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## Response to the DSD Consultation Paper on the Fundamental Review of the Regulation of Houses in Multiple Occupation

September 2012



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## **1.0 Background**

Housing Rights Service was established in 1964 and is the leading provider of independent specialist housing advice services in Northern Ireland. We work to achieve positive change by protecting and promoting the rights of people who are in housing need in Northern Ireland. Our policy work is based on the experience of our clients. Our services are delivered throughout Northern Ireland and focus on key areas of preventing homelessness; accessing accommodation; tackling affordability and poor housing conditions.

## **2.0 Summary**

We believe the proposed change from HMO registration to a licensing system, as already exists in England, Scotland and Wales, will greatly assist in protecting life, enhancing standards and eliminating the duplication that exists in administering the current systems of HMO registration and regulation in Northern Ireland. In the other UK jurisdictions the conditions which a HMO has to meet are part of the licensing scheme and we believe this approach should be adopted in Northern Ireland, along with the more prescriptive English and Welsh definition of a HMO household. In our view, licensing should be phased in for the highest risk properties and should be carefully targeted. Licensing will be expensive to administer and enforce, and although it is envisaged that this could be funded on a fee recovery basis; we believe there is a strong case for Departmental subventions to assist the HMO regulatory authority in implementing and administering the new regime.

In our view current legislation clearly does not include adequate protection for the approximate number of 30,000 tenants that live in HMOs in Northern Ireland and we believe there is a need for overcrowding legislation, similar to that found in other jurisdictions, particularly to stop the deliberate overcrowding of houses by those that claim family relationships. Also, our existing fitness standard is unable to address the most common safety defects found in rented accommodation. We therefore believe that the Department should introduce the Housing, Health and Safety Rating System to

Northern Ireland in order to address these safety concerns. In regard to exemptions, we have concerns about proposals to exempt properties controlled by public sector bodies, such as NIHE, and religious communities.

The Department will be aware of our long standing interest in HMOs and our concerns particularly in regard to proposals to amend the HMO definition under the Housing (Amendment) Bill in 2009. We appreciate that this is quite a complicated area of housing law and practice. We therefore suggest that there may be value in the Department establishing a small working group of stakeholders (including HMO tenants) to advise on the implementation of the outcomes of this review. We also believe there should be an independent review of the new regulation scheme within two years of its establishment.

In the following sections we address a number of overarching issues of concern to our clients and include responses to the questions contained in the consultation paper. Arising from this discussion, we make the following recommendations which we believe the Department should carefully consider:

**We recommend:**

- The method of HMO authorisation should change from registration to licensing and the conditions, which a HMO must meet, should be part of this scheme
- A working group of relevant stakeholders should be established to advise the Department on the implementation of key recommendations arising from this consultation process
- An independent review of the new regulation scheme should be undertaken within two years of its establishment
- A risk assessment tool such as the Housing Health and Safety Rating Scheme (HHSRS) should be introduced for residential property in Northern Ireland
- A targeted approach to inspections, based on risk assessment, should be established with larger, three or more storey HMO properties, or those accommodating five or more people, actively targeted for inspection and enforcement.

- A statutory definition of overcrowding should be introduced on a similar basis to that pertaining in England, Wales, Scotland, and Ireland
- The revised regulation scheme should include tenancy management criteria and the provision of relevant information to tenants
- The HMO definition should include converted self-contained flats, with households to include carers and domestic help
- Properties owned by public sector bodies such as NIHE and accommodation owned by religious communities should not be exempted from the HMO definition
- Planning policy and legislation should complement HMO regulation and other housing policy objectives
- There should be a statutory energy efficiency requirement for HMOs
- There should be a requirement for minimum house security standards; reasonable exterior decoration; and carbon monoxide detectors to be in place in HMOs
- Training on HMO licensing and tenancy management issues (such as legal rights and responsibilities, avoiding discrimination in letting, possession procedures, dealing fairly with arrears issues etc) should be provided for HMO owners and agents
- The “person with responsibility” for a HMO should satisfy a “fit and proper” test
- A statutory requirement should exist to provide HMO owners and agents with appropriate guidance and support in order to enable them to effectively manage these tenancies
- The regulatory authority should consider introducing a complaints and mediation service as part of the proposed licensing system.

### **3.0 General comments**

Housing Rights Service welcomes the publication of this document for consultation. Houses in Multiple Occupation (HMOs) play a key role in providing accommodation for many sections of our community, including some of the most vulnerable and disadvantaged members in society, and this role is set to become even more important

as cuts to Housing Benefit (HB) / Local Housing Allowance (LHA) force more people, particularly those aged under 35, to seek this type of private rented accommodation. Welfare Reform will further exacerbate this demand, with more vulnerable people encouraged to seek accommodation in shared rented properties, and this could be compounded by the Northern Ireland Housing Executive (NIHE) potentially discharging its homelessness duties, from the much reduced social housing sector, into private rental.

In comparison with other housing sectors and single family households, there are increased risks associated with living in houses with multiple occupancy including accidents, injuries and loss of life. The risk is increased in line with size of the HMO and the number of occupants. As the DSD consultation paper states:

*“Any sharing or increase in occupant numbers in accommodation increases risk and it is widely acknowledged the danger is greater according to the size of the house and the number of occupants.”<sup>1</sup>*

Tenants living in HMOs are also considered at a higher risk than single family homes as there is no head of household to supervise health and safety risks.

According to a recent report,<sup>2</sup> 1151 notices were issued by NIHE in 2011/12 for HMOs not up to the standards required by the Housing Order (NI) 1992, with over 75% (866) served in the Belfast City Council area alone. The report found:

- 678 HMOs were in need of improvement “to make good neglect of proper standards of management”
- 466 HMOs needed work to “render premises fit for the number of occupants” at the time of inspection
- Seven houses were deemed to be “unfit for human habitation”.

