It is accepted that the density of HMOs are not the only factor in the level of ASB but they undoubtedly contribute. It is also accepted that ASB does not occur in every HMO. However this has to be balanced against the ability of the Council to deal with ASB which is associated with areas where there is a high number of such properties, well in excess of the limits which were considered acceptable in the HMO Subject Plan.

The addition of antisocial behaviour conditions under the HMO licensing scheme has resulted in proactive management of antisocial behaviour in HMO properties and the NIHMO Unit has engaged with 241 landlords/managing agents in relation to antisocial

issues within the curtilage of their properties following receipt of complaints concerning anti-social behaviour. In addition, the Council recently approved the requirement for all property owners to provide an “out of hours” contact number to be added as a standard licensing condition for all HMO properties in Belfast which will be an additional measure to help the Council and other statutory agencies when dealing with antisocial behaviour incidents.

Under the existing transitional arrangements from the Northern Ireland’s Housing Executive’s Registration Scheme to the new HMO licensing regime, it will take five years to bring all licenses under the new standard licensing conditions which includes a condition placing responsibilities on landlords to manage anti-social behaviours of their tenants. Whilst it is acknowledged that councils have the power to vary individual deemed licences, the process is cumbersome and resource intensive. The Council is requesting as part of this review that the Department for Communities consider amending the Houses in Multiple Occupation (Commencement and Transitional Provisions) Order (NI) 2019 to apply the standard conditions around ASB to all deemed licences. This would allow much more decisive action on the part of the Council and landlords alike.

In relation to environmental management associated with HMO properties, there has not been a noted improvement in how such properties are managed by their owners with the Council receiving on-going complaints about litter, graffiti, garden maintenance etc. resulting in the need to engage with owners. This highlights that the need to ensure that owners and agents discharge their responsibilities more effectively will require an additional resource to continue to ensure compliance with the standard licensing conditions in this regard.

In conclusion, the new HMO licensing scheme has not delivered the anticipated benefits for communities and neighbourhoods where there are existing high density clusters of HMOs which in turn adversely impact on neighbourhoods and their residents resulting in environmental deterioration and anti-social behavioural activity.

A wider programme of multi-agency commitment and intervention such as the recently designated Special Action Area under the Councils community planning for The Wider University and The Lower Ormeau area and ongoing work through the Belfast Agenda may provide the platform to bring about transformational change through neighbourhood re-generation and tailored solutions at a local level but that should be in conjunction with a fit for purpose Act regulating the HMO Sector incorporating the changes recommended in this questionnaire and the table of suggested legislative changes in Appendix 4 as an immediate priority through this review.

In light of the concerns expressed in relation the HMO licensing regime, the Council have agreed that it would be beneficial for Department for Communities representatives and other relevant statutory bodies to attend a workshop to allow for further collaboration and engagement in relation to the review of the HMO Licensing scheme.

2. Has the HMO licencing scheme improved the overall standards of this type of accommodation?

☐ significantly improved ☒ somewhat improved ☐ has not improved

Please give the reasons for your answer

The standards imposed by the Houses in Multiple Occupation(Living Accommodation Standard) Regulations (Northern Ireland) 2019 is to a large part a replication of the 1993 HMO Management Regulations and the standards adopted by the Northern Ireland Housing Executive under the former registration scheme. There has been some improvement to the standards of HMO properties in terms of fire safety and bedroom sizes. Physical standards for all other room types eg living room/kitchen has not changed under this scheme. However the Council would welcome a review of the new DFC guidance in relation to room sizes to ensure compatibility with the wording and intention of the Regulations.

The most significant impact on standards to a small number of HMO properties is in relation to the energy performance and thermal comfort, whereby some owners of HMO properties have been required to upgrade heating systems, insulation and double glazing to meet the requirements of the scheme. In these cases, the overall thermal standards have improved for the tenants of these affected properties, thereby contributing to a reduction in fuel poverty.

The requirement to have a repair categorization system provides a level of reassurance and reasonable expectation to HMO tenants and results in a quicker turnaround time for repairs to be carried out.

