

HMO REGULATION: DRAFT HMO GUIDANCE FOR COUNCILS	7TH NOVEMBER 2017
TO: ENVIRONMENTAL SERVICES COMMITTEE	
FOR DECISION	

Linkage to Council Strategy (2015-19)	
Strategic Theme	Resilient healthy and engaged communities
Outcome	Response to Proposed Legislation
Lead Officer	Head of Health and Built Environment
Cost: (If applicable)	N/A

Background

On the 4 October 2017 the Department of Communities consulted with all 11 Councils in Northern Ireland with a view to getting comment on the draft guidance on HMO's for Councils. A response was requested by 27 October 2017.

Members will be aware The HMO Bill received Royal Assent on the 12 May 2016. The Department of Communities are continuing to work on the regulations that will accompany this Act as they move forward with the transfer of the function to Council possibly in 2018. These regulations will provide further detail on the operation of the scheme and will be supported by this guidance prior to the commencement of the licensing scheme.

A response has been prepared and can be found at Appendix 1.

Recommendation

It is recommended that Members support the response to this consultation.

PART	Comments	Name & Date	Area
Part 1 Introduction	No Comment		
Part 2 HMO Licensing General Requirements	No Comment		
2.1 Overview	<p>2.14 Guidance as to how a fit and proper person is required.</p> <p>2.1.8 Regulation 4 HMO Regulations 2017 should this be Schedule 1 Paragraph 4?</p> <p>2.1.9 Section 4 should read Section 1</p> <p>2.1.20 Online transactions will create additional costs for councils</p> <p>2.1.23 Council “will consider refunding fees” – clarity on this and will lead to inconsistency refers to xxxx 2018 & April 2019 will need to be confirmed following the making of the commencement order to the HMO Act. Also “will consider the refunding of fees” – it would be preferable if councils did not even have to consider the refunding of fees especially where they have investing time on considering any application or any other related work in relation to a HMO. There would also need to be a consistent approach across the board to avoid disputes</p> <p>2.1.25 – Essentially councils are expected to run parallel regimes for up to 5 years after the commencement of the HMO Act</p>		CC&G
2.2 Applying for an HMO licence	<p>2.2.1 “information set out in Section 8 of the Act” should read “information set out in Schedule 2 of the Act”</p> <p>2.2.2 New HMO regulations describe requirement to publish notice – Section 8(3) states that Schedule 2 makes provision about the procedural requirements relating to an application for an HMO Licence</p> <p>2.2.9 Need to specify who the statutory authorities are and</p>		CC&G

	<p>implementation of Information Sharing Protocols would be required</p> <p>2.2.12 “The council must copy any such objection to the applicant, and must notify the applicant of any other information they intend to take into account in considering the application” - There is no provision in Schedule 2 to require the council to do this (there is specific provision in Schedule 4 para 6 of Scottish Guidance for this)</p> <p>2.2.14 Further guidance needed on what information must be excluded from the register additional information is needed in relation to what constitutes a “genuine interest” in a property and “jeopardise the safety or welfare ...”</p> <p>2.2.18 The term of 3 months to process a license doesn’t seem very long in comparison to Scotland (where this guidance originated) where the period is 12 months.</p> <p>2.2.23 Which Council’s register of landlords do they refer to , is it the HMO database?</p> <p>2.2.24 Does this mean a new application is submitted. Does this mean Planning application will be required and does that mean over supply come into play in areas where the planning limits have been breached?</p>		
Part 3 Administration of HMO licensing	No Comment		
3.1 Overview	<p>3.1.5 What is an “unreasonable burden”</p> <p>3.1.6 – Although a regulators forum can be useful Councils must maintain full control of their enforcement decisions therefore</p>		CC&G