Housing Rights Service receives many enquiries from both tenants and landlords/agents involved in the HMO sector and is, therefore, well placed to comment on the proposals

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<sup>1</sup>Fundamental Review of the Regulation of Houses in Multiple Occupation in Northern Ireland: Consultation. DSD. June 2012. Pg 3

<sup>2</sup>The Detail. 21 September 2012

contained in the review. Whilst there are many good landlords in the private rented sector (PRS), there are also numerous cases of HMOs being poorly managed and in poor physical condition. Common concerns from tenants relate to the lack of fire safety facilities; problems with maintenance of communal areas; anti-social behaviour from other residents; and security issues. Enquiries from landlords, agents and solicitors normally concern the interpretation of the minimum legal requirements under HMO legislation such as fire safety precautions. It is our experience that HMO accommodation is more likely to be unfit and many properties fail to meet the conditions set out in regulations.

### **3.1 Targeting risk**

We acknowledge that enhancing HMOs by improving standards is likely to be resource intensive. Therefore, we suggest a targeted approach to inspections, based on risk assessment. This would mean, for example, that larger three or more storey HMO properties or those accommodating five or more people could be actively targeted for inspection and enforcement. Once this has been achieved, resources could then be focused on the next highest risk category of HMOs and so on. In this way the strategy could target HMOs where the risk to occupants is greatest regardless of where they live. Those of a lesser priority could be targeted with information about HMO regulations and a programme of targeted inspection and enforcement carried out.

### **3.2 Threatened homelessness**

One of our key concerns about HMO regulation is the threat of tenants becoming homeless as a result of landlords withdrawing from the market or being refused registration. There is evidence in England that landlords are refusing to let to tenants in receipt of benefits which could be exacerbated under Welfare Reform. Measures to enhance HMO standards must take account of the risk that landlords may choose to end a tenancy or withdraw from the HMO letting market letting altogether. Consideration should therefore be given to the wider implications of licensing and, in particular, its potential impact on vulnerable tenants. For example, some could face difficulties when presenting as homeless, particularly if the HMO owner or agent refuses to provide a Notice to Quit or when a fixed-term tenancy has not expired.

### **3.3 Evaluation of current scheme**

We are disappointed that there has been no real evaluation of the current HMO registration scheme in order to inform this consultation exercise. As the consultation paper makes clear, just 3,700 or approximately 40% of the 9,300 total number of HMOs recognised by NIHE in Northern Ireland have been registered to date. There are 6,520 HMOs in Northern Ireland with approximately 60% concentrated in the Belfast area. These are properties that have been inspected and confirmed to be a HMO. However, there are an estimated 2,784 other potential HMOs that have yet to be confirmed, based on information available to the NIHE from Housing Benefit claims.

We would have appreciated a fuller discussion of the difficulties encountered by the NIHE HMO Unit in managing the current mandatory registration programme and the resource and enforcement problems that have been encountered. We understand that a modest target of 250 inspections per year has been in place for some time owing to the pressures placed on the NIHE HMO unit. For example, the Department could have included details of the number of notices that have been served by NIHE, prosecutions achieved, and penalties imposed etc. We would also have welcomed a discussion of the impact of the recent Housing Benefit cuts on tenants in the sector and how Welfare Reform could dramatically increase demand for HMO accommodation. The new landlord registration and tenancy deposit protection schemes could also have been factored into this discussion and Housing Rights Service would have appreciated an opportunity to contribute to the pre-consultation exercise conducted by the Department.

### **3.4 Regulatory authority**

It is clear that one of the primary purposes of the proposed new HMO framework is to facilitate the change in responsibility for the regulation of HMOs from NIHE to district and borough councils as planned under the Reform of Public Administration. We would have appreciated more detail on this transfer of responsibility and why the Department

believes “a robust yet flexible scheme will make the transfer easier to implement”.<sup>3</sup> In addition, we would have welcomed information on the anticipated timetable for the transfer of these functions as, given the projected demands on the legislative process in the Northern Ireland Assembly, it is unlikely that any legislative change will be on the statute book before 2015.

### **3.5 Monitoring and complaint handling**

Housing Rights Service believes a robust monitoring system will be required to review the operation of any new licensing scheme and we would suggest that an independent review of the new scheme should be conducted within two years of the new arrangements being introduced. As part of this monitoring process, Housing Rights Service would also like to see a commitment from the Department to obtaining feedback from HMO tenants – a process which we can assist with through a recently established private rented tenants’ forum. Unfortunately the consultation document on the proposed new scheme does not refer to a complaints procedure. We believe that this would be beneficial for both HMO owners, agents and tenants and we would like to see the regulatory authority establish a mediation service to help resolve such complaints.

### **3.6 Tenancy management standards**

One of our overall concerns is that the proposed system does not include tenancy management standards. In framing the current guidance on HMO licensing produced for local authorities, the Scottish Executive has stated:

*“Local authorities are encouraged to place an emphasis on ensuring high standards of tenancy management in HMOs. Confirmation that tenancy management standards are satisfactory should be part of the processing of every licence application.”*<sup>4</sup>

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<sup>3</sup> Op. cit 1. Pg 4

<sup>4</sup> <http://www.scotland.gov.uk/Publications/2011/02/03132417/9>, para 2.2.2. Accessed 21/09/12

Housing Rights Service believes the HMO regulatory authority should consider the implications of any management issues which come to their attention in deciding whether to approve, revoke or vary an HMO licence. Such information should be pertinent in considering whether HMO owners and agents are “fit and proper”. This assessment should include adherence to tenancy management issues such as the existence of proper tenancy agreements which set out the rights and responsibilities of tenants and landlords and prevent the exploitation or harassment of tenants.

Good management practice should ensure that:

- Tenants have peaceful occupation of their home
- Lawful tenancy agreements and rent books are in place
- Adequate notice is given before a landlord enters the property
- Repossession procedures are lawfully observed
- Tenants are aware of their responsibilities in relation the maintenance of the property and towards their neighbours.