3. Has the HMO licencing scheme improved the current fitness standards expected in HMOs?

☐ significantly improved ☒ somewhat improved ☐ has not improved

Please give the reasons for your answer

Please refer to the answer to question 2 in relation to overall standards as determined by the HMO standard licensing conditions. In addition, it is noted that the current fitness standard for the private rented sector including HMO properties is over forty years old and therefore the standard licensing conditions under the HMO licensing regime offer a higher standard of fitness than is afforded to other private rented sector properties. The current Fitness Standard (Housing (NI) Order 1992) is a pass or fail model and dwellings are either fit or unfit. It does not give an indication of whether a dwelling has just failed or if it is grossly unfit. It is no longer a comprehensive measure of the suitability of a dwelling for occupation. It fails to address the areas of thermal comfort and safety standards in line with modern day expectations. An example of this is that it only requires a fixed heat source in the main living-room and a socket in any other living/bedroom in order to pass the heating element of the standard.

The current statutory fitness standard also does not take into account health and safety issues such as a risk of falls. HMO properties often provide a home to the most vulnerable people in society who would be at a higher risk from falls. Whilst there is

scope within the HMO legislation to deal with such hazards, these should be primarily addressed through the fitness standard.

The current fitness standard is in urgent need of review and should be replaced by a comprehensive fitness standard which assesses the suitability of the dwelling for the occupant such as the Housing Health and Safety Rating System used in England and Wales or a similar equivalent model.

4. Do you agree the HMO licencing scheme addresses the risk to safety associated with living in an HMO?

☐ agree strongly ☒ agree ☐ disagree ☐ disagree strongly

Please give the reasons for your answer

Belfast City Council agrees that the HMO licensing scheme addresses safety associated with a HMO, however there is an anomaly within the scheme in relation to fire safety in that Council officers cannot take enforcement action to address fire safety concerns identified during the assessment process. Such matters must be referred to the Northern Ireland Fires and Rescue Service (NIFRS). It would be more streamlined process if the Council were in a position to take enforcement action for noncompliance, however, this would require the Fire Services Order (Northern Ireland) Order 2006 to be reviewed.

The requirement for carbon monoxide monitors and the testing of chimney flues are welcome additional controls under the new licensing scheme which further enhances safety within HMO properties.

The Hazard Regulations introduced under the licensing regime provides an additional control mechanism in relation to a number of risks/hazards that weren't previously considered under the HMO management regulation under the registration scheme. This covers a range of hazards such as a risk of falling and is helpful when addressing safety concerns.

Belfast City Council also wishes to highlight concerns in relation to lack of fire safety legislative controls in the private rented sector in properties which do not fall within the definition of a HMO.

There is currently no legislation in place to address fire safety issues in 2 bedroom flats. These types of properties are likely to house vulnerable adults and it is extremely concerning that the current statutory fitness standard does not address fire safety and no enforcement action can be taken in relation to these matters.

5. Do you agree the HMO licencing scheme provides value for money?

☐ agree strongly ☒ agree ☐ disagree ☐ disagree strongly

Please give the reasons for your answer

During the transfer of the function for regulating Houses in Multiple Occupation (HMOS) to Councils, it was agreed that the new licensing scheme would operate on a cost neutral basis, with no cost to the ratepayer.

In advance of the transfer of this function to Councils, a draft budget was prepared by the lead councils, reviewed by external consultants and approved by the HMO Regional Programme Board. The estimated expenditure included full staff costs, non-staff costs and overhead costs to include the costs of a solicitor to provide the additional legal support required to support the licensing regime. The estimated income included deferred income from the NIHE's Registration Scheme and future estimated income from licence fees post April 2019.

The current level of fee payable per occupant is set at £37 per person per year with the full fee payable on renewal and it was estimated that this rate would ensure full cost recovery based on the deferred and proposed income figures. It was considered that setting a maximum amount at £45 in the regulations gave councils scope to increase the fee if required to ensure full cost recovery without requiring an amendment to the subordinate regulations.

The impact of the Covid-19 pandemic and a reduction in the number of HMO properties, particularly the smaller three bedroom properties as a result of the changes in the legislation including the new HMO definition along with the operating model and additional support provided by BCC has had a potential financial impact on the revenues estimated at the outset of this transfer. Belfast City Council will seek to engage with DfC on this matter to ensure the scheme continues to operate on a cost neutral basis. Therefore as part of this review BCC is calling for DfC to set up an urgent work stream on the resource and financial model potentially entailing increasing the fee threshold currently set at a maximum amount of £45 in the regulations to future proof the fee structure and reduce the burden on the rate payers as a consequence of the transfer of this function.

