



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 were 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	<p>The council does not believe that there is currently a need for regulations to be made pursuant to section 3(5).</p>
Section 4	Persons who are members of	<p>The council does not believe that there is currently a need for regulations to be made pursuant to section 4(1)(c).</p>



	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
Section 62	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
Section 63	Code of practice	No comments

Fixed penalty as alternative to prosecution

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

Appeals

Section	Description	Comments
Section 67	Appeals	No comments
Section 68	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 of factors to be considered for example allowing the owner sufficient time to undertake remedial works and accommodating the management of Committee agendas where representations are received. It is considered that the licensing regime is complicated and cumbersome. The time limit only creates more difficulties and has no practical benefit for councils and landlords alike. Given the requirements of the licensing scheme, particularly the fact that there is a requirement to assess the fitness of an applicant, it is not appropriate to have deemed licences in any event.</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

<p><u>Regulation 7</u></p>	<p>Personal Washing Facilities</p>	<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 data-bbox="582 638 1244 851"> <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> <p>Added to DfC HMO legislation issues log as per email of the 04 September 2020</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>							
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