A review of the scheme in Scotland found that all of local authorities surveyed welcomed the inclusion of these provisions within the licensing scheme.<sup>5</sup> We believe it will also be necessary to ensure that landlords are provided with appropriate guidance and support to enable them to resolve management issues in HMO’s particularly in regard to alleged anti-social behaviour.

### **3.7 Costs**

We would argue that HMO accommodation is not “relatively inexpensive” as stated in the consultation paper.<sup>6</sup> Along with the greater demand for properties in this sector, rents have increased and are unlikely to reduce, as government hopes, in the foreseeable future. As with the private rented sector in general, any additional costs borne by HMO landlords are usually passed on to tenants in the form of higher rents and, we fear that the costs of enhanced regulation for HMOs will result in higher rents which, coupled

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<sup>5</sup> License to let? A first year review of the Mandatory Licensing Scheme for HMOs, Shelter Scotland. December 2001.

<sup>6</sup> Op. cit 1. Pg 3

with the impact of Welfare Reform and Housing Benefit cuts, may result in increased levels of homelessness.

Nevertheless, it is not necessarily the case that increased regulation imposes additional costs on tenants and issues relating to affordability and increased standards are not mutually exclusive. Many changes, as proposed in this response, do not lead to additional costs and we believe the primary responsibility in this review is to improve HMO standards in order to protect life.

## 4.0 Responses to questions

1. **Apart from numbers and relationships of occupants, type and size of house and sharing of basic amenities, are there any other factors that should be taken into account in determining the level of risk likely to exist in a property?**

We believe the age and condition of the property; the level of occupancy including the number and characteristics of the tenants occupying the property; whether rooms have been sub divided or adapted (particularly any alterations to water and drainage pipes within the property); issues relating to the safety and security of the occupants; the number of storeys in the property; the length of escape routes; and the level of structural fire protection within properties are all important factors that should also be taken into account in risk assessments. In addition, the confidence in the landlord's management practice and capabilities; the history of compliance with relevant standards, and whether they are a 'fit and proper person' are other factors that should be considered by the regulatory authority.

Housing Rights Service believes the Housing Health and Safety Rating Scheme (HHSRS),<sup>7</sup> as exists in England and Wales, provides a clear framework that describes and assesses the risk factors associated with residential property. We believe that a risk assessment scheme, based on this framework, should be introduced to properly determine risk for properties such as HMOs.

2. **Do you think a new definition should provide for different types of HMO by being prescriptive, or should the definition be general?**

We would prefer a more prescriptive definition, as is the case with the comparable English/Welsh provision, in order to provide a clear, unambiguous framework for the regulation of HMOs in Northern Ireland.

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<sup>7</sup> The Housing Health and Safety Rating System (HHSRS) is a risk assessment tool used to assess potential risks to the health and safety of occupants in residential properties in England and Wales. The legislation came into effect in England and Wales in 2006.

**3. Do you think there should be a minimum number of people living in the house before it is designated a HMO? If so what is that number?**

We believe there should be a minimum number of three people living in a property before it could be designated as a HMO as is the case in England, Wales and Scotland. A number below three is highly unlikely to present a major risk in a HMO though it is important to be aware of the characteristics of the tenants forming such households. Any suggestion that this figure should be increased to five, for example, would have the effect of excluding those smaller properties, such as those clustered in South Belfast, which in our view can constitute a significant risk for those tenants sharing this type of accommodation. If such a change to five is envisaged we would recommend that an impact assessment should be carried out on the categories of tenants who would be most affected and the numbers likely to be excluded from HMO licensing.

**4. Do you think a maximum of 2 families or households should be able to live in a house without it being designated as a HMO, provided the total living in the house is less than a certain number?**

We support this proposal as we believe any extension would be difficult to substantiate given the problems that already exist in documenting the variety of family connections that can exist in households.

A statutory definition of overcrowding would greatly assist as it is currently difficult for NIHE to challenge, on reasonable grounds, any instances where it suspects where overcrowding is a threat to tenants' health and safety. Legislation relating to overcrowding currently exists in England, Wales, Scotland, and Ireland and has proved to be successful in preventing overcrowding of HMOs by groups of tenants who claim close family relationships.

We believe that if a HMO owner or manager knowingly allows a property to be occupied by more occupiers than it is licensed for, without a reasonable excuse, this should constitute a criminal offence and potentially incur a penalty of up to £50,000 as is the case in Scotland (£20,000 in England and Wales). The regulatory authority

should also consider revoking the license if the HMO owner or agent is found to have permitted overcrowding.

**5. Do you think a definition of family or household should be extended to include carers and domestic help?**

We believe that this definition should be extended to cover carers and domestic help who habitually reside in the accommodation. However we would propose that such exceptions will require careful definition and confirmation in the form of certification in order to limit attempts to avoid regulation.

**6. Do you think the size or type of building should have any bearing on its designation as a HMO?**

Yes, large buildings with multiple storeys and older properties with poorer levels of structural protection are at greater risk of fire. Obviously the number of occupants in a HMO property also influences this risk. The number of storeys in a building in this context should also include basements and attics, if they are occupied, or if they have been converted for occupation, or if they are used in connection with the occupation of the HMO by residents, e.g. a basement with just a residents' laundry room and no other living accommodation would count as a storey. In our view, any business premises, or storage space on the ground or upper floors, should also be included as a storey, along with mezzanine floors depending on their location and use.

**7. Do you think the definition of HMO should include converted buildings that contain self-contained flats, where the conversion has not been approved by building control?**

Yes. We believe the definition should include such buildings as there may be issues relating to the construction quality and condition of the property. However we suggest that priority should be attached to those built pre-2001 when building regulations were not as robust as they are now.

**8. Do you think there needs to be sharing of basic facilities before a house can be designated as a HMO?**

No, as some buildings will have been converted into self-contained flats. We don't believe the sharing of basic facilities should be a pre-requisite for designation.

