

## **Appendix 3**

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

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- ▶ Applying for a HMO Licence
- ▶ Licence conditions
- ▶ General HMO management
- ▶ Overprovision
- ▶ Refusal
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- ▶ 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.

<b>Comment</b>	<b>Percentage</b>
<i>Very satisfied</i>	31
<i>Somewhat satisfied</i>	29
<i>Neutral</i>	21
<i>Somewhat dissatisfied</i>	16
<i>Very dissatisfied</i>	3
<b>Grand Total</b>	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:

<b>Document</b>	<b>HMO Act</b>	<b>Other legislation / comments</b>
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 1<sup>st</sup> 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.