Whilst it is acknowledged that the wider costs such as policing, waste management, enforcement and engagement fall outside the scope of the review, these costs are nonetheless significant in high density HMO areas. The Council would welcome further consideration by DfC to explore ways in which existing areas of high density HMOs can re-coup these costs.

6. Do you agree the HMO licencing scheme guidance and assistance is easy to access and understand?

☐ agree strongly ☒ agree ☐ disagree ☐ disagree strongly

Please give the reasons for your answer

Belfast City Council would welcome the opportunity to work with DfC to review aspects of the DfC Guidance to Councils with the aim of obtaining some further clarity on a number of particular points, when administering the new HMO licensing scheme. An example which the Council would wish to highlight in particular is the guidance in

relation to room sizes which the Council believes may not reflect the legislative stance in some aspects.

The formatting and linkages to the relevant legislative sections would be a helpful addition in the Guidance.

The Council is currently reviewing the information and guidance on its website and will include “a frequently asked questions” section to assist owners of HMO properties with the application process.

The Council is also reviewing the online HMO application form to make it more intuitive for users based on feedback from a landlords forum.

7. Do you agree the communication between councils and landlords and councils and Department for Communities effective and timely?

☐ agree strongly ☒ agree ☐ disagree ☐ disagree strongly

Please give the reasons for your answer

Belfast City Council has regular and on-going communication with agents, landlords and LANI since the transfer of the HMO Licensing function to Councils. Following feedback from LANI meeting in March 2020, the on-line HMO application form and the website is currently being re-designed to assist users through the application process. Additional means of communication with landlords such as the use of texting service is currently under development as a means of reminding landlords to submit renewal applications on time and before their licence expires.

The need for on-going communication is recognised and accept that the messaging between landlords and the Council can be improved.

Communication between Council/ lead cluster Councils and the Department of Communities is maintained on a regular basis through quarterly review meetings with ongoing contact maintained between council officers and DFC officers as and when issues arise.

8. Please provide your views on the administration and delivery of the scheme:

Belfast City Council is the lead Council for the delivery of the HMO Licensing scheme and delivers this service on behalf of all Councils operating a cluster model with two lead Councils Causeway Coast & Glen and Derry & Strabane District Council. Belfast City hosts 2953 licensed HMOs which represents 76% of the total number of HMOs in Northern Ireland, Cluster 2 has 561 licensed HMOs (14%) and cluster 3 has 388 licensed HMO (10%)

The transfer of the HMO Licensing function to Councils was a complex, logistical exercise, involving the transfer of staff from the Northern Ireland Housing Executive 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. The combination of managing, interpreting and enforcing complex new legislation with additional administrative requirements and the use of a new IT system has brought many challenges for Council officers in delivering this service.

Interpreting new and complex legislation has resulted in a number of legal challenges, often requiring the Council to obtain legal advice to adjudicate and provide clarity on the intent and interpretation of the legislation. The Council has identified a number of areas in the legislation whereby amendments would be helpful to address omissions and anomalies that have come to light since the commencement of the HMO 2016 Act. Belfast City Council welcomes the opportunity to highlight areas within the HMO Act where an urgent review would be beneficial to assist Councils and to address areas of concern which would help improve the overall administration of the HMO licensing scheme and provide greater clarity to both Councils, owners of HMO properties and their managers.

A separate table outlining comments and suggestions in relation to the legislation will be forwarded to DfC as part of this submission.