**9. What items should be included in the phrase "basic amenities"?**

We believe basic amenities should include toilets, bathrooms, shower rooms, laundry facilities, communal living areas and kitchen facilities.

**10. Do you agree with the Department's criteria for exempting houses from the HMO definition? If not please give reasons and alternatives.**

The Department has proposed two criteria in para 3.4.2 of the consultation paper for exempting a property which would otherwise be a licensable HMO. However it is not clear whether it proposes to exempt properties from the HMO definition, as this question states, or from the obligation to be licensed. We would prefer the approach in England where exemptions are contained in the formal HMO definition. We are content with the first criterion however we believe there may be difficulties in adopting the second one as it is based on interpreting the construct - "head of household or equivalent and/or hierarchical structure in the house". Such a formulation could be open to varied interpretations and therefore open to abuse and difficult for the regulatory authority to substantiate and enforce.

**11. Do you agree with the content of the list of exempted houses? If not please give your reasons and any other suggestions for inclusion in the list.**

We are not in favour of the proposed list of exempted accommodation. It is not clear why buildings controlled by public sector bodies such as councils and NIHE are exempt from registration. In Britain, HMOs owned by local authorities are included in the licensing system. In particular, as NIHE is currently responsible for HMO registration, we believe it should set an example and ensure that relevant accommodation within its control is registered. Any student/health worker accommodation provided by Health Trusts and the proposed training college for the police, prison and fire officer services, for example, should also be included in the list.

Clarification is required in regard to the second bullet point of para 3.4.3 – “Other houses, if they adhere to a code of practice acceptable to the Department”. If such a “code of practice” follows the model of the categories described in Section 2 of the current NIHE “Houses in Multiple Occupation Standards”, then we would be content to agree with this proposed exemption.

Furthermore, we don’t believe houses occupied by religious communities should automatically be included in the exempted list as there could be difficulties in ascertaining the definition of a ‘religious community’ and we believe hostel and other accommodation provided by faith organisations can pose the same risks as other types of property.

**12. Do you think a statutory information sharing gateway between the body responsible for paying rental housing costs and the HMO regulatory authority would improve identification of HMOs?**

Yes, we believe this would be a major step forward in identifying HMOs, boosting registration and detecting benefit fraud. The Department will be aware that under the Private Tenancies (NI) Order 2006, information can already be shared between the NIHE administered Housing Benefit scheme and local councils.

**13. Please give details of any other bodies where you think a statutory or informal information sharing gateway would improve the identification of HMOs?**

We believe HMRC; Land and Property Service; utility providers; Planning Service; the Northern Ireland Fire and Rescue Service; the Northern Ireland Care Commission; PSNI; and the building control departments and landlord registration officers within councils should be included in a statutory information sharing gateway. Non-statutory arrangements could also be developed with financial institutions and advice agencies to assist referral and information exchange functions.

**14. Do you think the persons responsible for HMOs and the agents letting the houses should have to inform the regulatory authority of when they begin or stop operating as HMOs?**

Yes, this is currently the situation when a landlord sells a HMO property. As contained in the recent Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (Amendment) (England) Regulations 2012, Housing Rights Service would be supportive of measures to reduce the information requirements for applications for the renewal of licences for HMOs in order to minimise the demands placed on landlords and agents.

**15. Do you think self-contained flats that do not meet relevant building control requirements should be subject to mandatory licensing? Please give reasons for your answer.**

We would support a proposal to subject self-contained flats to mandatory licensing, particularly those poorly converted flats that are known to have a high fire risk, as is the case in England and Wales.

**16. Are there any other types of shared building not already mentioned that you think should be subject to HMO licensing? If so please give your reasons.**

Some shared properties may be used partly for residential use and for other purposes, such as offices, food outlets or workshops. If the HMO regulatory authority is satisfied that a property is primarily used as the main residence of tenants and the other use is additional to this, then we believe it should be classified as a HMO. Another example of this would include a house used in the summer for a holiday let, but for the remainder of the year is rented to tenants.

**17. Do you agree the power to close HMOs should be available where there is immediate and substantial danger to the health, safety or welfare of any of the occupants?**

Yes, we would support this type of enforcement action. Nevertheless we accept that closure will be rarely used for a complete HMO and would be largely utilised in

shutting down parts of a property where the threat to safety is high, such as accommodation on the upper floors of a multi-story building.

**18. Do you think any person or organisation should have responsibility for the occupants of a closed HMO? If so which person or organisation and what form should the responsibility take?**

Housing Rights Service believes that this responsibility should rest with NIHE. Where an application is refused, or revoked we recommend that residents should be notified of any decision relating to the refusal or revocation of registration and the HMO regulatory authority should ensure that residents are aware of the implications of such a decision and that advice on rehousing options is made available to them at the earliest opportunity.

**19. Please give your views on whether it is desirable to be able to designate a house as a HMO even if it is empty?**

Housing Rights Service believes this would be desirable for empty properties to be designated and actioned before occupation, particularly for student lets which are often vacant during the summer vacation and for other properties designed or converted for multi-occupancy use such as bedsits, hostels, and bed and breakfast accommodation.

**20. Please give suggestions as to how this might work in practice in a way that is fair and equitable?**

We believe it is in the HMO owners' and tenants' interests to have properties actioned before occupation rather than when tenants have taken up residence.

**21. Do you agree that a property used as an HMO within the last six months should fall within the regulatory regime?**

Yes. Six months appears to be a reasonable period for this designation.

**22. Do you agree that an onus of proof provision is a necessary anti-avoidance measure?**

Yes. As the Department is aware under the Private Tenancies (NI) Order 2006, the onus of proof is on the HMO owner to prove exception and this approach seems to have been successful in mitigating avoidance. We would welcome guidance from the Department on what can be construed as acceptable proof, particularly in regard to proving family relationships.