		the wording “to ensure that they are operating the regime in a reasonable ... manner” should be revised		
3.2	Co-ordination and preventing duplication	3.2.2 Information sharing protocols will need to be established between all these organisations requiring a significant amount of work. 3.2.6 -3.2.8 Guidance should ensure consistency and there are already established sub groups under the EHNI Group to discuss procedures, protocols etc.		CC&G
3.3	Verification of compliance with licensing requirements	3.3.1 Do Councils turn a blind eye to HMO’s if they don’t meet planning because of transitional arrangements?		CC&G
3.4	Fees	3.4.8 & 3.4.12 The same fee should be applied to all applications. How can Council manage different fees for unsuccessful applications. Unsuccessful application requires a lot of work?		CC&G
3.5	Fire safety	No Comment		
3.6	Restriction on applications-link to planning	No Comment		
Part 4	Standards and licensing conditions	No Comment		
4.1 4.1A	Overview Preliminary Refusal: breach of planning control	4.1a2 – “ a reasonable view” is imprecise – with planning sections now within councils and electronic planning portals it should not be hard for HMO owners to prove if they have planning approval for their HMO(s)		CC&G
4.2	Suitability of the applicant and agent	4.2 Will one of the three groups maintain the public register and control viewing?		CC&G

		<p>4.2.2 Information would be gained from Land Registry at a cost to Councils</p> <p>4.2.3 A list of relevant convictions is required requiring data sharing protocols.</p> <p>4.2.6 List of where to source information listed in this section required. In Scotland the guidance includes sexual assault, why has this been removed?</p> <p>4.2.7 Are there significant cost involved in Access NI checks?</p>		
4.3	Suitability of the living accommodation	<p>4.3.2 -4.3.4 Standards should be clear and the same for all properties to ensure consistency. Standards are prescribed in the HMO (Accommodation Standards) Regulations (NI)2016</p> <p>4.3.7 Section 13(2) states consideration needs to be given to :</p> <ul style="list-style-type: none"> • the accommodation's location, • the type and number of persons likely to occupy it, • the safety and security of persons likely to occupy it, and • the possibility of undue public nuisance. • the minimum standards set under Regulations made under 13(3) ie HMO (Accommodation Standards) NI Regulations 2016 for the accommodation's condition • the extent (if any) to which the accommodation falls short of the provisions of building regulations 		CC&G
4,4	Section 13 (2) a — the location of the accommodation	No Comment		CC&G
4.5	Section13 (5) — the condition of the accommodation	4.5 -4.6 The accommodation standards are set out in the (Accommodation Standards) NI Regulations 2016. Those detailed in this guidance are from		CC&G

		<p>the Scottish Guidance</p> <p>4.7 HMO (Space Standards)NI Regulations 2016 set these out</p> <p>4.7.10. I would caution against stating that children don't often live in HMOs.</p> <p>4.8 Subdivision of any rooms within the accommodation – we do not have this consideration in Section 13 of the Act</p> <p>4.9 Adaptation of any rooms within the accommodation resulting in an alteration to the situation of the water and drainage pipes within it – we do not have this consideration in Section 13 of the Act</p> <p>4.10.2 More specific guidance is required.</p> <p>4.10.12 – The gas regs were updated in 2004</p> <p>4.11 – This section could be more robust in terms of the guidance provided</p> <p>4.11A.3 – The LDP refers to Belfast only – all councils would have to produce their own and this if agree, could take up to a four year period to complete.</p> <p>4.14.15 – Councils may also have a role in the investigation of harassment & illegal eviction</p>		
4.6	Section 13 (3) — any amenities the living accommodation contains	No Comment		CC&G
4.7	Section 50 — the suitability for number of persons likely to occupy the accommodation	No Comment		CC&G
4.8	— subdivision of any rooms within the accommodation	No Comment		CC&G
4.9	— adaptation of any rooms within the accommodation, resulting in an alteration to the situation of water and drainage pipes within it	No Comment		CC&G
4.10	Section 17) - safety and security requirements	No Comment		CC&G

4.11	Section — the possibility of undue public nuisance	No Comment		CC&G
4.11A	Section 12 — overprovision	No Comment		CC&G
4.12	Inspections	No Comment		CC&G
4.13	Power to include licence conditions	No Comment		CC&G
4.14	Recommended licensing conditions	No Comment		CC&G
Part 5	Identification, enforcement and complaints	No Comment		CC&G
5.1	Identifying unlicensed HMOs	No Comment		CC&G
5.2	Enforcement action	No Comment		CC&G
5.3	Dealing with complaints	No Comment		CC&G
5.4	Data Protection and Sharing of Information	No Comment		CC&G
Annex A:	Technical specification for physical standards			
Annex B:	Table showing Fixed Penalty Notices			