The administration required to deliver the new licensing scheme as opposed to the NIHE's Registration Scheme has increased significantly by virtue of the need to engage with a range of statutory partners, different departments within the 10 Councils, in addition to new processes set out by the legislative requirements of the HMO Act 2016 when processing HMO applications. The increased burden associated with the administration of the scheme was not properly realised until after the transfer and commencement of the scheme. The additional administration combined with the processing of complex cases has highlighted that the three months' timescale to process a HMO applications is insufficient particularly for those cases which must be presented to the Councils' committees and must adhere to Committee schedules. In such cases where the Council cannot process the applications within the 3 months' timescale, the Council has to seek an extension of time to consider an application through the Magistrate's Court which significantly increases the costs incurred by the Council by creating additional administration and legal work in addition to generating work for the Court system. The costs incurred for each application to be extended via an application for an extension of time to the Magistrate's court are £130 per application plus officers' time 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. The Council would welcome an urgent review of the HMO Act 2016 in respect of timescales required to process HMO applications. If DfC are not prepared to remove this provision in its entirety, the Council would request that this time limit is extended to 6 months. This would be beneficial by not only reducing administration but would reduce costs and Court time.

Since the commencement of the new licensing scheme on 1st April 2019, it has become apparent taking into account the complexities of the legislation and the increased administrative burden, that the staff resources transferred from the NIHE has been insufficient and has placed an additional burden on the existing staff resources. Consequently, Belfast City Council has been required to provide additional

resources to oversee the management and administration of the scheme including additional staffing resources to assist with the on-going development and configuration of the IT system, the management of anti-social behaviour associated with HMOs, a new management post, additional administrative and financial post/s, on-going policy support and a dedicated technical officer from Digital Services to assist with the on-going development of the IT system.

Since April 2019, the following table highlights the work that has been undertaken by the NIHMO team

Activity 1st April 2019 up until 25 January 2021	Belfast	Cluster 1 – Causeway Coast & Glens lead	Cluster 2 – Derry & Strabane lead
Licences issued	1135	Causeway = 96 Lisburn & Castlereagh = 1 Mid & East Antrim = 1 Antrim & Newtownabbey = 12 Ards & North Down = 2 Total = 112	Derry & Strabane = 47 ABC = 11 Fermanagh & Omagh = 2 Mid Ulster = 3 Newry, Mourne & Down = 2 Total = 65
Inspections (Initial management) &	2034	235	204
FPN issued	23	1	0
Prosecutions	1 (2 pending)	0	0

A new element of the HMO Act 2016 is the introduction of new enforcement powers which includes a range of fixed penalties to address contraventions that were previously brought to Court, thereby saving both Council and Court time and money.

In the main, there are a range of enforcement notices available to the Council to address structural and safety issues, however, most property owners address these matters on advice and guidance from officers within the HMO Unit during the assessment and processing of HMO applications and negates the need to issue enforcement notices with the result that such notices have only been issued on an infrequent basis. Fixed penalty notices have been issued in respect of a number of offences since 1st April 2019 as indicated the above table.

At the time of the transfer of the HMO licensing scheme to Councils, a new IT system was procured to administer the system. It is acknowledged that the online application form and the back office administration has experienced teething problems and the Council is working with the IT systems provider to update elements of the system to provide a more user friendly and intuitive online application form. Such improvement will not only be beneficial to customers but also will greatly assist with the administration of the scheme by supporting officers with back office systems and thereby resulting in greater efficiencies. As outlined in question 6 above the website and online HMO form are to be updated.

Due to resourcing issues and the backlog created during to the initial lockdown due to the Covid-19 pandemic, the Council acknowledges that the development of a training programme for landlords and managing agent remains an outstanding issue which remains to be addressed.

In summary, the Council acknowledges that the new HMO licensing scheme has broadened the overall management responsibilities of the owners of such properties resulting in better standards for tenants, however, there has been a number of emerging issues arising from the transfer of the function from the NIHE to Councils and the implementation of new legislation namely:

- Belfast City Council has had an increased number of complaints/ legal challenges from landlords that are challenging decisions and interpretations of the legislation.
- Significant legal support is required on an on-going basis to deal with complex cases.
- The new licensing scheme does not address areas where there already high densities of HMOs in existence.
- There is a significant increase in administrative processes associated with the delivery of licensing scheme which in turn requires greater resources to administrator than the previous NIHE registration scheme. This factor was not evident in advance of the transfer of the function and NIHE resources to the Council.
- The re-development of the new IT system to manage the HMO licensing process, requires on-going resources to re-design, develop and configure to ensure that the system is fit for purpose.
- The new licensing process also requires Belfast City Council to work in partnership with a range of staff across all 11 Councils and in addition, a number of different agencies, which results in increased administration and can lead to delays in processing applications.
- The Covid-19 pandemic has resulted in a back log of cases and is more difficult to administer when staff are operating under a working from home business

model. Technical officers are also working under controlled operating models to protect their health and safety which can also result in delays to inspections.