**23. Would you like to see any other anti-avoidance measures? If so please give details.**

Housing Rights Service believes that the regulatory authority should have the power to seek proof of ownership and occupation and to serve notices for information on HMO owners, agents and tenants. Failure to provide information should be an offence and liable on conviction to a maximum fine of Level 2 on the standard scale. We would note however that care should be taken in regard to protecting vulnerable tenants from potential retaliatory action from HMO owners/agents and to consider whether information could be sought by alternative means, such as from neighbours, previous tenants and utility companies

**24. Should the method of HMO authorisation change from registration to licensing?**

Yes, we believe this change to a licensing system, as adopted in England, Scotland and Wales, would greatly assist in enhancing HMO standards and help eliminate the “disconnect and duplication” between the current systems of HMO registration and regulation in Northern Ireland, referred to para 4.2 in the consultation paper. In the other UK jurisdictions, the conditions which a HMO has to meet are part of the licensing scheme and we believe this approach should be adopted in Northern Ireland. We would emphasise our view, as expressed earlier in this response, that mandatory licensing should be phased in for the highest risk properties and should be carefully targeted.

**25. Do you agree the conditions a HMO must meet should be part of the licensing scheme?**

Housing Rights Services believes that this should be a mandatory element of the proposed licensing scheme and would presume that any breach of these conditions would result in the revocation of the licence and constitute a criminal offence with a fine of up to £5,000 (as is currently the case in England and Wales). If the breach is a serious or persistent one, we believe the regulatory authority should consider revoking the licence particularly if it considers the management of the HMO to be unsatisfactory or that the HMO is not suitable to house the number of occupiers.

As in the case with the corresponding HMO legislation in England and Wales, such mandatory conditions should require the licence holder to:

- produce an annual gas safety certificate
- keep electrical appliances and furniture supplied in a safe condition and to supply declarations of their safety to the regulatory authority on demand
- install smoke and carbon monoxide alarms and keep them in proper working order and to supply to the regulatory authority, on demand, a declaration of their positioning and condition; and
- provide tenants with a statement of the terms on which they occupy the HMO.

**26. Do you agree there should be a duty on the person with responsibility to apply for a licence?**

Yes, we believe the onus for this duty should rest with the person with responsibility for the HMO, as is the case under the Private Tenancies (NI) Order 2006, where landlords have to apply to the appropriate district council to have their properties inspected to determine whether they are fit for human habitation. This should be an important requirement and it is difficult to envisage who else should have this responsibility. We believe that it should be a criminal offence if, without reasonable excuse, the person managing or controlling a HMO fails to apply for a licence. We would support the inclusion of a time limit for this application process and penalties for the failure to adhere to this duty. We note that the Private Tenancies (NI) Order

already contains provisions for the imposition of time limits and penalties in relation to applying for a certificate of fitness. We also believe there should be an onus to notify 'relevant persons' who have an interest in the HMO and to supply the regulatory authority with these details. Such relevant persons should include tenants, mortgage companies, managing agents and other owners of the property, for example.

**27. Do you agree the person with responsibility for the house should be required to ensure the house is licensed?**

Yes, in the rest of the UK the onus is on the HMO owner, manager or agent to ensure a HMO is licensed. As we have stated above it should be a criminal offence to lease HMO accommodation without a licence.

**28. Do you agree there should be a time limit within which the regulatory authority must give a decision on the application? If so, what should the time limit be?**

We believe a time limit of 12 months would be reasonable, as is the case in Scotland.

**29. Do you agree flexibility should be built into the legislation so that it will be possible to leave particular categories of HMO out of mandatory licensing?**

Housing Rights Service would support the need for flexibility and, as we have stated earlier in this submission, we believe mandatory licensing should be targeted on certain categories of properties which constitute the highest risk. This is the approach adopted in England and Wales<sup>8</sup>, where licensing applies only to the highest risk HMO's due to the fire risks and high levels of occupancy found in such accommodation.

We note that councils in England and Wales also have discretion to introduce additional licensing of other types of HMOs which are not subject to mandatory licensing. This may apply to a specific geographical area or the whole of a local authority's area and is aimed at dealing with situations that cannot be improved by

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<sup>8</sup> The Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (England) Order 2006.

any other means. Such selective licensing does not however specifically relate to HMOs and may be introduced in areas with significant anti-social behaviour problems, for example.

**30. Do you agree that HMOs not subject to mandatory licensing should still have to meet less stringent conditions?**

We would be more supportive of this proposal if there was a proper fitness standard in place, such as the Housing, Health and Safety Rating System (HHSRS). Our present fitness standard is woefully inadequate in dealing with the most common health and safety defects found in the private rented sector and we would encourage the Department to consider introducing the HHSRS assessment system to Northern Ireland to allow for comparable protection as enjoyed in the rest of the UK. If such a scheme were to exist in Northern Ireland, there would no need to set less stringent conditions for HMOs, outside of the mandatory licensing framework, as all PRS properties, including HMOs, would have to comply with minimum standards for occupation.

**31. Do you agree that in certain circumstances the regulatory authority should be able to designate particular HMOs for mandatory licensing?**

Yes, Housing Rights Service would support this proposal as long as the legislation clearly designates particular high risk HMOs for mandatory licensing. As we have noted, councils in England and Wales have discretion to introduce additional licensing of other types of HMOs, which are not subject to mandatory licensing, in order to address issues of particular concern in specific localities.

**32. Do you agree a license should normally last for 5 years?**

Housing Rights Service would prefer to see the model of a three year time period that exists in Scotland introduced in Northern Ireland as we believe, given the amount of 'wear and tear' that HMO properties suffer compared to other types of accommodation, that the suggested five year licence period is too long. In addition we believe the regulatory authority should have the power to issue improvement notices and, in cases of repeated non-compliance, revoke the licence. In addition, the

authority should have the power, in some circumstances, to grant a licence for a shorter period if it considers it necessary.