- The number of HMO properties has reduced due to a variety of reasons since the economic appraisal was undertaken prior to the transfer of this function from the NIHE to Councils and will require the fee of £37 per person per year to be kept under review to ensure that the delivery of scheme remains cost neutral to Councils.

In conclusion, there are additional costs that have been borne by Belfast City Council in the administration, support and governance of the new licensing regime that have impacted on budgets and resources. At the start of the transfer of this function, it would have been difficult to foresee these emerging issues and Belfast City Council would welcome recognition of these factors when considering the outcome of this review undertaken by DfC.

Belfast City Council would welcome a separate review to be commissioned by DfC as a priority work stream to examine the adequacy of the resource transfer from the NIHE and financial model to deal with the new licensing regime for Councils in NI to support the effective governance, oversight and the financial strategy that underpins the delivery model ensuring that it is a quality fit for purpose function that meets stakeholder needs including the expectations of DfC.

9. What is your role regarding Houses of Multiple Occupation?

☐ landlord/managing agent ☒ council ☐ tenant ☐ other



Appendix 4

Review of the Houses in Multiple Occupation Act (Northern Ireland) 2016

<u>PART 1: Meaning of “House in Multiple Occupation”</u>		
Section	Description	Comments
Section 1	Meaning of “house in multiple occupation”	<p>See comments in relation to schedule 1</p> <p>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 allowing the owners of properties to live in the house and negate the need for the house to be subject to HMO licensing.</p>
Section 2	Definition of living accommodation	<p>The 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.</p> <p>(4) For the purposes of subsection (1)(b)(ii), the “basic amenities” are—</p> <p>(a) a toilet,</p> <p>(b) personal washing facilities, and</p> <p>(c) facilities for the preparation or provision of cooked food.</p>
Section 3	Cases where person is treated as occupying accommodation as only or main residence	The council does not believe that there is currently a need for regulations to be made pursuant to section 3(5).
Section 4	Persons who are members of	The council does not believe that there is currently a need for regulations to be made pursuant to section 4(1)(c).



	the same household	
Section 5	Notice regarding evidence of household	This section applies if the council believes, “on reasonable grounds”..., the 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
Section 6	Notice regarding continuation of occupation	The 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.

PART 2: Licensing of Houses in Multiple Occupation

Requirement for and issue of licences

Section	Description	Comments
Section 7	Requirements of HMOs to be licensed	No comments
Section 8	Applications for HMO licence	<p>Council believes that Section 8 2(a) should be amended.</p> <p>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.</p> <p>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</p>



		<p>amended test must apply to both new and renewal applications.</p> <p>Section 8(2)(e) – states that when considering an application for a HMO licence, the property must be fit for habitation. It has been widely acknowledged that the current statutory fitness standard is out of date and should be replaced by a modern standard. The current Fitness Standard (Housing (NI) Order 1992) is a pass or fail model and dwellings are either fit or unfit. It does not give an indication of whether a dwelling has just failed or if it is grossly unfit. With fitness levels currently at 1.6 % in the privately rented sector (NIHE, 2016) it doesn't provide useful data to inform Housing strategies or policy. It is no longer a comprehensive measure of the suitability of a dwelling for occupation. It fails to address the areas of thermal comfort and safety among others. An example of this is that it only requires a fixed heat source in the main living-room and a socket in any other living/bedroom in order to pass the Heating element of the standard.</p> <p>The fitness standard should be replaced by an updated fitness standard or Housing Health and Safety Rating system in due course.</p> <p>See comments in Schedule 2 regarding the procedural requirements relating to an application for an HMO licence.</p>
Section 9	Breach of planning control	See comments re Section 8
Section 10	Fit & proper persons	No comments
Section 11	Satisfactory management arrangements	No comments
Section 12	Overprovision	<p>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.</p> <p>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).</p>
Section 13	Suitability of living accommodation	No comments in relation to Section 13, however there is an error in the regulations made in exercise of the powers conferred by section 13(3) & 13(7)



	for multiple occupation	See Regulation 7 of The Houses in Multiple Occupation (Living Accommodation Standard) Regulations (Northern Ireland) 2016.
Licence conditions		
Section	Description	Comments
Section 14	Licence conditions	No comments
Temporary exemption from licensing requirements		
Section	Description	Comments
Section 15	Temporary exemption notice	<p>The council should have the ability to charge for a temporary exemption notice – See Section 84.</p> <p>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.</p> <p>The decision should also be served on the managing agent (if any)</p> <p>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.</p> <p>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.</p>
Section 16	Extension of temporary exemption notice	<p>The council should have the ability to charge for an extension to a temporary exemption notice.</p> <p>The decision should also be served on the managing agent (if any)</p>
Section 17	Safety and security requirements	No comments
Section 18	Revocation of temporary exemption notice	No comments



<u>Duration and renewal</u>		
Section	Description	Comments
Section 19	Duration of HMO licence	<p>In subsection 19.1 the date on which a renewal application has effect should be the date of expiry of the previous licence.</p> <p>Currently licences are renewed on the date of issue resulting in HMO properties having licences extending beyond five years and having a potential impact on income to support the scheme. To ensure that licences are retained with the 5 year cycles, the date on which a renewal application has effect should be the date of expiry of the previous licence. There is no detriment to the owner whilst a HMO licence is being processed and determined as the HMO continues to be licensed under the existing licence arrangements</p>
Section 20	Renewal of licence	See comments re Section 8
Section 21	Application to renew: effect on existing licence	See comments in relation to subsection 19(1)
<u>Variation and revocation</u>		
Section	Description	Comments
Section 22	Variation of licences	<p>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. The 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.</p>
Section 23	Revocation of licences	No comments
Section 24	Variation and revocation: procedure	See comment in relation to section 22
<u>Other provisions about licences</u>		
Section	Description	Comments



Section 25	Restriction on applications	No comments
Section 26	Joint licence holders	Section 26(5) should be treated as a variation of the existing licence rather than a renewal
Section 27	Surrender of HMO licence	No comments
Section 28	Change of ownership: effect on licence	See comments in Section 12. The Department should also consider whether its guidance on this issue complies with the wording of this Section and whether for example the wording of Section 28(2) should be revised.
Section 29	Death of sole licence holder: effect on licence	The 3 months period referred to in section 29 (1)(b) should be extended to 6 months (as it frequently takes longer to 3 months to put in place personal representatives and for them to put arrangements in place to manage the estate).
PART 3: Enforcement of Licensing Requirements		
Offences		
Section	Description	Comments
Section 30	Unlicensed HMO	No comments
Section 31	Exceeding licensed occupancy or breach of licence conditions	No comments
Section 32	Untrue claim that HMO is licensed	No comments
Section 33	Agents not named in licence	No comments
Section 34	Reasonable excuse	It would be helpful if a more comprehensive list of reasonable excuses was provided in guidance whilst still retaining the ability of councils to exercise its own discretion in all scenarios.
Rectification of breaches of conditions		
Section	Description	Comments
Section 35	Power to require rectification of breach of conditions	No comments



Section 36	Revocation of rectification notice	No comments
Section 37	Failure to comply with rectification notice	No comments
Orders of the court: revocation and disqualifications		
Section 38	Revocation orders and disqualification orders	No comments
Section 39	Revocations and disqualifications: appeals	No comments
Section 40	Discharge of disqualification orders	No comments
PART 4: Standards of Housing		
CHAPTER 1: Overcrowding		
Definitions		
Section	Description	Comments
Section 41	Definition of overcrowding	No comments
Section 42	The room standard	No comments
Section 43	The space standard	Council anticipates that representations may be received to amend the legislation so that these standards do not apply to renewals. The Council considers that this is fundamentally an issue for councils to determine having regard to the legislation, guidance issued by DfC and all other material considerations recognising the importance of space standards for tenants from a health and safety and general wellbeing perspective.
Overcrowding notices		
Section	Description	Comments
Section 44	Overcrowding notices	No comments
Section 45	Contents of overcrowding notice	No comments
Section 46	Requirement as to overcrowding generally	No comments