**33. Where a house is being brought up to standard or a HMO is being closed should there be a temporary period when a house can continue to operate as an unlicensed HMO?**

Housing Rights Service believes that there should be very few circumstances where an unlicensed HMO should be able to operate for a temporary period and that these circumstances should be contained in guidance to the regulatory authority following consultation with stakeholders. In order to protect the safety and welfare of tenants, we would propose that an interim inspection of such properties would be required before occupation. If there is no substantial danger to the occupants then an interim license could then be issued for a fixed period, which we argue should normally be no longer than three months, allowing the landlord to bring the standard of the HMO up to the required standard or for tenants to be rehoused.

**34. Should there be a set period of exemption or should this be at the discretion of the regulatory authority?**

We believe that normally this period of exemption should be for a maximum of three months however it may be useful to allow the regulatory authority to extend this, at their discretion, in exceptional circumstances.

**35. Do you agree management orders should be introduced to allow a regulatory authority to take over the running of a HMO?**

Yes, Housing Rights Service is supportive of such a provision. Generally, we believe it would be helpful to provide more detailed guidance covering what effect a management order has, if any, on mortgage, insurance and other payments. It would also be helpful to provide guidance on the relationship between the regulatory authority and the mortgage company, and any repossession proceedings. We also believe that consideration should be given to introducing the facility of rent repayment orders which currently exist in Britain. Under such orders, the regulatory authority can recover Housing Benefit paid in respect of the HMO during any period

when it ought to have been licensed, but was not. The maximum claim is twelve months of HB, during any period that the property was not licensed. A tenant (or former tenant) should also be able to claim a rent repayment order in respect of "rent" paid (less any HB).

**36. Under what circumstances do you think a regulatory authority should be permitted to serve a management order?**

We would envisage that such orders would be reserved for the following situations:

- large scale renovation works where the landlord is unable or unwilling to undertake necessary refurbishment
- if an HMO owner fails the 'fit and proper person' test
- if a notice cannot be enforced, such as where a HMO owner lives outside the jurisdiction

**37. Do you agree the matters currently contained in the "Management of Houses in Multiple Occupation Regulations" should be carried forward into the licensing scheme?**

Yes, we believe the provisions contained in the current regulations should be replicated in any new licensing scheme and reviewed as part of an independent monitoring and evaluation process.

**38. Are there any other areas (licensing conditions) you think should be included? If so please say what these are and why their inclusion should be considered?**

We believe tenancy management standards and inadequate refuse collection, recycling and storage arrangements should be considered as other licensing conditions. Also information provided to tenants relating to thermal comfort such as energy costs and Standard Assessment Procedure (SAP) ratings should be considered.

**39. Do you think there should be a provision for minimum security standards for HMOs? If yes, please tell us what security items are needed?**

We believe security improvements are required and items are needed, such as high quality locks on exterior doors (including patio doors); locks on bedroom doors; and safety glass, which conform to 'Secure by Design' standards and can ensure the means of escape. The provision of window locks is more problematic, especially if they are key operated, and needs to be carefully considered by the Department and the regulatory authority. The HHSRS provides a useful assessment framework for security standards.

**40. Do you think HMOs operating outside planning legislation should still be subject to HMO regulatory control or do you think such a HMO should not be allowed to be licensed? Please give reasons for your answer.**

Housing Rights Services believes that, in principle, licensing should not be allowed where planning permission does not exist, as the safety of tenants is at significant risk in such accommodation. However we are mindful that such a change will impact on tenants with some facing difficulties if presenting as homeless, particularly if the HMO owner/manager refuses to provide Notice to Quit or when a fixed-term tenancy has not expired. We believe the Department and the regulatory authority need to plan for such an eventuality and include such considerations in preventing homelessness action plans. We are aware that there are differences in the definition of properties and room sizes, such as self-contained flats, in planning, housing benefit and housing law and we believe there needs to be a greater alignment between these legislative provisions regarding the definition of such accommodation, which hopefully the Department can consider in this review. Planning policy and legislation should complement HMO legislation and other housing and social welfare policy objectives.

**41. Do you think there should be a statutory energy efficiency requirement for HMOs?**

We believe such a requirement for HMOs is important as it provides landlords and tenants with information about how energy efficient their property is, and

ultimately, this could reduce energy bills for the landlord and occupiers so help meet the government's green energy targets. The adoption of HHSRS as a new statutory fitness standard would help ensure HMOs, and indeed all PRS properties, are assessed and, if appropriate, enforcement action taken to minimise heat loss.

We believe HMO owners, agents and tenants will be supportive of this requirement as, for example, EPCs are used as marketing tools and tenants should be able to see the SAP energy rating of one potential property over another. They would therefore be able to exercise choice over their rented accommodation in favour of more energy efficient homes. There are also financial incentives available for landlords in certain circumstances where they install energy efficiency measures.

**42. If yes what should be included in a statutory energy efficiency requirement for HMOs?**

As stated in our response to question 41, we believe the Department should introduce the HHSRS, as the statutory fitness standard, as soon as possible.

**43. Do you think there should be a statutory definition of overcrowding for HMOs?**

Housing Rights Service is supportive of this proposal, and as stated earlier in this response, believes such a statutory definition of overcrowding is required, as evidence shows that this is one of the most significant risk factors in assessing the safety of HMOs.

**44. Where overcrowding occurs do you think the occupants should be allowed to remain in the house? If not what do you think should happen to the occupants?**

We believe that if there is an immediate risk to the health and safety of tenants they should not be allowed to stay in the property and should be provided with appropriate accommodation by NIHE as a matter of urgency. No new tenants should be allowed to stay in the property until the regulatory authority is satisfied that the HMO owner will adhere to proper management standards and the licence conditions relating to occupancy levels. No rent should be payable in such situations and the regulatory authority should consider prosecution and levying a financial

penalty on the HMO owner to cover rehousing costs if he/she has exceeded the occupancy level specified in the licensing conditions.

**45. Should there be provision for temporary overcrowding?**

No, we don't believe temporary overcrowding should be facilitated as, in this situation, tenants will be exposed to health and safety risks.

**46. If it is suspected that a house is overcrowded, do you think the onus should be on the person with responsibility to show that it is not?**

Yes, we believe the onus should be placed on the HMO owner or agent to satisfy the regulatory authority that overcrowding is not taking place. However we accept that this can be difficult to prove and we suggest that the Department should issue definitive guidance in regard to what is an acceptable level of proof. We believe that a statutory information gateway should be established between the Social Security Agency, NIHE Housing Benefit division, and the regulatory authority to match licensed occupancy levels and the numbers in receipt of benefits for relevant HMO addresses.

**47. Where an occupant has caused or permitted over occupation, do you think this should be an offence?**

No, as we believe this will be difficult to enforce and to frame in legislation

**48. Where there is overcrowding, do you think occupants should be allowed to live rent free or at a reduced rent?**

No, as providing free or reduced rent incentives could have the unintended consequence of encouraging overcrowding and increasing risk. As stated earlier in this submission, there are other ways of providing support to tenants who are affected by overcrowding. However the provision of financial compensation for tenants who have incurred loss in this situation, through a civil claims procedure, should be considered by the Department in this review.

**49. Do you agree there should be a requirement for carbon monoxide detectors to be in place in HMOs?**

Yes, Housing Rights Service is supportive of this measure and would suggest that a minimum number of CO detectors should be specified for each rental address rather than the HMO building as a whole and that these should be AC powered, with long life battery backup, and conform to a high BS specification.

**50. Do you think there should be a provision providing for a reasonable standard of external decorative condition in a HMO?**

Yes, landlords have a legal responsibility to maintain and upgrade their properties "to a reasonable standard, having regard to their age, character and locality".<sup>9</sup> The Department will also be aware that, under Article 7 of the Private Tenancies (NI) Order 2006 (landlords' duties to repair), there is a responsibility to repair the structure and exterior of their properties, including maintaining the exterior paintwork in a reasonable condition. Difficulties have been encountered in enforcing these provisions and the Department, in our view, should consider this aspect as part of the review.

**51. Are there any other areas relating to the outside of a house that should be addressed?**

Housing Rights Service believes the Department should consider a number of issues relating to the exterior of HMOs, and these include the maintenance of gardens, hedges and boundary walls/fences; the removal of graffiti; the provision of space for recycling; and perhaps most importantly hygiene and refuse collection in communal areas such as fire escapes, yards, balconies and shared entries. There are a number of provisions in the Clean Neighbourhoods and Environment Act (NI) 2011 which should be taken into account by the Department in order to avoid duplication in these regards.

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<sup>9</sup> Article 19. Private Tenancies (Northern Ireland) Order 2006

**52. Do you agree there should be certain clauses relating to occupant behaviour included in occupancy agreements?**

Such clauses are already contained in many tenancy agreements and the Department will be aware that Article 8 of the Private Tenancies (NI) Order 2006 already places certain obligations on private tenants in this regard. The Department will be aware that licensees will not be bound by such provisions.

**53. Do you think there should be provision for immediate eviction where anti-social behaviour has been proven against an occupant?**

No. We believe this would be a disproportionate response which may engage the Human Rights Act 1998. The Department will be aware that this proposal is contrary to Article 14 of the Private Tenancies (NI) Order 1996 which sets out a requirement for tenants and landlords to provide 28 days' Notice to Quit and due process.

**54. Do you think there should be provision for information sharing between the social and private HMO landlord sectors?**

No. Housing Rights Service believes that this proposal requires further consideration as it may breach Human Rights standards and the Data Protection Act 1998.

**55. Do you think persons who are convicted of anti-social behaviour within a HMO should be further penalised by being fined?**

No. Housing Rights Service believes that it should be the sole responsibility of the courts to impose fines under this legislation and questions whether additional penalties can be legally served by bodies such as the regulatory authority in this regard.

**56. Are there any other provisions you think might help to control anti-social behaviour?**

We believe the Department, and the regulatory authority, should develop comprehensive information and guidance materials to help inform tenants of their responsibilities. Support should also be provided to relevant tenants' and landlords'

organisations. As mentioned above, provisions in the Clean Neighbourhoods and Environment Act (NI) 2011 already exist which should be fully employed in dealing with this problem.

**57. Do you agree the powers of entry outlined above are adequate? If not please say why and detail the powers you consider should exist?**

We believe the existing powers of entry under the Housing Order (NI) 1981, as amended by Article 86 of the 1992 Housing Order, are more than adequate and that 24 hours is sufficient notice to assess whether a property is a HMO and any compliance issues.

**58. Do you think that a "fit and proper" test is necessary?**

We believe this requirement is essential, particularly given the high number of HMOs which are occupied by vulnerable individuals. This proposal has the potential to significantly improve the standards in the private rented sector generally and provide tenants with extra protection from bad landlords. Both the HMO owner **and** agent in our view should satisfy the "fit and proper person" test, not just the "person with responsibility". Once a licence is granted it should not be transferred to another property or to another person. If the HMO is sold, the new owner and/or manager should be obliged to apply for a new licence.

In deciding whether a person is "fit and proper", we believe the regulatory authority should follow the example in England and Wales and take into account evidence of criminal conduct by a person "associated, or formerly associated with", the proposed HMO licence holder or manager "whether on a personal, work or other basis", if relevant. The proposed agent/manager, if not the licence holder, and all other persons involved in the management of the HMO should also, in our opinion, be "fit and proper" in order to reassure tenants that the property will be legally managed and help eliminate the criminality that currently exists in certain elements of the HMO market.

**59. If so, what should the criteria be and to whom should the criteria apply?**

We believe consideration should be given to criteria which are relevant to an applicant's prospective role as a HMO owner and agent. These should include bankruptcy; convictions for offences such as assault, trafficking, theft, other forms of harassment; illegal eviction; and breach of health and safety legislation. In England and Wales, local authorities must play due regard to any offence involving fraud; violence or drugs; unlawful discrimination in connection with the carrying out of any business; the contravention of any provision of housing law; and breaches of any code of practice for the management of HMOs.