Section 47	Requirement not to permit new residents	No comments
Section 48	Notice requiring further information	No comments
Section 49	Information notice: supplementary provisions	No comments
CHAPTER 2: Suitability for numbers in occupation		
Section	Description	Comments
Section 50	Suitability notice	No comments
Section 51	Contents of suitability notice	No comments
Section 52	Occupancy requirements	No comments
Section 53	Statement of remedial work	Section 53(3) the council recognises that fire safety measurers within the meaning of the Fire and Rescue Services (northern Ireland) Order 2006 cannot be included, this can cause operational delays in correcting issues of fire safety if the licensee is not cooperative.
CHAPTER 3: Hazards		
Section	Description	Comments
Section 54	Definition of hazard	No comments
Section 55	Hazard notice	No comments – please note the council has not served any Hazard notices to date
Section 56	Contents of hazard notice: prohibitions	No comments
Section 57	Contents of hazard notices: other matters	No comments
Section 58	Works requirements	No comments
Section 59	Approvals as to use of premises	No comments
CHAPTER 4: Further provisions about notices under this part		
Section	Description	Comments
Section 60	Offences	No comments
Section 61	Further provision	See schedule 5



PART 5: Supplementary

HMO register

Section	Description	Comments
<u>Section 62</u>	HMO register	<p>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.</p> <p>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.</p> <p>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.</p>

Code of practice

Section	Description	Comments
<u>Section 63</u>	Code of practice	No comments

Fixed penalty as alternative to prosecution

Section	Description	Comments
<u>Section 64</u>	Fixed penalty: service of notice	No comments
<u>Section 65</u>	Fixed penalty: effect of notice	No comments
<u>Section 66</u>	Fixed penalty: power to alter amounts	No comments

Appeals

Section	Description	Comments
<u>Section 67</u>	Appeals	No comments
<u>Section 68</u>	Council's statement of reasons for decisions which	As a matter of practice the council includes the statement of reasons with any decision subject to Section 67



	may be appealed	
Section 69	Powers of court on appeal	No comments
Information		
Section	Description	Comments
Section 70	Powers to require information and documents: introductory	No comments
Section 71	Power to obtain information from persons connected to premises	No comments
Section 72	Power to require persons connected to premises to produce documents	No comments
Section 73	Power to obtain information from other persons	No comments
Section 74	Sharing of information between councils	No comments
Section 75	Failure to provide information or provision of false information	The level of fine should be increased from level 2 on the standard scale
Section 76	Unauthorised disclosure of information obtained under section 73 or 74	No comments
Section 77	Court to inform council of convictions	No comments
Powers of entry		
Section 78	Powers of entry: without warrant	No comments
Section 79	Powers of entry: with warrant	No comments
Section 80	Powers of entry: supplementary provisions	No comments



Other supplementary provisions		
Section 81	Applications by persons required to take action where consent withheld	No comments
Section 82	Obstruction etc	No comments
Section 83	Effect of moving from accommodation for works to be carried out	No comments
Section 84	Fees	A separate fee should be considered for Section 15 Temporary Exemption Notices
Section 85	Guidance	The guidance needs reviewed to consider issues around room sizes and valid applications
Section 86	Regulations and Order	No comments
Section 87	General notices	No comments
Section 88	Interpretation	No comments
Section 89	Consequential amendments and repeals	No comments
Section 90	Commencement	No comment
Section 91	Short title	No comments
Schedule 1	Buildings or parts of buildings which are not houses in multiple occupation	Paragraph 9 – 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.
Schedule 2	Applications for HMO licences: requirements and procedure	Paragraph 3 – Notice to statutory authorities This paragraph should 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.



		<p>Paragraph 12 –</p> <p>The current time limit for processing an application for a HMO licence is 3 months from that date that it is deemed a “valid” application. The current 3 months limit is overly difficult to achieve given a number 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.</p> <p>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.</p> <p>If DfC are not prepared to remove this provision in its entirety, the Council would request that this time limit is extended to 6 months.</p> <ul style="list-style-type: none">• 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
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		<p>already on the committee agenda needs to be considered.</p> <p>Paragraph 12 should clearly indicate that the time limit starts from the date the application is valid (this is currently only in guidance).</p> <p>Paragraph 13 – A review of the need to serve a notice of determination on all statutory authorities should be undertaken.</p> <p>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.</p>
Schedule 3	Further provision about notices that specify works	No comments
Sch 3: Part 1	Provision applying to all notices that specify works	No comments
Sch 3: Part 2	Failure to carry out works required by rectification notice or hazard notice	No comments
Schedule 4	Variation and revocation of HMO licences: procedure	<p>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.</p> <p>Paragraph 5 (1)(c) – 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.</p>
Schedule 5	Part 4 notices: further provisions	
Sch 5: Part 1	Service and date of effect of notices	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 paragraph 1(2)
Sch 5: Part 2	Suspension of effect of notices	No comments
Sch 5: Part 3	Variation and revocation	No comments



Schedule 6	Definitions for the purpose of section 73	No comments
Schedule 7	Consequential amendments	No comments
Schedule 8	Repeals	No comments



Review of the [HMO \(Living accommodation Standard\) Regulations \(Northern Ireland\) 2019](#)

Regulation 7	Personal Washing Facilities	<p>Firstly within Table 1 of Regulation 7 it states that 1 bathroom or shower is required for 5 occupants. However within the NIHE guidance it states that it should be 1-5.</p> <p><i>Table 1</i></p> <hr/> <p><i>Household</i></p> <hr/> <table><tr><td>1-5 occupants</td><td><i>1 bathroom or shower room</i></td></tr><tr><td><i>6-10 occupants</i></td><td><i>2 bathrooms or shower rooms</i></td></tr><tr><td><i>11-15 occupants</i></td><td><i>3 bathrooms or shower rooms</i></td></tr></table> <hr/> <p>Secondly paragraph 5, in Regulation 7, refers to paragraph 4. We believe that this should refer to paragraph 1.</p> <p>(5) Where paragraph (4) does not apply and the bathroom or shower room is shared, each occupant shall have an accessible water closet compartment, separate from the bathroom or shower room, and containing a water closet and a wash hand basin in the following ratios as per Table 2:—</p> <p>Please also see NIHE guidance to compare the equivalent paragraph which is paragraph 7.4. Paragraph 7.4 refers to Paragraph 7.1.</p> <p>The consequences of these two anomalies is that the Regulation 7 can be interpreted as a single combined bathroom (Shower/bath, w.h.b. and toilet) and a W.C. ,which may not be communal, being adequate for 4no persons.</p>	1-5 occupants	<i>1 bathroom or shower room</i>	<i>6-10 occupants</i>	<i>2 bathrooms or shower rooms</i>	<i>11-15 occupants</i>	<i>3 bathrooms or shower rooms</i>
1-5 occupants	<i>1 bathroom or shower room</i>							
<i>6-10 occupants</i>	<i>2 bathrooms or shower rooms</i>							
<i>11-15 occupants</i>	<i>3 bathrooms or shower rooms</i>							

Response to each of the Major Themes raised by the Feedback Report.

A number of themes have emerged from the responses to the 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 continual 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.

NI Houses in Multiple Occupation

► NI Houses in Multiple Occupation

Certificate of fitness

Garden safety

Harassment and unlawful eviction

High hedges

Home heating

Home safety

Homelessness

Japanese Knotweed

Managing your tenancy

Home Community Housing NI Houses in Multiple Occupation

► NI Houses in Multiple Occupation

► HMO Licensing Scheme

► Applying for a HMO Licence

► Licence conditions

► General HMO management

► Overprovision

► Refusal

► Applying for a temporary exemption notice

► Vary the number of people who are authorised to occupy the HMO

► Tenants' rights and responsibilities

► What is a HMO?

► View HMO Licence Register and open applications

► Fees

► Landlords guide to tackling antisocial behaviour

► Planning

► Fit and proper person test

► Enforcement action

► Removing, adding or substituting the managing agent of the HMO

► Landlord Registration Scheme

► Reporting antisocial behaviour

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 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
<i>Very satisfied</i>	31
<i>Somewhat satisfied</i>	29
<i>Neutral</i>	21
<i>Somewhat dissatisfied</i>	16
<i>Very dissatisfied</i>	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.

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(5) 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
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)	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. 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
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
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 fitting 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.	
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 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. Over provision

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 we 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 is currently the subject of judicial review proceedings brought by LANI. This will provide clarity for all parties in relation to this issue.

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.

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