**60. Do you agree that where there is (a) question over who is the most appropriate person to be the person with responsibility the regulatory authority should decide?**

No. See our response to the previous question for our views on this issue. Surely as a result of this consultation exercise and the drafting of legislation, this issue will be settled. We believe it should not be left to the discretion of the regulatory authority to determine this issue. In order to avoid ambiguity and possible legal challenges in the future, the Department should frame legislation which clearly identifies this responsibility.

**61. Do you think fees should be set at a level to allow licensing of HMOs to be self-financing?**

We believe this issue needs to be considered by the regulatory authority as it will have to establish what it costs to implement HMO licensing, including staff costs, training, inspection, administration costs, publicity, education and enforcement. Nevertheless we believe HMO owners should take responsibility for funding the bulk of these costs without passing these costs on to tenants in the form of higher rents. We believe the Department should contribute to the costs of the licensing scheme and take particular responsibility for funding the education, information and enforcement aspects of the new regime. Housing Rights Services does not believe that the regulatory authority should be allowed to use licence fees to raise revenue for other projects or areas of work outside HMO regulation. However any fines

resulting from prosecutions and penalties, in regard to non-compliance with the licensing scheme, should be made available to the authority.

**62. Do you think fees should be increased where a person with responsibility does not come forward to be licensed?**

Yes, this seems a sensible and proportionate proposal which will encourage HMO owners and agents to comply with licensing. Prosecution could then follow, if there is a continuing failure to apply for a licence, with the fee backdated to cover the period when it was originally due.

**63. Do you think fees should be higher in areas where there are high concentrations of HMOs?**

No. We believe this proposal could introduce an unnecessary degree of complexity to the licensing scheme particular in regard to defining what constitutes a high concentration area. If the differential in fees was very large it could also result in some HMOs owners relocating their properties from traditional rent areas to localities unable, or unwilling, to assimilate higher concentrations of PRS tenants.

**64. Do you think there should be provision to allow payment of fees by instalments?**

We have no view on this matter and would suggest this is a matter for the Department and the regulatory authority to decide.

**65. Do you agree that methods of enforcement other than the service of notices and court action should be considered?**

Housing Rights Service believes that a major difficulty exists regarding enforcement and would have welcomed details in the consultation paper on, for example, the number of statutory notices that have been served; the number of prosecutions that have been taken and the average levels of fine that have imposed in recent years. It is our experience that the penalties imposed by the courts to date have been on the lowest levels of the scale. We would welcome a discussion with relevant parties on how current enforcement actions and sanctions can serve as more effective

deterrents to landlords who are tempted to break the law and endanger the lives of their tenants.

Be that as it may, we would support the introduction of fixed, on the spot, fines as a means of helping to enforce compliance with the licensing scheme. We would also suggest that other means of enforcement such as daily penalties for non-compliance with notices; rent recoupment and restriction; and the provision of rent free periods should be considered. We suggest that the regulatory authority explores the potential of including a mediation service as part of the licensing scheme to limit court action. This would be of benefit to tenants, landlords and the wider community.

**66. Do you think a requirement to display a sign externally would assist in ensuring HMOs are compliant?**

No. Housing Rights Service does not believe such a provision would assist in ensuring compliance and may well stigmatise tenants and their host communities. However there is certainly a case for such notices to be displayed internally.

**67. Apart from those already mentioned, are there any other enforcement methods you think would be effective?**

No. See answer to question 65

**68. Do you agree a register of licences should include the name and contact details of the licence holder?**

Yes. We believe the contact details should include the address of the licence holder to allow for the effective delivery of licensing documentation and other statutory notices. The address would not be available in the public domain and could be redacted from a public register in order to satisfy any security concerns that licence holders may have. The Department will be aware of NIHE's existing Anserve system which could be further developed and promoted to assist tenants in contacting their landlords, particularly in emergency situations.

We presume the full registration details will be available to relevant statutory bodies through the proposed statutory information gateway. The soon to be introduced Landlord Register will greatly assist in this regard and we believe the HMO register and this new system should be integrated to allow for registration of the whole of the PRS in order to avoid duplication and reduce administration costs.

**69. Do you think there should be a statutory or voluntary requirement on the regulatory authority to undertake education and awareness activities?**

We believe there should be a statutory requirement for the authority to provide HMO owners and agents with appropriate guidance and support in order to enable them to effectively manage these tenancies. Education and information awareness programmes should also be provided for HMO tenants and their representatives. We suggest that the Department considers funding such activities and explores the potential of including a mediation service for landlords and tenants as part of the licensing scheme.

**70. Do you think there should be a course for persons with responsibility to attend? If so, do you think such a course should be accredited?**

Yes. Housing Rights Service is in favour of the provision of such courses which should be preferably accredited. A number of courses are already provided for landlords and could be easily adapted to cover HMO issues in more depth.

**71. Do you have any suggestions as to who should run an accredited course?**

Housing Rights Service already offers provides accredited training to landlords and agents and would be happy to provide further information on the nature of this provision.

**72. How do you think education and awareness courses should be financed?**

We believe there is a case for such courses to be initially funded by the Department and the regulatory authority. Thereafter they should be self-financing.

**73. Do you think there should be a fee reduction for those who successfully complete a course?**

Yes. This is a useful suggestion however we believe the Department should consider making such courses a mandatory part of the licensing scheme for all HMO owners and agents. We note that a number of local authorities in Britain have made it a condition of licensing that landlords attend courses and cover these costs themselves.

## **5.0 Conclusion**

Housing Rights Service trusts that full consideration will be given to the issues raised in this response. We look forward to the development of a scheme which will lead to better physical conditions and standards of management within the HMO sector.

Further detail is available from:

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